

Nos. 24-1287 & 25-250

IN THE
Supreme Court of the United States

LEARNING RESOURCES, INC., *et al.*,
Petitioners,
v.

DONALD J. TRUMP,
PRESIDENT OF THE UNITED STATES, *et al.*,
Respondents.

DONALD J. TRUMP,
PRESIDENT OF THE UNITED STATES, *et al.*,
Petitioners,
v.

V.O.S. SELECTIONS, INC., *et al.*,
Respondent.

**On Writ of Certiorari Before Judgment to the
United States Court of Appeals for the
District of Columbia Circuit and
On Writ of Certiorari to the United States
Court of Appeals for the Federal Circuit**

**BRIEF OF PROFESSORS OF U.S. FOREIGN
RELATIONS LAW AS *AMICI CURIAE*
IN SUPPORT OF PETITIONERS IN NO. 24-1287
AND RESPONDENTS IN NO. 25-250**

PAUL B. STEPHAN
Counsel of Record
UNIVERSITY OF VIRGINIA
SCHOOL OF LAW
580 Massie Rd.
Charlottesville, VA. 22903
(434) 924-7098
pbs@virginia.edu

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Counsel for Amicus Curiae

QUESTION PRESENTED

Whether the International Emergency Economic Powers Act of 1977 (IEEPA), 91 Stat. 1626, as amended, 50 U.S.C. § 1701 *et seq.*, allows the President to impose tariffs not otherwise authorized by legislation?

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IDENTITY AND INTEREST OF *AMICI CURIAE*

Andrew Kent is the Joseph M. McLaughlin Chair at Fordham University School of Law. He has written numerous academic articles about U.S. sanctions authorities, U.S. foreign relations law, separation of powers, and international law, including the law of war.

Paul Stephan is the John C. Jeffries, Jr., Distinguished Professor and the Louis F. Ryan '73 Research Professor at the University of Virginia School of Law. He has served as Counselor on International Law to the Legal Adviser of the Department of State and Special Counsel to the General Counsel of the Department of Defense. He was Coordinating Reporter of the American Law Institute's Restatement (Fourth) of the Foreign Relations Law of the United States. He has written extensively about U.S. sanctions law and testified before Congress and advised the Departments of State and Treasury on the design of sanctions on the Russian Federation under IEEPA.

Amici have an interest in the sound development of the law in the areas covered by this brief.¹

SUMMARY OF THE ARGUMENT

The International Emergency Economic Powers Act of 1977 (IEEPA), Pub. L. No. 95-223, 91 Stat. 1626, as amended, 50 U.S.C. § 1701 *et seq.*, does not authorize the President to impose tariffs on the importation of goods to the United States. IEEPA represents a limited grant of authority tied to the foreign commerce powers of Congress under Article I, § 8, cl. 3. It stands in contrast to the Trading with the Enemy Act of 1917

¹ No party or party's counsel authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund its preparation or submission.

(TWEA), ch. 106, 40 Stat. 411, as amended, 50 U.S.C. § 4301 *et seq.*, which authorizes war powers consistent with Article I, § 8, cls. 10-13, of the Constitution and the international law of war.

The enactment of IEEPA in 1977, paired with amendment of TWEA by the same statute, drew a clear line between emergency powers for peacetime and powers that come into existence only upon the declaration of war. Although these statutes have some common language, they proceed from different constitutional foundations, serve different purposes, and work within different legal contexts.

Only TWEA provides a general authority for the executive to confiscate alien property or any inferred lesser power to impose exactions such as tariffs or taxes. The amendment of IEEPA by the USA Patriot Act of 2001, § 106, 115 Stat. 272, 277-78, 50 U.S.C. § 1702(a)(1)(C), and the adoption of the REPO Act of 2024, Pub. L. No. 118-50, Div. F, 138 Stat. 895, 942, confirm that, without express legislative sanction, the presidential powers available under IEEPA do not include actions that alter the ownership of alien property interests.

The line between war powers and peacetime measures to influence foreign relations frames the statutory interpretation issue at the heart of this case. Determinative to the outcome is the meaning of the word “regulate.” Section 5(b)(1)(B) of TWEA authorizes the President, among other war powers, to “regulate . . . importation or exportation of . . . property in which any foreign country or a national thereof has any interest.” 50 U.S.C. § 4305(b)(1)(B). The same term appears in Section 203(a)(1)(B) of IEEPA. 50 U.S.C. § 1702(a)(1)(B). Until this dispute arose, no President

had relied on this term to levy a tariff or any other monetary charge, much less to confiscate.

The principles of *noscitur a sociis* and *ejusdem generis*, as well as the major questions doctrine, oppose reading a tariff authority into IEEPA. IEEPA's transformation of TWEA Section 5(b)(1)(B), and in particular its divorce of regulatory power from vesting power, imposes a narrower meaning on the term "regulate" by changing the company it keeps. The government's contrary argument would tear down the barrier between peacetime emergency powers and those available to prosecute a war. It would also read into that term an authorization for a broad, consequential, and largely discretionary presidential power to impose taxes as well as tariffs.

The United States argues that the Nixon administration relied on TWEA § 5(b)(1)(B) as authority for its 1971 levy of a surcharge on all dutiable imports, and that *United States v. Yoshida Int'l, Inc.*, 526 F.2d 560 (C.C.P.A. 1975), agreed. It follows, the United States maintains, that Congress endorsed this gloss when it included similar language in IEEPA § 203(a)(1)(B). The first part of this argument is wrong as a matter of fact: President Nixon's Proclamation referenced only his authorities under trade legislation and limited the scope of the levy so as not to violate limits imposed by that legislation. As to the second part of the argument, the *Yoshida* court did refer to TWEA as support for the surcharge, but also insisted that this authority could not exceed the existing trade law limits with which the presidential proclamation expressly complied.

