

The Questionable Legality of IEEPA Tariffs: Does the Major Questions Doctrine Apply?

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This Note will discuss and analyze the litigation in response to the Trump Administration's imposition of tariffs brought under the questionable authority of the International Emergency Economic Powers Act (IEEPA). Rather than using traditional tariff authorities like Section 232 of the Trade Expansion Act and Section 301 of the Trade Act, the Trump Administration used IEEPA as statutory authority for these sweeping tariffs due to its lack of lengthy procedural hurdles. Though these IEEPA tariffs went into immediate effect, the legal questions surrounding Trump's choice of authority have abounded. The history of the statute, the history of tariff litigation, and the Supreme Court's major questions doctrine all contribute to the foregoing analysis of whether this broad emergency action was actually legal. Following a review of the most relevant legal arguments, this Note turns to the body causing the murkiness in the legal waters surrounding tariff imposition: Congress and their widespread delegation of their enumerated powers.

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Introduction

Since his second inauguration on January 20, 2025, President Trump has revived the practice of imposing tariffs and has pushed the boundaries of the President's authority to do so. Traditional tariff authorities, like Section 232 of the Trade Expansion Act and Section 301 of the Trade Act, involve lengthy procedural hurdles. To avoid a waiting period, the Trump Administration has placed wide-ranging tariffs into immediate effect, under the authority of the International Emergency Economic Powers Act (IEEPA)—an act typically used for conflict-driven sanctions and never before used as a tariff authority.

A number of lawsuits have been filed in response to Trump's IEEPA tariffs, though this Note will focus primarily on the filing and development of *V.O.S. Selections, Inc. v. Trump*,¹ the current suit pending before the U.S. Supreme Court. This lawsuit, like many others filed, claims that these tariffs lack a sufficient connection to the declared national emergencies and invokes the major questions doctrine to demand clear congressional authorization.

1. 149 F.4th 1312 (Fed. Cir. 2025) (per curiam), *cert. granted*, No. 25-250, 2025 WL 2601020 (U.S. Sep. 9, 2025).

Ultimately, the Supreme Court's impending decision will not only clarify the scope of IEEPA; it will help define the scope of presidential power in trade policy.

In analyzing the currently pending litigation, this Note begins by briefly contextualizing the evolution of U.S. tariffs and the typical scope of tariff-related litigation in U.S. courts. Then, Part II turns to the history and statutory framework of IEEPA and its predecessor, the Trading with the Enemy Act (TWEA). Through a discussion of TWEA, *United States v. Yoshida International, Inc.*,² and IEEPA's connection to the National Emergency Act (NEA), this Part highlights IEEPA's broad language and procedural requirements, laying the foundation for current challenges rooted in statutory interpretation.

Next, Part III examines recent litigation arising from tariffs enacted in Trump's first term—including failed Section 232 suits and ongoing Section 301 cases—as a predictor for IEEPA tariff litigation. Comparing and contrasting these tariffs with Trump's second-term impositions, Part IV focuses on one key lawsuit challenging the Administration's use of the IEEPA to impose sweeping tariffs in 2025, *V.O.S. Selections, Inc. v. Trump*. This lawsuit highlights the key arguments before the courts—that the tariffs lack a clear link to national emergencies and violate the major questions doctrine.

This Note's analysis narrows in Part V with a discussion of the merit of the major questions doctrine's application to Trump's IEEPA tariffs. Ultimately, this Part concludes that President Trump's actions reflect the kind of executive overreach the doctrine is meant to prevent: an agency—in this case, the President—overstepping their constitutional authority on the back of ambiguous statutory authority. Setting aside a court ruling in either direction, this Note's conclusion urges Congress to reevaluate IEEPA and the NEA, just as it once replaced TWEA, to better define limits on presidential trade powers.

I. The United States Tariff

To better understand the Trump Administration's reasoning in using IEEPA, it is important to establish the history of U.S. tariffs and the lengthy procedural processes associated with common tariff authorities. This discussion will specifically highlight Section 232 of the Trade Expansion Act and Section 301 of the Trade Act, comparing those procedures to those required by IEEPA.

Until the late nineteenth and early twentieth centuries, the U.S. federal government acquired a substantial portion of its revenue through the use of

2. 526 F.2d 560 (C.C.P.A. 1975).

tariffs.³ Widespread industrial expansion and the adoption of federal income tax in 1913 diminished the necessity for revenue from tariffs.⁴ Following World War II, the focus shifted from using tariffs to raise federal funds to an emphasis on free trade. The United States was a leader in the establishment of the General Agreement on Tariffs and Trade, a precursor to the World Trade Organization (WTO), and set out to minimize tariffs and other restrictions on free trade.⁵ With few exceptions, America's anti-tariff and pro-free-trade policies remained a mainstay through the Obama Administration.⁶

The Trump Administration, however, has brought tariffs back into the limelight, using tariffs and the threat of tariffs against every state on Earth, even an uninhabited island.⁷ In doing so, the Trump Administration has drawn on a number of statutory authorities for presidential imposition of tariffs.⁸ Most notable, however, is the Trump Administration's ongoing imposition of tariffs through IEEPA.⁹ IEEPA had never been used to impose tariffs on foreign importers,¹⁰ and unsurprisingly, its use has already brought on multiple lawsuits.¹¹

3. Frank Holmes, *The Surprising History of Tariffs and Their Role in U.S. Economic Policy*, U.S. GLOB. INVS. (Feb. 10, 2025), <https://www.usfunds.com/resource/the-surprising-history-of-tariffs-and-their-role-in-u-s-economic-policy/> [<https://perma.cc/CN79-EY69>] ("Between 1798 and 1913, they accounted for anywhere from 50% to 90% of federal income.").

4. Tyler Halloran, *A Brief History of Tariffs in the United States and the Dangers of Their Use Today*, FORDHAM J. CORP. & FIN. L. (Mar. 17, 2019), <https://news.law.fordham.edu/jcfl/2019/03/17/a-brief-history-of-tariffs-in-the-united-states-and-the-dangers-of-their-use-today/> [<https://perma.cc/6KD2-4XAL>].

5. *Id.*

6. *Id.*

7. *See id.* (discussing recent tariffs and threat of tariffs against Europe, China, Mexico, and Canada); Kate Lyons & Nick Evershed, 'Nowhere on Earth Is Safe': Trump Imposes Tariffs on Uninhabited Islands Near Antarctica, *GUARDIAN* (Apr. 2, 2025), <https://www.theguardian.com/us-news/2025/apr/03/donald-trump-tariffs-antarctica-uninhabited-heard-mcdonald-islands> [<https://perma.cc/BD2T-XCN9>] (reporting that a group of uninhabited Antarctic islands had been hit with a tariff).

8. Warren Maruyama, Lyric Galvin & William Alan Reinsch, *Making Tariffs Great Again: Does President Trump Have Legal Authority to Implement New Tariffs on U.S. Trading Partners and China?*, CTR. FOR STRATEGIC & INT'L STUD. (Oct. 10, 2024), <https://www.csis.org/analysis/making-tariffs-great-again-does-president-trump-have-legal-authority-implement-new-tariffs> [<https://perma.cc/F74T-KG6L>].

9. *Id.*

10. *Id.*

11. *E.g.*, *Emily Ley Paper, Inc. v. Trump*, No. 3:25cv464-TKW-ZCB, 2025 WL 1482771, at *2 (N.D. Fla. May 20, 2025); *V.O.S. Selections, Inc. v. Trump*, 149 F.4th 1312 (Fed. Cir. 2025) (per curiam), *cert. granted*, No. 25-250, 2025 WL 2601020 (U.S. Sep. 9, 2025); *see* Justin Bachman, *Trump Tariffs Present Untested Legal Areas for Trade Litigation*, *LEGAL DIVE* (Feb. 3, 2025), <https://www.legaldive.com/news/trump-tariffs-present-untested-legal-areas-for-trade-litigation/739054/> [<https://perma.cc/47DJ-EDDK>] (predicting that the tariffs will spark litigation).

A. Presidential Tariff Power: Section 232 and Section 301

The tariff power is derived from Article I, Section 8 of the United States Constitution, which grants Congress the power to “lay and collect Taxes, Duties, Imposts and Excises.”¹² Tariffs were further authorized in the Tariff Act of 1789, one of the first acts signed into law by Congress.¹³ Congress has delegated the tariff power to the President through a number of statutes, including but not limited to Section 232 of the Trade Expansion Act and Section 301 of the Trade Act.¹⁴ Both statutes permit the President to impose import restrictions under varying circumstances, though they also involve substantial procedural hurdles. And even though the first Trump Administration jumped through these procedural hoops to impose tariffs, in 2025 the Administration departed from tradition and instead chose a swifter, albeit questionable, path through IEEPA.

Section 232 of the Trade Expansion Act of 1962 grants the President power to impose import restrictions “based on an investigation and affirmative determination by the Department of Commerce . . . that certain imports threaten to impair U.S. national security.”¹⁵ During Trump’s first term, the Administration initiated eight Section 232 investigations.¹⁶ Two of those investigations resulted in the imposition of a twenty-five percent tariff on steel and a ten percent tariff on aluminum.¹⁷

Section 232 tariffs require a lengthy process before the tariffs are actually imposed. In total, the process of implementing Section 232 tariffs takes roughly one year. It begins with a written request by the President, or any other “interested party,” for the Department of Commerce to investigate the effect of certain imports on national security.¹⁸ After the initiation of the investigation, the Department of Commerce has 270 days to prepare a report advising the President on whether the imports are harming U.S. national security.¹⁹ If the Department of Commerce finds that the imports impair national security, the President has 90 days to determine whether and to what extent to impose tariffs.²⁰

In addition to Section 232 of the Trade Expansion Act of 1962, Section 301 of the Trade Act of 1974 is a primary piece of legislation

12. U.S. CONST. art. I, § 8.

13. Halloran, *supra* note 4.

14. See Maruyama et al., *supra* note 8 (discussing the powers delegated to the President by each Act).

15. RACHEL F. FEFER, CONG. RSCH. SERV., IF10667, SECTION 232 OF THE TRADE EXPANSION ACT OF 1962 (2022).

16. *Id.*

17. *Id.*

18. *Id.* Alternatively, the Department of Commerce may self-initiate an investigation. *Id.*

19. *Id.*

20. *Id.*

delegating tariff authority to the President. Section 301 of the Trade Act grants the United States Trade Representative (USTR) the authority and responsibility “to enforce U.S. rights under trade agreements and respond to certain foreign trade practices.”²¹ The USTR is appointed by the President,²² and “has lead responsibility for developing and coordinating U.S. international trade, commodity and direct investment policy and is the lead trade negotiator for the United States in bilateral, regional and multilateral trade and investment agreements.”²³ Under Section 301, the USTR has the power to self-initiate an investigation into foreign government conduct or do so in response to a petition from an interested party.²⁴ Foreign government conduct that would prompt a Section 301 investigation includes (1) violations denying rights of the United States under a trade agreement, (2) “unjustifiable” actions burdening or restricting U.S. commerce,²⁵ and (3) “unreasonable” or “discriminatory” actions burdening or restricting U.S. commerce.²⁶

Similar to Section 232 actions, Section 301 actions require a lengthy procedural process. After initiating an investigation into a foreign government’s conduct, the USTR is required to request consultations with that government.²⁷ If a trade agreement is involved and a mutually acceptable agreement is not reached during consultations, the USTR is required to “request formal dispute settlement proceedings under the governing trade agreement.”²⁸ Historically, in cases not involving trade agreements, the USTR has still requested consultations with the foreign government.²⁹ If consultations do not result in a resolution, the USTR investigates the alleged conduct to determine whether it meets the criteria for Section 301 action.³⁰ In cases involving trade agreements, the USTR must make a determination 30 days after the conclusion of dispute resolution.³¹ If an investigation finds retaliatory action necessary, the USTR must implement it within 30 days.³²

21. DANIELLE M. TRACHTENBERG, CONG. RSCH. SERV., IF11346, SECTION 301 OF THE TRADE ACT OF 1974 (2025).

22. 19 U.S.C. § 2171(b)(1) (1974).

23. *Office of the U.S. Trade Representative (USTR)*, U.S. DEP’T INTERIOR, <https://www.doi.gov/invasivespecies/ustr> [<https://perma.cc/5HN6-YJ7L>].

24. TRACHTENBERG, *supra* note 21.

25. *Id.*

26. *See id.* (describing a December 2024 USTR investigation into Nicaragua “to determine whether they are unreasonable, discriminatory, or burden or restrict U.S. commerce”).

