THE PRESIDENT'S AUTHORITY TO IMPOSE TARIFFS

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INTRODUCTION

The International Emergency Economic Powers Act ("IEEPA")[1] empowers the President to "regulate . . . importation." One might think that this broad grant of statutory authority includes the power to regulate importation through a traditional and familiar means: tariffs. But in *Learning Resources v. Trump*,[2] the District Court ruled otherwise.

The District Court concluded that, to empower the President to impose tariffs, Congress must do more than empower the President to "regulate . . . importation." Congress must instead use different "words," like "'tariffs' or 'duties,' their synonyms, or any other similar terms like 'customs,' 'taxes,' or 'imposts.'"[3] This Essay will explain why it is mistaken to impose that type of magic-word requirement on Congress.

In short: Although the District Court was adamant that imposing tariffs requires an exercise of *taxation* power, rather than the power to *regulate commerce*, the Constitution's original meaning and Supreme Court precedent indicate that tariffs can be used in *both* the taxation and commerce-regulation settings. Thus, by clearly delegating power to regulate foreign commerce—a power that has long been understood to include the authority to impose tariffs—IEEPA is best understood as delegating tariff-setting authority to the President. What's more, neither the nondelegation doctrine nor the major questions doctrine invalidate IEEPA's delegation of tariff authority.

I. THE DISTRICT COURT'S ANALYSIS

To determine whether IEEPA's grant of power to "regulate . . . importation" includes the power to impose tariffs, the District Court in *Learning Resources* drew a distinction between the power to *tax* and the power to *regulate*. As the District Court explained, "[t]he Constitution recognizes and perpetuates" this "distinction."[4] Most notably, the former power is vested in the Article I Taxation Clause,[5] and the latter power vested in the Article I Foreign Commerce

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[1] 50 U.S.C. § 1702(a)(1)(B).

[2] Learning Res., Inc. v. Trump, No. CV 25-1248 (RC), 2025 WL 1525376 (D.D.C. May 29, 2025).

[3] *Id.* at *8.

[4] *Id.*

[5] U.S. CONST. Art. I, § 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; but all duties, imposts and excises shall be uniform throughout the United States").

Clause.[6] The District Court therefore felt that, because those two powers were distinct, it meant that "[i]f imposing tariffs and duties were part of the power '[t]o regulate [c]ommerce with foreign [n]ations,'" then "[the Taxation] Clause . . . would have no independent effect."[7]

To further justify its taxation/regulation dichotomy, the District Court quoted Chief Justice Marshall's observation in *Gibbons v. Ogden* that "the power to regulate commerce is . . . entirely distinct from the right to levy taxes and imposts."[8] The District Court also observed that IEEPA uses the word "regulate" alongside other words that the court did not think related to revenue-raising—such as "investigate, block[,] . . . direct[,] . . . compel, nullify, void, prevent or prohibit."[9]

In addition, the District Court pointed to dictionary definitions of the terms "tariff" and "regulate," and concluded that "[t]o regulate is to establish rules governing conduct; to tariff is to raise revenue through taxes on imports or exports."[10] Then, having set up a distinction between the power to tax and the power to regulate commerce, and having concluded that imposing tariffs required an exercise of the former (*i.e.*, taxation) power, the District Court ruled that IEEPA did not delegate any tariff-setting authority.[11]

Along the way, and to sure-up its statutory interpretation, the District Court made passing references to some of the Supreme Court's recent major questions decisions. Citing *Biden v. Nebraska*, the District Court wrote that, "[i]f Congress had intended to delegate to the President *the power of taxing* ordinary commerce from any country at any rate for virtually any reason, it would have had to say so."[12] The court also cited *NFIB v. OSHA* for the proposition that a "lack of historical precedent, coupled with the breadth of authority that the [President] now claims, is a telling indication that the [tariffs] extend[] beyond the [President's] legitimate reach."[13] This later citation was relevant in the court's view because "[i]n the five decades since IEEPA was enacted, no President until now has ever invoked the statute—or its predecessor, TWEA—to impose tariffs."[14]

II. TARIFFS AS A MEANS OF REGULATING COMMERCE

The District Court was wrong to conclude that tariffs require an exercise of Congress's power to tax. That is because originalist evidence and Supreme Court precedent indicate that tariffs can be used to both raise revenue and regulate foreign commerce.

