No. 25-250

IN THE

Supreme Court of the United States

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

Petitioners,

v.

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

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF OF TRADE SCHOLARS IN ECONOMICS, POLITICS, AND LAW AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT V.O.S. SELECTIONS

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INTRODUCTION AND SUMMARY OF ARGUMENT

Section 122 of the Trade Act of 1974 ("Section 122") governs President Donald Trump's trade deficit tariffs. This is for two reasons.

First, Section 122 gives presidents tariff authority to address balance of payments ("BoP") disequilibria, and decades of U.S. economic data show that BoP deficits and trade deficits are empirically synonymous. The BoP is an accounting methodology that tracks all assets flowing between the United States and the rest of the world.

Because the trade of goods and services accounts for the vast majority of such assets, the trade balance and the BoP in the United States rise and fall as one. This was true when Section 122 was passed and remains true today.

Second, Congress enacted Section 122 to address the same economic challenge that President Trump seeks to address today: a trade deficit. In 1971, the United States recorded its first trade deficit in nearly a century. In response, President Richard Nixon declared a national emergency and imposed a ten-percent tariff on dutiable imports. He later justified the tariff under Section 5(b) of the Trading with the Enemies Act ("TWEA"). When the U.S. Customs Court held that Section 5(b) granted President Nixon no such authority, Congress enacted Section 122 to fill this void. That provision arms presidents with tariff authority to respond to trade deficits like the one President Nixon faced in 1971 and President Trump faces today. Because the economic data and history demonstrate that Congress deliberately and narrowly designed Section 122 to target trade deficits, Section 122 governs the tariffs here.

The Government insists that the International Emergency Economic Powers Act ("IEEPA") also provides tariff authority to address trade deficits. But IEEPA does not. In fact, its history reveals that Congress enacted IEEPA to *constrain* the president's expansive use of emergency declarations and emergency powers. Further, IEEPA neither mentions duties or tariffs nor has it ever been used to levy tariffs until now. In passing IEEPA shortly after Section 122, Congress created a statutory framework restricting the president's trade deficit tariff authority to Section 122 while providing other non-tax emergency powers under IEEPA. Because Section 122 is the sole authority Congress made available for presidents to impose trade deficit tariffs, President Trump must comply with its limitations.

ARGUMENT

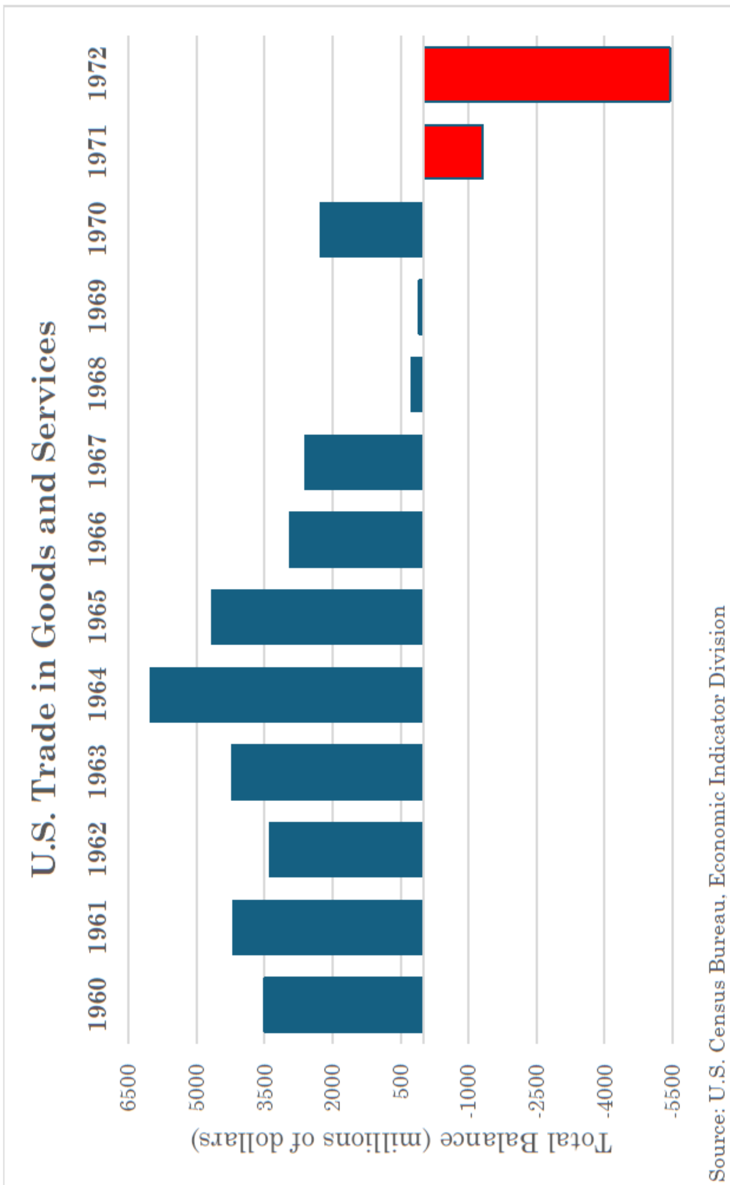
I. The Economics Behind Section 122 Demonstrate that Congress Enacted It to Target Trade Deficits.