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

Prior to Trump's first term, the United States "used Section 301 authorities primarily to build cases and pursue dispute settlement at the WTO."³³ However, the Trump Administration used Section 301 as authority for the imposition of tariffs on two occasions. In 2019, Trump imposed fifteen to twenty-five percent tariffs on European Union (EU) imports due to EU subsidies on large civil aircraft.³⁴ Most notably, the Trump Administration imposed tariffs on Chinese imports following the USTR's investigation into allegedly unjustifiable and discriminatory Chinese practices, including "technology transfer, intellectual property, and innovation policies."³⁵ These tariffs covered around \$370 billion worth of Chinese imports,³⁶ and they were met with criticism from Congress and foreign importers.³⁷ In 2020, Chinese importers filed suit in the Court of International Trade (CIT) over the Section 301 tariffs, claiming they went beyond the statute's authority.³⁸ In March 2023, the CIT upheld the tariffs, and on September 25, 2025, the Federal Circuit affirmed the CIT's decision.³⁹

B. *Switching Lanes: Trump's IEEPA Tariffs*

In a historic move, the Trump Administration departed from tradition in 2025, choosing to impose tariffs under IEEPA rather than Section 232 and Section 301. Though Section 232 and Section 301 both grant the President authority to impose tariffs, they each involve lengthy procedures prior to implementation. IEEPA authorizes swift action by the President. For example, President Biden used IEEPA to implement immediate sanctions on Russia "within hours of Russia invading Ukraine."⁴⁰ By contrast, Trump's Section 301 tariffs on China took eleven months in 2017 and 2018 to implement.⁴¹

IEEPA allows for such swift implementation due to its role as an emergency statute. If the President declares a national emergency under the NEA, IEEPA "may be used 'to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United

33. *Id.*

34. Maruyama et al., *supra* note 8. The tariffs affected roughly \$7.5 billion worth of imports. *Id.*

35. *Id.*

36. *Id.*

37. TRACHTENBERG, *supra* note 21.

38. *China Tariff Case Advances at Appeals Court*, SANDLER, TRAVIS & ROSENBERG, P.A. (July 27, 2023), <https://www.strtrade.com/trade-news-resources/str-trade-report/trade-report/july/china-tariff-case-advances-at-appeals-court> [<https://perma.cc/B2AJ-AY99>]. This case is discussed thoroughly in subpart III(B).

39. *Id.*; HMTX Indus. LLC v. United States, No. 23-1891 (Fed. Cir. Sep. 25, 2025) at *34.

40. Peter E. Harrell, *The Case Against IEEPA Tariffs*, LAWFARE (Jan. 31, 2025, at 11:34 AM), <https://www.lawfaremedia.org/article/the-case-against-ieepa-tariffs> [<https://perma.cc/Q6S4-PTZD>].

41. *Id.*

States, to the national security, foreign policy, or economy of the United States.”⁴² IEEPA grants authority to “regulate” imports and exports,⁴³ though it is unclear whether that regulation power translates into the authority to impose tariffs.⁴⁴ Prior to Trump, IEEPA had never been used to impose tariffs.⁴⁵

On January 20, 2025,⁴⁶ President Trump declared a national emergency under the NEA, specifically citing “the grave threat to the United States posed by the influx of illegal aliens and drugs into the United States.”⁴⁷ On February 1, 2025, the Trump Administration published a new IEEPA tariff proposal in response to the “extraordinary threat posed by illegal aliens and drugs, including deadly fentanyl.”⁴⁸ The proposal involved the implementation of an additional 25% tariff on all imports from Canada and Mexico, as well as a 10% hike on the already-existing tariff on imports from China.⁴⁹ The Trump Administration stated that these tariffs were intended to hold “Mexico, Canada, and China accountable to their promises of halting illegal immigration and stopping poisonous fentanyl and other drugs from flowing into our country.”⁵⁰

On March 3, 2025, the Trump Administration increased tariffs on China from 10% to 20%.⁵¹ The President invoked his authority to do so under IEEPA based on his determination “that the [People’s Republic of China

42. CHRISTOPHER A. CASEY, CONG. RSCH. SERV., IN11129, THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT (IEEPA), THE NATIONAL EMERGENCIES ACT (NEA), AND TARIFFS: HISTORICAL BACKGROUND AND KEY ISSUES 1 (2025) (quoting 50 U.S.C. § 1701(a)).

43. See 50 U.S.C. § 1702(a)(1)(A) (outlining presidential authorities under the Act).

44. CASEY, *supra* note 42, at 1.

45. *Id.*

46. Inauguration day. See *The Inaugural Address*, THE WHITE HOUSE (Jan. 20, 2025), <https://www.whitehouse.gov/remarks/2025/01/the-inaugural-address/> [<https://perma.cc/L7PP-2EFT>].

47. Further Amended Notice of Implementation of Additional Duties on Products of the People’s Republic of China, 90 Fed. Reg. 11426, 11427 (Mar. 6, 2025). Notably, Trump tried to do this in 2019 but reached a deal with Mexico before IEEPA could be used. Doug Palmer, Adam Behsudi & Ted Hesson, *Trump Drops Tariff Threat on Mexico After Migration Deal Reached*, POLITICO (June 7, 2019, at 11:13 PM ET), <https://www.politico.com/story/2019/06/07/mexico-troops-southeastern-border-1514223> [<https://perma.cc/3AM9-PZNQ>].

48. *Fact Sheet: President Donald J. Trump Imposes Tariffs on Imports from Canada, Mexico and China*, THE WHITE HOUSE (Feb. 1, 2025), <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-imposes-tariffs-on-imports-from-canada-mexico-and-china/> [<https://perma.cc/V6J8-PVEZ>].

49. *Id.* (noting the exception that “[e]nergy resources from Canada will have a lower 10% tariff”).

50. *Id.*

51. *Further Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People’s Republic of China*, THE WHITE HOUSE (Mar. 3, 2025), <https://www.whitehouse.gov/presidential-actions/2025/03/further-amendment-to-duties-addressing-the-synthetic-opioid-supply-chain-in-the-peoples-republic-of-china/> [<https://perma.cc/P6BS-7JSF>].

(PRC)] has not taken adequate steps to alleviate the illicit drug crisis through cooperative enforcement actions.”⁵²

On the same day, the Trump Administration confirmed that they would be “proceeding with implementing tariffs on Canada and Mexico under [IEEPA] to combat the extraordinary threat to U.S. national security, including our public health posed by unchecked drug trafficking.”⁵³ The 25% tariff on all imports originating from Canada and Mexico⁵⁴ went into effect on March 4.⁵⁵ However, on March 5, 2025, the Trump Administration announced a pause on the 25% tariff for auto imports in response to concerns from U.S. automakers.⁵⁶

Canada wasted no time retaliating with the imposition of 25% tariffs on \$155 billion of U.S. goods on March 4, 2025.⁵⁷ The next day, Canada filed a complaint with the WTO against the tariffs.⁵⁸ On March 6, the Trump Administration “granted temporary tariff exemptions for Canadian and Mexican goods” covered by the United States–Mexico–Canada Agreement (USMCA)—a free trade agreement between the three North American nations.⁵⁹ The temporary exemption lasted until April 2 and covered roughly 50% of Mexican imports and 38% of Canadian imports.⁶⁰ However, Ontario Premier Doug Ford announced a 25% surcharge on electricity exports to New York, Minnesota, and Michigan and threatened to “shut the electricity off completely” if the United States escalated any further.⁶¹ Trump quickly responded to Canada’s threat with his own retaliatory measure of a 25% tariff on Canadian electricity and an order to raise tariffs on Canadian steel and

52. *Id.*

53. *Fact Sheet: President Donald J. Trump Proceeds with Tariffs on Imports from Canada and Mexico*, THE WHITE HOUSE (Mar. 3, 2025), <https://www.whitehouse.gov/fact-sheets/2025/03/fact-sheet-president-donald-j-trump-proceeds-with-tariffs-on-imports-from-canada-and-mexico/> [<https://perma.cc/JW29-PP6N>].

54. *See supra* note 49 and accompanying text.

55. Pillsbury Global Trade & Sanctions Law Team, *U.S. Tariffs on Non-USMCA Compliant Products Take Effect; Increased Tariff Rate on China Imposed*, PILLSBURY (Mar. 5, 2025), <https://www.globaltradeandsanctionslaw.com/u-s-tariffs-on-mexico-and-canada-take-effect-increased-tariff-rate-on-china-imposed/> [<https://perma.cc/S3BR-L6WY>].

56. *Id.*

57. *Id.*

58. *Id.*

59. Yun Li, *Trump Tariffs: U.S. Pauses Tariffs on Some Canadian, Mexican Imports until April 2*, CNBC (Mar. 6, 2025, at 7:24 PM), <https://www.cnbc.com/2025/03/06/trump-tariffs-live-updates-businesses-warn-of-ripple-down-effects-from-tariffs-because-of-rising-costs.html> [<https://perma.cc/RS3Q-GD57>].

60. *See id.* (providing the approximate percentage of imports covered by the USMCA).

61. Max Saltman, *Ontario Premier Threatens to ‘Shut Off Electricity Completely’ for US if Trade War Escalates*, CNN BUS. (Mar. 11, 2025, at 12:47 PM), <https://www.cnn.com/2025/03/10/business/canada-electricity-us-tariffs-doug-ford/index.html> [<https://perma.cc/WZQ6-GAUC>].

aluminum by another 25%, bringing the total tariff to 50%.⁶² In response to the tariff hike on Chinese imports, China filed a complaint with the WTO, “challenging the legality of the unilateral U.S. tariff hikes.”⁶³ China also imposed retaliatory tariffs on U.S. imports, including poultry, produce, and wheat on March 10, 2025.⁶⁴

On April 2,⁶⁵ Trump announced another national emergency due to “foreign trade and economic practices.”⁶⁶ Specifically, the Trump Administration cited America’s persistent trade deficits and the way these deficits have weakened the United States’ manufacturing base, undermined critical supply chains, and caused the defense industrial base to become dependent on foreign adversaries to justify the emergency declaration.⁶⁷ In response to this declared national emergency, the Trump Administration imposed a 10% tariff on all countries, as well as an “individualized reciprocal higher tariff on the countries with which the United States has the largest trade deficits.”⁶⁸ This included an additional 34% tariff on China, raising the total tariff to 54% on Chinese imports.⁶⁹ Additionally, the existing fentanyl- and migration-based tariffs on Canada and Mexico remained in effect.⁷⁰

Trump also advised that nations that do not retaliate will be rewarded.⁷¹ In the days following, Trump announced a ninety-day pause on his across-

62. David Goldman & Elisabeth Buchwald, *Trump Reverses New Tariffs Threat on Canada after Ontario Rescinds Electricity Charges*, CNN BUS. (Mar. 11, 2025, at 5:37 PM ET), <https://www.cnn.com/2025/03/11/business/tariffs-canada-trump/index.html> [https://perma.cc/3NUF-HAEQ]. These tariff threats were quickly reversed when Ontario Premier suspended its surcharge on energy exports to the United States. *Id.*

63. Pillsbury Global Trade & Sanctions Law Team, *supra* note 55.

64. *Id.*

65. April 2 was coined by the Trump Administration as “Liberation Day.” Wyatt Grantham-Philips, *Trump Has Dubbed April 2 ‘Liberation Day’ for His Tariffs. Here’s What to Expect*, AP NEWS (Mar. 31, 2025, at 6:04 PM CT), <https://apnews.com/article/trump-reciprocal-tariffs-liberation-day-april-2-86639b7b6358af65e2cbad31f8c8ae2b> [https://perma.cc/7S95-BTX5].

66. *Fact Sheet: President Donald J. Trump Declares National Emergency to Increase Our Competitive Edge, Protect Our Sovereignty, and Strengthen Our National and Economic Security*, THE WHITE HOUSE (Apr. 2, 2025), <https://www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donald-j-trump-declares-national-emergency-to-increase-our-competitive-edge-protect-our-sovereignty-and-strengthen-our-national-and-economic-security/> [https://perma.cc/J8L7-RW65].

67. *Id.*

68. *Id.*

69. Juliana Liu & Nectar Gan, *China Imposes 34% Reciprocal Tariffs on Imports of US Goods in Retaliation for Trump’s Trade War*, CNN BUS. (Apr. 4, 2025, at 10:28 AM), <https://www.cnn.com/2025/04/04/business/china-us-tariffs-retaliation-hnk-intl> [https://perma.cc/WPB5-XYLK].

