

The International Emergency Economic Powers Act (IEEPA) and Tariffs: Historical Background and Key Issues

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Updated June 24, 2019

On May 30, 2019, President Donald J. Trump [announced](#) his intention to use the [International Emergency Economic Powers Act \(IEEPA\)](#) (50 U.S.C. §§1701 *et seq.*) to impose a 5% tariff on all goods imported from Mexico effective June 10, 2019. The tariff, he said, would gradually increase until “the illegal migration crisis is alleviated through effective actions taken by Mexico.” On June 7, 2019, the President [stated](#) that the tariffs were “indefinitely suspended” because Mexico had “agreed to take strong measures to ... stem the tide of migration.”

Presidents may invoke IEEPA in response to an “unusual and extraordinary threat, which has its source in whole or substantial part outside the United States” when a national emergency has been declared with respect to that threat. Using IEEPA, Presidents may regulate imports. Although no President has used IEEPA to impose tariffs, President Nixon imposed a 10% tariff on all imports into the United States in response to a monetary crisis using IEEPA’s precursor statute, the Trading with the Enemy Act of 1917 (TWEA).

President Nixon’s Emergency Tariff

In 1971, the United States was facing a balance-of-payments crisis because of the inflexibility of the Bretton Woods monetary order, and reform seemed increasingly necessary. [Several reports](#) compiled by the Nixon Administration suggested a series of reforms that would require key economic partners in Europe and Asia to revalue their currencies voluntarily. To [gain negotiating leverage](#), the reports recommended, among other things, suspending gold convertibility and imposing trade restrictions. When discussing such options in the Oval Office, Nixon reacted positively to the suggestions, [commenting](#), “the import duty delights me.” Under the General Agreement on Tariffs and Trade (GATT), such measures had [generally been tolerated](#) in response to balance-of-payments crises.

On August 15, 1971, President Nixon issued [Proclamation 4074](#), in which he declared a national emergency and imposed a 10% *ad valorem* supplemental duty on all dutiable articles imported into the United States. That evening, [in a televised address to the nation](#), President Nixon outlined his new economic policy, the targets of which were unemployment, inflation, and international speculation. He addressed the supplemental duty specifically

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I am taking one further step to protect the dollar, to improve our balance of payments, and to increase jobs for Americans. As a temporary measure, I am today imposing an additional tax of 10% on goods imported into the United States. This is a better solution for international trade than direct controls on the amount of imports.

This import tax is a temporary action. It isn't directed against any other country. It is an action to make certain that American products will not be at a disadvantage because of unfair exchange rates. When the unfair treatment is ended, the import tax will end as well.

While the tariff was not explicitly “directed against any other country,” the Nixon Administration was [primarily concerned](#) with compelling Japan to negotiate a 24% revaluation of the Japanese yen. Then-national security council chair Henry Kissinger’s staff economist [described](#) the surcharge as “a bargaining lever to get other countries to revalue their currencies.” Then-Under Secretary of the Treasury for Monetary Affairs Paul Volcker, likewise, [thought](#), “the president had been convinced that [the import surcharge] was both an essential negotiating tactic and a way to attract public support.”

Over the next several months, the Administration negotiated with the [G-10](#) to resolve the monetary crisis and convince West Germany and Japan to revalue their currencies. On December 18, 1971, speaking from the Commons Room at the Smithsonian Institution Building, President Nixon [announced the conclusion of the Smithsonian Agreement](#), which he billed as “the most significant monetary agreement in the history of the world.” Among [the provisions](#) were a [16.9% revaluation of the yen](#). Two days later, [President Nixon removed the supplemental duties](#).

In response to the import surcharge, several importers filed suit alleging that Nixon lacked the authority to impose the surcharge. The Government argued that it had the authority to impose the import surcharge under [section 5\(b\)\(1\)\(B\) of TWEA](#). The United States Court of Customs and Patent Appeals [held](#) in *United States v. Yoshida International* that it was “incontestable that [TWEA] does in fact delegate to the President, for use during war or during national emergency only, the power to ‘regulate importation’” and upheld the President’s action, in part because it “bore an eminently reasonable relationship to the emergency confronted.” A year later, the court held the same in [another case](#).

When [testifying before Congress on reforms to TWEA in 1977](#), Andreas F. Lowenfeld, one of the premier practitioners and scholars of international economic law in the United States, spoke disapprovingly about President Nixon’s actions and said that he found the Court of Customs and Patent Appeals reasoning in *Yoshida* “thin.” He recommended, among other things, changing the language of the statute.

Despite Lowenfeld’s recommendation, Congress maintained the language of section 5(b)(1)(B) of [TWEA](#) in section 203(a)(1)(B) of [IEEPA](#). Additionally, 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](#).

Issues for Congress

Unlike Nixon’s import surcharge, President Trump’s proposed tariff would have been subject to the procedures of the National Emergencies Act of 1976 (NEA) (50 U.S.C. §§1601 *et seq.*), which [requires](#)

that the President specify “the provisions of law under which he proposes that he, or other officers, will act.” He may specify these provisions “either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders.” IEEPA, however, may only be used “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....” The authorities granted by IEEPA “may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this chapter and may not be exercised for any other purpose.” Moreover, “[a]ny exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency which must be with respect to such threat.”

The President did not cite IEEPA in [Proclamation 9844](#), which declared a national emergency at the border and some Members of Congress from both parties as well as trade groups have [debated](#) whether the President may invoke IEEPA in an executive order referencing Proclamation 9844 or whether he will need to declare a new national emergency. To date, no President has invoked IEEPA in an executive order issued subsequent to a declaration of national emergency.

Because IEEPA is subject to the NEA, a President may only exercise its powers with respect to a declared national emergency. Should the President decide to invoke IEEPA to impose a tariff in the future, Congress may attempt to terminate the national emergency upon which the action is based by [enacting a joint resolution](#) of disapproval using the expedited procedures provided by the NEA.

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