Interpreting IEEPA as not covering tariffs or other monetary exactions does not hobble the President. Existing trade law gives him significant authority to adjust tariffs to confront a national emergency.

Current law expressly provides for tariffs motivated by reasons of national security. Trade Expansion Act of 1962, Pub. L. No. 87-794, § 232, 76 Stat. 872, 877, as amended, 19 U.S.C. § 1862. Trade legislation provides several other authorities to raise tariffs in response to unfair or discriminatory foreign conduct. The President has found Section 232 sufficient for many of the more recent tariffs. This Court should not endorse an unfounded and nearly limitless interpretation of “regulate” in IEEPA to satisfy a need that existing trade law already meets.

ARGUMENT

I. IEEPA DOES NOT AUTHORIZE GOVERNMENT EXACTIONS OF PROPERTY, WHETHER THROUGH CONFISCATION, TAXATION OR IMPOSITION OF TARIFFS

Throughout U.S. history, presidents have imposed financial costs on enemies as part of the prosecution of wars. These measures include naval blockades, the law of prize, control of commerce with enemies, seizing enemy assets, and, at times, imposing taxes and fees attendant to temporary U.S. military occupation of enemy territory.

The United States also has used economic measures as an instrument of foreign policy, such as freezing assets (without taking title), imposing peacetime embargos, and withdrawing trade concessions and other economic advantages. Over the course of the twentieth century, Congress enacted detailed legislation governing both the wartime and peacetime use of economic power in foreign relations.

A. The Law-of-War Background to TWEA

The pre-1917 history of U.S. use of economic measures in the prosecution of wars has only limited

relevance to an understanding of TWEA. Before World War I, the executive branch sometimes imposed wartime tariffs and taxes, not otherwise authorized by regular trade and tax legislation, only as exercises of the well-established war power to administer occupied enemy territory. On occasion, Congress gave the President authority to license transactions that crossed enemy lines as part of a general ban on trading with the enemy. We are aware of no evidence, however, that Presidents ever exercised this power to derive revenue from commerce with persons actively engaged in war with the United States.

The amicus brief of Professor Bamzai asserts, to the contrary, that “the background understanding of the laws of war in the pre-TWEA era embraced the notion that the greater authority (to prohibit trade altogether) included the lesser authority (to allow trade subject to taxes or fees).” Bamzai Brief at 26. A review of the cases cited indicates a much narrower principle at stake, one TWEA did not address.

Fleming v. Page, 50 U.S. (9 How.) 603 (1850), concerned the temporary U.S. military occupation of the port of Tampico, Mexico, during the Mexican War. The Court signaled approval of the military government’s levying of “contributions” at Tampico—a place “invaded and subdued, and occupied as the territory of a hostile foreign nation”—through import duties and otherwise. 50 U.S. at 615. The other cases cited arose from similar military occupations of enemy territory, in California as a result of the Mexican War, *Cross v. Harrison*, 57 U.S. (16 How.) 164 (1853), and the occupied Confederacy during the Civil War, *Hamilton v. Dillin*, 88 U.S. (21 Wall.) 73 (1874). The cases express the principle that a military government over conquered enemy territory may “displace the preexisting authority”

and “exercise by itself . . . all the powers and functions of government[,]” including the power to “prescribe the revenues to be paid” within the territory, in order to “strengthen itself and weaken the enemy.” *New Orleans v. New York Mail S.S. Co.*, 87 U.S. (20 Wall.) 387, 394 (1874).² TWEA did not contemplate instances of governance of occupied territories and thus had nothing to say about that prospect.

In short, this particular background understanding of the law of war, the only one involving taxes and tariffs and the only one in play in the cases cited by the amicus brief, did not inform TWEA in any respect.

B. Financial Exactions under TWEA

The United States argues that the authority for the President’s tariffs originates in TWEA, and was then incorporated into IEEPA in 1977. To assess this claim, it is necessary first to understand the origin and evolution of TWEA.

1. The original TWEA

Congress adopted TWEA upon the entry of the United States into World War I. TWEA was primarily designed to control cross-border trade with enemies and business activities of enemies in the United States, and to allow the sequestration of enemy property under U.S. jurisdiction. It was not an internal or external revenue statute. A year earlier, when the prospects of war were gathering, Congress raised some

² Another case cited by Professor Bamzai, *Lincoln v. United States*, 197 U.S. 419, 427-28 (1905), held that the executive branch had no law-of-war or other power to impose its own tariffs on goods coming into Manilla after the peace treaty with Spain had ended the war and incorporated the Philippines into the United States, even though portions of the Philippines were in insurrection.

tariffs and created the U.S. Tariff Commission. Revenue Act of 1916, 39 Stat. 756. Then, immediately before adopting TWEA, Congress passed the War Revenue Act of 1917, Pub. L. No. 65-50, 40 Stat. 300, to raise taxes to defray the costs of war. These measures, and not TWEA, addressed the war's fiscal requirements.

