

The Roaring Legal Debate Regarding The Legality of The Trump Administration's Tariffs

By Morris Zetooney¹

Many, unaware of the true origin of tariffs, have commonly associated their modern exercise with the Trump administration. Despite this, tariffs can be traced to the Roman Empire's golden age—preceding the founding of the United States of America by two millennia. Once a widely accepted economic tool, tariffs were initially contrived to promote domestic manufacturing and bolster economic independence. The invocation of President Trump's sweeping tariffs have left the judicial system facing a significant dilemma—evaluating the legality of the current executive's economic endeavors. Circumventing congressional sanction, the Trump administration has emplaced tariff and foreign trade policies through the exercise of emergency trade facilities. The astute comprehension of duties' origin and procedural usage divulge such actions' profound deviation from the original, intended Constitutional purpose.

Overview

The United States of America has been engulfed in some of the fiercest political divisions the nation has ever seen.² President Trump and his administration's maneuvering of foreign economic policy remains a deeply polarizing point of contention due to their unprecedented magnitude, resulting in consistent queries regarding the legality of implemented tariff policy.³ Coincidentally, this work's publication overlaps with the impending Supreme Court case, *Learning Resources*,

¹ Brandeis University, Class of 2029; *Brandeis University Law Journal*

² James A. Piazza, *Political Polarization and Political Violence*, 32 *Security Studies* (2023).

³ Thiemo Fetzer & Carlo Schwarz, *Tariffs and Politics: Evidence from Trump's Trade Wars*, 131 *The Economic Journal* (2021).



Inc. v. Trump, which aspires to resolve this legal predicament—expounding upon a preliminary court decision. The U.S. Court of International Trade’s decision in *V.O.S. Selections, Inc. v. Trump* emphasized the necessity to taper the president’s unduly vast control over foreign trade.⁴

The forthcoming case of *Learning Resources, Inc. v. Trump* will determine the constitutional validity of presidential tariff delegatory powers, construed by statutory provisions including Sections 1701 and 1702 of the IEEPA. Parenthetically, the command of overarching statutory provisions, such as “any unusual and extraordinary threat” and “any property, subject to the jurisdiction of the United States,” divulge evident abuse of emergency power by the Trump administration.⁵ If a national crisis were to be declared, the International Emergency Economic Powers Act’s Section 1702, “any interest by any person” article would grant superfluous executive power to restrict or prohibit all forms of commerce under American jurisdiction.⁶ The usurpment of virtually absolute authority over fiscal matters, reminiscent of a presidential general customs power, transgresses the Constitution’s non-delegation clause confined in Article 1, Section 1—reserving legislative powers solely to Congress.⁷

The resolution of *Learning Resources, Inc. v. Trump* will bring significant ramifications for future presidential tariff invocation and emergency powers; most certainly, statutory linguistic revision will diminish the scope regarding duty and

⁴ *Learning Resources, Inc. v. Donald Trump* (Supreme Court of the United States 2025).

⁵ *Learning Resources, Inc. v. Donald J. Trump, President of the United States* Petition for a Writ of Certiorari 1, 4–5 (United States Court of Appeals for the District of Columbia Circuit 2025).

⁶ International Economic Emergency Powers Act of 1988, 95–223, 50 § 1702 U.S. Code.

⁷ Peter E. Harrell, *Economic Sanctions and the Law: Goals, Enforcement, and Procedural and Substantive Limits*, 48 *FORDHAM INT. LAW J.* 1043 (2024).



emergency-oriented competency.⁸ This paper will evince the Trump administration's contemporary exercise of delegatory tariff power as unconstitutional—drawing upon noteworthy precedent, such as the Tariff Act of 1789, which manifest appropriate constitutional standards that deviate from modern implementation.

The Introduction of Duties Into American Foreign Policy—The Hamilton Tariffs

The United States enacted tariffs on various countries in its infancy.⁹ The Washington administration instituted the Tariff of 1789, commonly known as the Hamilton Tariff, to preserve domestic industries, raise revenue to fund the federal government, and guide the country toward global commercial prominence.¹⁰ Preliminary tariff power resonated exclusively in the legislator—conforming to Article 1, Section 8 of the Constitution.¹¹ Nevertheless, these tariffs played a crucial role in Washington's efforts to bolster domestic manufacturing initiatives following the Revolutionary War, as the country was left indebted and impoverished, lacking a coherent mechanism to accumulate national wealth.¹² Section One of the Hamilton Tariff emphasizes the necessity to remunerate governmental tabs, leading to the development of domestic enterprises. The revitalization of the American economy conferred opportunities to tariff foreign imports, thus affording the means

⁸ V.O.S. Selections, Inc. v. Trump (U.S. Court of International Trade 2025).

⁹ Douglas A Irwin, *Trade Policy in American Economic History*, 12 ANNU REV ECON 23 (2020).

¹⁰ Max M. Edling & Mark D. Kaplanoff, *Alexander Hamilton's Fiscal Reform: Transforming the Structure of Taxation in the Early Republic*, 61 WILLIAM MARY Q. 713 (2004).

¹¹ *Overview of Taxing Clause*,

https://constitution.congress.gov/browse/essay/artI-S8-C1-1-1/ALDE_00013387/.

¹² Peter Clarke, *Alexander Hamilton: Championing Tariffs for Economic Growth and Industrial Development*, World Times (2024).



to accrue ministerial revenue.¹³ This progressive ambition to transmute the war-tattered United States of America into a world power was backed by a large majority of Congress—swiftly amassing widespread support and a formal rectification of the proposed tariffs by the First Congress on July 4th, 1789.¹⁴ This matter is thoroughly illustrated by the published statement:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the first day of August next ensuing, the several duties hereinafter mentioned shall be laid on the following goods, wares and merchandises imported into the United States from any foreign port or place. Tariff Act of 1789, ch. 2, § 1(b), 1 Stat. 24 (1789).

The Hamilton Tariff’s statutory outlines established a coherent precedent for ensuing tariff legislation and endowing limits on presidential authority, in manners both articulated by direct pronouncement and tacit implications.¹⁵ Within the Hamilton Tariff’s manuscript, a crucial restriction on governmental power persists, embodying a statute of limitations. According to the text, “This act shall continue and be in force until...and from thence until the end of the next succeeding session of Congress.”¹⁶ This provision specifies a clear deadline for the tariffs—indicating an unambiguous duration a custom may

¹³ Tariff Act of 1789, ch. 2, § 1, 1Stat. 24, pmb1. (1789) (“Whereas it is necessary for the support of government, for the discharge of the debts of the United States, and the encouragement and protection of manufactures, that duties be laid on goods, wares and merchandises imported.”).