70. *Id.*

71. Dan Mangan, Kevin Breuninger, Jeff Cox, Christina Wilkie, Erin Doherty & Ruxandra Iordache, *Trump Tariffs: ‘Do Not Retaliate and You Will Be Rewarded,’ White House Says*, CNBC (Apr. 10, 2025, at 11:54 AM), <https://www.cnbc.com/2025/04/09/trump-tariffs-live-updates.html> [https://perma.cc/974L-GA7Z].

the-board 10% tariff after claiming that seventy-five countries “had reached out to the White House to offer concessions.”⁷² During this ninety-day window, the Trump Administration planned to rework existing trade deals with each of the seventy-five countries.⁷³ While the U.S. and Britain did reach a deal during that window, the Trump Administration ultimately raised tariffs on the European Union to 30% in July 2025 and instituted new tariffs on ninety countries on August 7.⁷⁴

The trade dispute with China did not reach a quick resolution, either. In response to the initial 54% tariff on Chinese imports, China did not offer concessions to the White House; instead, China retaliated with its own 34% tariff on U.S. goods.⁷⁵ In response, Trump amended his 34% increased tariff on Chinese imports to 125%, raising its total to a 145% tariff.⁷⁶ Again, China responded with the same: a 125% tariff on U.S. imports into China.⁷⁷ The Trump Administration did exclude some Chinese imports from the 145% tariff, including “smartphones, computers, and some other electronics.”⁷⁸ The two countries have exchanged tariffs throughout 2025 and, most recently, President Trump “said he would impose a 100 percent tariff on all products from China in response to Beijing’s latest attempt to tighten control over global production of rare earth metals.”⁷⁹

Overall, the Trump Administration’s decision to use IEEPA to impose tariffs around the world marked a steep departure from established trade practice. By bypassing the procedural safeguards embedded in Sections 232 and 301, the Administration sought to swiftly address immigration, drug trafficking, and economic concerns by labeling them as national security threats. The resulting legal challenges have raised questions about the limits of presidential power under IEEPA and its long-term consequences.

72. Shannon Pettypiece, *Trump Faces Imposing Timeline to Broker 75 Trade Deals in Less than 90 Days*, NBC NEWS (Apr. 18, 2025, at 4:00 AM), <https://www.nbcnews.com/politics/trump-administration/trump-faces-imposing-timeline-broker-75-trade-deals-less-90-days-rcna200793> [https://perma.cc/9BH9-7VTC].

73. *Id.*

74. Tayla Minsberg, *A Timeline of Trump’s On-Again, Off-Again Tariffs*, N.Y. TIMES (last updated Oct. 14, 2025), <https://www.nytimes.com/2025/03/13/business/economy/trump-tariff-timeline.html> [https://perma.cc/K98T-B8W7].

75. Liu & Gan, *supra* note 69.

76. *Id.*; David Lawder & Jeff Mason, *Trump Spares Smartphones, Computers, Other Electronics from China Tariffs*, REUTERS (Apr. 13, 2025, at 7:11 AM), <https://www.reuters.com/markets/us-excludes-smartphones-computers-reciprocal-tariffs-2025-04-12/> [https://perma.cc/WPB5-XYLK] (“For the Chinese imports, the exclusion of the tech products applies only to Trump’s reciprocal tariffs, which climbed to 125% this week.”).

77. Lawder & Mason, *supra* note 76.

78. *Id.*

79. Minsberg, *supra* note 74.

C. *The Scope of Tariff Litigation: The World Trade Organization and the Court of International Trade*

As demonstrated by Canada and China's swift complaint filings, WTO members often file complaints to address broken trade promises.⁸⁰ However, in the WTO's own words, "the point is not to pass judgment."⁸¹ The majority of WTO disputes are settled out of court or otherwise resolved through consultation between nations.⁸² Although U.S. courts have deemed WTO opinions persuasive authority, they are not binding on the executive branch, U.S. agencies, or the judiciary.⁸³ Thus, to achieve a binding, enforceable judgment against the U.S. government's imposition of tariffs, plaintiffs typically file suit in U.S. federal court.

When it comes to binding resolutions on tariffs imposed by the U.S. government, the CIT is the most appropriate venue.⁸⁴ The CIT has exclusive jurisdiction over any "civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for . . . tariffs."⁸⁵ On appeal, the cases enter the jurisdiction of the Court of Appeals for the Federal Circuit.⁸⁶

The most effective way to challenge the United States' imposition of tariffs is through a U.S. business or a foreign importer—in other words, an affected individual or group of individuals—filing suit in the CIT. Though tariffs have the power to harm foreign countries "by making their products pricier and harder to sell abroad,"⁸⁷ U.S. businesses are impacted by paying increased import taxes directly to the U.S. government on foreign

80. *A Unique Contribution*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/whatis_e/tif_e/displ_e.htm [<https://perma.cc/89UV-QRPC>].

81. *Id.*

82. *Id.*

83. CONG. RSCH. SERV., RS22154, WORLD TRADE ORGANIZATION (WTO) DECISIONS AND THEIR EFFECT IN U.S. LAW 9 (2012).

84. See U.S. CT. OF INT'L TRADE, <https://www.cit.uscourts.gov/> [<https://perma.cc/MR9M-95GS>] ("The United States Court of International Trade . . . has nationwide jurisdiction over civil actions arising out of the customs and international trade laws of the United States."); *U.S. Court of International Trade—Judicial Business 2021*, U.S. CTS., <https://www.uscourts.gov/data-news/reports/statistical-reports/judicial-business-united-states/judicial-business-2021/us-court-international-trade-judicial-business-2021> [<https://perma.cc/37DJ-U2C4>] (outlining the scope and quantity of the cases handled by the CIT).

85. 28 U.S.C. § 1581(i)(2).

86. *About the Court*, U.S. CT. OF INT'L TRADE, <https://www.cit.uscourts.gov/about-court> [<https://perma.cc/47VZ-TSTC>].

87. Paul Wiseman, *5 Things to Know About Tariffs and How They Work*, PBS (last updated Apr. 3, 2025, at 6:51 PM), <https://www.pbs.org/newshour/economy/5-things-to-know-about-tariffs-and-how-they-work> [<https://perma.cc/NS2H-R6BV>].

purchases.⁸⁸ And because the tax increases costs for domestic companies, foreign importers typically lower their prices or risk losing sales altogether.⁸⁹

As such, while the WTO offers a forum for a more diplomatic resolution of trade-related disputes, its lack of binding enforceability against the U.S. government makes it an ill-suited forum for challenging tariff measures like those imposed by the current Trump Administration. In contrast, the CIT provides a jurisdictionally proper avenue for litigating these claims, especially given the direct impact tariffs have on domestic businesses and importers.⁹⁰

II. The History of IEEPA

Though IEEPA has never been used as a tariff authority, TWEA was used by the Nixon Administration to impose “a 10% tariff on all imports into the United States in response to a monetary crisis.”⁹¹ Nixon’s tariffs gave rise to a number of lawsuits from foreign importers, but *Yoshida* is the landmark case on the subject. Though the Court of Customs and Patent Appeals (CCPA) ultimately upheld Nixon’s tariffs, the use of TWEA for tariff imposition is considered by some to be “the precise reason Congress worked on tightening the statute and replacing it with . . . IEEPA.”⁹² Importantly, in *Yoshida*, the Court established a requirement that a tariff imposed by the President must have an “eminently reasonable relationship” with the declared emergency.⁹³ As such, this requirement will be analyzed in the context of each round of Trump’s IEEPA tariffs.

Apart from the Court’s holding in *Yoshida*, IEEPA’s broad language and legislative history illuminate potential arguments that may arise in litigation regarding the creation of a tariff power under IEEPA. Additionally, the standards for drafting a national emergency under the NEA will be applied to both of the Trump Administration’s emergency declarations to test their legitimacy. Through this discussion, however, the reader is reminded

88. Alex Durante, *Who Pays Tariffs? Americans Will Bear the Costs of the Next Trade War*, TAX FOUND. (Feb. 19, 2025), <https://taxfoundation.org/blog/who-pays-tariffs/> [https://perma.cc/HU3S-8G3U].

89. *Id.*

90. Though foreign nations will also challenge the Trump Administration’s authority to impose IEEPA tariffs by filing complaints with the WTO, this Note specifically focuses on the lawsuits that will arise in the CIT and Federal Circuit.

91. CASEY, *supra* note 42, at 1.

92. Inu Manak, *Trump’s Tariffs Are an Unconstitutional Power Grab*, FOREIGN POL’Y (Feb. 7, 2025, at 7:30 AM ET), <https://foreignpolicy.com/2025/02/07/trump-tariffs-canada-mexico-china-trade-allies-border-fentanyl-migration/> [https://perma.cc/V46Q-T6UJ], reprinted in Inu Manak, *Trump’s Tariffs Are an Unconstitutional Power Grab*, COUNCIL ON FOREIGN RELS. (Feb. 14, 2025, at 11:12 AM ET), <https://www.cfr.org/article/trumps-tariffs-are-unconstitutional-power-grab> [https://perma.cc/SJL4-46ZA].

93. *United States v. Yoshida Int’l, Inc.*, 526 F.2d 560, 579–80 (C.C.P.A. 1975).

that a court “has never second-guessed a president’s determination under IEEPA that a national emergency has occurred.”⁹⁴

A. *The Trading with the Enemy Act and Yoshida International*

As mentioned, no President prior to Trump had used IEEPA as a tariff authority. However, President Nixon used IEEPA’s predecessor, TWEA, to impose “a 10% tariff on all imports into the United States in response to a monetary crisis.”⁹⁵ Congress passed TWEA in 1917, following the United States’ entry into World War I, to allow the President to regulate international transactions with enemy powers.⁹⁶ In the 1930s, Congress expanded the Act, “delegating to the President the power to declare states of emergency in peacetime and assume expansive domestic economic powers.”⁹⁷ Much like its sequel statute (IEEPA), TWEA was primarily used as a sanction device; its use became prominent as part of U.S. Cold War strategy.⁹⁸

In enacting the 10% tariff, Nixon declared a national emergency “to protect the dollar” by encouraging other nations, including Japan and West Germany, to revalue their currencies.⁹⁹ Before Trump imposed IEEPA tariffs on March 4, 2025, this was the only time a president had used an emergency authority to impose tariffs.¹⁰⁰

Several foreign importers filed suit in the United States Customs Court¹⁰¹ in response to Nixon’s across-the-board import tariff, challenging the Administration’s statutory authority.¹⁰² In one of those cases, *Yoshida*, the U.S. government responded to a Japanese zipper importer’s claim by

94. Addar Levi, *IEEPA Tariffs’ Many Legal Challenges*, LAWFARE (Feb. 18, 2025, at 12:00 PM), <https://www.lawfaremedia.org/article/ieepa-tariffs--many-legal-challenges> [https://perma.cc/9YE5-M9L4].

95. CASEY, *supra* note 42, at 1.

96. See CHRISTOPHER A. CASEY, DIANNE E. RENNACK & JENNIFER K. ELSEA, CONG. RSCH. SERV., R45618, *THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT: ORIGINS, EVOLUTION, AND USE* 3–4 (2024) (identifying and describing the powers granted to the President).

97. *Id.* at 4.

98. *Id.* at 5.

99. CASEY, *supra* note 42, at 1–2 (quoting President Richard Nixon, Address to the Nation Outlining a New Economic Policy: “The Challenge of Peace” (Aug. 15, 1971), in THE AM. PRESIDENCY PROJECT, <https://www.presidency.ucsb.edu/documents/address-the-nation-outlining-new-economic-policy-the-challenge-peace> [https://perma.cc/RZ84-G9JF]).

100. See *id.* at 1 (asserting that no president had ever used IEEPA to impose tariffs before this, although President Nixon did so under TWEA).

101. In 1980, the United States Customs Court was reorganized as the United States Court of International Trade. *U.S. Customs Court*, FED. JUD. CTR., <https://www.fjc.gov/history/timeline/us-customs-court> [https://perma.cc/S3MH-4DXJ].

102. See *Yoshida Int’l, Inc. v. United States*, 378 F. Supp. 1155, 1157 (Cust. Ct. 1974) (describing a challenge by a Japanese zipper importer to President Nixon’s 10% tariff surcharge on the grounds that it exceeded the President’s delegated statutory authority), *rev’d*, 526 F.2d 560 (C.C.P.A. 1975).

pointing to Section 5(b) of TWEA as sufficient legal authority.¹⁰³ The Customs Court ultimately held that Nixon's tariff "exceeded the authority delegated to the President and is, therefore, invalid."¹⁰⁴

In large part, the Customs Court based its reasoning on an evaluation of the word "regulate" in the context of TWEA: "The words 'instructions, licenses, or otherwise' contained in section 5(b)(1) define the nature and mode of the regulatory authority intended to be delegated to the President. . . . These words likewise serve . . . to preclude the all-encompassing construction now urged by the [United States]."¹⁰⁵ The Customs Court went on to reject the President's authority to "determine and fix rates of duty at will, without regard to statutory rates prescribed by the Congress and without the benefit of standards or guidelines which must accompany any valid delegation of a constitutional power by the Congress."¹⁰⁶ In other words, the Customs Court held that President Nixon's use of TWEA—an emergency power act—to unilaterally create import standards without congressional approval went beyond presidential authority. In fact, the Customs Court ruled that the action was directly at odds with Article 1, Sections 1 and 8 of the Constitution, which manifestly prohibit Congress from abdicating or transferring "the essential legislative functions with which it is thus vested."¹⁰⁷

The United States appealed the case to the CCPA.¹⁰⁸ Specifically, the CCPA considered whether "Congress, having itself regulated imports by employing duties as a regulatory tool, and having delegated to the President, for use in national emergencies, the power to regulate imports, intended to permit the President to employ the same regulatory tool."¹⁰⁹ The CCPA ultimately overturned the Customs Court's decision and held that TWEA authorized Nixon's tariff, rejecting the Customs Court's view that the power

103. *Id.* The United States also claimed the action was authorized by § 350(a)(6) of the Tariff Act of 1930 and § 255(b) of the Trade Expansion Act of 1962. *Id.* The Customs Court ruled that both statutes "merely provide[] the President with a mechanical procedure of supplanting or replacing existing rates with rates which have been established by prior proclamations or by statute." *Id.* at 1162. Because Nixon's proclamation involved tariffs that had not been legally established, the Customs Court held that neither statute sufficiently authorized the tariff. *Id.*

104. *Id.* at 1175–76.