Section 122 is the proper vehicle to address President Trump's trade deficit concerns. Congress designed Section 122 to give presidents a tool to address trade deficits, like the one President Nixon declared to be a national emergency in 1971 and the one President Trump declared an emergency in 2025. That Congress identified "balance-of-payments deficits" within the statute, 19 U.S.C. § 2132(a)(1), reflects nothing more than the basic economic understanding that BoP deficits and trade deficits are empirically the same in the United States. They move hand in hand.

A. The Term "Balance-of-Payments Deficits" in Section 122 Means Trade Deficits.

To understand the economic issue Section 122 targets, it is important to understand the turbulent state of the U.S. economy relative to other global economies at the time of its enactment. Europe had rebuilt its productive capacity after years of war-driven stagnation, becoming the world's largest trading bloc. S. Rep. No. 93-1208, at 13 (1974). Japan's economy was growing at an astonishing speed. *Id.* Trading partners that had agreed to nondiscrimination practices under the General Agreement on Tariffs and Trade of 1947 were increasingly reverting back to discriminatory trading arrangements. *Id.* at 5. And record peacetime inflation had weakened the dollar abroad. *See id.* at 12–13.

As a result, for the first time since 1888, the United States recorded a trade deficit in 1971.



That the United States was running a trade deficit necessarily meant it was running a BoP deficit. The BoP is an established accounting methodology[3] showing all assets flowing between the United States and the rest of the world through trade, investments, and financial transfers. *See* U.S. Dep't of Com., Bureau of Econ. Analysis, *The Balance of Payments of the United States: Concepts, Data Sources, and Estimating Procedures* xii (May 1990). It has three major components—current, capital, and financial accounts:

- The "current account" predominantly tracks the flow of goods and services across the U.S. border, which is often referred to as the "balance of trade."

- The "capital account" monitors U.S. government lending abroad (loans, grants, and aid). This account is relatively small because such transactions are narrow and uncommon.

- The "financial account" reflects U.S. foreign debts, as well as international investment flows (such as foreigners investing in the United States).[4]