As Professor Robert Natelson explains, "[d]uring the founding era, *commercial regulation* was understood to entail financial impositions."[15] Thus, a "legislature might adopt an imposition

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[6] U.S. CONST. Art. I, § 8, Cl. 3 (Congress shall have the power "To regulate commerce with foreign nations, and among the several states, and with the Indian tribes").

[7] *Learning Resources*, 2025 WL 1525376 at *8.

[8] *Id.* (quoting *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 201 (1824)).

[9] *Id.* at *9 (quoting 50 U.S.C. § 1702(a)(1)(B)).

[10] *Id.* at *8 (citations omitted).

[11] *Id.* at *13.

[12] *Id.* at *8 (quoting *Biden v. Nebraska*, 143 S.Ct. 2355, 2375 (2023)) (emphasis added).

[13] *Id.* at *10 (quoting *Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin.*, 595 U.S. 109, 119 (2022)).

[14] *Id.*

[15] Robert G. Natelson, *What the Constitution Means by "Duties, Imposts, and Excises"—and "Taxes" (Direct or Otherwise)*, 66 CASE W. RSRV. L. REV. 297, 303 (2015) (emphasis added).

purely for *regulatory* purposes—by, for example, *levying tariffs* high enough to inhibit foreign imports and thereby protect domestic producers."[16] Indeed, although American "pamphleteers staunchly contested efforts by Parliament to 'tax' them" in the lead-up to the Revolution, the pamphleteers "conceded the authority of the British government to *regulate commerce* . . . by . . . imposing prohibitory *tariffs* to restrict trade."[17]

A founding-era legislature could, of course, also impose another form of financial imposition—taxes—in the appropriate context. And duties were one form of taxation. But in the founding era, "not all duties were taxes."[18] To the contrary, "[s]ome [duties] were imposed not for revenue but merely to regulate (or effectively prohibit) trade in particular articles."[19] Indeed, duties were apparently such a prominent form of regulating commerce that, "[a]t the federal convention" a delegate "sought to limit export 'duties' to those for regulatory purposes only."[20]

This historical evidence demonstrates that, at the founding, financial impositions could be imposed both for revenue-raising and for commerce-regulating purposes. So, the fact that a particular financial imposition (*e.g.*, a tariff) *could* qualify as a revenue-raising tax does not mean that the same type of imposition (*e.g.*, a tariff) could not *also* qualify as a form of regulating commerce. The powers were, in this sense, overlapping. A tariff could be an exercise of either power. As Natelson writes, "[u]nder the Constitution's original legal force," a congressional decision "to assist the [domestic] cotton trade by . . . impos[ing] a $1 million levy on each imported wool item" would "probably" have been deemed "valid as a regulation of foreign commerce" even if it were "probable" that the protective tariff "raised no revenue."[21]

Early congressional action offers additional evidence that an original understanding of the foreign commerce power included the power to impose tariffs to promote domestic industry. Writing in 1828, James Madison noted that "the first session of the first Congress" "made use" of "the power to regulate trade" in order to "encourage Manufactures."[22]

To wit, the Tariff Act of 1789—signed into law by George Washington on the Fourth of July—was enacted both "for the support of government" (*i.e.*, revenue raising) and for "the encouragement and protection of manufacturers" (*i.e.*, commerce regulation).[23] The Act placed duties on a lengthy list of goods.[24] For example, and as Madison no doubt noted with a grin, Virginians "did not hesitate to" support "duties" that "favor[ed] . . . several articles of [Virginia] production."[25] Reflecting in 1828 on forty years of similar and unquestioned practice, Madison

[16] *Id.* at 305 (emphasis added).
[17] *Id.* at 306 (emphases added).
[18] *Id.* at 320.
[19] *Id.*
[20] *Id.* at 320 n.127 (citing 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 363 (Max Farrand ed., 1937)).
[21] *Id.* at 308.
[22] Letter from James Madison to Joseph C. Cabell (Sept. 18, 1828), *in* 9 THE WRITINGS OF JAMES MADISON (Gaillard Hunt eds. 1910) [*hereinafter* "Madison Letter"].
[23] An Act for Laying a Duty on Goods, Wares, and Merchandises Imported into the United States, § 1, 1 Stat. 24 (1789).
[24] *Id.* at 25–26.
[25] Madison Letter, *supra* note 22.