TWEA was an entirely different kind of enactment. Section 3 of TWEA banned trade with persons known to be an "enemy" or "ally of enemy," the transportation of enemy aliens into the United States, and written communications with enemy aliens, except as licensed by the President. Section 5(b), the much-amended ancestor of the provision at the center of this case, authorized the President to "regulate," under conditions he prescribed, transactions in foreign exchange, bullion, and financial instruments, including evidences of property ownership, between U.S. persons and persons resident in "any foreign country." 40 Stat. at 415. Unlike Section 3, this authority applied to all transactions between U.S. persons and persons abroad, whether enemy alien or not.

Section 11 of TWEA gave the President authority to restrict or ban imports. In a break from historical wartime practice, this power extended to imports from all countries, not just imports from enemy states or on behalf of enemy aliens. President Wilson imposed no tariffs or taxes under this provision, but rather, through a War Trade Board, limited designated imports to achieve war aims.³ By its terms, this authority existed only "during the present war," and thus expired at the war's end.

Section 6 of TWEA created the Office of the Alien Property Custodian to take possession of enemy alien

³ Report of the War Trade Board 5-6, 10 (1920).

property within U.S. jurisdiction. Section 7(c) allowed the President to require the transfer to the Custodian of any property owned by or held on behalf of enemy aliens. Section 9 authorized suits to recover wrongfully seized property, but only if the claimant were “not an enemy, or ally of enemy.” It also allowed non-enemies to seek satisfaction of third-party claims against the assets held by the Custodian. Section 12 provided that, “[a]fter the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the alien property custodian . . . shall be settled as Congress shall direct.”⁴

Two 1918 amendments to Section 7 expanded the Custodian’s authority. One allowed the sale of administered assets, but not the disbursement of the proceeds to the treasury. Pub. L. 65-109, § 2, 40 Stat. 459, 460. The other directed the Custodian to take ownership of specified intellectual property, but again not for the purpose of converting the assets for the benefit of the United States. First Deficiency Appropriations Act of 1917, Pub. L. No. 65-233, § 2, 40 Stat. 1020, 1020-21.

In sum, the World War I version of TWEA banned commercial intercourse with the enemy, authorized the President to regulate a limited range of international transactions affecting the financial system, and, for the duration of the war, permitted presidential

⁴ In 1922 the United States and Germany established a claims commission to administer claims of their nationals against the other country. The assets still held by Custodian could be used to satisfy the claims of U.S. nationals. Settlement of War Claims Act of 1928, Pub. L. 70-122, 45 Stat. 254. The remaining assets were gradually returned to their pre-war owners until Germany defaulted on debts to the United States, after which Congress halted repayments of TWEA seizures.

control over imports generally, as well as seizure of enemy property and its administration by a Custodian. The Act gave the government considerable leeway over the seized property, including allowing its conversion into cash, but did not authorize the outright confiscation of those assets for the benefit of the United States. At no time was TWEA used to impose tariffs or taxes.

2. Amendments to TWEA after World War I

Responding to President Roosevelt's declaration of a bank holiday upon his assumption of office, Congress revised Section 5(b) of TWEA to extend it to national emergencies, not just times of war. Emergency Banking Relief Act, Pub. L. No. 73-1, § 2, 48 Stat. 1, 1-2 (1933). Complementing the broadening of presidential emergency powers, Congress reduced the effect of that provision by removing the power to regulate international transactions involving evidences of ownership of property. Following the outbreak of World War II in Europe, but before the United States had joined the conflict, Congress restored that power. S. J. Res. 252, 54 Stat. 179 (1940). This step ratified President Roosevelt's taking control over the U.S. assets of persons that were nationals of the European countries that Germany had occupied. Exec. Order 8389, 5 Fed. Reg. 1400 (Apr. 12, 1940).

In the wake of the U.S. declaration of war on Japan and Germany, the War Powers Act of 1941, Pub. L. 77-354, 55 Stat. 838, again amended TWEA. The amendment added subsection § 5(b)(1)(B), which authorizes the President to "regulate . . . any . . . importation or exportation of . . . any property in which any foreign country or national thereof has any interest." This provision resembles that of the expired Section 11, but

went even further by applying to exports.⁵ Section 5(b)(1)(B) also gave the President the power to vest in the United States ownership of any alien property. This went further than Section 7 in the original TWEA, which applied only to the property of enemy aliens and resulted only in sequestration.⁶ Prominent U.S. lawyers, including those involved in the law's administration, argued that, to avoid constitutional and international legal issues, Section 5(b)(1)(B) should be limited to transactions directly implicating the war effort.⁷

The first of these measures introduced to TWEA the “regulate . . . importation” language at issue in this case. The second created a new authority to confiscate alien property, whether enemy or not. Each of these actions represented a break from prior U.S. and international practice, which recognized only a combatant's power to ban or restrict trade with its enemy and to sequester or confiscate enemy property.

As enacted (and up to the present day), Section 5(b)(1)(B) of TWEA provides that the President may:

investigate, regulate, direct and compel, nullify,
void, prevent or prohibit, any acquisition

⁵ During World War I, the Espionage Act of 1917, Pub. L. No. 65-24, tit. VII, 40 Stat. 217, 225-26, gave the President authority to regulate exports “during the present war”.

⁶ As noted above, fn. 4, the United States could sell the sequestered assets but retained the proceeds for later disposition, including return to owners after satisfaction of outstanding claims.