¹⁴ William Hill, *Protective Purpose of the Tariff Act of 1789*, 2 Journal of Political Economy No. 1 (1893).

¹⁵ Mauni Jalali, *On Tariffs and Constitutional Structure*, American Constitution Society Expert Forum (2025).

¹⁶ Tariff Act of 1789, ch. 2, § 6, 1 Stat. 27 (1789).



remain in effect, subsequently inhibiting potential executive overreach germane to the implementation of economic stratagems.¹⁷ Elaborating further upon this point, supplemental restrictions persist inside the confines of this congressional act, inhibiting the president from meddling with the imposition of levies applicable to sea vessels, both domestic and foreign. Parenthetically, domestically owned trade and fishing vessels were subjected to an annual duty, whereas foreign watercraft, in accordance with their tonnage, ought to remunerate recurring duties each instance of docking at an American port.¹⁸ These legal mandates function as limiting statutes, restraining the president's ability to ascertain influence over tariffs and their incorporated powers.¹⁹ The Hamilton Tariffs formulate a precedent crucial for construing the idealistic legal emplacement of duties on foreign and domestic goods, by reason of duly congressional ratification and obedience to constitutional standards.²⁰ Moreover, the Tariff Act of 1789's bylaws construct safeguards against excessive exertion of

¹⁷ Christopher T. Zirpoli, *Congressional and Presidential Authority to Impose Import Tariffs*, Congressional Research Service Report No. 48435 (2025).

¹⁸ Tariff Act of 1789, ch. 3, §§ 1-2, 1 Stat. 27 (1789) (“...hereby imposed on all ships or vessels entered in the United States, that is to say: On all ships or vessels built within the said States, and belonging wholly to a citizen or citizens thereof; or not built within the said States... no ship or vessel built within the aforesaid States, and belonging to a citizen or citizens thereof...pay tonnage more than once in any year.”).

¹⁹ Sharon B. Jacobs, *The Statutory Separation of Powers*, 129 *YALE LAW J.* 380 (2019). (“The idea of a statutory separation of powers complements Metzger’s and Katyal’s accounts by making explicit Congress’s role in creating intraexecutive checks.”); Tariff Act of 1789, ch. 3, § 2, 1 Stat. 27 (1789). (“Provided always... no ship or vessel built within the aforesaid States, and belonging to a citizen or citizens thereof, shall, whilst employed in the coasting trade, or in the fisheries, pay tonnage more than once in any year.”)

²⁰ Tariff Act of 1789, ch. 2, § 1(b), 1 Stat. 27 (1789) (“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.”).



executive authority pertaining to customs enforcement.²¹ Modern iterations of customs under the Trump administration diverge from such precedent, instituting tariffs constructed from unwarrantedly comprehensive statutory delegations of power—culminating in the unconstitutional practice of presidentially incorporated tariff competency.²²

Sectional Interests Causing Tension Regarding The Implication of The Hamilton Tariffs

Despite Congress' substantial endorsement to ratify the Hamilton Tariffs, its enactment was not devoid of opposition. In fact, many Southern plantation owners objected to import duties. These farmers valued the low-cost importation of slaves, seeds, and tools, which were indispensable to the continuity of large-scale farming enterprises, which in turn fueled Northern industrial manufacturing.²³ Domestic producers leaned on large reserves of cotton and other natural resources supplied by Southern businesses to propel the American economy into global relevance.²⁴ Nevertheless, sectional variance of interest forged a rift between those who endorsed and despised early American tariffs;²⁵ a phenomenon where those in favor of customs frequently aligned themselves with the Federalist Movement, and those in support of limited

²¹ Tariff Act of 1789, *supra* note 15.

²² Jacob Ely, *The "National Security" of Nations: President Trump's Pretextual Tariff Rationale and How to Overcome It Notes*, 3 INT. COMP. POLICY ETHICS LAW REV. 241 (2019).

²³ Douglas A. Irwin, Sectional Conflict and Crisis, 1816-1833, in *Clashing over Commerce: A History of U.S. Trade Policy*, 125-175 (Douglas A. Irwin ed., 2017).

²⁴ Presidential Committee on Harvard & the Legacy of Slavery, *Financial Ties: Harvard and the Slavery Economy*, Southern Slavery and Northern Textile Manufacturing, 27-28 (2022).

²⁵ Douglas A. Irwin, *Antebellum Tariff Politics: Regional Coalitions and Shifting Economic Interests*, 51 The Journal of Law and Economics No. 4 (2008).



government, the Anti-Federalists.²⁶ Despite profound political criticism, the Hamilton Tariffs did not face any judicial resistance, as the duties in question were formally affirmed by Congress' right "To lay and collect Taxes, Duties, Imposts and Excises"—thus, no legal backing warranted action against their invocation.²⁷ Provided this context, one might assume this constitutional statute to be absolute—exclusively licensing Congress, and no other governmental entity, to sanction tariffs on domestic or foreign vessels. However, as time went on, Congress gradually delegated powers to the president over matters of international trade, digressing from the inaugural vision our forefathers had in mind.²⁸

²⁶ Leonard D. White, *Public Administration under the Federalists*, 24 BOSTON UNIV. LAW REV. 144 (1944) ("It was confirmed by Hamilton's proposal to establish the United States Bank, and to encourage manufactures by bounties and protective tariffs. Jefferson was against these proposals...").

²⁷ Douglas A. Irwin, Trade Policy for the New Nation, 1789-1815, in *Clashing over Commerce: A History of U.S. Trade Policy*, 68-124 (Douglas A. Irwin ed., 2017); U.S. Const. art. 1, § 8, cl. 1 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States.").

²⁸ Eric R. Bolinder, *Seizing the Duty of Congress: The President's Unilateral Implementation of Tariffs is Unconstitutional*, 101 Indiana Law Journal Supplement No. 1 2, 11 (2025) ("The idea that the will of the President could, without any material guidance from Congress, levy taxes or duties, would baffle the founders. That said, some of the earliest laws in our nation's history *did* give the President limited authority over tariffs. This trend continued for centuries, and a series of Supreme Court decisions and statutes have upheld these laws as lawful delegations. But *none* of these laws (and decisions interpreting them) remotely resemble the power President Trump claims under the IEEPA.").