thought there was more than sufficient "evidence in support of the Cons[tituional] power to protect [and] foster manufactures by regulations of trade."[26]

Joseph Story offered a similar conclusion in 1833 when he asked: "Why does the power" to "regulate commerce . . . involve the right to lay duties?"[27] His answer: "Simply, because [laying duties] is a common means of executing the power [to regulate commerce]."[28] He reasoned further that the raising of "revenue is an incident to such an exercise of the power."[29] Thus, the mere fact that a tariff raises revenue does not in and of itself require an exercise of taxation power, rather than commerce-regulation power. Instead, revenue "flows from, and does not create the power" to regulate commerce."[30]

The Supreme Court has similarly recognized that tariffs can be a form of both taxation and commerce-regulation. In *Bd. of Trs. of Univ. of Illinois v. United States*,[31] the Supreme Court recognized that even though "the taxing power is a distinct power and embraces the power to lay duties, *it does not follow that duties may not be imposed in the exercise of the power to regulate commerce*."[32] Rather, "[t]he contrary is well established."[33] Quoting Joseph Story, the Court explained that "[t]he laying of duties is 'a common means of executing the power'" of regulating commerce, and that "[i]t has not been questioned that this power may be exerted by laying duties 'to countervail the regulations and restrictions of foreign nations.'"[34]

Similarly, in *McGoldrick v. Gulf Oil Corp.*,[35] the Court wrote that, although "[t]he laying of a duty on imports" *can* be "an exercise of the taxing power," it "is *also* an exercise of the power to regulate foreign commerce."[36] For that reason, "[c]ustoms regulations" concerning "imports" could be understood as falling "within the Congressional power" to regulate foreign commerce "since such regulations are not only necessary or appropriate to protect the revenue, but are means to . . . the regulation of foreign commerce . . . ."[37]

III. FLAWS IN THE DISTRICT COURT'S ANALYSIS

Given that tariffs have long been recognized as common means of both raising revenue and regulating commerce, the District Court in *Learning Resources* was mistaken when it wrote that "[t]o regulate is to establish rules governing conduct; to tariff is to raise revenue through taxes on

[26] *Id.*
[27] 2 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION § 1084 (1833).
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] 289 U.S. 48 (1933)
[32] *Id.* at 58 (emphasis added).
[33] *Id.* (citing Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 201 (1824)).
[34] *Id.* (quoting 2 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION §§ 1083–1084).
[35] 309 U.S. 414 (1940).
[36] *Id.* at 428 (emphasis added).
[37] *Id.; see also* United States v. Yoshida Int'l, Inc., 526 F.2d 560, 575 n.20 (C.C.P.A. 1975) ("Though the power to tax and to lay duties upon imports and the power to regulate commerce are distinct, it is well established that the first power can be employed in the exercise of the second.") (citing cases).

imports or exports."[38] Sure, *some* tariffs are revenue-raising taxes. But not *all* tariffs. Other tariffs are a means of regulating foreign commerce.

Once one recognizes the inherent flaw in the District Court's position that tariffs must be a means of taxation, the secondary flaws in the court's various defenses of its position become clearer as well.

Independent Effect. Consider the District Court's rationale that, "[i]f imposing tariffs and duties were part of the power '[t]o regulate [c]ommerce with foreign [n]ations,' then" the Taxation Clause "would have no independent effect."[39] That logic is faulty, and was all but expressly rejected by Madison.

As to the logic: the Taxation Clause does not require Congress to raise revenue through tariffs; Congress can also raise revenue through other means permitted by the Taxation Clause. For that reason alone, the Taxation Clause is not made superfluous simply because the Foreign Commerce Clause also empowers Congress to impose tariffs. What is more, even if one were to focus solely on the Taxation Clause's tariff component, the Clause would still have "independent effect" because it gives Congress a second justification for imposing tariffs. Having both justifications available is not superfluous; it frees Congress to impose tariffs in varying situations.