⁷ John Foster Dulles, *Vesting Powers of the Alien Property Custodian*, 28 Cornell L. Rev. 245 (1943); George A. McNulty, *Constitutionality of Alien Property Controls*, 11 L. & Contemp. Prob. 135 (1945) (Chief, Alien Property Unit, War Division, Department of Justice).

holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest, by any person, or with respect to any property, subject to the jurisdiction of the United States; *and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States . . .*

50 U.S.C. § 4305(b)(1)(B) (emphasis added). The statute links the power to “regulate” imports directly to the power to “vest” ownership of alien property in the United States, as the italicized language provides. There is no indication of a connection to tariffs or taxes, which other contemporaneous legislation addressed in detail.

3. TWEA after World War II

Dating from the 1933 amendment, TWEA applied to any national emergency, not just declared wars. The 1941 War Powers amendment did not provide for automatic termination of the new authorities at war’s end. This lacuna may have made sense at the time, as it was deeply uncertain which states would become the

enemies of the United States.⁸ Once the war ended and the Cold War commenced, the anomaly of authorizing war powers during peacetime became evident.

From 1946 on, jurists and government officials wondered whether the President might use powers traditionally confined to the conduct of war to meet the new challenges posed by the unprecedented postwar position of the United States. They debated whether some war powers might extend to international confrontations not satisfying the historical definition of a war and not involving a congressional declaration of that status. Some suggested that the modern world recognized a new category of hostility, neither peace nor war in the traditional sense, that justified the exercise of some war powers. See, e.g., *Sardino v. Federal Reserve Bank of New York*, 361 F.2d 106, 111-12 (2d Cir. 1966) (Friendly, J.).

While drawing much interest, the question of a new category between war and peace was never put to the test in the courts. At no time did any President impose a tariff or other monetary levy under the authority of Section 5(b)(1)(B). Without exception, TWEA sanctions, besides travel bans, involved trade embargoes and the sequestration of property, but not forfeiture. This was true, for instance, of the Cuban sanctions at issue in *Sardino*. No President ever invoked TWEA to impose or adjust tariffs in conflict with existing trade legislation, in particular the Tariff Act of 1930, Pub. L. 71-361, 46 Stat. 590 as amended, 19 U.S.C. § 1202 *et seq.*,

⁸ Six months after adoption of the War Powers Act, Congress declared war on three more Axis powers. War with Bulgaria, H.J. Res. 319 (1942), 56 Stat. 306; War with Hungary, H.J. Res. 320 (1942), 56 Stat. 307; War with Rumania, H.J. Res. 321 (1942), 56 Stat. 307.

the Trade Expansion Act of 1962, and the Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978.⁹

Although President Nixon in 1971 imposed a special tariff to respond to a balance of payments crisis, his proclamation relied on authorities provided by existing trade legislation. Proclamation No. 4074, 36 Fed. Reg. 15,724 (Aug. 17, 1971). The argument that the proclamation might also rest on TWEA § 5(b)(1)(B) emerged only in the course of litigation challenging the levy. *Yoshida Int'l, Inc. v. United States*, 378 F. Supp. 1155, 1157 (Cust. Ct. 1974). We discuss *Yoshida* and its irrelevance to IEEPA in Section II of this brief.

C. Financial Exactions under IEEPA

In this litigation, the United States rests its claim for the validity of its tariffs on IEEPA, not TWEA. Before the levies at issue in this case, no President had ever interpreted IEEPA as authorizing monetary exactions. The language, purpose, and history of IEEPA all point in the same direction: IEEPA does not

⁹ If such an authority existed under TWEA, Congress would have had no reason to adopt Section 232 of the Trade Expansion Act of 1962, which expressly creates a power to adjust tariffs in response to a subset of national emergencies, namely those threatening national security. In 1973, the Department of Justice prepared a detailed memorandum on section 5(b) of TWEA for a special Senate committee on national emergency statutes. In reviewing executive branch uses of section 5(b), the memorandum gave no indication that tariff authority was thought to exist. Justice Department Memorandum on Section 5(b) of the Trading with the Enemy Act (May 21, 1973), reprinted in *Emergency Controls on International Economic Transactions: Hearings Before the Subcommittee on International Economic Policy and Trade of the Committee on International Relations*, House of Representatives, 95th Cong., 1st Sess., at 231-35 (1977). The memorandum refers to Proclamation 4074 but indicates that the duty imposed there did not rest on Section 5(b).

provide an independent tariff authority untethered from trade legislation.

1. Statutory purpose

Congress adopted IEEPA in 1977 to provide an exclusive basis for economic sanctions in foreign relations in the absence of a declared war. IEEPA followed other contemporary enactments that reclaimed for Congress foreign relations powers that Presidents had exercised since the end of World War II. These include the use of force (War Powers Resolution of 1973, H.J. Res. 542, 87 Stat. 555), the levying of tariffs (Trade Act of 1974), the expenditure of appropriated funds (Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 298), and the recognition of foreign sovereign immunities (Foreign Sovereign Immunities Act of 1976, Pub. L. 94-583, 90 Stat. 2891, as amended 28 U.S.C. §§ 1330, 1602 *et seq.*).

The 1977 enactment has three titles. The first amended TWEA to restrict its scope to instances of declared war, restoring the pre-1933 status quo. The second created IEEPA. The third amended the Export Administration Act of 1969, Pub. L. No. 91-184, 83 Stat. 841, to clarify the President's authority to regulate exports on national security grounds. Pub. L. No. 95-223, 91 Stat. 1625 (1977). The net effect of these provisions was to separate categorically the powers that the President may wield during a declared war and those available to address peacetime international challenges.