105. *Id.* at 1172 (quoting Trading with the Enemy Act of 1917, ch. 106, § 5(b)(1), 40 Stat. 411, 8401 (current version at 50 U.S.C. § 4305(b)(1))).

106. *Id.*

107. *Id.* at 1173 (quoting *Panama Refin. Co. v. Ryan*, 293 U.S. 388, 421 (1935)).

108. *United States v. Yoshida Int'l, Inc.*, 526 F.2d 560 (C.C.P.A. 1975). "The Federal Courts Improvement Act of 1982 merged the U.S. Court of Customs and Patent Appeals and the U.S. Court of Claims to form the U.S. Court of Appeals for the Federal Circuit." *U.S. Court of Customs and Patent Appeals: Legislative History*, FED. JUD. CTR., <https://www.fjc.gov/history/courts/u.s.-court-customs-and-patent-appeals-legislative-history> [<https://perma.cc/Y2Z5-2EGD>].

109. *Yoshida Int'l*, 526 F.2d at 574.

to “regulate” does not equate to a power to impose duties.¹¹⁰ The CCPA determined that the Customs Court gave TWEA an overly limited interpretation, especially due to its lack of recognition for the phrase, “or otherwise,” in TWEA’s list of enumerated powers.¹¹¹

The CCPA’s decision in *Yoshida* drew criticism from some scholars. One international economic law scholar, Andreas F. Lowenfeld, testified before Congress on reforms to TWEA in 1977, and described the CCPA’s ruling in *Yoshida* as “thin.”¹¹² He went on to recommend altering the statute’s language to clarify its scope.¹¹³ More broadly, growing concern over the President’s expansive emergency authority emerged during the 1970s. The Senate formed a special committee to reevaluate these powers.¹¹⁴ The special committee issued a report, specifically noting that the United States had “on the books at least 470 significant emergency powers statutes without time limitations delegating to the Executive extensive discretionary powers, ordinarily exercised by the Legislature, which affect the lives of American citizens in a host of all-encompassing ways.”¹¹⁵ Another report referred to TWEA as “an unlimited grant of authority for the President to exercise, at his discretion, broad powers in both the domestic and international economic arena, without congressional review.”¹¹⁶

Congress ultimately altered and retitled TWEA in enacting IEEPA, but again, it chose to maintain the language of Section 5(b)(1)(B) of TWEA—the alleged authority for Nixon’s tariff—in Section 203(a)(1)(B) of IEEPA.¹¹⁷ In addition to retaining this language in IEEPA, “Congress gave the President the explicit power to impose temporary import surcharges in response to balance-of-payments issues in Section 122 of the Trade Act of 1974.”¹¹⁸

Without question, the *Yoshida* decision will serve as a feather in the cap of the Trump Administration in current and impending litigation over IEEPA tariffs. The CCPA ruled that Section 5(b)(1)(B) of TWEA authorized

110. *Id.* at 575.

111. *Id.* at 576.

112. CASEY, *supra* note 42, at 2.

113. *Id.*

114. See SPECIAL COMM. ON NAT’L EMERGENCIES AND DELEGATED EMERGENCY POWERS, 93D CONG., A BRIEF HIST. OF EMERGENCY POWERS IN THE U.S., at v (Comm. Print 1974) (outlining the need to reevaluate emergency powers).

115. *Id.*

116. H.R. Rep. No. 95-459, at 7 (1977).

117. Compare Trading with the Enemy Act of 1917, ch. 106, § 5(b)(1)(B), 40 Stat. 411, 8401 (current version at 50 U.S.C. § 4305(b)(1)(B)) (granting the President power to regulate property transactions during war time), with International Emergency Economic Powers Act, Pub. L. 95-223, § 203(a)(1)(B), 91 Stat. 1625, 1626 (current version at 50 U.S.C.A. § 1702(a)(1)(B)) (carrying forward the same language).

118. CASEY, *supra* note 42, at 2.

Nixon's tariff, and though IEEPA succeeded TWEA only two years later, the language of Section 5(b)(1)(B) remains in IEEPA to this day.¹¹⁹ However, the CCPA in *Yoshida* did clarify that tariffs imposed under TWEA must bear "an eminently reasonable relationship to the emergency."¹²⁰ In *Yoshida*, the "declared national emergency was premised on a prolonged decline in our country's international monetary reserves, the serious threat to our trade position, and our unfavorable balance of payments position."¹²¹ The CCPA found that Nixon's tariff possessed an eminently reasonable relationship through its "direct effect on our nation's balance of trade and, in turn, on its balance of payments deficit and its international monetary reserves."¹²²

In light of the *Yoshida* holding, Trump's first round of IEEPA tariffs must have an eminently reasonable relationship with the "extraordinary threat posed by illegal aliens and drugs, including deadly fentanyl."¹²³ The Trump Administration could argue that the tariffs are closely linked due to their obvious intent to incentivize foreign action on immigration and fentanyl. Nixon's tariffs were similarly intended to incentivize other nations to revalue their currencies.¹²⁴ However, the CCPA in *Yoshida* found an eminently reasonable relationship in light of the tariff's direct impact on the root of the national emergency: the nation's balance of payments position.¹²⁵ Though Trump's IEEPA tariffs very well might impact the issues of illegal immigration and fentanyl in the United States, the impact would be less direct. The Trump Administration declared the emergency due to "a public health crisis,"¹²⁶ rather than an economic crisis. As the Administration's fact sheet clarifies, the imposition of IEEPA tariffs leverages U.S. economic superiority to ensure American safety.¹²⁷

The question, then, is whether courts will define an "eminently reasonable relationship" by the tariffs' impact on the emergency, or by the action's direct relevance to the declared emergency. If courts choose to define the relationship by its impact, then this round of IEEPA tariffs at least serves as a likely incentive for Mexico and Canada to address illegal immigration via their respective borders. Similarly, the increased tariff on Chinese imports gives China additional financial motivation to address their contribution to the U.S. fentanyl epidemic. However, if courts define the

119. See *supra* note 117.

120. *United States v. Yoshida Int'l, Inc.*, 526 F.2d 560, 579–80 (C.C.P.A. 1975).

121. *Id.* at 580.

122. *Id.*

123. *Fact Sheet: President Donald J. Trump Imposes Tariffs on Imports from Canada, Mexico and China*, *supra* note 48.

124. *CASEY*, *supra* note 42, at 2.

125. *Yoshida, Int'l*, 526 F.2d at 580.

126. *Fact Sheet: President Donald J. Trump Imposes Tariffs on Imports from Canada, Mexico and China*, *supra* note 48.

127. *Id.*

“eminently reasonable relationship” requirement by the action’s direct relevance to the declared emergency, then the Trump Administration should struggle to meet its burden. It is difficult to see how an across-the-board import tariff is directly related to illegal immigration or fentanyl.

In determining which approach IEEPA’s drafters would prefer, courts should look no further than the House report that accompanied the statute’s passing, which clarified that IEEPA does not include “authority to control noneconomic aspects of international intercourse.”¹²⁸ Again, the basis for this round of IEEPA tariffs was a declaration of “a public health crisis,”¹²⁹ not an economic crisis. As the Administration’s fact sheet clarifies, the IEEPA tariffs intend to use the nation’s economic “leverage to ensure Americans’ safety.”¹³⁰ No executive order, press release, or fact sheet released by the Trump Administration has claimed that there is an *economic* national emergency. Accordingly, it appears that the IEEPA tariffs are an attempt to use the statute’s “authority to control noneconomic aspects of international intercourse.”¹³¹

Trump’s second round of IEEPA tariffs were imposed in response to a national emergency stemming from “foreign trade and economic practices.”¹³² For these across-the-board and retaliatory tariffs, the relationship between the declared emergency and the economy is significantly more direct. Much like Nixon’s tariff, Trump’s declared emergency involves the economy, and even more specifically, the impact on the economy from foreign trade. In challenges to IEEPA tariffs stemming from this emergency, U.S. courts would almost certainly determine there is a sufficient relationship between these tariffs and the declared emergency.¹³³

B. *TWEA’s Replacement: IEEPA and the NEA*

While the aforementioned precedent suggests that courts are unlikely to strike down an emergency declaration, Congress did attempt to restrict the

128. H.R. Rep. No. 95-459, at 11 (1977).

129. *Fact Sheet: President Donald J. Trump Imposes Tariffs on Imports from Canada, Mexico and China*, *supra* note 48.

130. *Id.*

131. H.R. Rep. No. 95-459, at 11 (1977).

132. *Fact Sheet: President Donald J. Declares National Emergency to Increase Our Competitive Edge, Protect Our Sovereignty, and Strengthen Our National and Economic Security*, *supra* note 66.

133. *See United States v. Yoshida Int’l, Inc.*, 526 F.2d 560, 580 (C.C.P.A. 1975) (finding an eminently reasonable relationship between the nation’s balance of payments position and the implementation of Nixon’s tariff). Given the similarity of the emergencies declared and the tariffs imposed by the Nixon Administration and the Trump Administration, the *Yoshida* precedent strongly suggests that courts will find an eminently reasonable relationship between the Trump Administration’s tariffs and the declared emergency stemming from “foreign trade and economic practices.”

President's power to declare emergencies in the 1970s. Due to concerns over TWEA's expansion and the rising number of ongoing states of emergency under the act, Congress replaced TWEA with a pair of statutes that work in conjunction with one another: the NEA (1976) and IEEPA (1977).¹³⁴ According to the Council on Foreign Relations, Nixon's use of TWEA for tariff imposition was "the precise reason Congress worked on tightening the statute and replacing it with . . . IEEPA."¹³⁵ The NEA terminated all existing emergencies in 1978, "except those making use of Section 5(b) of TWEA."¹³⁶ It also placed new restrictions on the declaration of new states of emergency, including the following requirements and rights: (1) biannual review from Congress to consider a vote on a joint resolution to determine whether the emergency should be terminated; (2) congressional authority to terminate the national emergency with a joint resolution;¹³⁷ and (3) annual presidential assessment and potential extension of any declared emergency.¹³⁸

1. IEEPA's Broad Language.—IEEPA's broad language regarding the President's authority to regulate foreign exchange could serve as crucial support for the legality of IEEPA tariffs. However, certain procedural requirements may undermine and ultimately prevent an overly permissive interpretation of IEEPA's language.

IEEPA is beholden to the procedures set forth in the NEA, which require the President to "immediately" send any emergency proclamation to Congress and publish it in the *Federal Register*.¹³⁹ Unlike TWEA, IEEPA requires the President "to declare a national emergency for each independent use."¹⁴⁰ IEEPA also requires the President to consult with Congress "in every possible instance" before putting the statute into use.¹⁴¹ Once the President declares an emergency, he or she must send a report to Congress that includes (1) the circumstances necessitating the use of authority, (2) why the President believes the circumstances constitute "an unusual and extraordinary threat," (3) the authorities and actions the President intends to take, (4) the reasons those actions are necessary, and (5) any foreign countries that will be affected by the action.¹⁴²

134. CASEY ET AL., *supra* note 96, at 8–9 ("Congress's reforms to emergency powers under TWEA came in two acts.").

135. Manak, *supra* note 92.

136. CASEY ET AL., *supra* note 96, at 8.

137. *Id.* Originally, the NEA authorized Congress to terminate a national emergency with a concurrent resolution in each chamber. *Id.* at i. However, Congress amended the statute to require a joint resolution, making termination far more difficult. *Id.*

138. *Id.* Experts argue "the renewal process has become *pro forma*." *Id.*

139. 50 U.S.C. § 1621(a).

140. CASEY ET AL., *supra* note 96, at 16.

141. 50 U.S.C. § 1703(a).

142. 50 U.S.C. § 1703(b)(1)–(5).