As to Madison: in his 1828 letter concerning "the constitutionality of the power in Cong. to impose a tariff for the encourag[e]m[en]t[] of Manufactures," Madison pointed to both the Taxation Clause and the Commerce Clause as sources of authority.[40] And he did not think it problematic that the two clauses gave Congress overlapping authority. To the contrary, examples of overlapping powers could be seen "elsewhere in the Constitution" as well.[41] Such "[p]leonasms, tautologies [and] the promiscuous use of terms [and] phrases" were to "be ascribed sometimes to the purpose of greater caution; sometimes to the imperfections of language; [and] sometimes to the imperfection of man himself."[42] Thus, "it was quite natural, however certainly the general power to regulate trade might include a power to impose duties on [trade], not to omit [the power to impose duties] in a clause enumerating the several modes of revenue authorized by the Constitution."[43]

Chief Justice Marshall. Next consider the District Court's reliance on Chief Justice Marshall's statement in *Gibbons* that "the power to regulate commerce is . . . entirely distinct from the right to levy taxes and imposts."[44] It is true that commerce regulation and taxation are distinct powers. But it does not follow that a particular tool (*i.e.*, tariffs) is limited to exercises of only one of those powers. Indeed, one need only to keep reading Marshall's *Gibbons* opinion to understand that, although the taxation and regulation powers are distinct, "[t]he right to *regulate commerce* . .

[38] Learning Res., Inc. v. Trump, 1:25-cv-01248-RC, 2025 WL 1525376 at *8. (D.D.C. May 29, 2025).

[39] *Id.*

[40] Madison Letter, *supra* note 22.

[41] *Id.* As one example, Madison wrote that "a power 'to coin money,' would doubtless include that of 'regulating its value,' had not the latter power been expressly inserted" in the Constitution. *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.* (quoting Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 201 (1824)).

. by the imposition of duties . . . was not controverted" by the "illustrious statesmen and patriots" of the founding era.[45]

As Marshall explained, it was "no novelty to the framers of our constitution" that "the same measure might, according to circumstances, be arranged with different classes of power."[46] Thus, although it was true that duties "may be . . . imposed with a view to *revenue*," Marshall explained that it was also "true[] that duties may often be, and in fact often are, imposed . . . with a view to the *regulation of commerce*."[47]

Dictionary Definitions. Third, consider the shortcomings in the District Court's use of the various dictionary definitions for "tariff" and "regulate."[48] Nothing in the definitions relied on by the court require one to conclude that tariffs must be limited to the revenue-raising context.

Yes, "tariffs" might be defined as "schedules of 'duties or customs imposed by a government on imports or exports.'"[49] But note how that definition does *not* limit tariffs to "schedules of duties or customs imposed by a government on imports or exports *to raise revenue rather than regulate commerce*."[50] And yes, dictionaries might indicate that, "[t]o regulate" means "to '[c]ontrol by rule' or 'subject to restrictions.'"[51] But why, exactly, would those definitions not permit a government to rule or restrict through the familiar means of imposing tariffs? As Professor Jack Goldsmith observes, "a schedule of government duties on imports *is* a form of government control over imports by rule or an example of the government subjecting imports to restrictions."[52]

Noscitur a sociis. Finally, the District Court was off base when it argued that, "[e]ven if *regulate* may take a broad meaning in other contexts . . . the words immediately surrounding it" in IEEPA "cabin the contextual meaning of that term" such that the term does not encompass tariff authority.[53] Sure, IEEPA does list the term "regulate" alongside other terms like "investigate, block … direct and compel, nullify, void, prevent or prohibit."[54] And sure, one might spot the

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[45] *Gibbons*, 22 U.S. at 202 (emphasis added).

[46] *Id.*

[47] *Id.* (emphases added).

[48] Learning Res., Inc. v. Trump, 1:25-cv-01248-RC, 2025 WL 1525376 at *8 (D.D.C. May 29, 2025).

[49] *Id.* (quoting *Tariff*, RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE (1973)).

[50] This is consistent with founding-era usage. "[N]ot all duties were" then understood to be "taxes." Natelson, *supra* note 15, at 320. And at that time, "customs" referred to "[d]uties imposed on imports and exports." *Id*. at 321.

[51] *Id.* (quoting *Regulate*, THE CONCISE DICTIONARY OF CURRENT ENGLISH (6th ed. 1976)).