First, IEEPA limits the scope of presidential authorities in comparison to the 1933-77 version of TWEA. Before the 1977 amendment, TWEA applied to both a declared war and "any other period of national emergency declared by the President." IEEPA restricts the definition of a national emergency to "any unusual

and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States.” IEEPA § 202(a). Thus, IEEPA does not apply to purely domestic problems such as the 1933 banking crisis.

Second, IEEPA, while using some of the language of TWEA § 5(b)(1)(B) to define emergency powers, struck out all references to asset confiscations. IEEPA § 203(a)(1)(B) conveys to the President the power to “regulate . . . importation or exportation of . . . any property in which any foreign country or a national thereof has any interest.” But it does not link that authority to the power to “vest . . . such property or interest” in agencies of the United States. Congress excised that language from the statute. The IEEPA authority, unlike the TWEA authority, does not invoke traditional wartime powers to alter the ownership of enemy property interests.

Congress understood that international law and practice condones the banning of transactions and the freezing of assets as a legitimate means of influencing international relations in peacetime. As the U.K. Supreme Court recently observed:

[T]he imposition or threat of trade restrictions in order to exert pressure upon other states, and thereby achieve political objectives, has been part of the armoury of the state since classical times. It was a familiar aspect of state practice during the period when English commercial law and equity were developing in the eighteenth and nineteenth centuries: for example, during the American War of Independence, the Napoleonic Wars and the War of 1812. Trade sanctions, embargoes and

protectionism more widely remain normal and important aspects of statecraft in the modern world.

Law Debenture Trust Corp. plc v. Ukraine, [2023] U.K.S.C. 11, 55.

In contrast, taking property simply because of the identity of the owner—rather than as a forfeiture penalty for an independent legal violation or as a lawfully authorized tax, whether tariff or otherwise—is permissible only during war. Congress adopted IEEPA precisely to end the ambiguity posed by the previous version of TWEA as to whether the President could exercise war powers during peacetime, particularly the power to impose exactions on property and transactions for no reason other than the involvement of an alien.

2. Implications of later enactments

Later enactments confirm that IEEPA does not bestow any power to convert seized assets into revenues for the United States. Following the 2001 Al Qaeda attacks, Congress amended IEEPA to grant the President an exceptional authority to confiscate the property of states or persons engaged in an attack on the United States. USA PATRIOT Act of 2001, § 106, 115 Stat. 272, 278-80, *codified at* 50 U.S.C. § 1702(a)(1)(C). In effect, this provision authorizes the President to exercise war powers of the type provided by TWEA, in the absence of a declaration of war but where the international law requirements for armed self-defense are met. *See* UN Charter, art. 51.

Second, responding to Russia’s 2022 invasion of Ukraine, members of Congress and several public figures called on the President to confiscate Russia’s frozen sovereign assets and to transfer the proceeds to

Ukraine. Without confiscation authority under IEEPA, the Biden administration declined to take this step. Congress responded by enacting the REPO Act of 2024, Pub. L. No. 118-50, Div. F, 138 Stat. 895, 942. This law filled IEEPA's gap by authorizing the use of Russia's frozen assets for Ukraine. Congress acted with the understanding that, even though a state of war did not exist between Russia and the United States, Russia's flagrant violation of the international legal prohibition of armed aggression required an extraordinary response. Ashley Deeks, Mitu Gulati, & Paul Stephan, *The Syndicated Loan for Ukraine: A Model for Future Crisis Collaboration*, 20 Cap. Mkts. L.J. 1, 2-3 (2025). Congress did not extend the confiscation power further than authorizing these specific measures.

Each of these later enactments make clear that, except when they apply, IEEPA does not allow the President to make the United States the owner of sanctioned property. As with Sections 7 and 9 of the original TWEA, the United States may subject this property to any lawful taxes, imposts, or third-party claims that otherwise would apply. What IEEPA does not do is allow the president to impose otherwise unauthorized exactions or financial penalties on property subject to IEEPA, potentially including any property subject to U.S. jurisdiction in which an alien has an interest. This restriction reflects IEEPA's purpose of separating the tools needed to respond to peacetime international emergencies, which includes asset freezes, from those available during war, which include confiscating property, in whole or in part.

3. Canons of statutory interpretation

Proper application of canons of statutory interpretation compels interpreting IEEPA as not including a tariff

authority unchained to existing trade legislation. The United States argues that Section 5(b)(1)(B) of TWEA allows the President to impose tariffs as part of the power to “regulate . . . importation,” and that the appearance of these same words in IEEPA’s Section 203(a)(1)(B) indicates that this statute provides an identical authority during peacetime. Section I.B of this brief challenges the premise of this argument, that TWEA encompasses a tariff authority. But even conceding that point for the sake of argument, the conclusion does not follow. The principles of *noscitur a sociis* and *ejusdem generis*, *Fischer v. United States*, 603 U.S. 480, 487-88 (2024), as well as the major questions doctrine, *Biden v. Nebraska*, 600 U.S. 477 (2023); *West Virginia v. EPA*, 597 U.S. 697 (2022), require reading IEEPA Section 203(a)(1)(B) as not providing a freestanding authority to impose tariffs, whatever TWEA Section 5(b)(1)(B) might mean.