The McKinley Tariffs and Their Objective to Attain Reciprocal Trade

During the mid-nineteenth century, America grew into a world power, undeterred by war and economic troubles.²⁹ The United States' economic plan emphasized the profound significance of securing "reciprocal trade" with other nations, ensuring that no unjust tariffs or prices for goods would impede native ventures, solidifying the United States' ascension towards prestige in international trade.³⁰ The Tariff Act of 1890, commonly known as the McKinley Tariff, sought to proactively dissuade foreign powers from imposing "unjustifiable and unreasonable" duties onto American exports, mandating that the president may wield congressionally entrusted powers to alter rates of tariffs.³¹ Granted, the delegation would only apply in specific circumstances, notably listed under Section 3 of the indicated ordinance:

That with a view to secure reciprocal trade with countries producing the following articles... he may deem to be reciprocally unequal and unreasonable, he shall have the power and it shall be his duty to suspend, by proclamation to that effect, the provisions of this act... and during such suspension duties shall be levied, collected, and paid...³²

²⁹ Office of the Historian, U.S. Dep't of State, *Rise to World Power, 1867-1913*, n.d., [Rise to World Power, 1867-1913 - Short History - Department History - Office of the Historian](#)

³⁰ Daniel Griswold & Clark Packard, *How Trade Agreements Have Enhanced the Freedom and Prosperity of Americans*, 1 DEFENDING GLOB. ECON.,

<https://www.cato.org/publications/how-trade-agreements-have-enhanced-freedom-prosperity-americans>.

³¹ An Act to Reduce the Revenue and Equalize Duties on Imports, and for Other Purposes. of 1890, sec. 2504, p.460 R.S.

³² *Id.* at § 3.



Conforming to the statutory clause above, the McKinley Tariff stands as a preliminary milestone towards modern iterations of presidential economic authority—pioneering the congressional bestowment of authority to maintain international “reciprocal trade” by means of duty invocation.³³

Legal Resistance to The McKinley Tariffs—*Marshall Field & Co. v. Clark*

The Tariff Act of 1890 had granted delegatory powers to the behest of President Harrison, being met with profound legal dissonance—culminating in the landmark case of *Marshall Field & Co. v. Clark*. Several import-reliant businesses, including Marshall Field & Co., championed three major grievances against the tariff’s legality. Firstly, propounding discrepancies between the presidentially approved duty schedule and those logged within the Senate and House of Representatives. Secondly, asserting the president’s failure to meet constitutional standards, thereby contending against the suspension of tariff rates set forth by the legislative body. Lastly, profoundly denouncing the congressional allocation of funds for domestic manufacturers of sugar products—functioning as subsidies—contending the necessity to revoke the entire customs schedule.³⁴ Justice Harlan I, writing on behalf of a unanimous majority, moved to uphold the powers vested in the executive branch under the authority of Congress—citing the legislator’s right to delegate tariff enforcement capabilities.³⁵ Justice Harlan postulated that the approval of the tariff schedule by the president and both chambers of Congress highlighted its lawful invocation, regardless of discrepancies amongst congressional schedule

³³ *Id.*

³⁴ *Field v. Clark - Boyd v. United States - Sternbach v. United States*, 143 U.S. 649 (U.S. Supreme Court 1892).

³⁵ *Historical Background on Nondelegation Doctrine*, <https://www.law.cornell.edu/constitution-conan/article-1/section-1/historical-background-on-nondelegation-doctrine>.



proposals, and the one ultimately signed into law.³⁶ Expounding further, the congressional proposals did not insinuate the “highest level of fact,” lacking overwhelming evidence to warrant annulling the customs.³⁷ The Supreme Court alleged that the president did not fabricate economic policies without congressional approval, citing the emanation of legislative powers amid the executive branch distinctly violates the Constitution—distinguishing between fitting presidential prudence and apparent breach of constitutional standard.³⁸ Failure to intelligibly differentiate between these powers would infringe on Section 1, Article 1 of the Constitution’s non-delegation clause, barring all governmental entities, aside from Congress, from possessing legislative dexterity.³⁹ Justice Harlan’s deduction predicated that the president, in this instance, exerted discretionary management on Congress’ behalf, instead of law-making faculties—abiding by formerly ratified congressional statutes, thereby conforming

³⁶ *Field v. Clark - Boyd v. United States - Sternbach v. United States*, 143 U.S. 649, 670 (U.S. Supreme Court 1892) (“... for it remains to inquire as to the nature of the evidence upon which a court may act when the issue is made as to whether a bill, originating in the House of Representatives or the Senate, and asserted to have become a law, was or was not passed by Congress.”).

³⁷ *Id.* at 479-480 (“But referring now only to matters which the Constitution does not require to be entered on the journals, it is clear that this is not a statutory declaration that the journals are the highest evidence of the facts stated in them, or complete evidence of all that occurs in the progress of business in the respective houses...”).

³⁸ *Id.* at 692 (“That Congress cannot delegate legislative power to, the President is a principle universally, recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution. The act of October 1, 1890, in the particular under consideration, is not inconsistent with that principle. It does not, in any real sense, invest the President with the power of legislation. For the purpose of securing reciprocal trade... Congress itself determined that the provisions of the act of October 1, 1890, permitting the free introduction of such articles...”).

³⁹ Historical Background on Nondelegation Doctrine, *supra* note 35.



to constitutional procedure.⁴⁰ As illustrated by the majority opinion:

It would seem to be unnecessary to make further reference to acts of Congress to show that the authority conferred upon the President by the third section of the Act of October 1, 1890, is not an entirely new feature in the legislation of Congress... He was the mere agent of the lawmaking department to ascertain and declare the event upon which its expressed will was to take effect.⁴¹

The upholding of presidential delegatory powers under *Marshall Field & Co. v. Clark* firmly established the preliminary foundation which all future delegations of tariff enforcement power follow; once an executive's trade proposal is affirmed by investigative committees such as the U.S. International Trade Commission, Congress may exercise legislative oversight to pass a statute authorizing the president and executive trade agencies to negotiate trade policy.⁴² Once a formal petition is brought before Congress, it can uphold, modify, or reject such propositions.⁴³

⁴⁰ *Field v. Clark - Boyd v. United States - Sternbach v. United States*, 143 U.S. 649, 693 (U.S. Supreme Court 1892) (“... it became his duty to issue a proclamation declaring the suspension, as to that country, which Congress had determined should occur.”).

⁴¹ *Id.* at 690, 693.

⁴² TAMARA GUREVICH & DAVID GUBERMAN, ECONOMIC IMPACT OF TRADE AGREEMENTS IMPLEMENTED UNDER TRADE AUTHORITIES PROCEDURES, 2021 REPORT (2021), https://www.usitc.gov/commission_publications_library/2021/publication_5_199; CHRISTOPHER T. ZIRPOLI, CONGRESSIONAL AND EXECUTIVE AUTHORITY OVER FOREIGN TRADE AGREEMENTS (2025), <https://www.congress.gov/crs-product/R47679>.

⁴³ 19 U.S. Code § 4203 - *Congressional Oversight, Consultations, and Access to Information*, LII / LEGAL INFORMATION INSTITUTE, <https://www.law.cornell.edu/uscode/text/19/4203>.