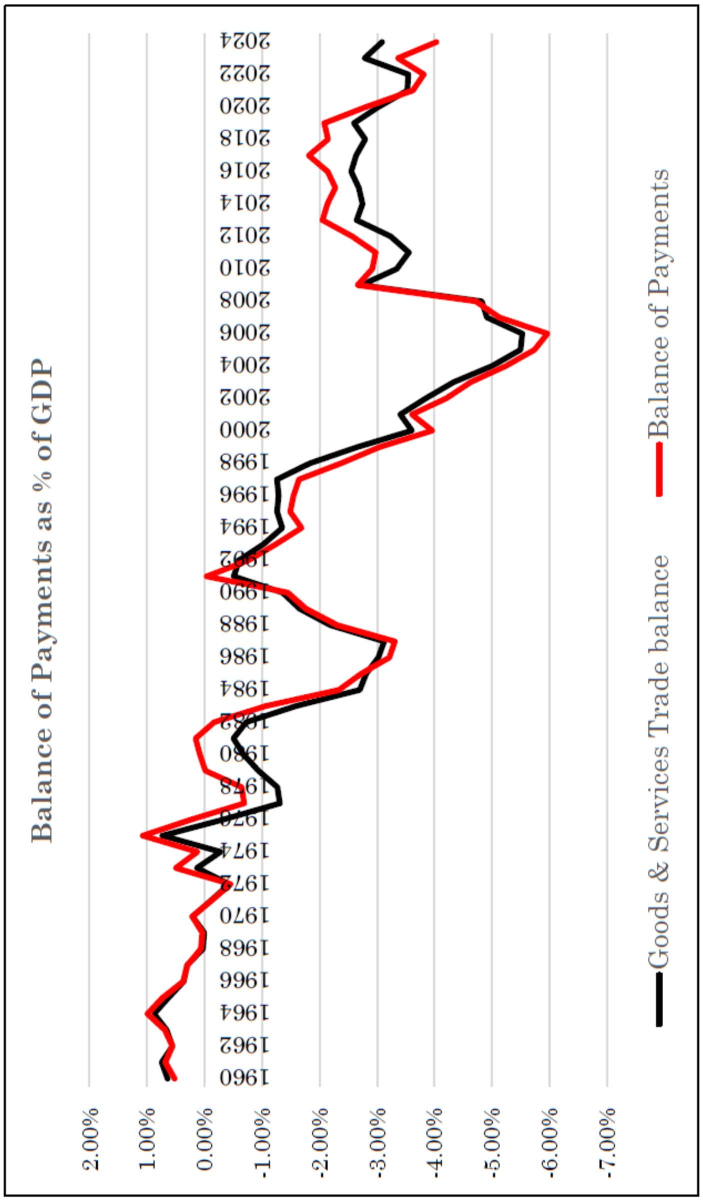
3. The United States started recording its BoP in 1922. *See* IMF, Comm. on Balance of Payments Stat., *The Use of Balance of Payments Statistics in the Determination of Monetary and Fiscal Policy*, at 1 (Sep. 16, 2002). The measure gained greater prominence to track the flow of goods and services abroad during World War II. *See* Vipin Arora, *Beer and the Balance of Payments*, U.S. Bureau of Economic Analysis (Mar. 11, 2024), https://perma.cc/GJ3G-RGBR.

4. Although the naming convention for each BoP component has shifted over time, the essential elements—what the BoP tracks and its method of calculation—remain the same. *Compare* IMF,

The current account *plus* the capital account *minus* the financial account *equals* zero, reflecting the accountant's basic wisdom that the books have to balance. Because the capital account is very close to zero, *the current account equals the financial account*. This is the standard accounting logic: Every import of a good (recorded in the current account) has a corresponding payment for that import (recorded in the financial account). Thus, when discussing the BoP, one can discuss the current account or the financial account interchangeably because they are two sides of the same coin. The BoP is in deficit when the current account is in deficit and the BoP is in surplus when the current account is in surplus. Restated, the "current account" dictates the BoP in the United States.

Empirically speaking, trade in goods and services dominates the BoP. Not only is this true today—trade currently constitutes 76 percent of the U.S. BoP—but it was also true in 1970, when trade constituted 97 percent of the U.S. BoP. *See* U.S. Bureau of Econ. Analysis, "Table 1.1, U.S. International Transactions," https://perma.cc/SWP2-84ZG. As such, the BoP and trade balance move in lockstep. This is best seen by looking at the long history of BoP surpluses and deficits in the United States. The figure below displays the U.S. BoP and the goods and services trade balance (the current account). As is standard practice among economists, these are expressed as a percentage of GDP to control for growth over time across all economic variables.

Balance of Payments Manual (4th ed. 1977), *with* IMF, *Balance of Payments and International Investment Position Manual* (6th ed. 2009).



Source: U.S. Bureau of Econ. Analysis, "Table 1.1, U.S. International Transactions," https://perma.cc/SWP2-84ZG

These numbers speak for themselves. When there is a trade deficit in the United States, there is almost always a BoP deficit,[5] including in the years leading up to the 1971 trade deficit crisis. Indeed, over the last thirty years, the ratio of the two deficits has averaged 1.02, indicating that the BoP deficit and the trade deficit in practice are empirically the same in the United States.[6] Thus, when the 1971 trade deficit crisis hit, it was a deep BoP crisis.