As Section I.B.2 of this brief recounts, Section 5(b)(1)(B) of TWEA contains a back-to-back authorization of the power to “regulate . . . imports” and to confiscate property subject to such regulation. Congress, however, excised the confiscatory power from Section 203(a)(1)(B) of IEEPA. This move changed the surroundings text and context of “regulate” and removed a specific term that might inform that word’s interpretation. By eliminating the power to alter property rights in sanctioned property, Congress indicated that regulations that achieve that result, such as a tax, tariff, or confiscation, were no longer available. Even though the term “regulate” appears in both statutes, it lives in different neighborhoods and requires different interpretations.

Were there any doubt that the excision of tax, tariff, and confiscatory powers from Section 203(a)(1)(B) of

IEEPA affects the meaning of the term “regulate,” the major questions doctrine settles the issue. The present dispute is a case “in which the ‘history and the breadth of the authority that [the agency] has asserted,’ and the ‘economic and political significance’ of that assertion, provide a ‘reason to hesitate before concluding that Congress’ meant to confer such authority.” *Biden v. Nebraska*, 600 U.S. at 501 (cleaned up); *West Virginia v. EPA*, 597 U.S. at 721.

Current trade legislation already gives the President significant discretion to adjust tariffs, either through international agreements or unilaterally. As Section III of this brief argues, this includes Section 232 of the Trade Expansion Act of 1962, an authority that the present administration has used to adopt tariffs much like the ones at issue in this case. What the interpretation of IEEPA Section 203(a)(1)(B) urged by the United States would do is give the President virtually unlimited powers to impose new tariffs unbounded by the several substantive and procedural requirements that trade law imposes on these authorities. Moreover, the presidential powers that the United States would read into Section 203(a)(1)(B) go well beyond tariffs. If “regulate” includes the imposition of tariffs, then surely it applies to taxation as well.

The deployment of an IEEPA-based presidential taxation power to address international economic grievances is not fanciful. The House version of the tax legislation enacted as the One Big Beautiful Bill Act, Pub. L. 119-21, 139 Stat. 72 (2025), would have authorized the President to impose a withholding tax on the currently exempt income of foreign governments from the U.S. investments, conditioned on the President’s determination that those countries discriminate against U.S. technology companies. H.R. 1, 119th

Cong., 1st Sess., § 112029 (adding new Section 899 to Internal Revenue Code). The proposal did not survive Senate consideration. Under the reading of Section 203(a)(1)(B) urged by the United States in this case, however, approval of Congress would be unnecessary. The President could determine that the threat to the technology sector constitutes a national emergency and proceed accordingly.

The wisdom of revoking a tax exemption for foreign governments based on their treatment of particular U.S. businesses is debatable. What should be clear, however, is that such a consequential discretionary power should not be implied from a general authority in IEEPA to “regulate” transactions in which foreign persons have an interest, such as placing investments in the United States.

II. THE *YOSHIDA* CASE DID NOT CREATE A NEW POWER TO LEVY TARIFFS

The United States relies on the 1975 *Yoshida* decision of the Court of Customs and Patent Appeals as support for the claim that IEEPA Section 203(a)(1)(B) encompasses the imposition of tariffs. This reading of the case misconstrues what the court said and ignores the differences between pre-1977 TWEA, the statute at issue there, and IEEPA.

A. The Structure of U.S. Trade Legislation

The *Yoshida* case was a dispute over the validity of customs duties heard first by the Customs Court, the predecessor of the Court of International Trade, and then by the Court of Customs and Patent Appeals, the predecessor of the Federal Circuit. These were specialist courts focused on the validity of customs levies under

trade law. A brief review of that legislation reveals the context and scope of the appellate court's decision.

The imposition of customs duties by the United States rests ultimately on tariff schedules enacted by Congress pursuant to its constitutional authorities under Article I, § 8, cls. 1 and 3. The Tariff Act of 1930 is the principal source of the current harmonized tariff schedule. Other statutes have both amended that schedule and, significantly, authorized the executive to negotiate trade concessions with other states. These concessions produce downward departures from the harmonized schedule. Statutes authorizing these concessions include the Reciprocal Trade Agreements Act of 1934, Pub. L. No. 73-316, 48 Stat. 943, the Trade Expansion Act of 1962, and the Trade Act of 1974.

The 1974 Act also created a procedure for legislative approval of these concessions, the so-called “fast-track” process. Previously, the executive had relied on the 1934 Act, which gave advance permission to negotiate agreements and did not expressly require that the executive to return to Congress for approval of agreements once reached. The 1974 Act made clear that, going forward, the executive must obtain the consent of Congress before any concession can take effect. Trade Act of 1974, Title I., ch. 1, as amended 19 U.S.C. § 2111 *et seq.*¹⁰

Trade legislation also grants the executive the authority to make upward revisions of the tariff schedule in particular instances and for particular countries, subject to specific requirements. Congress in

¹⁰ Treaties subject to the advice and consent of the Senate remain an alternative method for ratification of trade concessions, but this method has largely dropped out of use since adopting of the 1934 Act.

1890 first authorized countervailing duties as a respond to improper export subsidies, *Zenith Radio Corp. v. United States*, 437 U.S. 443, 451 (1978). Congress first authorized antidumping duties to respond to improper pricing of imports through the Antidumping Act of 1916, 39 Stat. 798 (since repealed). Title VII of the Tariff Act of 1930 regularized and systemized the application of countervailing and antidumping duties. 19 U.S.C. § 1671 *et seq.* (as amended).