The proceedings of *Marshall Field & Co. v. Clark* bestowed the president permissive authority to suspend tariff rates in the absence of “reciprocal trade”—acting as an enabling precedent for future delegations of statutory construed tariff schedules.⁴⁴ The looming case of *Learning Resources, Inc. v. Trump* will address concerns of the president’s broad range of economic powers that may be exerted during times of national crisis—possibly redefining the scope of presidential authority entrusted to direct foreign trade policies.⁴⁵

The McKinley Tariffs’ Imprint on Shaping Economic Policy

During the proceedings of *Marshall Field & Co. v. Clark*, the plaintiff alleged that Section 3 under the Tariff Act of 1890 lacked constitutional backing, asserting that the duty rates on sugar, molasses, tea, coffee, and hides surpassed the threshold compulsory to the enforcement of reciprocal international trade.⁴⁶ The Court ruled against the plaintiff’s petition, subsequently deriving a new philosophy pertaining to tariff schedules. Granted the Tariff Act of 1890 was duly approved by Congress, the judicial branch opposed evaluating tariff schedules in order to challenge its validity—regardless of possible discrepancies. Parenthetically, minor flaws in

⁴⁴ Field v. Clark, 143 U.S. at 692; *Enabling Statute Definition, Meaning & Usage*, JUSTIA LEGAL DICTIONARY, <https://dictionary.justia.com/enabling-statute>.

⁴⁵ Penny Naas, *A Supreme Showdown*, (Nov. 3, 2025), <https://www.gmfus.org/news/supreme-showdown>; Chad Squitieri, *The President’s Authority to Impose Tariffs*, HARV. J. LAW PUBLIC POLICY CURIAM (2025). Although not directly cited in this work, when referring to “earlier 19th century Supreme Court precedent,” on page seven of the article, Field v. Clark is left in the footnote—implicating its bearing on Learning Resources.

⁴⁶ Field v. Clark - Boyd v. United States - Sternbach v. United States, 143 U.S. 649, 652 (U.S. Supreme Court 1892) (“That section 3 of said act was unconstitutional and void, in that it delegates to the President the power of laying taxes and duties, which power, by sections 1 and 8 of article I of the Constitution, is vested in Congress.”).



congressionally ratified commercial regulations would not be deemed void in its entirety, emphasizing the remainder of the tariff schedule would endure.⁴⁷ The court's rationale stems from the president functioning as a mere agent on Congress' behalf, rather than invoking tariffs under his own authority.⁴⁸ Congress holds the right to "levy and collect taxes" under Article I, Section 8 of the Constitution—firmly asserting its right to delegate powers to the president, despite remaining the chief overseer of sanctioning economic policy.⁴⁹ Upon review of a presidential tariff act proclamation, the judiciary strives to excise any unconstitutional provisions rather than to strike down the entire tariff proposal—expounded upon in *J.W. Hampton, Jr. & Co. v. United States*, later explicated in this article.⁵⁰

The Echoes of The McKinley Tariffs Within President Trump's Trade Policies

Due to the unrivaled magnitude and sheer number of tariffs directed by Executive Order No. 14,257, in all likelihood, some provisions will survive the judicial scrutiny of *Learning Resources, Inc. v. Trump*—even if the court rules against the Trump administration.⁵¹ Any constitutional tariff within the confines of Executive Order No. 14,257 will remain in continuation. For all tariffs deemed unconstitutional by the

⁴⁷ *Id.* at 677 ("Let the courts accept as statutes, duly enacted, such bills as are delivered by the legislature as their acts authenticated as such in the prescribed mode.").

⁴⁸ *Id.* at 693 ("He was the mere agent of the law-making department to ascertain and declare the event upon which its expressed will was to take effect.").

⁴⁹ *Overview of Taxing Clause*,

https://constitution.congress.gov/browse/essay/artI-S8-C1-1-1/ALDE_00013387/.

⁵⁰ *Overview of Taxing Clause*,

https://constitution.congress.gov/browse/essay/artI-S8-C1-1-1/ALDE_00013387/.

⁵¹ Cameron Silverberg, *Trading Power: Tariffs and the Nondelegation Doctrine*, 73 *STANFORD LAW REV.* 1289, 1298–1300 (2021).



court, these exclusives will be terminated, rather than objectifying to the entire duty schedule.⁵² Thus, in conformity with *V.O.S. Selections, Inc. v. Trump*, schedule entries pursuant to national security under the International Emergency Economic Powers Act will be most attentively condemned due to the unduly grant of vast executive power.⁵³

Tariffs Proposed Following The Great War

After the fallout of World War I, the Fordney-McCumber Tariff schedule was instituted into law under the Tariff Act of 1922. Carrying the intent to protect domestic agriculture and industry, this legislation sought to offset losses incurred due to a sharp decrease in international commerce;⁵⁴ most of Europe was in the process of rebuilding large portions of infrastructure—a grim byproduct of the Great War.⁵⁵ Within five years, the Fordney-McCumber Tariff had drawn retaliatory measures by several prominent international domains, including the United Kingdom, Germany, and France. Parenthetically, European sovereignties had levied duties on imports from the United States that often matched or exceeded terms invoked by the Fordney-McCumber Tariff of 1922. Foreign tariffs on domestic ventures presented profound repercussions, rendering it largely unprofitable, thus culminating in the diminishment of exports to global outlets.⁵⁶

⁵² 276 U.S. at 399.

⁵³ *V.O.S. Selections, Inc. v. Trump*, at 4 (“The court does not read IEEPA to confer such unbounded authority and sets aside the challenged tariffs imposed thereunder.”).

⁵⁴ F. W. Taussig, *The Tariff Act of 1922*, 37 Q. J. ECON. 1 (1922).

⁵⁵ Christopher Kobrak, *Interwar Financial Summits: The Economic Consequences and Lessons of Attempts to Repair a Broken World*, 2 GLOB. SUMMITRY 114 (2016).

⁵⁶ Edward S. Kaplan, *The Fordney-McCumber Tariff of 1922*, ECON. HIST. ASSOC. (2008),

<https://eh.net/encyclopedia/the-fordney-mccumber-tariff-of-1922/> (“After failing to convince the United States to lower its tariff duties, European and Latin American countries decided to retaliate and raise their duties... The recession of 1920-1921 marked the end of a burst of prosperity for the



To combat such an issue, the Fordney-McCumber Tariff endowed presidential capacity to increase or decrease duty rates up to fifty percent in comparison to Congress' original proposal.⁵⁷ Maintained by the Tariff Act of 1922's Section 315, "provided, that the total increase or decrease of such rates of duty shall not exceed 50 per centum of the rates specified in Title I of this Act, or in any amendatory Act."⁵⁸ However, to impede executive overreach of newly relinquished tariff enforcement authority, these powers are tied to a certain preliminary circumstance; investigative bodies such as the United States Tariff Commission must first report discrepancies between domestic and foreign tariffs, thereby threatening reciprocal trade. If, and only if, a report of this nature is circulated, may the president alter imposed tariff rates to the behest of American interests.⁵⁹

Legal Dissonance Against The Fordney-McCumber Tariff

Understandably, the tariffs did not sit well with foreign importers—prompting retaliatory legal action to be taken, resulting in the landmark case of *J.W. Hampton, Jr. & Co. v. United States*. The major point of contention during this case was whether the president may raise duty rates with respect to barium oxide, with J.W. Hampton, Jr. & Co. arguing against the constitutionality of this proposition—referring to Congress'

American farmer, as Europe had recovered from the ravages of war and no longer required large quantities of American agricultural products.”)