[52] Jack Goldsmith, *The Weaknesses in the Trump Tariff Rulings*, EXECUTIVE FUNCTIONS (May 30, 2024) (emphasis added), https://executivefunctions.substack.com/p/the-weaknesses-in-the-trump-tariff. The District Court was also off base when it suggested that, because *other* statutes impose "express procedural, substantive, and temporal limits on" other grants of statutory tariff power, interpreting IEEPA as granting tariff power would require "assum[ing] that, in enacting IEEPA, Congress repealed by implication every extant limitation on the President's tariffing authority." *Id*. Not so. Different statutes can impose different restrictions on different tariff authorities; the limitations relevant to IEEPA tariffs are the limitations found in IEEPA, not other statutes. As Goldsmith explains, "any adverse impact of IEEPA's expansive emergency power on the more carefully gauged tariff and other statutes should be addressed to Congress." Goldsmith, *supra* note 52; *see also* United States v. Yoshida Int'l, Inc., 526 F.2d 560, 578 (C.C.P.A. 1975) ("The existence of limited authority under certain trade acts does not preclude the execution of other, broader authority under a national emergency powers act.").

[53] *Learning Resources*, 2025 WL 1525376 at *9.

[54] *Id.* (citing 50 U.S.C. § 1702(a)(1)(B).)).

court the conclusion that the latter terms do not "deal[] with the power to raise revenue."[55] But that conclusion is entirely immaterial.

Tariffs are not restricted to the revenue-raising context, either. Tariffs can instead be used to regulate commerce—and the neighboring words in IEEPA are undoubtedly associated with regulating commerce, at least under modern precedent.[56] What is more, as the originalist evidence outlined above indicates, "[s]ome [duties] were imposed not for revenue but . . . to . . . effectively *prohibit*[] trade."[57] IEEPA's use of the terms "block," "prevent," and "prohibit" therefore lend additional support for understanding IEEPA as delegating tariff authority.

IV. THE NONDELEGATION AND MAJOR QUESTIONS DOCTRINES

The above analysis has explained how tariffs can be used as a means of regulating foreign commerce. But regulating such commerce is a power vested in Congress, not the President. It is therefore necessary to consider whether the nondelegation or major questions doctrines reveal IEEPA's delegation of tariff-authority to be defective. Neither doctrine does.

Start with the nondelegation doctrine. It is nonsensical to require Congress to use special words relating to its power to tax (*e.g.*, require IEEPA to use the word "taxes") in order to delegate the entirely distinct foreign commerce power. But must Congress use some of the other special words flagged by the District Court (*e.g.*, "tariffs" or "duties") to delegate tariff-setting authority? The answer is no. And the answer turns on the fact that IEEPA's delegation occurs in the foreign affairs context—where the President's own constitutional authority allows for Congress to delegate more power with less specificity than in the domestic realm.

Congress's ability to delegate more freely in the foreign affairs context was recognized in *United States v. Curtiss-Wright Export Corp*.[58] There, the Supreme Court explained that there are important "differences" between "the powers of the federal government in respect of foreign or external affairs and those in respect of domestic or internal affairs."[59] In the foreign affairs context, statutory delegations must be interpreted alongside "the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations."[60] Thus, "[i]f embarrassment . . . is to be avoided and success . . . achieved" on the world stage—where the President legitimately acts on the nation's behalf—then "congressional legislation which is to be made effective through negotiation . . . within the international field must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved."[61]

The Court's rationale in *Curtiss-Wright* was consistent with earlier, 19th century Supreme Court precedent.[62] But to focus on more recent writings, which offer particularly helpful insight

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[55] *Id.*

[56] *See, e.g.*, Gonzales v. Raich, 545 U.S. 1, 26 (2005) (holding that prohibiting marijuana is a means of regulating commerce).

[57] Natelson, *supra* note 15, at 306320 (emphasis added).

[58] 299 U.S. 304 (1936).

[59] *Id.* at 315.

[60] *Id.* at 320.