Over the years Congress has enacted other authorities for upward revisions to the scheduled tariffs. Some reflect trade concerns, such as sudden surges of imports or unfair trade practices by exporting countries. Trade Act of 1974, title II, ch. 1, as amended, 19 U.S.C. § 2251 *et seq.* (relief from import competition); *id.* title III, as amended, 19 U.S.C. § 2411 *et seq.* (relief from unfair trade practices). Other powers, such as to meet national security concerns (Section 232 of the Trade Expansion Act of 1962) and to address chronic imbalances of payments (Section 122 of the Trade Act of 1974), permit upward revisions for foreign policy reasons. None of the upward revisions that these provisions authorize is bound by the harmonized tariff schedule. Unlike IEEPA § 203(a)(1)(B), all require specific administrative procedures and have substantive limits.

B. The *Yoshida* Case

It was the shared conclusion of the first-instance and appellate courts in *Yoshida* that the President could not undo downward revisions of tariffs based on trade concessions without legislative approval. Upward revisions thus require a specific legislative grant, such as those for proscribed export subsidies, dumping, import surges, unfair trade practices or reasons of national security. The Customs Court ruled that

TWEA did not add to this list. The Court of Customs and Patent Appeals disagreed, but only in part. It held that TWEA allowed the President to reverse trade concessions that Congress had approved in advance, but otherwise did not permit the imposition of tariffs.

1. *Yoshida* did not supersede tariff legislation

In 1971, President Nixon issued Proclamation 4074 to address a perceived crisis in trade balances. The proclamation declared a national emergency based on the nation's growing trade deficit and declining gold reserves. Among other measures, it imposed a ten percent surcharge on all imports of dutiable goods. It justified the measure under authorities provided to the President by the Tariff Act of 1930 and the Trade Expansion Act of 1962.

The proclamation also indicated that "other provisions of law" might supplement the President's authority. Nowhere, however, did it refer to Section 5(b) of TWEA as a basis for the measure. Rather, it expressly excluded the application of any surcharge that would exceed the duties provided by the uniform tariff schedule. As a result, the new duties had force only to the extent that they reversed past trade concessions made under congressional grants of authority.

When an importer challenged the surcharge, the United States cited Section 5(b)(2)(B) of TWEA as among the sources of the President's authority to impose the surcharge. *Yoshida Int'l, Inc. v. United States*, 378 F. Supp. 1155, 1157 (Cust. Ct. 1974). The Customs Court ruled that TWEA did not suffice to justify the levy. On appeal, the Court of Customs and Patent Appeals reversed. It agreed with the lower court that extant trade legislation did not grant the President the power to roll back trade concessions

made pursuant to legislative authority. It found, however, that TWEA did convey a limited power to reverse prior concessions.

Rather than parsing the language of TWEA, its historical background, or evidence of legislative purpose reflected in specific text, the Court based its decision on its general understanding of the exigencies of national emergencies:

The delegation in § 5(b) is broad and extensive; it could not have been otherwise if the President were to have, within constitutional boundaries, the flexibility required to meet problems surrounding a national emergency with the success desired by Congress. . . . Congress has said what may be done with respect to foreseeable events in the Tariff Act [of 1930], the [Trade Expansion Act of 1962], and in the Trade Act of 1974 (all of which are in force) and has said what may be done with respect to unforeseeable events in the TWEA. In the latter, Congress necessarily intended a grant of power adequate to deal with national emergencies.

Yoshida, 526 F. 2d at 573, 578.

In spite of the perceived need for broad presidential discretion, however, the court proceeded to defend the surcharge as consistent with trade law. Under Proclamation 4074, the new duty only rolled back past concessions authorized by Congress. Even though the court believed that trade law itself did not convey the power to roll back, it regarded trade law's ceiling on upward revisions of tariffs as binding the President.

Whatever the precise bounds of *Yoshida*'s holding, it cannot be read as approving an unlimited tariff

authority based on the term “regulate” in Section 5(b)(1)(B) of TWEA. To the contrary, the court went out of its way to reconcile the duty imposed by Proclamation 4074 with existing trade legislation, in particular the legislative limits tracing back to the Tariff Act of 1930. *Yoshida* did not endorse an understanding of “regulate” that amounts to a blank check to impose tariffs (and by clear implication, taxes) in a national emergency.

2. *Yoshida*’s gloss on TWEA does not apply to IEEPA

Even if an aggressive reading of *Yoshida* were to generate an expansive interpretation of “regulate” in Section 5(b)(1)(B) of TWEA, it does not follow that IEEPA Section 203(a)(1)(B) permits the same interpretation. As discussed in Section I.B.3 of this brief, IEEPA significantly revised this subsection by removing the confiscation authority found in its TWEA counterpart. Inferring a lesser power to impose tariffs from a great power to confiscate property may be defensible. Once the confiscatory power disappears, however, so does the inference.

III. EXISTING TRADE LAW PROVIDES THE PRESIDENT WITH AMPLE AUTHORITIES TO RESPOND TO INTERNATIONAL EMERGENCIES

Interpreting IEEPA as not authorizing tariffs does not rob the President of powers necessary to confront international emergencies. Existing trade legislation, in particular the Trade Expansion Act of 1962 and the Trade Act of 1974, already give the President broad authority to deploy tariffs to respond to challenges from abroad. Indeed, the present administration has

based many of its new tariffs on these authorities, rather than on IEEPA.