B. A White House Committed to Restoring the Trade Balance

President Nixon, facing reelection and growing protectionist pressures, was eager to address the trade deficit. *See, e.g.*, *Information Memorandum from the President's Assistant for International Economic Affairs (Peterson) to President Nixon*, Foreign Relations of the United States 1969-1976, 4: 260 (Dec. 10, 1971), https://perma.cc/3NG7-MAUY. On August 15, 1971, he declared the trade deficit a national emergency and imposed a ten-percent tariff on dutiable imports. *See* Proclamation No. 4074, 85 Stat. 926 (Aug. 15, 1971).

5. Slight deviations are due to a small dimension of the current account: primary and secondary income. Primary and secondary income includes returns on factors of production, such as compensation for labor and financial assets, as well as redistributions of income. While these income numbers are relatively minimal, they are not always zero. They can thus cause slight differences between the movement of the BoP and the trade balance.

6. There is some variation over time because the trade deficit either was smaller than or larger than the BoP deficit in a given year, but the trend line remains near 1.0.

The Administration used the terms BoP and balance of trade synonymously. President Nixon, for example, declared that "the balance of payments position of the United States requires the imposition of a surcharge on dutiable imports." *Id.* at 926. His Treasury Department recognized that correcting the BoP deficit required correcting the trade deficit, noting that the "erosion of the merchandise trade position has been a primary element in the unsatisfactory U.S. balance of payments." *See Paper Prepared in the Department of Treasury,* Foreign Relations of the United States 1969-1976, 3: 76 (Sept. 10, 1971), https://perma.cc/JTZ8-2KTU. President Nixon's trade advisers, meanwhile, wielded the ten-percent tariff as a stick to restore the trade balance, including by demanding that Japan reduce its trade surplus with the United States by at least $2 billion in two years. *See U.S. Position Paper,* Foreign Relations of the United States 1969-1976, 3: 95 (undated), https://perma.cc/9UGJ-KA3A.

But President Nixon's tariff action lacked sure legal footing. A Japanese company—Yoshida International—had challenged President Nixon's tariff authority in customs court. *Yoshida Int'l, Inc. v. United States*, 378 F. Supp. 1155, 1168 (Cust. Ct. 1974) (*Yoshida I*). In response, the Department of Justice argued that TWEA Section 5(b) gave President Nixon tariff authority to remedy trade deficit crises. *Id.* at 1168. The *Yoshida I* court rejected that position, holding that Section 5(b) granted no such authority. *Id.* at 1176. The government had appealed, but there was no knowing if it would prevail.

C. Congress Heeds the President's Call

With the future of its purported tariff authority in the appellate court's hands, President Nixon's team turned to legislative solutions. On April 10, 1973, the President transmitted the Trade Reform Act of 1973 to Congress. To address the balance of payments crisis, President Nixon referenced the country's "international payments imbalances" and "therefore request[ed] more flexible authority to raise or lower import restrictions on a temporary basis to help correct deficits or surpluses in our payments position." *President Richard Nixon, Special Message to the Congress Proposing Trade Reform Legislation* (Apr. 10, 1973), in The American Presidency Project, https://perma.cc/F9MQ-487F.

Congress quickly got to work. On October 3, 1973, the House of Representatives introduced President Nixon's proposal as H.R. 10710. Trade Act of 1974, Pub. L. No. 93-168, 88 Stat. 1978 (1974). In addressing President Nixon's concerns about international payments imbalances, committee reports and hearing testimony emphasized the role of the trade balance in sending the BoP into disequilibrium. The Senate Finance Committee, for instance, recognized that it had to reverse the growing trade deficit in order to reverse the country's BoP deficit. *See* S. Rep. No. 93-1208, at 11, 18. Proponents envisioned the Act's new tariff authority as "a response to a long-continued deterioration in the international trading position of the United States as reflected—until very recent months—in continuing and enlarging deficits in our international balance of payments." The Trade Reform Act of 1973: Hearings on H.R. 10710 Before the Sen. Fin. Comm., 93rd Cong. 2400 (1974) (statement of Charles W. Stewart, Machinery and Allied Products Institute President).

Congress enacted President Nixon's proposal, with slight modifications, in the Trade Act of 1974. Pub. L.