Though IEEPA does not specifically authorize the imposition of tariffs, its language is broad. Section 1702 of IEEPA grants the President authority to “investigate, regulate, or prohibit . . . any transactions in foreign exchange . . . [and] the importing or exporting of currency or securities.”¹⁴³ This power “may be exercised 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, if the President declares a national emergency with respect to such threat.”¹⁴⁴

Again, IEEPA had not been used as a tariff authority prior to March 2025. However, the Trump Administration’s argument in support of IEEPA as a tariff authority will almost certainly stem from the language of Section 1702. The power to “regulate . . . transactions in foreign exchange”¹⁴⁵ appears, *prima facie*, to cover the use of tariffs, as long as the action follows a properly declared national emergency. The Trump Administration declared a national emergency on January 20, 2025, relating to the influx of illegal aliens and illicit drugs into the United States.¹⁴⁶ The Trump Administration filed the proclamation with the *Federal Register* on January 29, 2025.¹⁴⁷ On April 2, Trump declared a national emergency based on threats to the U.S. economy caused by “a lack of reciprocity in our bilateral trade relationships . . . and U.S. trading partners’ economic policies.”¹⁴⁸ The emergency declaration was published with the *Federal Register* on April 7, 2025.¹⁴⁹

One effective language-based argument against the IEEPA tariffs’ legality stems from the Trump Administration’s alleged failure to consult with Congress “in every possible instance” prior to using the statute’s authority.¹⁵⁰ In fact, two senators have already introduced legislation based on these concerns. On January 30, 2025, Senators Chris Coons (D-Del.) and Tim Kaine (D-Va.) introduced the Stopping Tariffs on Allies and Bolstering Legislative Exercise of (STABLE) Trade Policy Act.¹⁵¹ STABLE would require congressional approval before the executive could “impose new

143. 50 U.S.C. § 1702(a)(1).

144. 50 U.S.C. § 1701(a).

145. 50 U.S.C. § 1702(a)(1)(A)(i).

146. Proclamation No. 10886, 90 Fed. Reg. 8327 (Jan. 20, 2025).

147. *Id.*

148. Exec. Order No. 14257, 90 Fed. Reg. 15041, 15041 (Apr. 2, 2025).

149. *Id.*

150. 50 U.S.C. § 1703(a).

151. Press Release, Sen. Chris Coons, Ahead of Expected Trump Tariffs, Senators Coons and Kaine Introduce Legislation to Require Congressional Approval of New Tariffs on U.S. Allies (Jan. 31, 2025), <https://www.coons.senate.gov/news/press-releases/ahead-of-expected-trump-tariffs-senators-coons-and-kaine-introduce-legislation-to-require-congressional-approval-of-new-tariffs-on-us-allies> [<https://perma.cc/EH65-UGW8>].

tariffs on U.S. allies and free trade agreement (FTA) partners.”¹⁵² Senator Coons went to the Senate floor on February 27 to ask for unanimous consent, but Senator Mike Crapo (R-Idaho) objected.¹⁵³ On March 7, 2025, Representatives Don Beyer (D-Va.) and Suzan DelBene (D-Wash.) announced the reintroduction of the Congressional Trade Authority Act and Prevent Tariff Abuse Act, which would similarly “reassert congressional trade authorities over tariffs imposed under [IEEPA].”¹⁵⁴ The legislation is cosponsored by four additional democratic Representatives, and it is currently pending review by the congressional Committee on Ways and Means.¹⁵⁵

Even if the Trump Administration is able to demonstrate sufficient consultations with Congress, the legislative intent and the “national emergency” standard may pose additional hurdles to establishing the legitimacy of these tariffs under IEEPA.

2. *Legislative Intent and the “National Emergency” Standard.*—In conjunction with arguments over the Trump Administration’s arguably insufficient consultations with Congress, foreign importers could reasonably question whether this “national emergency” fits within the legislature’s intended definition. The legislature intended IEEPA to be used scarcely, as demonstrated by the House report that accompanied the passing of the statute: “[E]mergencies are by their nature rare and brief, and are not to be equated with normal, ongoing problems.”¹⁵⁶ The report goes on to clarify that “[a] national emergency should be declared and emergency authorities employed only with respect to a specific set of circumstances which constitute a real emergency, and for no other purpose.”¹⁵⁷ Regardless of the legislature’s original intent in replacing TWEA with IEEPA, “presidential emergency use of IEEPA has expanded in scale, scope, and frequency since the statute’s enactment.”¹⁵⁸

Courts faced with IEEPA expansion have generally deferred to the President’s authority. In *Dames & Moore v. Reagan*,¹⁵⁹ the Supreme Court

152. *Id.*

153. Press Release, Sen. Chris Coons, As Tariffs Loom, Republicans Block Senator Coons’ Bill on Senate Floor that Would Prevent President Trump from Unilaterally Imposing Tariffs on Allies (Feb. 27, 2025), <https://www.coons.senate.gov/news/press-releases/as-tariffs-loom-republicans-block-senator-coons-bill-on-senate-floor-that-would-prevent-president-trump-from-unilaterally-imposing-tariffs-on-allies> [https://perma.cc/432E-YB7Q].

154. Press Release, Rep. Don Beyer, Beyer and DelBene Introduce Legislation Stop Trump Tariff Chaos, Restore Trade Authority to Congress (Mar. 7, 2025), <https://beyer.house.gov/news/documentsingle.aspx?DocumentID=6427> [https://perma.cc/9SF7-253V].

155. Congressional Trade Authority Act, H.R. 1903, 119th Cong. (2025).

156. H.R. Rep. No. 95-459, at 10 (1977).

157. *Id.*

158. CASEY ET AL., *supra* note 96, at 15.

159. *Dames & Moore v. Reagan*, 453 U.S. 654 (1981).

considered whether President Carter was authorized to block “the removal or transfer of ‘all property and interests in property of the Government of Iran, . . . which are or become subject to the jurisdiction of the United States.’”¹⁶⁰ The Court ultimately held that “both the legislative history and cases interpreting . . . TWEA fully sustain the broad authority of the Executive when acting under this congressional grant of power.”¹⁶¹ Most notably, a court “has never second-guessed a president’s determination under IEEPA that a national emergency has occurred, even in the face of ever broader and longer national emergencies.”¹⁶²

However, U.S. courts did confine IEEPA’s authority in 2020, when Trump attempted to use the statute to ban Chinese-owned apps TikTok and WeChat. In *TikTok*¹⁶³ and *Marland*,¹⁶⁴ D.C. and Pennsylvania district courts held that Trump’s action exceeded IEEPA’s authority “because it violate[d] IEEPA’s express prohibition on the direct or indirect regulation of informational materials.”¹⁶⁵ This, along with Trump’s novel use of IEEPA as a tariff authority, suggests it is worth considering the merit of the national emergency declaration.

With respect to the border and fentanyl emergency, Trump’s challengers could argue that recent statistics do not support his emergency declaration. According to the Pew Research Center, Border Patrol encounters with migrants crossing the United States’ southern border grew and eventually spiked in December 2023 with nearly 250,000 recorded encounters.¹⁶⁶ However, the research shows a steep decline throughout 2024, lowering to 58,038 encounters in August 2024.¹⁶⁷ This decline came amid policy changes from both the United States and Mexico. President Biden “issued an executive order in June [2024] that [made] it much more difficult for migrants who enter the U.S. without legal permission to seek asylum and remain in the country.”¹⁶⁸

160. *Id.* at 662–63 (quoting Exec. Order No. 12170, 44 Fed. Reg. 65729, 65729 (Nov. 15, 1979)).

161. *Id.* at 672.

162. Levi, *supra* note 94.

163. *TikTok, Inc. v. Trump*, 507 F. Supp. 3d 92 (D.D.C. 2020).

164. *Marland v. Trump*, 498 F. Supp. 3d 624 (E.D. Pa. 2020).

165. *Id.* at 636, 641; *see* 50 U.S.C. § 1702(b)(3) (citing the informational materials that the President does not have authority to regulate or prohibit); *see also TikTok*, 507 F. Supp. 3d at 108 (“Plaintiffs are also likely to prove that the prohibitions exceed the authority granted by IEEPA.”).

166. John Gramlich, *Migrant Encounters at U.S.-Mexico Border Have Fallen Sharply in 2024*, PEW RSCH. CTR. (Oct. 1, 2024), <https://www.pewresearch.org/short-reads/2024/10/01/migrant-encounters-at-u-s-mexico-border-have-fallen-sharply-in-2024/> [<https://perma.cc/3WM5-RP5L>].

167. *Id.* “Encounters” refers to “Border Patrol apprehensions of migrants who cross into the U.S. without authorization.” *Id.*

168. *Id.*

Foreign importers from Canada and Mexico could point out each nation's reduced role in the United States' problem with illegal immigration. In 2024, roughly 24,000 people were apprehended for attempting to illegally cross the United States–Canada border.¹⁶⁹ In December of 2024, Canada “directed 1.3 billion Canadian dollars (\$900 million USD) to enhance border security,” including the implementation of sixty drones equipped with thermal cameras and two Black Hawk helicopters.¹⁷⁰ These recent trends suggest that Canadian importers might have a legitimate claim against their inclusion in the border-related national emergency.

Obviously, China does not share a border with the United States, but the PRC has played an undeniable role in the fentanyl epidemic in the United States. In 2024, the United States House Select Committee on Strategic Competition between the United States and the Chinese Communist Party (Committee on CCP) released their findings on China's role in the “deadly fentanyl epidemic that has killed hundreds of thousands of Americans.”¹⁷¹ The report describes China as the “ultimate geographic source of the fentanyl crisis,” claiming that Chinese companies “produce nearly all of illicit fentanyl precursors.”¹⁷² It also notes that, on average, fentanyl kills over 200 Americans every day, making it the leading cause of death for people aged eighteen to forty-five in the United States.¹⁷³ In Trump's announcement of the imposition of IEEPA tariffs on China, he claimed that the CCP “has subsidized and otherwise incentivized PRC chemical companies to export fentanyl and related precursor chemicals that are used to produce synthetic opioids sold illicitly in the United States.”¹⁷⁴

Ultimately, it is unlikely that courts break precedent and challenge Trump's first national emergency declaration. However, the House report that accompanied IEEPA also clarified that the statute does not include “authority to control noneconomic aspects of international intercourse.”¹⁷⁵ Foreign importers might point to the Trump Administration's own claim that

169. Matina Stevis-Gridneff, *Canada Curbed Illegal Migration to the U.S. Now People Are Heading to Canada*, N.Y. TIMES (Mar. 2, 2025), <https://www.nytimes.com/2025/03/01/world/canada/canada-us-border-immigration.html> [<https://perma.cc/S6K2-WSAM>].

170. *Id.*

171. Press Release, H. Select Comm. on the Chinese Communist Party, Select Committee Unveils Findings into CCP's Role in American Fentanyl Epidemic (Apr. 16, 2024), <https://selectcommitteeontheccp.house.gov/media/press-releases/select-committee-unveils-findings-ccps-role-american-fentanyl-epidemic-report> [<https://perma.cc/AVY3-X2DK>].

172. SELECT COMM. ON STRATEGIC COMPETITION BETWEEN U.S. & CHINESE COMMUNIST PARTY, 118TH CONG., THE CCP'S ROLE IN THE FENTANYL CRISIS 2 (Comm. Print 2024), <https://www.congress.gov/118/meeting/house/117142/documents/HRPT-118-1.pdf> [<https://perma.cc/MZR2-JKKK>].

173. *Id.*

174. Exec. Order No. 14195, 90 Fed. Reg. 9121, 9121 (Feb. 1, 2025).

175. H.R. Rep. No. 95-459, at 11 (1977).

the tariffs are a use of American “leverage to ensure Americans’ safety.”¹⁷⁶ This argument might also prove useful in distinguishing Trump’s IEEPA tariffs from Nixon’s use of TWEA. In *Yoshida*, Nixon imposed tariffs due to an economic emergency.¹⁷⁷ While immigration and the fentanyl epidemic are significant concerns, they are arguably “noneconomic aspects of international intercourse.”¹⁷⁸

The Trump Administration’s second national emergency declaration responded to an “extraordinary threat” to the U.S. economy and national security caused by “a lack of reciprocity in [U.S.] bilateral trade relationships, disparate tariff rates and non-tariff barriers, and U.S. trading partners’ economic policies that suppress domestic wages and consumption.”¹⁷⁹ The executive order focuses specifically on the growing trade deficit, which, according to the White House’s statistics, has “grown by over 40 percent in the past 5 years alone, reaching \$1.2 trillion in 2024.”¹⁸⁰

Challengers could argue that a longstanding trade deficit does not constitute a national emergency, especially considering the House Report’s clarification that “emergencies are by their nature rare and brief, and are not to be equated with normal, ongoing problems.”¹⁸¹ A growing trade deficit could be classified as a normal and ongoing problem; however, the fact remains that a court “has never second-guessed a president’s determination under IEEPA that a national emergency has occurred.”¹⁸²

Ultimately, the precedent suggests that courts would be more likely to consider whether the legislature intended for IEEPA to be used as a tariff authority than to question the emergency declaration itself. Like its predecessor, TWEA, IEEPA is often used “to impose economic sanctions in furtherance of U.S. foreign policy, national security, and economic objectives.”¹⁸³ A more typical use of IEEPA authority occurred when Biden used the statute to enforce trade sanctions on Russia “within hours of Russia invading Ukraine” in February 2022.¹⁸⁴ Currently, the U.S. Treasury Department maintains “more than 30 IEEPA-derived sanctions programs.”¹⁸⁵ Again, President Trump is the first to use IEEPA as a tariff device, which is

176. *Fact Sheet: President Donald J. Trump Imposes Tariffs on Imports from Canada, Mexico and China*, *supra* note 48.