[61] *Id.*

[62] Marshall Field & Co. v. Clark, 143 U.S. 649, 691 (1892) ("[I]n the judgment of the legislative branch of the government, it is often desirable, if not essential for the protection of the interests of our people against the unfriendly or discriminating

into how the current Supreme Court might view the question, Justice Gorsuch suggested in his seminal dissent in *Gundy v. United States* that the Constitution's nondelegation principle applies less forcefully in the foreign affairs context.[63] Justice Gorsuch relied in particular on the Supreme Court's 1813 decision in *Cargo of the Brig Aurora v. United States*, which concerned foreign importation authority granted to the President by statute.[64] As Justice Gorsuch explained, "when a congressional statute confers wide discretion to the executive, no separation-of-powers problem may arise if 'the discretion is to be exercised over matters already within the scope of executive power.'"[65] Thus, "the foreign-affairs-related statute in *Cargo of the Brig Aurora* may be an example of . . . permissible lawmaking, given that many foreign affairs powers are constitutionally vested in the president under Article II."[66]

The upshot is that, in the foreign affairs context, Congress can more easily delegate more power. IEEPA's general delegation of authority to "regulate . . . importation" is thus properly read as delegating a traditional and familiar means of regulating importation (*i.e.*, tariffs)—even though the statute does not use the magic word "tariff." Indeed, to *not* read IEEPA's delegation as including tariff authority would be to inexplicably strip the President of a traditional and familiar means of regulating imports. And a reviewing court should not insert itself into the field of international relations by inexplicably reading such authority out of a statute. Doing so would risk undermining the type of diplomatic success that can often be achieved (by statutory design) through the President.[67]

Particularly in the foreign affairs context, IEEPA satisfies the nondelegation doctrine's easy-to-satisfy intelligible principle test—*i.e.*, the current test used by courts to enforce the nondelegation doctrine.[68] Consider the analysis in *United States v. Yoshida Int'l, Inc.*, in which the United States Court of Customs and Patent Appeals considered the constitutionality of the Trading With the Enemy Act ("TWEA").[69]

TWEA was the statutory precursor to IEEPA, and TWEA contained statutory language that is materially identical to the IEEPA language at issue in *Learning Resources*.[70] TWEA was cited as

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regulations established by foreign governments, in the interest of their people, to invest the President with large discretion in matters arising out of the execution of statutes relating to trade and commerce with other nations.").

[63] Gundy v. United States, 588 U.S. 128, 159 (2019) (Gorsuch, J., dissenting).

[64] *Id.* (referring to 11 U.S. (7 Cranch) 382 (1813)).

[65] *Id.*

[66] *Id.*; *see also Marshall Field*, 143 U.S. at 691 ("If the decision in the case of *The Brig Aurora* had never been rendered, the practical construction of the Constitution, as given by so many acts of Congress, and embracing almost the entire period of our national existence, should not be overruled, unless upon a conviction that such legislation was clearly incompatible with the supreme law of the land.").

[67] *See Curtiss-Wright*, 299 U.S. at 320 ("It is quite apparent that if, in the maintenance of our international relations, embarrassment — perhaps serious embarrassment — is to be avoided and success for our aims achieved, congressional legislation which is to be made effective through negotiation and inquiry within the international field must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved. Moreover, he, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries, and especially is this true in time of war. He has his confidential sources of information. He has his agents in the form of diplomatic, consular and other officials.").

[68] *See* Chad Squitieri, *Who Determines Majorness?*, 44 HARV. J.L. & PUB. POL'Y 403, 469 (2021).

[69] *See* United States v. Yoshida Int'l, Inc., 526 F.2d 560 (C.C.P.A. 1975).

[70] V.O.S. Selections, Inc. v. United States, No. 25-00066, 2025 WL 1514124, at *3 (Ct. Int'l Trade May 28, 2025) ("Congress drew much of the relevant language in IEEPA from TWEA, including language authorizing the President to 'regulate ...

authority for President Nixon to impose certain "tariffs . . . known as the 'Nixon shock.'"[71] And in *Yoshida Int'l*, the court held that the "Presidential exercise" of the TWEA tariff authority was constitutional in part because it was "limited to actions consistent with the national emergency purpose" of the statute.[72] In explaining why TWEA's delegation of tariff authority was constitutional, the court further noted that "the power delegated" by Congress was confined by the fact that it "shall be applied only to 'property in which any foreign country or a national thereof has any interest.'"[73] What's more, TWEA cabined the President to act "by means of instructions, licenses, or otherwise,"[74] which "manifestly is restrictive in scope and is but one branch of many attached to the trunk of the tree in which is lodged the all-inclusive substantive power to regulate foreign commerce, vested solely in the Congress."[75]