A. Trade Law Provides the President with Substantial Discretion to Use Tariffs in Response to International Challenges

Section 232 of the Trade Expansion Act of 1962 allows the President to impose new tariffs, without regard to the ceilings found in other parts of trade legislation, in circumstances where imports threaten national security. *Federal Energy Agency v. Algonquin SNG, Inc.*, 426 U.S. 548 (1976) (reviewing authority and upholding license fee). This provision requires the Secretary of Commerce, in consultation with the Secretary of Defense, to investigate the situation and propose measures, including tariff increases. The President has final authority to accept or reject the proposal.

Since 2018, U.S. Presidents of both parties have made frequent use of Section 232. President Trump based the latest round of national-security tariff increases on this authority. Proclamation 10976 of September 29, 2025, 90 Fed. Reg. 48127 (Oct. 6, 2025). To date, the lower courts have upheld all invocations of this power. *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States*, 63 F.4th 25 (Fed. Cir. 2023); *PrimeSource Building Products, Inc. v. United States*, 59 F.4th 1255 (Fed. Cir. 2023); *Transpacific Steel LLC v. United States*, 4 F.4th 1306 (Fed Cir. 2021).

Especially as deployed in the last seven years, the Section 232 authority seems fully adequate to meet the concerns to which the President's IEEPA tariffs respond. Indeed, IEEPA authorities apply only to threats from abroad, while national security threats, not otherwise defined in Section 232, might reasonably be understood to include domestic ones. Restricting

emergency measures to uses of this provision would impose no significant substantive constraint on the President's capacity to meet international challenges.

An additional discretionary power resides in the President's balance-of-payments powers. In response to President Nixon's Proclamation 4074, Section 122 of the Trade Act of 1974 gave prospective approval to the authority claimed by that measure.¹¹ It authorizes the imposition of a surcharge, capped at 15 percent, whenever the President seeks to respond to a "large and serious" balance-of-payments deficit. The provision limits the duration of the proclamation to 150 days, unless Congress extends the period.

No President has resorted to Section 122 since its enactment. It remains, however, on the books as a potential response to trade deficits that threaten the nation's currency reserves. It is a tariff tool that the President can wield in cases where international financial trends pose an economic threat to the nation, even if not severe enough to put national security at risk.

B. Interpreting IEEPA as Authorizing Tariffs Would Circumvent Congressional Limits on the Use of Taxes and Tariffs as Responses to International Emergencies

Given the discretion to impose tariffs that the President already enjoys, allowing IEEPA to serve as a substitute basis for tariffs is unnecessary. Such a power would, however, create two significant problems. First, it would open the door not only to new tariffs,

¹¹ The *Yoshida* case did not involve the President's prospective authority under the Trade Act of 1974, but only the validity of the tariffs imposed by the proclamation, which had lapsed by the time of the litigation.

but also discretionary imposition of taxes inconsistent with the Internal Revenue Code. Second, empowering IEEPA would dispense with the procedural limits that trade law applies to the authorities it provides.

As noted in Section I.B.3 of this brief, if the term “regulate” in IEEPA Section 203(a)(1)(B) encompasses tariffs, it necessarily includes taxes. The President, upon declaring a national emergency, could impose taxes at rates and with conditions of his choosing on transactions involving property in which a foreign national has an interest. The President could, for example, remove on a case-by-case basis the tax exemption currently enjoyed by foreign governments, including their sovereign wealth funds, on income from U.S. investments. Internal Revenue Code, 26 U.S.C. § 892. Similarly, the President could raise the taxes of particular foreign nationals who hold property in the United States or engage in transactions with a U.S. nexus, on the basis of a finding that the person poses an “unusual and extraordinary threat” to U.S. interests, whether security or economic.

The present state of U.S. tax law limits the ability of the President to pick and choose the taxes people must pay. Internal Revenue Code § 7217, 26 U.S.C. (unlawful for President to intervene in tax investigations). Interpreting IEEPA as containing a broad and discretionary taxation power, parallel to that for tariffs, would undo these limits. Although one can imagine situations in which such taxes would serve the national interest, it is unlikely that Congress would not want a say in the design of such a system.

Both the national security and balance-of-payments authorities provided by trade law, although deferring to the discretion of the President in many respects, come with important limits. Section 232 requires prior

investigation and deliberation, engaging two Departments of the government, as a condition of the exercise of this power. Section 122 sets a cap on the amount of duty to be levied and limits the duration of the charge, subject to congressional extension. These restrictions would become irrelevant if the President had access to IEEPA as an alternative base for imposing tariffs.

* * *

IEEPA does not bestow upon the President an independent authority to impose tariffs. Neither the war powers recognized by the Supreme Court before World War I, nor the versions of TWEA in effect during the two world wars, were used to justify such an authority. Congress enacted IEEPA so as to limit to declared wars the power to confiscate property for the benefit of the United States, whether as an outright taking or as a financial exaction. Later enactments, by creating specific exceptions, confirmed this general rule. Interpreting IEEPA as the United States proposes would open the door to uncharted presidential powers to levy taxes as well as tariffs without congressional authorization.

CONCLUSION

This brief takes no position on the question of which lower court has jurisdiction to address challenges to the tariffs under review. Assuming jurisdiction exists, however, the substantive portions of the judgments of the District Court for Massachusetts and of the United States Court of Appeals for the Federal Circuit as to the invalidity of the tariffs imposed should be affirmed.

Respectfully submitted,

PAUL B. STEPHAN
Counsel of Record
UNIVERSITY OF VIRGINIA
SCHOOL OF LAW
580 Massie Rd.
Charlottesville, VA. 22903
(434) 924-7098
pbs@virginia.edu
Counsel for Amicus Curiae

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