No. 93-168. The *Yoshida I* decision seemed to be the straw that broke the camel's back. The Senate Finance Committee stated:

> The importance of providing such authority is manifest in the light of the recent decision by the United States Customs Court . . . . While the Committee does not wish to take a position one way or the other on the validity of the 1971 surcharge, it does feel the Executive ought to have explicit statutory authority to impose certain restrictions on imports for balance of payments reasons.

S. Rep. No. 93-1208, at 88.

This legislation gave presidents precisely what President Nixon had wanted: "additional authority to the President temporarily to modify restrictions upon imports into the United States in response to the balance of payments disequilibria." *Id.* at 3–4. But it also imposed key limits: a tariff of no more than fifteen percent to last no more than 150 days. 19 U.S.C. § 2132(a). All told, Congress's reference to the BoP in the Act reflected the basic economic understanding that a BoP deficit and trade deficit empirically move together.

II. IEEPA Cabined the President's Power.

Congress authorized the president to address trade deficits by imposing tariffs under Section 122. IEEPA did not—as the Government suggests—broaden that authority. The backdrop of IEEPA's passage shows that Congress enacted IEEPA to curtail the president's non-war emergency authorities. In the 1970s, Congress first passed the National Emergencies Act ("NEA"), which restrained the president's ability to declare national emergencies and invoke emergency powers. Then it passed IEEPA, which preserved a narrow set of foreign economic actions the president could take during a non-wartime emergency. Before passing the two acts, Congress expressed alarm as it meticulously detailed decades of executive emergency power overreach, including under TWEA. Through IEEPA, Congress imposed a clear legislative framework within which the president must operate, notably omitting any mention of tariffs.

A. TWEA and the Expansive Use of Emergency Powers

IEEPA's purpose and scope are best understood through an examination of its predecessor, TWEA, and the overly expansive ways that presidents leveraged its terms. Congress passed TWEA during World War I to "define, regulate, and punish trading with the enemy." Trading with the Enemy Act, Pub. L. No. 65-91, 40 Stat. 411 (1917). Section 5(b) gave the president power to regulate: transactions in foreign exchange; the export or earmarking of specie or currency; and the transfer of credit in any form "between the United States and any foreign country." *Id.* In the fifty years after World War I, presidents reinterpreted Section 5(b) in increasingly broad ways to justify additional executive actions on international economic policy. Congress retroactively authorized at least some of these expansions of executive power. *See*, *e.g.*, J. Res. of May 7, 1940, 54 Stat. 179 (retroactively approving President Franklin D. Roosevelt's actions freezing all U.S. transactions involving Danish and Norwegian property). But Congress did not otherwise expand the president's authority under TWEA.

The Executive's growing use of TWEA authority fit within its broader expansion of emergency powers. Between 1917 and 1974, presidents declared seven emergencies and invoked emergency powers over one hundred times. *See generally* S. Rep. No. 93-1280 (1974). Congress disfavored presidents' consistent and broad use of emergency powers and emphasized that "emergencies are by their nature rare and brief." H.R. Rep. No. 95-459, at 10 (1977); *see* S. Rep. No. 93-549, at 1 (1973) ("For 40 years, freedoms and governmental procedures guaranteed by the Constitution have . . . been abridged by laws brought into force by states of national emergency.").

The Executive's pre-IEEPA expansion of emergency authority culminated with President Nixon's 1971 emergency declaration concerning the trade deficit. *See* Proclamation No. 4074, 85 Stat. 926 (Aug. 15, 1971). In overturning the *Yoshida I* decision, the Court of Customs and Patent Appeals held that TWEA had authorized President Nixon's 1971 imposition of a tariff. *See United States v. Yoshida Int'l, Inc.*, 526 F.2d 560, 583–84 (CCPA 1975) (*Yoshida II*). But that opinion made clear that any *future* use of Section 5(b) to levy tariffs would need to adhere to the limitations set forth in the then-recently enacted Section 122. *See id.* at 582 n.33.

B. Congress Responds to the Expansive Use of Emergency Power.

Recognizing that it had ceded too much authority to the president under the auspices of emergency actions, Congress enacted the NEA and IEEPA. The NEA curtailed the president's general ability to declare a national emergency and invoke emergency powers, while IEEPA limited the president's powers to address non-wartime economic emergencies originating from outside the United States. In conjunction with IEEPA's passage, Congress restored TWEA to its original use: authority for presidential action only during wartime emergencies. *See* 91 Stat. 1625 § 101 (enacted).