⁵⁷ *Id.* (“...the Finance Committee gave the president the authority to modify tariff rates. He could change the basis for assessing ad valorem duties on selected items from the foreign value to the American value, if he saw that there was a major discrepancy between the two values.”).

⁵⁸ Tariff Act of 1922, ch. 356, § 315(a), 42 Stat. 858, 942 (1922) (repealed).

⁵⁹ UNITED STATES TARIFF COMMISSION, SIXTH ANNUAL REPORT OF THE UNITED STATES TARIFF COMMISSION 2 (1923), https://www.usitc.gov/publications/year_in_review/fy_1932_annual_report.pdf.https://www.usitc.gov/publications/year_in_review/fy_1932_annual_report.pdf (“Section 315 imposes upon the President the duty of adjusting upward or downward individual tariff rates after an investigation by the Tariff Commission has shown that this action is necessary to equalize...”).



immutable role to “lay and collect duties.” Moreover, barring the president from assuming delegatory power to alter tariffs, a responsibility ought to be exclusive to the legislator. *J.W. Hampton, Jr. & Co.* challenged the apparent lawmaking ability exerted by the standing Chief Executive, President Calvin Coolidge, citing a breach in proper constitutional conduct.⁶⁰ Pursuant to the Tariff Act of 1922’s Section 315:

That in order to regulate the foreign commerce of the United States... the President, upon investigation of the differences in costs of production of articles wholly or in part the growth or product of the United States and of like or similar articles wholly or in part the growth or product of competing foreign countries, shall find it thereby shown that the duties fixed in this Act do not equalize the said differences in costs of production in the United States... determine and proclaim the changes in classifications or increases or decreases in any rate of duty provided in this Act shown by said ascertained differences in such costs of production necessary to equalize the same.⁶¹

Justice Taft, writing on behalf of the majority, affirmed the presidential exercise of delegatory congressional powers to alter import and export customs to maintain reciprocal trade in

⁶⁰ *J.W. Hampton, Jr. & Co. v. United States*, 276 U.S. at 400 (“*J. W. Hampton, Jr., & Company* made an importation into New York of barium dioxide... issued under, and by authority of, § 315 of Title III of the Tariff Act of September 21, 1922, ch. 356, 42 Stat. 858, 941, which is the so-called flexible tariff provision. Protest was made and an appeal was taken... A majority held the Act constitutional.”).

⁶¹ Tariff Act of 1922, ch. 356, § 315(a), 42 Stat. 858, 941-942 (1922) (repealed 1930).



mere instances where an "intelligible principle" persists.⁶² Parenthetically, the intelligible principle test mandates that Congress may pass legislative frameworks which empower select governmental agencies—ones that possess the technical prowess necessary to implement policy in specific fields, such as public health and safety—constituting precedent of the "flexible tariff provision," the legal doctrine which firmly upholds executive influence over duty rates previously approved by the legislature.⁶³ Nonetheless, these broad projections of power may not deviate from the policy enumerations set forth by Congress, concurring with the non-delegation clause of the Constitution's Article 1.⁶⁴

The Intelligible Principle and Its Relevance to Learning Resources, Inc. v. Trump

The ruling of *J.W. Hampton, Jr. & Co. v. United States* brought forth the introduction of the "intelligible principle," mandating that all delegatory powers the president may exercise on tariffs and their associated rates must closely align with the provisions originally outlined by Congress.⁶⁵ The

⁶² *Id.* at 409 ("If Congress shall lay down by legislative act an intelligible principle to which the person or body authorized to fix such rates is directed to conform, such legislative action is not a forbidden delegation of legislative power.").

⁶³ *Id.* ("It is conceded by counsel that Congress may use executive officers in the application and enforcement of a policy declared in law by Congress, and authorize such officers in the application of the Congressional declaration to enforce it by regulation equivalent to law... If it is thought wise to vary the customs duties according to changing conditions of production at home and abroad, it may authorize the Chief Executive to carry out this purpose, with the advisory assistance of a Tariff Commission appointed under Congressional authority.").

⁶⁴ *Id.* at 404 ("The contention of the taxpayers is two-fold—first, they argue that the section is invalid in that it is a delegation to the President of the legislative power, which by Article I, § 1 of the Constitution.").

⁶⁵ *Id.* at 404–405 ("It may be that it is difficult to fix with exactness this difference, but the difference which is sought in the statute is perfectly clear and perfectly intelligible... Congress adopted in § 315 the method of describing with clearness what its policy and plan was and then authorizing



impending case decision of *Learning Resources, Inc. v. Trump* will examine the International Emergency Economic Powers Act, determining whether the intelligible principle present in this instance justifies President Trump’s sweeping range of economic trade restrictions. The dissenting opinion has challenged that Executive Order No. 14,257’s customs schedule deviates from congressionally orchestrated delegatory frameworks, shrouding the legality of the Trump administration’s tariff in ambiguity.⁶⁶ Even broad delegations require an “intelligible principle,” as illustrated by the U.S. Court of International Trade in *V.O.S. Selections, Inc. v. Trump*, adjudicating the IEEPA cannot grant unbounded tariff power while in a state of national emergency. The U.S. Court of International Trade dictated that presidential tariff emplacements must align with its pre-existing “intelligible principle” fashioned by Congress—foreshadowing the debates hosted in the impending *Learning Resources* case.⁶⁷

a member of the executive branch to carry out this policy and plan, and to find the changing difference from time to time, and to make the adjustments necessary to conform the duties to the standard underlying that policy and plan.”).

⁶⁶ *Learning Resources, Inc. v. Donald J. Trump, President of the United States Petition for a Writ of Certiorari*, at 4, 7 (“Congress has done so in a series of statutory enactments, all codified under Title 19 of the U.S. Code, which governs ‘Customs Duties’ and carefully constrains the President’s authority... President Trump, through a series of executive orders, has repeatedly bypassed Congress to impose tariffs unilaterally under IEEPA... he has dramatically changed United States tariff policy... none of the 4,732 sections in Title 19 of the U.S. Code—the title governing customs duties—allows him to do so.”).