177. *See* *United States v. Yoshida Int’l, Inc.*, 526 F.2d 560, 580 (C.C.P.A. 1975) (discussing Nixon’s emergency declaration and the constitutionality of TWEA).

178. H.R. Rep. No. 95-459, at 11 (1977).

179. Exec. Order No. 14257, 90 Fed. Reg. 15041, 15041 (Apr. 7, 2025).

180. *Id.* at 15041, 15044.

181. H.R. Rep. No. 95-459, at 10 (1977).

182. Levi, *supra* note 94.

183. CASEY ET AL., *supra* note 96, at 15.

184. Harrell, *supra* note 40.

185. *Id.*

at least in part due to the view that Nixon's use of TWEA as a tariff authority led to its replacement.¹⁸⁶

In summary, IEEPA's complex history and broad language reveal both the statute's intended limits and its evolving application. Although courts have historically shown great deference to presidential emergency declarations, the Trump Administration's novel use of IEEPA as a tariff authority stretches the statute beyond its traditional use as a sanctions tool. The outcome of current litigation will likely hinge not only on whether the tariffs bear an "eminently reasonable relationship" to the declared emergencies, but also on whether courts are willing to revisit long-standing deference in light of legislative intent and procedural constraints. In the next Part, this Note will examine existing judicial treatment of tariffs from the Trump Administration to better predict whether the Supreme Court will uphold the Federal Circuit's decision that the Trump Administration's IEEPA tariffs exceed the authority granted by the statute.

III. Judicial Treatment of Trump's Tariffs to Date as a Prediction Tool

As mentioned, the Trump Administration imposed multiple tariffs during its first term under the authority of Section 232 of the Trade Expansion Act and Section 301 of the Trade Act.¹⁸⁷ Though these are more typical tariff authorities than IEEPA, importers quickly filed claims in the CIT in response to their use. Each claim challenging the Section 232 tariffs, including *USP Holdings*¹⁸⁸ and *American Institute for International Steel*,¹⁸⁹ was rejected by the CIT and Federal Circuit.¹⁹⁰ However, Section 301 litigation between Chinese importers and the U.S. government is still ongoing. The CIT ruled in favor of the federal government's action in March 2023.¹⁹¹ In their appeal, the plaintiffs raised multiple arguments that challengers will likely use in the ensuing IEEPA tariff litigation, including the eminently reasonable relationship argument and the major questions doctrine.¹⁹² Ultimately, the

186. See Manak, *supra* note 92 ("Nixon's loose interpretation of the old law and use against friendly countries in peacetime was, in fact, the precise reason Congress worked on tightening the statute and replacing it with . . . IEEPA.").

187. Maruyama et al., *supra* note 8.

188. *USP Holdings, Inc. v. United States*, 36 F.4th 1359 (Fed. Cir. 2022).

189. *Am. Inst. for Int'l Steel, Inc. v. United States*, 806 F. App'x 982 (Fed. Cir. 2020).

190. See *USP Holdings*, 36 F.4th at 1370–71 (finding that Presidential Proclamation 9705 did not violate the statute); *Am. Inst. for Int'l Steel*, 806 F. App'x at 983 (affirming the CIT decision to reject a challenge to the constitutionality of Section 232).

191. *China Tariff Case Advances at Appeals Court*, *supra* note 38.

192. See *id.* ("[T]he plaintiffs raised two main arguments[:]. . . that a Section 301 tariff increase must be tied to an increase in the burden on U.S. commerce from the Chinese practices that gave rise to the initial round of tariffs The plaintiffs also cited the 'major questions' doctrine").

Federal Circuit affirmed the CIT's decision and held that the Section 301 tariffs did not exceed statutory authority.¹⁹³

A. Overview: Section 232 Litigation

Historically, the U.S. judiciary has remained lenient when upholding tariffs imposed under Section 232 throughout both Trump Administrations. In 2018, the Department of Commerce completed its investigation under Section 232 into “the impact on [U.S.] national security from imports of steel mill products and from imports of wrought and unwrought aluminum.”¹⁹⁴ The Department of Commerce found that steel and aluminum imports do pose a threat to national security, under the definition provided by Section 232.¹⁹⁵ In response, Trump imposed twenty-five percent tariffs on imports of steel and ten percent tariffs on aluminum.¹⁹⁶ The tariffs originally applied to every country, though exemptions were eventually granted to Brazil, South Korea, Canada, Mexico, Argentina, Australia, Japan, the United Kingdom, and the EU “in exchange for quota arrangements.”¹⁹⁷ Importers filed suit in the CIT, challenging the Section 232 tariffs’ constitutionality and adherence to the statute.¹⁹⁸

In *USP Holdings*, the CIT upheld the Trump Administration’s imposition of Section 232 tariffs on steel.¹⁹⁹ The Federal Circuit affirmed the CIT’s ruling, finding “no violations of the statute.”²⁰⁰ The plaintiff, USP, argued that the Trump Administration and the Secretary of Commerce acted contrary to the language of Section 232. First, USP claimed that the threat to national security needed to be “imminent” in order to authorize the tariff imposition.²⁰¹ The Federal Circuit refuted USP’s argument, claiming that the statute does not impose a specific imminence requirement.²⁰²

193. *HMTX Indus. LLC v. United States*, No. 23-1891 2025 WL 2726274, at *34 (Fed. Cir. Sep. 25, 2025).

194. Press Release, Off. of Pub. Affs., U.S. Dep’t of Com., Secretary Ross Releases Steel and Aluminum 232 Reports in Coordination with White House (Feb. 16, 2018), <https://2017-2021.commerce.gov/news/press-releases/2018/02/secretary-ross-releases-steel-and-aluminum-232-reports-coordination.html> [<https://perma.cc/W9FW-B49F>].

195. *Id.*

196. Maruyama et al., *supra* note 8.

197. *Id.*

198. *E.g.*, *USP Holdings, Inc. v. United States*, 36 F.4th 1359, 1362 (Fed. Cir. 2022); *Am. Inst. for Int’l Steel, Inc. v. United States*, 806 F. App’x 982, 983 (Fed. Cir. 2020).

199. *Universal Steel Prods., Inc. v. United States*, 495 F. Supp. 3d 1336, 1354 (Ct. Int’l Trade 2021), *aff’d*, *USP Holdings, Inc. v. United States*, 36 F.4th 1359 (Fed. Cir. 2022).

200. *USP Holdings*, 36 F.4th at 1371.

201. *Id.* at 1368.

202. *Id.* at 1369.

Second, USP argued that Trump failed to satisfy the statute's "nature and duration" requirement,²⁰³ which involves the President determining "the nature and duration of the action that . . . must be taken to adjust the imports . . . so that such imports will not threaten to impair the national security."²⁰⁴ Trump's Section 232 tariffs on steel did not provide any confines on duration; yet still, the Federal Circuit held that they satisfied the statute's requirements. Specifically, the Court stated:

[W]e see no reason why the duration requirement . . . must be fixed on an end date or termination criteria. If the President has authority to . . . adjust[] tariffs over time, then the President must also have authority to undertake a plan of action that includes imposing a tariff indefinitely and removing it at a later time once the President determines that it is no longer necessary.²⁰⁵

Despite the statute clearly stating that the President must determine the duration of the action, the Federal Circuit upheld Trump's Section 232 tariffs. The Court's leniency illustrates a willingness to grant the President wide latitude in the Administration's decisions on tariff imposition.

B. Overview: Section 301 Litigation

Unlike previous rulings on Section 232 tariffs, litigation on Section 301 tariffs paints a less clear picture. In 2017, the USTR commenced a Section 301 investigation into Chinese trade practices, ultimately determining that Chinese "technology transfer, intellectual property, and innovation policies" did, in fact, unfairly burden U.S. commerce.²⁰⁶ As mentioned, Trump's Section 301 tariffs covered around \$370 billion worth of Chinese imports, and they were met with substantial criticism from Congress and foreign importers.²⁰⁷ In 2020, HMTX Industries, LLC filed suit in the CIT to challenge the Trump Administration's imposition of Section 301 tariffs.²⁰⁸ Since the case's initial filing, thousands of importers have joined HMTX's argument that the tariffs were wrongly imposed.²⁰⁹ In March 2023, however, the CIT upheld the tariffs' legality, leaving them in effect for the time being.²¹⁰

203. *Id.* at 1370.

204. 19 U.S.C. § 1862(c)(1)(A)(ii).

205. *USP Holdings*, 36 F.4th at 1370–71.

206. Maruyama et al., *supra* note 8.

207. *Id.*; TRACHTENBERG, *supra* note 21.

208. Complaint at 24, *HMTX Indus., LLC v. United States*, No. 20–00177 (Ct. Int'l Trade Sep. 10, 2020).

209. *China Tariff Case Advances at Appeals Court*, *supra* note 38.

210. *Id.*; *see In re Section 301 cases*, 628 F. Supp. 3d 1235, 1251 (Ct. Int'l Trade 2023) (sustaining the challenged tariffs).

In their appeal, the importers raised two arguments that will almost certainly apply to ensuing IEEPA tariff litigation. First, the plaintiffs argue that the USTR lacked statutory authority “because relevant law provides that a Section 301 tariff increase must be tied to an increase in the burden on U.S. commerce from the Chinese practices that gave rise to the initial round of tariffs (and not, for example, retaliation by China for those tariffs).”²¹¹ Most relevant to the IEEPA cases in this context, of course, is *Yoshida*, in which the CCPA held that tariffs imposed under TWEA must have “reasonable relation to the particular emergency confronted.”²¹²

Next, the plaintiffs cited the major questions doctrine,²¹³ which is rooted in Supreme Court precedent and generally asserts that, “if an agency seeks to decide an issue of major national significance, its action must be supported by clear congressional authorization.”²¹⁴ In response to Trump’s Section 301 tariffs, the plaintiffs argued that “Congress would not have granted [the] USTR authority to take action of such economic and political consequence without a far clearer statement than the circumscribed grant of authority to ‘modify’ a targeted trade action.”²¹⁵

On September 25, 2025, the Federal Circuit rejected both arguments, upholding the CIT’s decision and affirming that the statutory language authorized USTR to enforce the escalatory tariffs.²¹⁶ Though this matter concerned an entirely distinct delegation of tariff authority, it is the most recent example of judicial deference to the executive branch’s imposition of tariffs.

IV. Lawsuits Challenging Trump’s IEEPA Tariffs

A growing number of legal challenges have emerged targeting the validity and scope of the Trump Administration’s decision to impose tariffs under IEEPA. One lawsuit, *V.O.S. Selections, Inc. v. Trump*, is the most significant test of IEEPA’s authority.²¹⁷ By raising questions about statutory

211. *China Tariff Case Advances at Appeals Court*, *supra* note 38.

212. *United States v. Yoshida Int’l, Inc.*, 526 F.2d 560, 579 (C.C.P.A. 1975).

213. *China Tariff Case Advances at Appeals Court*, *supra* note 38.

214. KATE R. BOWERS, CONG. RSCH. SERV., IF12077, THE MAJOR QUESTIONS DOCTRINE (2022) (emphasis omitted).

215. Opening Brief for Plaintiffs-Appellants at 29–30, *HMTX Indus. LLC v. United States*, No. 23-1891 2025 WL 2726274 (Fed. Cir. Sep. 25, 2025) (No. 23-1891).

216. *HMTX Indus.*, No. 23-1891 at *16 (“Because Section 307(a)(1)(C) authorizes USTR to take escalatory, modified trade actions, and because USTR’s remand redetermination meets the APA’s procedural requirements in 5 U.S.C. § 553, we affirm the trial court and sustain the challenged Lists 3 and 4A tariffs.”).

217. An additional lawsuit, *Emily Ley Paper, Inc. v. Trump*, raises similar challenges. No. 3:25cv464-TKW-ZCB, 2025 WL 1482771, at *2 (N.D. Fla. May 20, 2025). However, due to *V.O.S. Selections* being further along with court consideration, this Note will focus solely on *V.O.S. Selections*. Nos. 2025-1812, 2025-1813, 2025 WL 2490634, at *1 (Fed. Cir. Aug. 29, 2025).

interpretation, congressional authorization under the major questions doctrine, and the relationship between declared national emergencies and presidential trade actions, this case illuminates the core arguments that will determine the legality of Trump's IEEPA tariffs.