Congress began its work on the NEA and IEEPA by forming a Committee on the Termination of the National Emergency (later renamed the Committee on the National Emergencies and Delegated Emergency Powers) to address concerns about presidents' increasing use of national emergencies to expand executive power. *See* S. Res. 9, 93rd Cong. (1973) (enacted). Over a three-year period, this committee drafted reports compiling: statutes authorizing national emergency declarations; declared national emergencies; and executive orders relating to a declared emergency. *See*, *e.g.*, S. Rep. No. 93-549, at iv (1973). The committee found that "hundreds of emergency statutes confer[red] enough authority on the President to rule the country without reference to normal constitutional process." S. Rep. No. 94-922, at 18 (1976). It identified three key issues with the lack of national emergency regulations, each of which the NEA subsequently rectified.

First, the committee found neither uniform requirements for declaring emergencies nor a clear definition of an emergency. *See* S. Rep. No. 94-922, at 1, 15. The NEA thus required the president to specify the statutory source of emergency authority being invoked and to define the emergency in accordance with the statutory source. 50 U.S.C. § 1631. Second, the committee found that numerous emergencies had never been canceled, which meant many Americans had lived their entire lives under a state of emergency. *See* S. Rep. No. 94-922, at 1, 3.

The NEA responded by establishing procedures for either Congress or the president to terminate emergencies, as well as an automatic termination on the "anniversary" of the declaration. 50 U.S.C. § 1622. Third, the committee found that the use of emergency powers lacked uniform recordkeeping and accountability. *See* S. Rep. No. 94-922, at 16–17. The NEA called for regular reviews of emergency declarations by joint resolutions of Congress, along with detailed accountability and reporting requirements. Nat'l Emergencies Act § 401.

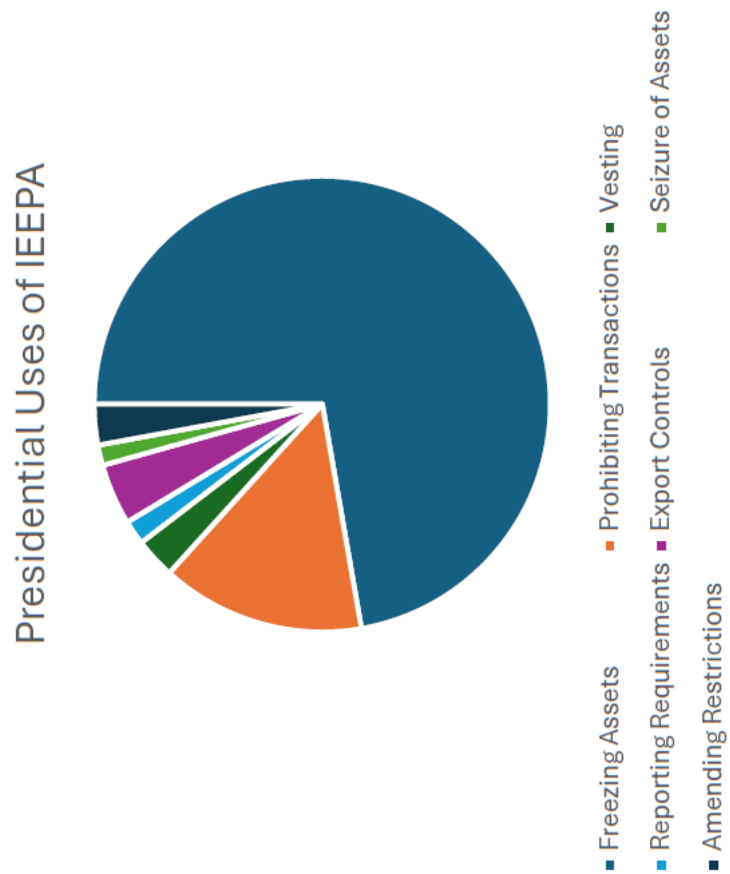
A year after passing the NEA, Congress enacted IEEPA as part of the same movement to right-size the president's emergency powers. *See e.g.*, S. Rep. No. 94-922, at 1–2 (1976) (referencing broad bipartisan and Executive branch support for curtailing Executive emergency powers); International Emergency Economic Powers Act, Pub. L. 95-223, 91 Stat. 1626 (1977). Several committees found that presidents had used economic emergencies to advance their agendas by taking actions with only tenuous connections to the declared emergencies. *See, e.g.*, S. Rep. No. 94-922, at 12–13. For example, President Roosevelt included "vendor[s] of consumer durable goods" within the meaning of "banking institutions" to regulate these entities during his declared banking emergency. H.R. Rep. No. 95-459, at 5; S. Rep. No. 94-922, at 3 (recognizing that "disorder enveloped the whole field of emergency statutes and procedures").