⁶⁷ *V.O.S. Selections, Inc. v. Trump*, at 4, 27. (“The court does not read IEEPA to confer such unbounded authority and sets aside the challenged tariffs imposed thereunder... Plaintiffs and some Amici argue that the Government’s interpretation transforms IEEPA into an impermissible delegation of power because ‘[t]he President’s assertion of authority here has no meaningful limiting standards’...”); *To Promote the General Welfare, Foreign Policy, and Security of the United States Through International Trade Agreements and Through Adjustment Assistance to*



The Expansion of Presidential Delegatory Powers Presiding Over Tariffs

In the last century, the presidential office has been imbued with additional powers under various statutes, including the Trade Expansion Act of 1962, which enables the president to redefine duty schedule terms—granting leeway in negotiations with foreign governments to promote global commerce. The Trade Expansion Act’s origin descends from the McKinley Tariffs and the standing decision of *Marshall Field & Co. v. Clark*, sharing a common objective—to protect domestic markets;⁶⁸ however, the Trade Expansion Act would defy a new, prototypical enemy—the rampant proliferation of communism during the Cold War era.⁶⁹ Section 232 of the Trade Expansion Act permits the president to artificially adjust U.S. trade in the interest of protecting national security—endowing the president expanded control over tariffs in the event of a national emergency, in accordance with the Department of Commerce’s counsel.⁷⁰ According to Section 232’s manuscript, the president may enjoy invigorated privileges to preserve national security by means of tariff emplacement:

No action shall be taken pursuant to section 201(a) or pursuant to section 350 of the Tariff

Domestic Industry, Agriculture, and Labor, and for Other Purposes. of 1962, 87–794.

⁶⁸ To Promote the General Welfare, Foreign Policy, and Security of the United States Through International Trade Agreements and Through Adjustment Assistance to Domestic Industry, Agriculture, and Labor, and for Other Purposes. of 1962, 87–794 (repealed 1970); Taussig, *supra* note 54.

⁶⁹ An Act to Promote the General Welfare, Foreign Policy, and Security of the United States Through International Trade Agreements and Through Adjustment Assistance to Domestic Industry, Agriculture, and Labor, and for Other Purposes, 87–794 Section 231(repealed 1970).

⁷⁰ *Id.* Section 232(b).



Act of 1930 to decrease or eliminate the duty or other import restriction on any article if the President determines that such reduction or elimination would threaten to impair the national security.⁷¹

To elaborate, both corroborated sections of the Tariff Act of 1930 mustered motivations of the safeguarding of American interests appertaining international commerce, stemming from presidential delegatory powers to oversee duty enforcement.⁷² Several presidents, including Presidents Reagan and Trump, levied tariffs on industrial materials in an acute endeavor to revitalize national manufacturing—relying upon the stipulated statutory clause. The judiciary continues to uphold the legality of its use, remaining an instrumental methodology for the Chief Executive to exert influence on tariff-oriented matters.⁷³

The Trade Act of 1974 and Its Implications on Presidential Authority Over Tariffs

Shortly after the institution of the Trade Expansion Act of 1962, another piece of legislation was created, the Trade Act of 1974, presenting noteworthy ramifications on presidential delegatory powers presiding over international pecuniary conventions. According to Section 201 of the Trade Act of 1974, if the U.S International Trade Commission identifies a major loss to the American economy due to an outpouring of imported goods, the president may impose “safeguard” tariffs.⁷⁴ As stated within the act:

⁷¹ *Id.* Section 232(a).

⁷² Harry Aubrey Toulmin, *Tariff Act of 1930*, 3 TREATISE ANTI-TRUST LAWS U. S. RELAT. TRADE REGUL. LAWS 1, 136 (1949).

⁷³ Rachel Falgout Moody, *Let's Tariff like It's 1773: The Intelligible Principles Are Coming! Section 232 Tariffs on Steel Comments*, 8 LSU J. ENERGY LAW RESOUR. 311, 319 (2019).

⁷⁴ UNITED STATES INTERNATIONAL TRADE COMMISSION, UNDERSTANDING SAFEGUARD INVESTIGATIONS, https://www.usitc.gov/press_room/us_safeguard.htm.



If the United States International Trade Commission... determines under section 2252(b) of this title that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry... the President, in accordance with this part, shall take all appropriate and feasible action... to make a positive adjustment to import competition and provide greater economic and social benefits than costs.⁷⁵

Section 203 of the Trade Act of 1974 maintains that in times of commercial plight, the president may exercise any of the following measures to remedy the situation at hand: aid and subsidies for federal workers impacted by the economic crisis, the imposition of tariffs, and import relief. The legislative clause in question definitively affirms as such “... the President shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.”⁷⁶ However, these tariffs possess a statute of limitations—allowing a maximum duration of four years for the tariffs to remain in place—a nuance reflecting the underlying intent of swift, decisive action on the part of the president to defend the prosperity of American manufacturers.⁷⁷

Notwithstanding the delegation of executive assumed tariff power, opined by Sections 201 and 202, Section 301 imbues the Chief Executive with another prominent ability.

⁷⁵ 19 U.S.C § 2252(a).

⁷⁶ *Id.* at 2253(a)(1)(A).

⁷⁷ *Id.* at 2253(e) (“... the duration of the period in which an action taken under this section may be in effect shall not exceed 4 years.”).



The president may facilitate retaliatory action against foreign discriminatory trade practices, following an investigation overseen by the U.S. International Trade Commission. According to the text:

An act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce... the President regarding any such action, and all other appropriate and feasible action... to obtain the elimination of that act, policy, or practice. Actions may be taken that are within the power of the President with respect to trade in any goods or services, or with respect to any other area of pertinent relations with the foreign country.⁷⁸

Ultimately, the Trade Act of 1974 introduces immense power to the executive branch, exemplifying growing international tensions and the necessity for quick retort and decisive responsiveness to ensure peace, freedom, and security to the United States economy.⁷⁹

The Trade Expansion Act of 1962 and The Trade Act of 1974's Importance to The Current Tariff Climate

The upcoming case of *Learning Resources, Inc. v. Trump* will cover various facets of tariff law, but the primary subject of debate comprises the Trump administration's implementation of the Trade Expansion Act of 1962's Section 232. In the event of a national security risk, which the law broadly defines, the president may invoke expanded control

⁷⁸ *Id.* at 2411(b)(1)(2).