On April 14, 2025, the Liberty Justice Center—a nonpartisan public interest litigation firm that has regularly represented conservative interests—filed a lawsuit in the CIT on behalf of U.S.-based businesses affected by Trump's Liberation Day tariffs.²¹⁸ The lawsuit challenges the Trump Administration's authority under IEEPA, arguing that Congress has not “delegated” sweeping authority under IEEPA to “unilaterally issue across-the-board worldwide tariffs.”²¹⁹ The plaintiffs argue that Trump has taken IEEPA's “specific grant of emergency authority” and turned it “into general tariff authority.”²²⁰ The complaint draws on the language of IEEPA, which does not use the word “tariff,” or “any synonym or equivalent.”²²¹

The complaint also challenges Trump's national emergency declaration, describing the declared emergency stemming from the trade deficit as “a figment of [Trump's] own imagination[,] . . . which [has] persisted for decades without causing economic harm.”²²² The plaintiffs note that this alleged “national emergency” of a trade deficit is not new; it has persisted since the 1970s and does not necessarily indicate a problem: “[T]hey simply mean that some other country sells lots of things Americans want to buy, or that its people are unwilling or unable (often because of poverty) to purchase many American goods.”²²³

The plaintiffs' complaint follows the principle laid out in the House Report that accompanied IEEPA's passing: “[E]mergencies are by their nature rare and brief, and are not to be equated with normal, ongoing problems.”²²⁴ A longstanding trade deficit does not appear to fall within the legislature's intent when drafting IEEPA and the NEA, especially

218. Alison Durkee, *Can Trump's Tariffs Be Undone In Court? First Lawsuit Targets 'Liberation Day' Orders as Conservative Lawyers Protest Policy*, FORBES (Apr. 15, 2025, 12:23 PM), <https://www.forbes.com/sites/alisondurkee/2025/04/15/can-trumps-tariffs-be-undone-in-court-first-lawsuit-targets-liberation-day-orders-as-conservative-lawyers-protest-policy/> [<https://perma.cc/9N5T-E25V>].

219. Complaint at 2, V.O.S. Selections, Inc. v. Trump, No.25-00066, 2025 WL 1178581 (Ct. Int'l Trade Apr. 22, 2025) [hereinafter, V.O.S. Complaint].

220. *Id.* at 9.

221. *Id.* at 10.

222. *Id.* at 2.

223. *Id.* at 11–12 (citing Allison Smith, Ariel Sheinberg, James McBride, Madeline Burns & Andrew Chatzky, *The U.S. Trade Deficit: How Much Does It Matter?*, COUNCIL ON FOREIGN RELS. (Apr. 23, 2025, at 11:44 ET), <https://www.cfr.org/backgroundunder/us-trade-deficit-how-much-does-it-matter> [<https://perma.cc/TEE3-BXDW>]; Michael Chapman, *Ignore the Politicians: Trade Deficits Don't Really Matter*, CATO INST. (Aug. 29, 2024, at 13:10 CT), <https://www.cato.org/blog/ignore-politicians-trade-deficits-dont-really-matter> [<https://perma.cc/M2ZR-MSRD>]).

224. H.R. Rep. No. 95-459, at 10 (1977).

considering the ongoing debate as to whether the deficit is even a problem. Still, the argument's merit does not necessarily overcome the longstanding precedent against a reviewing court "second-guess[ing] a president's determination under IEEPA that a national emergency has occurred."²²⁵

Unsurprisingly, the plaintiffs point to the major questions doctrine: "If anything qualifies as a 'decision[] of vast economic and political significance,' requiring a clear statement under the major questions doctrine, this is it."²²⁶ The complaint states that Trump's second round of IEEPA tariffs "would impose an estimated average of almost \$1,300 in new taxes per year on American households, for a total tax burden of some \$1.4 to 2.2 [trillion] over the next ten years, reducing US gross domestic product by some 0.8%."²²⁷ They argue this impact is likely much larger than that of the executive actions the Supreme Court has previously deemed "major questions."²²⁸ Further, the plaintiffs firmly state that "IEEPA does not grant the President power to impose tariffs at all—it does not mention such a power or imply it."²²⁹

On May 28, 2025, the CIT "issued a unanimous decision finding the tariffs illegal and issuing a permanent injunction banning their enforcement."²³⁰ While the CIT acknowledged the major questions doctrine as a "useful tool[]" for statutory interpretation,²³¹ the decision relied primarily on a tight interpretation of IEEPA's power to "regulate . . . importation."²³² Following the stated concerns of the *Yoshida* Court, the CIT held that these words "cannot grant the President unlimited tariff authority."²³³ As a result, the CIT defined IEEPA's delegation of power "to provide more limited authority so as to avoid constitutional infirmities and maintain the 'separate and distinct exercise of the different powers of government' that is 'essential to the preservation of liberty.'"²³⁴

Shortly thereafter, the Trump Administration filed a motion to stay the injunction pending the outcome of their appeal, which the Federal Circuit

225. Levi, *supra* note 94.

226. V.O.S. Complaint, *supra* note 219, at 18 (quoting *West Virginia v. EPA*, 142 S. Ct. 2587, 2605 (2022)).

227. *Id.* at 18–19 (citing Erica York & Alex Durante, *Trump Tariffs: The Economic Impact of the Trump Trade War*, TAX FOUND. (Apr. 11, 2025), <https://taxfoundation.org/research/all/federal/trump-tariffs-trade-war/> [<https://perma.cc/VTQ5-HVVR>]).

228. *Id.* at 19.

229. *Id.* at 18.

230. *About V.O.S. Selections, Inc. v. Trump*, LIBERTY JUST. CTR., <https://libertyjusticecenter.org/cases/v-o-s-selections-inc-v-trump> [<https://perma.cc/J5JD-PAQX>].

231. *V.O.S. Selections, Inc., v. United States*, 772 F. Supp. 3d 1350, 1372 (Ct. Int'l Trade 2025).

232. *Id.* at 1372–73 (quoting 50 U.S.C. § 4305(b)(1)(B); 50 U.S.C. § 1702(a)(1)(B)).

233. *Id.* at 1373.

234. *Id.* (quoting THE FEDERALIST NO. 51 (James Madison)).

granted on June 10, 2025.²³⁵ On July 31, 2025, the Federal Circuit held an *en banc* hearing on the merits.²³⁶ The Federal Circuit ultimately affirmed the CIT's decision, holding that the Trump Administration's IEEPA tariffs exceeded the authority granted in the statute.²³⁷ The Federal Circuit's decision is currently pending appeal before the U.S. Supreme Court, with oral argument scheduled for November 5, 2025.²³⁸

V. The Major Questions Doctrine as a Major Barrier to the Legality of IEEPA Tariffs

The major questions doctrine is likely the most useful foundation for legal argument against the Trump Administration's authority to impose IEEPA tariffs.²³⁹ Under the major questions doctrine, there can be no ambiguity as to whether Congress intended for the power in question to be used in the manner in question. The Court has typically used the doctrine to reject agency action, such as the Environmental Protection Agency (EPA) or the Occupational Safety and Health Administration (OSHA), though it has also drawn on the doctrine when a president has attempted to use congressionally delegated authority.²⁴⁰

In major questions cases, courts first consider whether the suit challenges a significant action taken under the authority of an alleged congressional delegation.²⁴¹ An action is significant when it is of "economic and political significance."²⁴² If the action is deemed a "major question," then a court will review that action with a skepticism that can only be overcome with "clear congressional authorization."²⁴³

235. *V.O.S. Selections, Inc v. Trump*, Nos. 2025-1812, 2025-1813, 2025 WL 1649290, at *1 (Fed. Cir. June 10, 2025) (per curiam).

236. Brooke M. Ringel, Paul C. Rosenthal, R. Alan Luberd & Joshua Morey, *Federal Circuit Affirms that IEEPA Tariffs Are Unlawful*, KELLEY DRYE (Sep. 2, 2025), <https://s3.amazonaws.com/cdn.kelleydrye.com/content/uploads/pdf-snapshots/federal-circuit-affirms-that-ieepa-tariffs-are-unlawful-20250902134620.pdf> [<https://perma.cc/SL6A-32DC>].

237. *V.O.S. Selections, Inc. v. Trump*, 149 F.4th 1312, 1318 (Fed. Cir. 2025) (per curiam), *cert. granted*, No. 25-250, 2025 WL 2601020 (U.S. Sept. 9, 2025).

238. *About V.O.S. Selections, Inc. v. Trump*, LIBERTY JUST. CTR., <https://libertyjusticecenter.org/cases/v-o-s-selections-inc-v-trump> [<https://perma.cc/J5JD-PAQX>].

239. See Harrell, *supra* note 40 (discussing how Trump's proposed "universal tariff" should trigger major question doctrine analysis).

240. See *Biden v. Nebraska*, 143 S. Ct. 2355, 2363, 2374 (2023) (describing the authority granted to the Secretary of Education by the HEROES Act and analyzing the Secretary's action in the context of the major questions doctrine).

241. See *West Virginia v. EPA*, 142 S. Ct. 2587, 2614 (2022) (discussing how the EPA's cap-and-trade regime was suspect).

242. *Id.* at 2595 (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000)).

243. *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014).

Though the Supreme Court had not yet referred to the major questions doctrine by its name, the Court in *Utility Air Regulatory Group v. EPA*²⁴⁴ held that “[w]hen an agency claims to discover in a long-extant statute an unheralded power to regulate ‘a significant portion of the American economy,’ we typically greet its announcement with a measure of skepticism.”²⁴⁵ In *Utility Air*, the EPA used the Clean Air Act to set standards for emissions of greenhouse gases from new motor vehicles.²⁴⁶ The Court’s “skepticism” resulted in a 9–0 unanimous opinion striking down the EPA’s use of the Clean Air Act.²⁴⁷ In the opinion, Justice Scalia wrote that the EPA overstepped its authority because the statute did “not envision an elaborate, burdensome permitting process for major emitters of steam, oxygen, or other harmless airborne substances.”²⁴⁸

In the case of IEEPA tariffs, Trump’s action is precisely what invites the Court’s skepticism: deriving an “unheralded power” (the tariff power) from a long-extant statute (IEEPA) to regulate a significant portion of the American economy. Following its holding in *Utility Air*, the Court should review Trump’s use of IEEPA with skepticism. Its next step is to determine whether the President’s emergency tariffs fall within the bounds of the major questions doctrine.

The Supreme Court first recognized the “major questions doctrine” by its title in *West Virginia v. EPA*,²⁴⁹ where the Court again held that cases challenging significant agency action require their “skepticism.”²⁵⁰ “To overcome that skepticism,” according to the Court, “the Government must . . . point to ‘clear congressional authorization’ to regulate in that manner.”²⁵¹ In *West Virginia*, the Court once again used the major questions doctrine to strike down the attempt to reinterpret the Clean Air Act to allow the EPA to broadly regulate greenhouse gas emissions.²⁵² The Court held that, in major questions doctrine cases, “both separation of powers principles and a practical understanding of legislative intent make [it] ‘reluctant to read into ambiguous statutory text’ the delegation claimed to be lurking there.”²⁵³ Specifically, the Court held that the statute’s language did not point to clear

244. 573 U.S. 302 (2014).

245. *Id.* at 324 (citation omitted) (quoting *Brown & Williamson Tobacco*, 529 U.S. at 159).

246. *Util. Air Regul. Grp.*, 573 U.S. at 307.

247. *Id.* at 304, 333.

248. *Id.* at 317.

249. 142 S. Ct. 2587 (2022).

250. *Id.* at 2614.

251. *Id.* (quoting *Util. Air Regul. Grp.*, 573 U.S. at 324).

252. *Id.* at 2599, 2616.

253. *Id.* at 2609 (citing *Util. Air Regul. Grp.*, 573 U.S. at 324).

congressional authorization and that a “decision of such magnitude and consequence rests with Congress itself.”²⁵⁴

The Court used the major questions doctrine to overturn an executive action again in *Biden v. Nebraska*,²⁵⁵ when it considered Biden’s effort to forgive hundreds of billions of dollars of student loans.²⁵⁶ In *Nebraska*, six states sought declaratory and injunctive relief against the President and the Secretary of Education for their attempt to forgive student loan debt under the authority of the Higher Education Relief Opportunities for Students Act (HEROES Act).²⁵⁷ The HEROES Act permits the Secretary of Education to cancel or reduce student loans “‘as may be necessary to ensure’ that ‘recipients of student financial assistance under [T]itle IV of the [Act]’” are not harmed financially due to the national emergency.²⁵⁸ Here, the Biden Administration used the Act to reduce or eliminate student debt for an estimated 43 million borrowers.²⁵⁹

Chief Justice Roberts delivered the Court’s majority opinion, where it held that the major questions doctrine applies.²⁶⁰ The Biden Administration challenged the Court’s use of the major questions doctrine, claiming that it should not apply to cases involving government benefits.²⁶¹ However, the Court found that “major questions cases ‘have arisen from all corners of the administrative state.’”²⁶² The Court pointed to its decision in *King*,²⁶³ holding that cases fall under the major questions doctrine when congressional approval is unclear and the action involves “a question of deep ‘economic and political significance’ that is central to [the] statutory scheme.”²⁶⁴ Ultimately, the Court clarified the relevant question in this case and other major questions doctrine cases: it “is not whether something should be done; it is who has the authority to do it.”²⁶⁵ With \$430 billion in student loans in question, the Court determined the action was too significant and the statutory authority was too ambiguous to permit the loan forgiveness.²⁶⁶ As Chief Justice Roberts stated, “[i]t would be odd to think that separation of

254. *Id.* at 2616.