Nearly identical limits are present in IEEPA. Like TWEA, IEEPA does not empower the President to exercise Congress's Foreign Commerce Clause power however he wants, whenever he wants. IEEPA instead cabins the President's delegated authority by empowering him to deal with certain types of declared emergencies.[76] Like TWEA, IEEPA further limits the President's response to those emergencies to dealing with certain foreign-related property.[77] And like TWEA, IEEPA limits the President to taking only certain forms of actions.[78]

Moreover, IEEPA contains various exceptions to its statutory grant of authority. For example, the President may not "regulate . . . any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value," nor may he ordinarily "regulate" any "donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering."[79] Similarly, IEEPA does not empower the President to regulate "the importation . . . of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds."[80]

The above limitations demonstrate that, like TWEA, IEEPA does not give the president free range to exercise the foreign commerce power.[81] IEEPA instead requires the President to exercise

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importation ... of ... any property in which any foreign country or a national thereof has any interest by any person ... subject to the jurisdiction of the United States ....'"); *id.* at *12 (noting that "the words 'regulate ... importation' . . . exist in identical form in IEEPA" and the TWEA).

[71] *Learning Resources*, 2025 WL 1525376, at *11 & n.10.

[72] *Yoshida Int'l*, 526 F.2d at 583.

[73] *Id.* at 581.

[74] 50 U.S.C. § 4305(b)(1).

[75] *Id.* at 570.

[76] 50 U.S.C. § §1701, 1702(a)(1).

[77] 50 U.S.C. § 1702(a)(1)(B) (referring to "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").

[78] 50 U.S.C. § 1702(a)(1) ("[T]he President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise…."); 50 U.S.C § 1702(a)(1)(B) (The President may "investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit . . . .").

[79] 50 U.S.C. § 1702(b)(1)-(2).

[80] 50 U.S.C. § 1702(b)(3).

[81] The above-mentioned limitations demonstrate why the District Court was mistaken to state that IEEPA does not "include language setting limits on any potential tariff-setting power." *Learning Resources*, 2025 WL 1525376 at *9.

delegated authority within the confines of statutory direction. That statutory direction might be broad—perhaps even much broader that the types of delegations that would be constitutionally permitted in the domestic context. But IEEPA delegates power in the foreign affairs context, where broad presidential discretion is constitutionally permitted.

The nondelegation doctrine's sensitivity to the foreign affairs context also explains why the District Court's hand-waving about the President's delegated-authority to impose tariffs "at any rate for virtually any reason"[82] is unconvincing. For one, the President is not claiming the authority to impose tariffs for any reason. As Goldsmith observes, "[t]he Trump administration did not, for example, assert an authority to issue IEEPA import duties in non-emergency or non-threat situations."[83] But more fundamentally: Congress *can* delegate strikingly broad discretion in the foreign affairs context given that the President already has his own foreign affairs authority.

The major questions doctrine doesn't lead to a different conclusion, either. If that doctrine is a substantive canon promoting the Constitution's nondelegation principle, as Justice Gorsuch has suggested,[84] then the doctrine should account for the foreign affairs context just as the underlying nondelegation doctrine accounts for that context. Alternatively, if the major questions doctrine is a linguistic canon, as Justice Barrett has suggested,[85] then the "contextual evidence"[86] a court must consider when interpreting a delegation should include the fact that the President has his own foreign affairs authority. Similar to how, if a "babysitter were a grandparent," she would be properly understood as having the major authority to take the kids on a "multiday excursion to an out-of-town amusement park" since such context reveals that the grandparent-babysitter has underlying authority over the child,[87] the President's underlying foreign affairs authority should lead a court to anticipate that statutory delegations to the President in the foreign affairs context include "major" authority in the ordinary course.

Moreover, and regardless of whether the major questions doctrine is a substantive or linguistic canon, the doctrine properly applies in contexts where the executive branch has claimed "unheralded" statutory authority.[88] And in *Learning Resources*, the President is claiming tariff authority pursuant to statutory language that has, for half a century, been understood as empowering the President to impose tariffs.

