



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

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President-elect Donald J. Trump has repeatedly [expressed his intention](#) to impose a 10%-20% tariff on all imports. He has also asserted that he intends to impose tariffs on specific countries to achieve foreign policy goals, such as [pressuring Mexico and Canada \(through a 25% tariff\)](#) to aid the United States in reducing undocumented immigration ([a strategy he used in 2019](#)) and [pressuring China \(through an additional 10% tariff\)](#) to address illicit exports of fentanyl.

President-elect Trump has not given details on how he intends to impose those tariffs, [he has indicated in some circumstances he intends to do so through an executive order](#). During his previous term, Trump announced his intention to use the International Emergency Economic Powers Act (IEEPA) ([50 U.S.C. §§1701 *et seq.*](#))—which authorizes the President to regulate imports during a national emergency declared under the National Emergencies Act (NEA) ([50 U.S.C. §§1601 *et seq.*](#))—to impose duties and other trade restrictions. Many analysts ([1](#)) ([2](#)) ([3](#)) have suggested that IEEPA remains one of the more likely options for President-elect Trump’s proposed tariffs. Although no President has used IEEPA to impose tariffs, former 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). This remains the only time a President has used emergency authority, like that provided by IEEPA, to impose a tariff.

President Nixon’s Emergency Tariff

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:

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

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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,” some observers had surmised the Nixon Administration was [using the surcharge as leverage](#) to compel [Japan and West Germany](#) to revalue their currencies. Robert Hormats, a staff economist on the National Security Council at the time, [argued](#) that the surcharge be used as “a lever only for securing appropriate currency revaluations.” 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 Nixon Administration negotiated with the Group of Ten (G-10, composed of the world’s 10 biggest economies at the time) to resolve the monetary crisis and convince West Germany and Japan to revalue their currencies. On December 18, 1971, President Nixon [announced the conclusion of the Smithsonian Agreement](#), which he billed as “the most significant monetary agreement in the history of the world.” 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 [a similar case](#).

When [testifying before Congress on reforms to TWEA in 1977](#), Andreas F. Lowenfeld, a scholar 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

IEEPA is one of the authorities that analysts expect President-elect Trump may use to impose several of his proposed tariffs. If Congress approves of such tariffs, no further action is needed by Congress to keep the tariff in place. If Congress disapproves of the tariff, it has several options for expressing that disapproval. Congress could terminate the underlying national emergency by [enacting a joint resolution](#) of disapproval using the expedited procedures provided in the NEA. Congress could also amend IEEPA to restrict its use in imposing tariffs. Several Members of Congress introduced bills, in the 116th Congress, doing just that following then-President Trump’s 2019 threatened action against Mexico (S. 764, H.R. 1755, S. 2413, H.R. 3557).

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