In response, IEEPA required, among other things, that: (1) emergencies must originate from an "unusual and extraordinary threat" and not a general state of emergency; (2) IEEPA's authority "may only be exercised" to deal with the declared emergency; and (3) the president must consult with Congress "in every possible instance," both before and while acting under IEEPA's authority. 50 U.S.C. §§ 1701, 1703. Of particular significance, IEEPA permits the president only to "investigate, regulate, or prohibit (i) any transactions in foreign exchange, (ii) transfers of credit or payments between, by, through, or to any banking institution . . . , [and] (iii) the importing or exporting of currency or securities." 50 U.S.C. § 1702(a)(1)(A). Congress conspicuously omitted any reference to duties or tariffs.

Finally, in the same legislation enacting IEEPA, Congress limited TWEA to apply only during wartime emergencies, shifting Section 5(b)'s non-wartime emergency authorities to IEEPA. Pub. L. No. 95-223, § 101. Through IEEPA, Congress intended to "separate war and nonwar authorities and procedures, preserving existing Presidential powers in time of war declared by Congress, and providing somewhat narrower powers subject to congressional review in times of 'national emergency' short of war." H.R. Rep. No. 95-459, at 1. Congress stated: "[W]henever possible, authority for routine, nonemergency regulation of international economic transactions which has heretofore been conducted under section 5(b) should be transferred to other legislation." H.R. Rep. No. 95-459, at 11.

C. IEEPA Has Never Been Used to Authorize Tariffs Before Now.

The post-enactment history of IEEPA shows that IEEPA does not confer tariff authority on the president. In the nearly fifty years since IEEPA's passage—and despite presidents declaring 77 national emergencies—no president has used IEEPA to impose tariffs until now. Christopher A. Casey et al., Cong. Rsch. Serv., R45618, *The International Emergency Economic Powers Act: Origins, Evolution, and Use* 60 (2025). Instead, as the chart below illustrates, IEEPA has primarily been used to freeze assets of a targeted nation/group or to prohibit entire transactions (such as investing in a certain country). *Id*. at 69–74. Such uses are consistent with IEEPA's text and do not infringe Congress's taxing authority.



Similarly, no president used IEEPA's predecessor, TWEA, to levy a tariff until President Nixon, whose action contributed to the passage of IEEPA as described above. *See* S. Rep. No. 95-459, at 5, 11. Put simply, the history leading up to the passage of IEEPA, along with its consistent use by prior presidents, demonstrates that IEEPA does not authorize tariffs to address trade deficits.

III. President Trump Must Comply with Section 122's Requirements When Imposing Any Tariffs to Address Trade Imbalances.

Section 122 governs President Trump's tariff actions because Section 122 is the sole authority that expressly permits tariffs to address trade imbalances.[7] IEEPA, by contrast, neither authorizes tariffs nor specifies any authority to rectify trade imbalances. As shown above, IEEPA cabins the president's non-wartime emergency authorities. It does not grant the Executive authority to impose tariffs. Even if such authority had existed in TWEA when President Nixon imposed a tariff—which is questionable—Congress made clear that IEEPA

7. The Federal Circuit's dissent asserts that even if Section 122 applies to trade imbalances, it only applies to imbalances triggered by "fundamental international *payments* problems." *V.O.S. Selections, Inc. v. Trump*, 149 F.4th 1312, 1372 (Fed. Cir. 2025) (emphasis in original). But this attempts to draw a distinction where there is none. An import is an international payment (after all, to make an international purchase, one must make an international payment). The more a country imports, the greater the international payments problem. To address that problem, Section 122's text, legislative history, and economic history make plain that presidents may take "special import measures to restrict imports." *See* 19 U.S.C. § 2132(a).

significantly limited the President's non-wartime emergency powers. IEEPA's text does not mention any authorization to impose tariffs.