255. 143 S. Ct. 2355 (2023).

256. *Id.* at 2362 (“The Secretary’s plan canceled roughly \$430 billion of federal student loan balances.”).

257. *Id.*

258. *Id.* at 2363 (quoting 20 U.S.C. § 1098bb(a)(2)(A)).

259. *Id.* at 2365.

260. *Id.* at 2373–74.

261. *Id.* at 2374.

262. *Id.* at 2375 (quoting *West Virginia v. EPA*, 142 S. Ct. 2587, 2608 (2022)).

263. *King v. Burwell*, 576 U.S. 473 (2015).

264. *Nebraska*, 143 S. Ct. at 2375 (alteration in original) (quoting *King*, 576 U.S. at 486 (quoting *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014))).

265. *Id.* at 2372.

266. *Id.* at 2375.

powers concerns evaporate simply because the Government is providing monetary benefits rather than imposing obligations.”²⁶⁷

To determine whether the major questions doctrine applies to Trump’s IEEPA tariffs, the first consideration is whether the action is of deep economic and political significance.²⁶⁸ The precedent certainly suggests that the tariffs’ significance meets the quota. Both the greenhouse gas regulation plan and college loan forgiveness plan would have had large economic impacts. Federal regulation of greenhouse gases would pose significant challenges to many industries, particularly the auto and oil industries. The economic impact of forgiving \$430 billion in student loans speaks for itself, and it involves a commonly discussed and disagreed upon political question.

Just looking at their potential domestic impacts, Trump’s IEEPA tariffs meet the “significance” standard for the major questions doctrine set by the Supreme Court. Using 2024’s U.S. import estimate of \$3 trillion, “a 10 percent tariff would result in \$300 billion in new annual taxes. Economic estimates have indicated that a universal tariff of 20 percent could cost a typical U.S. family nearly \$4,000 annually.”²⁶⁹ Additionally, the tariffs are projected by many to “cost jobs, increase federal deficits, and generate both recessionary and inflationary pressures.”²⁷⁰

Beyond the economic implications, many have questioned Trump’s IEEPA tariffs from a foreign policy perspective, especially considering the focus on Canada—one of the United States’ most consistent and longstanding allies. So far, Canadians have “rejected American imports and issued other economic punishments in an unusual show of patriotism.”²⁷¹ Former U.S. diplomat Wendy Cutler claimed that the tariffs could “push allies to forge closer relationships with other countries like China and India.”²⁷²

Next, the Supreme Court must consider whether IEEPA possesses a clear congressional tariff authorization. Based on the statute’s legislative

267. *Id.*

268. *See* *West Virginia v. EPA*, 142 S. Ct. 2587, 2608 (2022) (defining a major question as a case where “the ‘economic and political significance’ of [an] assertion[] provide a ‘reason to hesitate before concluding that Congress’ meant to confer such authority”) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159–60 (2000)).

269. Harrell, *supra* note 40.

270. Kimberly Clausing & Maurice Obstfeld, *Trump’s 2025 Tariff Threats*, 59 *INTERECONOMICS* 243, 243 (2024), <https://www.intereconomics.eu/contents/year/2024/number/4/article/trump-s-2025-tariff-threats.html> [<https://perma.cc/NDR3-J49J>].

271. Alex Harring, ‘*See You in Four Years*’: *Canada Flexes Economic Muscle as Tariff Negotiations Continue*, *CNBC* (Mar. 17, 2025, 10:41 AM), <https://www.cnbc.com/2025/03/16/see-you-in-four-years-canada-flexes-economic-muscle-as-tariff-negotiations-continue.html> [<https://perma.cc/XNU3-QBRC>].

272. Lim Hui Jie, *Trump’s Tariffs Could Push U.S. Allies Elsewhere—Including China and India*, *CNBC* (Mar. 14, 2025, 2:34 AM), <https://www.cnbc.com/2025/03/14/trump-tariffs-may-push-us-allies-toward-countries-like-china-india.html> [<https://perma.cc/Y79P-Z3LD>].

history and lack of clarity on its use for tariffs, IEEPA does not appear to possess sufficiently clear congressional authority for the imposition of universal tariffs. Again, Section 1702 of IEEPA grants the President broad authority to “investigate, regulate, or prohibit . . . any transactions in foreign exchange . . . [and] the importing or exporting of currency or securities.”²⁷³ Still, IEEPA makes no specific mention of tariffs, and some scholars believe that Nixon’s use of its predecessor statute (TWEA) resulted in the statute’s retitling and the NEA’s additional requirements.²⁷⁴ Additionally, the House Report confined the intended use of IEEPA: “A national emergency should be declared and emergency authorities employed only with respect to a specific set of circumstances which constitute a real emergency, and for no other purpose.”²⁷⁵ And again, IEEPA, under its current title, had never been used to impose tariffs.

Still, the Supreme Court could view the right to regulate imports and exports as a clear congressional delegation for the imposition of tariffs, especially if they follow traditional precedent on IEEPA review. A U.S. federal court had “never second-guessed a president’s determination under IEEPA that a national emergency has occurred,”²⁷⁶ until the CIT and Federal Circuit held that the Trump Administration’s IEEPA tariffs exceeded their statutory authority.²⁷⁷ But this is a quickly evolving legal landscape. Since the Federal Circuit’s decision in *V.O.S. Selections*, the Federal Circuit upheld Section 301 tariffs in spite of a major questions doctrine argument,²⁷⁸

The major questions doctrine provides IEEPA tariff challengers with a useful backdrop for legal argument. IEEPA tariffs have already made a substantial impact on the U.S. stock market. The impositions and pauses during March 2025 have “created volatility on Wall Street, confusion for consumers and massive amounts of uncertainty for businesses, who are paralyzed by their inability to plan for what’s next.”²⁷⁹ However, the broad language of IEEPA offers U.S. courts another potential opt-out from striking down the tariffs. IEEPA grants the President the right to “regulate . . . any

273. 50 U.S.C. § 1702(a)(1)(A)(i), (iii).

274. Manak, *supra* note 92. The NEA added the following requirements: (1) biannual review from Congress to consider a vote on a joint resolution to determine whether the emergency should be terminated; (2) congressional authority to terminate the national emergency with a joint resolution; and (3) annual presidential assessment and potential extension of any declared emergency. CASEY ET AL., *supra* note 96, at i, 8.

275. H.R. Rep. No. 95-459, at 10 (1977).

276. Levi, *supra* note 94.

277. *V.O.S. Selections, Inc. v. Trump*, 149 F.4th 1312, 1318 (Fed. Cir. 2025) (per curiam), *cert. granted*, No. 25-250, 2025 WL 2601020 (U.S. Sept. 9, 2025).

278. *HMTX Indus. LLC v. United States*, No. 23-1891 (Fed. Cir. Sep. 25, 2025) at *34.

279. David Goldman, *Stocks Rally as Trump’s ‘Liberation Day’ Is Looking Like Yet Another Tariff Retreat*, CNN BUS. (Mar. 24, 2025, 4:10 PM), <https://www.cnn.com/2025/03/24/business/tariffs-stocks-trump/index.html> [<https://perma.cc/M4D5-34MG>].

transactions in foreign exchange . . . [and] the importing or exporting of currency or securities.”²⁸⁰ Plaintiffs argue that the statutory language falls far short of a clear congressional authorization for tariff imposition, but the language is broad enough to allow federal courts to rule in favor of the President. The CIT made their perspective known—the power to “regulate . . . imports” is not a broad tariff authority,²⁸¹ and the Federal Circuit affirmed that decision.²⁸² Given IEEPA’s legislative history,²⁸³ the absence of tariffs in IEEPA’s text, and the fact that IEEPA had never been used for tariff imposition in the past, the Court has sufficient legal authority to strike down the IEEPA tariffs under the major questions doctrine. The question remains, however, whether the Supreme Court will adopt these substantive legal arguments or overturn the Federal Circuit’s decision in favor of the historical trend of leniency toward the President’s imposition of tariffs.

Conclusion

As mentioned in this Note’s opening, the Constitution granted the tariff power to Congress, not the President. Many have questioned Congress’s statutory delegations of its power to the President, a school of thought known as the non-delegation doctrine.²⁸⁴ This question dates back to the early nineteenth century, when Chief Justice John Marshall stated that Congress could not delegate powers “which are strictly and exclusively legislative.”²⁸⁵ The doctrine’s application to the tariff power was decided in the 1892 decision *Field v. Clark*,²⁸⁶ in which a company objected to the President’s use of the Tariff Act of 1890 to place tariffs on sugar, molasses, coffee, and tea as unconstitutional.²⁸⁷ The Court held that the President’s imposition of tariffs was permissible, since it was “simply in execution of the act of Congress.”²⁸⁸

Over 130 years later, the remaining question is whether a court, or the constitutional founders for that matter, would approve of a president imposing widespread tariffs through an emergency statute. Jeffrey Schwab, a lawyer challenging Trump’s IEEPA tariffs on behalf of Liberty Justice

280. 50 U.S.C. § 1702(a)(1)(A)(i), (iii).

281. *V.O.S. Selections, Inc. v. United States*, No. 25-00066, slip op. at 28 (Ct. Int’l Trade 2025).

282. *V.O.S. Selections*, 149 F.4th at 1318.

283. In particular, Nixon’s use of its predecessor statute (TWEA) resulting in the statute’s retitling and the IEEPA’s additional requirements. Manak, *supra* note 92.

284. Scott Bomboy, *How Congress Delegates Its Tariff Powers to the President*, NAT’L CONST. CTR. (Apr. 2, 2025), <https://constitutioncenter.org/blog/how-congress-delegates-its-tariff-powers-to-the-president> [https://perma.cc/RZ2M-F46H].

285. *Wayman v. Southard*, 23 U.S. 1, 42–43 (1825).

286. *Field v. Clark*, 143 U.S. 649 (1892).

287. *Id.* at 680–81.

288. *Id.* at 693.

Center, does not believe either would approve. In fact, he argues that it goes against the essence of the American constitutional republic. He claims, “[o]ur system is not set up so that one person in the system can have the power to impose taxes across the world economy. That’s not how our constitutional republic works.”²⁸⁹

Arguments abound in both directions, but Congress’s statements when replacing TWEA with IEEPA suggest that Trump’s use of the statute is in direct conflict with their true intention. In the 1970s, growing use of emergency authority for non-emergencies led to the Senate’s creation of a special committee that set out to reevaluate these powers.²⁹⁰ In particular, Nixon’s use of TWEA as a tariff authority encouraged this reevaluation.

The special committee’s report disparagingly described IEEPA’s predecessor, TWEA, as “an unlimited grant of authority for the President to exercise, at his discretion, broad powers in both the domestic and international economic arena, without congressional review.”²⁹¹ In retitling and adding requirements to TWEA, the legislature attempted to limit the executive’s power to authorize international economic measures without Congress playing a role. Still, the purpose in enacting an emergency statute is to allow the president to act swiftly when *necessary*, so certain language stayed consistent. In turn, Congress’s failure to alter the language of Section 5(b)(1)(B) of TWEA—the authority for Nixon’s TWEA tariff and Trump’s IEEPA tariffs—has put courts in a difficult position.

Ultimately, Trump’s use of IEEPA should encourage congressional review as to whether IEEPA, the NEA, and other statutes transferring power to the President during a state of emergency are functioning in the manner they were intended. Based on the House Report that accompanied the passing of IEEPA, the legislature intended for presidents to use IEEPA “rare[ly] and brief[ly]”²⁹² and not to avoid “congressional review.”²⁹³ The Trump Administration could have imposed tariffs under Section 232 of the Trade Expansion Act or Section 301 of the Trade Act. Without question, the Administration chose an emergency power authority that had never been used as a tariff authority to avoid those procedural hurdles, including congressional review. Regardless of whether U.S. courts find the tariffs

289. Zach Schonfeld, *Trump Sued over ‘Liberation Day’ Tariffs*, HILL (Apr. 14, 2025, 2:13 PM), <https://thehill.com/regulation/court-battles/5247999-trump-sued-liberation-day-tariffs/> [<https://perma.cc/9R3L-9T76>] (quoting an interview with Jeffrey Schwab, senior counsel at Liberty Justice Center).

290. CASEY ET AL., *supra* note 96, at 6–7.

291. H.R. Rep. No. 95-459, at 7 (1977).

292. *Id.* at 10.

293. *Id.* at 1.

unconstitutional or otherwise lacking in sufficient legal authority, the legislature should confine the language of IEEPA to meet its original intention. Most importantly, refining IEEPA and other congressional delegations of emergency authority would mean that the President cannot declare an emergency without judicial and legislative challenge.