Sure, the long-established understanding of the President's tariff authority relates to what President Nixon's administration argued, and the *Yoshida Int'l.* court ruled, IEEPA's precursor statute to mean in the 1970s.[89] And for that reason the District Court was not patently wrong to state that, "[i]n the five decades since IEEPA was enacted, no President until now has ever

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[82] *Learning Resources*, 2025 WL 1525376, at *8.

[83] Goldsmith, *supra* note 52.

[84] Chad Squitieri, *"Recommend ... Measures": A Textualist Reformulation of the Major Questions Doctrine*, 75 BAYLOR L. REV. 706, 728-29 (2023) (citing W. Virginia v. Env't Prot. Agency, 597 U.S. 697, 742 n.3 (2022) (Gorsuch, J., concurring).

[85] *Id.* at 729-32 (citing Biden v. Nebraska, 143 S. Ct. 2355, 2376 (2023) (Barrett, J., concurring).

[86] *Nebraska*, 143 S. Ct. at 2380 (Barrett, J., concurring).

[87] *Id.*

[88] *See, e.g.*, *West Virginia*, 597 U.S. at 724 (majority op.) (quoting Util. Air Regul. Grp. v. EPA, 573 U.S. 302, 324 (2014)); Squitieri, *supra* note 84 at 727, 759.

[89] *Yoshida Int'l.*, 526 F.2d at 584. The *Learning Resources* court notes that, although President Nixon did not personally invoke the precursor statute (*i.e.*, the TWEA) in his declaration, the statute was cited by the government in its *Yoshida Int'l.* briefing. *Learning Resources*, 2025 WL 1525376 at *11 n.10. That distinction is legally irrelevant since the government lawyers are properly understood as exercising executive power on the President's behalf.

invoked the [IEEPA]—or its predecessor . . . to impose tariffs."[90] But as was already noted, the precursor statute (*i.e.*, the TWEA) used materially "identical"[91] language to the IEEPA. And both the *Yoshida Int'l.* court and the Nixon administration interpreted that statutory language as constitutionally granting tariff authority.[92] Thus, the District Court's statement in *Learning Resources* was a bit too reliant on carefully worded technicalities that miss the forest for the trees. What's more: as *Cargo of the Brig Aurora* demonstrates, Congress has been granting the President authority over foreign imports for over two-hundred years.[93] The situation is therefore distinguishable from past major questions cases, where the claimed authority constituted a surprising and unheralded power-grab.

CONCLUSION

The District Court erred in *Learning Resources* by ruling that IEEPA does not delegate tariff authority. The flaw in the court's analysis stemmed from its failure to recognize that tariffs can be used both to raise revenue *and* regulate commerce. By empowering the President to "regulate . . . importation," IEEPA empowers the President to regulate importation through a traditional and familiar means: tariffs.

[90] *Learning Resources,* 2025 WL 1525376 at *10.

[91] *V.O.S. Selections*, 2025 WL 1514124, at *12.

[92] The District Court in *Learning Resources* criticized the *Yoshida Int'l.* court for engaging in statutory purposivism by speaking of congressional "intent." *Learning Resources,* 2025 WL 1525376 at *12. As it explained, "[t]hat is no longer how courts approach statutory interpretation." *Id*. But a closer read of the court's opinion in *Yoshida Int'l.* reveals that the court's analysis is more consistent with modern textualism than *Learning Resources* suggested. Immediately after stating that the court's "duty is to effectuate the intent of Congress," the *Yoshida Int'l.* court clarified that, "[i]n so doing, we look first to the literal meaning of the words employed," and further clarified that "[a]nalysis of the statute and its wording provides the threshold determination of what was delegated by the Congress." *Yoshida Int'l*, 526 F.2d at 573. Elsewhere the *Yoshida Int'l.* court explained that a "statute must be interpreted as a whole." *Id*. at 674. Moreover, it is curious that *Learning Resources* took issue with a reference to congressional intent given that it itself stated that "other events confirm that *Congress did not intend* for the language 'regulate ... importation' to delegate the authority to impose tariffs," and elsewhere hypothesized about what "Congress understood." *Learning Resources,* 2025 WL 1525376 at *12 (emphasis added).

[93] *See also Yoshida Int'l.*, 526 F.2d at 572 ("Congress, beginning as early as 1794 . . . has delegated the exercise of much of the power to regulate foreign commerce to the Executive.").