⁷⁹ Stuart S. Malawer; Bernard D. Jr. Reams. *Federal Regulation of International Business: An Annotated Source Book of Legislation, Regulations and Treaties.*



over domestic and foreign trade under this bylaw.⁸⁰ In synthesis with the Trade Act of 1974's Section 301, the president may take retaliatory action against unjustifiable commercial measures conscripted against the United States—granting the means to utilize broadened powers over international trade vested in the executive office. The Trump administration reasoned under the broad language of this act, that Chinese cyber attacks, theft of intellectual property, and other discriminatory actions which directly threaten American interests would enable such sweeping economic measures to be taken.⁸¹ Amid its current usage, Executive Order No. 14,257 resembles more an act of legislation than a presidential intervention of trade restrictions, considering the immense scope of economic measures set into motion.⁸² The decision of *Learning Resources* will greatly impact the future of presidentially invoked tariffs during times of crisis.⁸³ Modern iterations of legislative policy mandate power reminiscent of a general tariff power for presidents to exercise and not a Congressional right—deviating from the original intent behind the law's issuing. Contrasting to the statute's original emphasis, the overarching diction embedded within the phrase "threaten to impair the national security" bestows the president with unduly fatalities.⁸⁴ Idealistically, concurring to constitutional standard, the expressed congressional enactment authorizes presidential delegatory powers over international trade policy, inherently limited in nature, to safeguard American commercial interests, diametrically averse to the near-absolute presidential control over tariffs as of late.⁸⁵

⁸⁰ *Learning Resources, Inc. v. Donald J. Trump, President of the United States Petition for a Writ of Certiorari*, at 26.

⁸¹ *Id.* at 21–22.

⁸² *Id.* at 8.

⁸³ *Id.* at 27.

⁸⁴ Ben Budner, *The Questionable Legality of IEEPA Tariffs: Does the Major Questions Doctrine Apply?*, 104 TEX. LAW REV. 212 (2025).

⁸⁵ *V.O.S. Selections, Inc. v. Trump*, at 4.



The National Emergencies Act of 1976 and Its Indirect Influence on Tariff Invocation

Despite its lack of direct implications for the presidential command over tariffs, the National Emergencies Act of 1976 outlines and consolidates procedures requisite to a presidentially mandated national state of emergency.⁸⁶ In the event of such an occurrence, the president is vested with expanded powers—with the ultimate goal of protecting the nation’s best interests. The National Emergencies Act’s paramount significance is its unique capacity to be exercised in tandem with other policies—widening the scope of delegatory powers employed during a state of national emergency—conforming to the statutory provision held in Section 1621:

With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register... Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect only when the President... specifically declares a national emergency...⁸⁷

According to this excerpt, “during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency,” grants the president expanded powers, even without congressional approval. The National Emergencies Act’s nuance concerning “of any special or extraordinary power” is a paramount

⁸⁶ 50 U.S.C. § 1621(a).

⁸⁷ *Id.* 1621(a)–(b)(1).



one—making it feasible that reasonable foreseeability of harm to American interests would accredit an augmentation of presidential capabilities, construed by a broad interpretation of Section 1621.⁸⁸

The National Emergencies Act of 1976’s Relation to The IEEPA

Upon the declaration of a national emergency, the National Emergencies Act may work in tandem with numerous legal statutes—a unique characteristic to this federal statute.⁸⁹ With the deliberate motivation to sustain peace and order during times of crisis, the president may instate the International Emergency Economic Powers Act to enact restrictions on imports and exports, as rendered by Section 1701:

Any authority granted to the President by section 1702 of this title may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.⁹⁰

Once a national emergency has been declared, the president may exercise expanded liberties granted by Section 1702—resolute in facilitating prompt and effective intervention against any threat to American society. Whether that be a domestic or foreign entity, the president is tasked with quelling any attempt to undermine the nation’s affairs. Accordingly, the

⁸⁸ Seth Halper-Stromberg, *Interpreting and Reforming the National Emergencies Act in Light of the Pacificus-Helvidius Debate Notes*, 52 N. Y. UNIV. J. INT. LAW POLIT. 907, 909 (2019).

⁸⁹ Karl R. Thompson, *Emergency Statutes That Do Not Expressly Require a National Emergency Declaration*, 40 Op. Off. Legal Counsel 54, 57–58 (2016).

⁹⁰ 50 U.S.C. § 1701(a).



president's role as Commander in Chief becomes evident—while in times of crisis, in tandem with its original fidelities, the office garners the duty to safeguard the nation and its interests—proclaimed in Section 1702.⁹¹

At the times and to the extent specified in section 1701 of this title, the President may... investigate, regulate, or prohibit any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country... By any person, or with respect to any property, subject to the jurisdiction of the United States; investigate, block during the pendency of an investigation, regulate... or prohibit any acquisition, 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...⁹²

These statutory provisions are constructed upon extensive diction, granting proliferated executive authority to the president—imbuing the executive office with an enumeration of powers to restrict or outright block vast aspects of commerce amid American lawful jurisdiction.⁹³ Upon the proclamation of a nationwide scourge, the president may employ

⁹¹ *V.O.S. Selections, Inc. v. Trump*, at 8–9.

⁹² 50 U.S.C. §§ 1702, 1702(a).

⁹³ Eric R. Bolinder, *supra* note 27.



near-unmitigated dominion over “any transactions in foreign exchange,” encapsulating the transfer of all forms of property and currency linked to foreign sovereignties.⁹⁴ To elaborate, the phrase “... any foreign country or any national thereof has or has had any interest,” warrants the applicability of such powers over American citizens as well as foreign individuals—emphasizing the executive’s incisive duty to national security.⁹⁵ Notwithstanding its duly congressional ratification, the Trump administration’s tariff schedule relies heavily upon these greatly empowering provisions, posing as an instrumental point of debate amid *V.O.S. Selections, Inc. v. Trump*.⁹⁶ Moreover, posing as the fundamental grievance *Learning Resources, Inc. v. Trump* contemplates, urging the requisite paring down of presidential emergency facilities en-route to pronounced authoritative overreach.⁹⁷

The National Emergencies Act of 1976 and International Emergency Economic Powers Act’s Relevance to *Learning Resources, Inc. v. Trump*

The National Emergencies Act of 1976 and the International Emergency Economic Powers Act of 1977 form the legal backdrop for *Learning Resources, Inc. v. Trump*, illustrating how presidential tariff authority has increasingly been framed as an extension of emergency powers.⁹⁸ The National Emergencies Act was originally enacted to limit executive overreach by requiring formal declarations and periodic renewals of emergencies; nonetheless, it progressively became far more difficult for Congress to terminate these cataclysms.⁹⁹ Concurring with the International Emergency

⁹⁴ 50 U.S.C § 1702(a)(1)(A)(i).

⁹⁵ *Id.* § 1702(a)(2)(1).