That omission is significant because Congress referenced President Nixon's 1971 tariff as an impetus for constraining the president's emergency powers through IEEPA. Indeed, the committee report justifying IEEPA says as much. After detailing President Nixon's Section 5(b) tariff in the background section of the report, the committee concluded:

> The need for this legislation is apparent from the background discussed above . . . . [S]ection 5(b) has become essentially 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.

H.R. Rep. No. 95-459, at 5, 7. Finally, Congress enacted IEEPA knowing that Section 122 expressly authorized tariffs in response to trade deficits, whether during a national emergency or not. Legislative sources thus indicate that IEEPA does not authorize tariffs for trade imbalances.

But even if the Court were to hold that both Section 122 and IEEPA authorize tariffs, Section 122 still governs. This is because Section 122—which was passed only two years before IEEPA—is the sole tariff authority specifically targeting trade imbalances. Where there is overlap and conflict between two statutory provisions, "the specific governs the general." *RadLAX Gateway Hotel,* *LLC v. Amalgamated Bank*, 566 U.S. 639, 644 (2012); *see Varity Corp. v. Howe*, 516 U.S. 489, 519 (1996) (Thomas, J., dissenting) (reasoning that this principle is especially true where "Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions").

The Government concedes that Section 122 and IEEPA "are overlapping." Gov't. Opening Br. 4. It nevertheless claims the two statutes do not conflict because "IEEPA addresses emergencies whether or not they involve trade deficits, and Section 122 addresses trade deficits whether or not they involve declared emergencies." *Id.* But even under the Government's own framing, the two statutes conflict. When there is a trade deficit emergency, the president is either limited to a fifteen-percent tariff for no more than 150 days (Section 122), or he is not (IEEPA, as the Government construes it).

The Government claims that presidents can choose which statute to follow. *Id.* But absent express congressional instruction, presidents cannot simply *choose* to discard Section 122 in a trade deficit emergency. *See Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) ("We come armed with the strong presumption that repeals by implication are disfavored." (cleaned up)). That is particularly so because Congress enacted IEEPA just two years after it enacted Section 122. If Congress had intended for IEEPA to displace Section 122's restrictions, it needed to have said so. *See id.* ("Congress will specifically address preexisting law when it wishes to suspend its normal operations in a later statute." (internal quotation marks omitted)). Discarding Section 122's tariff limitations in the trade deficit emergency context is particularly troubling because Congress enacted Section 122 *in direct response* to a trade deficit that President Nixon declared to be a national emergency. To now hold that IEEPA—and not Section 122—permits unfettered presidential imposition of tariffs to address trade deficit emergencies is to nullify Section 122 for the very situation Congress enacted it.

Holding that presidents can choose between Section 122 and IEEPA also defies Congress's manifest intent to ensure that presidents do not have open-ended tariff authority. In enacting Section 122, Congress recognized that presidents needed the ability to impose tariffs to address trade deficit emergencies. But it sought to address concerns about the dangers of handing presidents unrestricted tariff power, even during an emergency:

> Since there is evidence that the President probably needs authority to act in emergencies, it is better that this authority be provided explicitly by law and its limits spelled out . . . . [T]he 150-day limitation . . . should ensure that the authority is not invoked for purely protectionist purposes or to avoid taking more politically difficult actions.

Hearings on H.R. 10710 Before the Sen. Fin. Comm., at 2403.

Congress drafted Section 122 with clear limits: no more than 15 percent and no longer than 150 days. *See* 19 U.S.C. § 2132(a). To interpret IEEPA as lifting those limits—without Congress expressly saying so—defies Section 122's very purpose. It also gets the courts and the president into the dangerous business of legislating. *See Morton v. Mancari*, 417 U.S. 535, 551 (1974) (where Congress has provided no clear and manifest intent to repeal, the Court has no power to repeal). Because Congress did not expressly repeal Section 122 as a tool to address trade deficit emergencies, neither the courts nor the president can choose to do so now. President Trump is bound by Section 122's limitations.

CONCLUSION

This Court should affirm the Federal Circuit's conclusion that IEEPA does not authorize tariffs to address trade deficits.

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