⁹⁶ *V.O.S. Selections, Inc. v. Trump*, at 43–45.

⁹⁷ *Learning Resources, Inc. v. Donald J. Trump, President of the United States Petition for a Writ of Certiorari*, at 22–23.

⁹⁸ *V.O.S. Selections, Inc. v. Trump*, at 40–41.

⁹⁹ *Id.* at 9–10.



Economic Powers Act, the president was granted sweeping authority to regulate or prohibit economic transactions with foreign countries and domestic individuals once an emergency had been declared.¹⁰⁰ Contrary to modern implementation, measures of trade authority traditionally have been used to levy sanctions against hostile states. When working in tandem with one another, these statutes enable the president to assert emergency status, artificially empowering executive trade power with little to no congressional check.¹⁰¹

In the case, *Learning Resources, Inc. v. Trump*, context matters greatly due to the repeated instances where President Trump invoked emergency powers to commandeer trade authority.¹⁰² For example, President Trump threatened to impose tariffs on Mexico under the authority of the International Emergency Economic Powers Act in May 2019.¹⁰³ Upon declaring the border crisis a national emergency, the Trump administration flexed this legal justification for retaliatory practices against Mexico, Iran, and China.¹⁰⁴ Although the customs in question rely heavily upon the Trade Expansion Act of 1962's Section 232 and the Trade Act of 1974's Section 301, plaintiffs argue that the National Emergencies Act and the International Emergency Economic Powers Act project an unjust delegation of congressional power to the executive branch.¹⁰⁵ The utmost concern behind upholding Trump's tariffs under Sections 232 and 301 would

¹⁰⁰ *Id.* at 13–14.

¹⁰¹ Budner, *supra* note 84.

¹⁰² *V.O.S. Selections, Inc. v. Trump*, at 44.

¹⁰³ Andy McFarlane, *News Daily: CBI's "No-Deal" Warning to Tories, and Trump's Mexico Tariffs*, BBC NEWS, May 31, 2019, <https://www.bbc.com/news/uk-48461181>.

¹⁰⁴ Atlantic Council experts, *Experts React: Trump Just Slapped Tariffs on Mexico, Canada, and China. What's Next?*, ATLANTIC COUNCIL, Feb. 1, 2025,

<https://www.atlanticcouncil.org/blogs/new-atlanticist/experts-react-trump-just-slapped-tariffs-on-mexico-canada-and-china-whats-next/>.

¹⁰⁵ Silverberg, *supra* note 51.



corroborate the use of the two acts in tandem with one another, thus blurring the lines between emergency powers and ordinary trade policy. Incidentally, the president may utilize the National Emergencies Act's "of any special or extraordinary power" clause to effectively concoct a falsified crisis declaration; that said, the executive can usurp powers retained exclusively for genuine times of public threat—in essence, rendering constitutional efforts to constrain presidential capabilities as fruitless.¹⁰⁶

The United States Court of International Trade and Its Bearing on Tariffs Under The Trump Administration

The Court of International Trade's decision in *V.O.S. Selections, Inc. v. Trump* will present an invaluable precedent for the upcoming landmark case of *Learning Resources, Inc. v. Trump*, as both disputes examine the legal validity pertaining to the scope of presidential delegatory powers under the National Emergencies Act and the International Emergency Economic Powers Act.¹⁰⁷ During the proceedings of *V.O.S. Selections*, the court emphasized a profound need for the narrowing down of the International Emergency Economic Powers Act, on account of the president's unintendedly vast faculties over commercial matters. In turn, introducing a glaring threat to Congress' constitutionally bestowed ability to navigate foreign trade policy. Parenthetically, enabling the president to nullify or overrule previously emplaced congressional trade deficits and border security initiatives instated through specialized legislation—construing an unduly check over the legislator. Due to the urgent threat of a presidential overreach, the court hastily narrowed the statute's scope and rejected any economic operations that remained too far removed from the primary objective behind the implication of tariffs under ideal

¹⁰⁶ Harrell, *supra* note 7.

¹⁰⁷ *V.O.S. Selections, Inc. v. Trump*, at 9–10; *Learning Resources, Inc. v. Donald J. Trump, President of the United States Petition for a Writ of Certiorari*, at 16–17.



circumstances. The Trump administration's passing of Executive Order No. 14,257 leverages the International Emergency Economic Powers Act's "unusual and extraordinary" clause to an astonishing degree—differing from Congress' underlying intent to complicate national emergency fabrication by the executive.¹⁰⁸

The majority ruled decision of *V.O.S. Selections, Inc. v. Trump* will likely outline the arguments held within the impending case of *Learning Resources, Inc. v. Trump*.¹⁰⁹ The plaintiffs will heavily rely on the precedent established during *V.O.S. Selections* to reason that the Trump administration's sweeping tariffs exceed statutory and constitutional limits, given the proposed narrowing of the International Emergency Economic Powers Act's scope. Granted *V.O.S. Selections* has already been affirmed by the Federal Circuit, this legal standard must be considered by the Supreme Court during the forthcoming case, acting as the deciding factor whether Congress will remain as the spearhead entity of economic strategy actuation.¹¹⁰

Conclusion

In light of the foregoing, rather than repealing the Trump administration's duty schedule in its entirety, *Learning Resources* will most certainly excise all tariff entries amid Executive Order No. 14,257 which diverge from Congress' preliminary "intelligible principle."¹¹¹ Likewise, it is highly plausible the Supreme Court will adjudicate against the International Emergency Economic Power Act granting the president immeasurable tariff power while in a state of national

¹⁰⁸ *V.O.S. Selections, Inc. v. Trump*, at 25–28.

¹⁰⁹ *Learning Resources, Inc. v. Donald J. Trump, President of the United States Petition for a Writ of Certiorari*, at 16–17.

¹¹⁰ *Learning Resources, Inc. v. Donald J. Trump, President of the United States Petition for a Writ of Certiorari*, at 16–17.

¹¹¹ 276 U.S. at 399.



emergency.¹¹² In conformity with *V.O.S. Selections*, the artificial declaration of national crises under the National Emergencies Act and overarching statutory provisions bestow vast executive power—divulging evident abuse of emergency faculties by the Trump administration.¹¹³

¹¹² *V.O.S. Selections, Inc. v. Trump*, at 4, 27 (“The court does not read IEEPA to confer such unbounded authority and sets aside the challenged tariffs imposed thereunder... Plaintiffs and some Amici argue that the Government’s interpretation transforms IEEPA into an impermissible delegation of power because ‘[t]he President’s assertion of authority here has no meaningful limiting standards’...”).

¹¹³ Budner, *supra* note 84; *Learning Resources, Inc. v. Donald J. Trump, President of the United States Petition for a Writ of Certiorari*, at 4–5.

