

Intelligence MEMOS



From: Jon Johnson
To: Trade War Watchers
Date: May 2, 2025
Re: JUDICIAL CHALLENGES TO TRUMP'S IEEPA TARIFFS – TIME FOR CONGRESS TO ACT

The Trump administration has issued 13 executive orders under the *International Emergency Economic Powers Act* (IEEPA) imposing tariffs based on alleged national emergency concerns, including:

Declaring an America First Trade policy addressing “unfair and unbalanced trade,” trade relations with major US trading partners, reviewing US trade agreements including CUSMA and reviewing trade relations with China.

Multiple executive orders targeting the alleged flow of illicit drugs and illegal immigration from Mexico and Canada into the United States.

Multiple executive orders directed at China including abuse of the de minimis exception and synthetic opioids.

Executive orders regulating imports with a “reciprocal” tariff (which is in no way reciprocal) to rectify trade practices contributing to large and persistent annual US goods trade deficits and modifying such tariff rates to reflect trading partner retaliation.

On April 16 the State of California and California State Governor Gavin Newsom filed a [complaint](#) in the United States District Court for the Northern District of California challenging the tariffs imposed under the Act.

As the California complaint emphasizes, authority in the US Constitution to impose tariffs complaint reside solely with Congress and not with the president. The powers set out in the IEEPA, which became law in 1977, include the power to “regulate” imports, but not specifically the power to impose tariffs. Indeed, prior to the Trump administration, the IEEPA had not been used to impose tariffs.

The complaint describes the legislative history of the IEEPA and the intention of the House of Representatives to limit the powers of the president previously provided for in the broader *Trading with the Enemy Act*.

The complaint further points out that the IEEPA requires that the President consult with Congress before exercising any of IEEPA powers and shall consult regularly with the Congress so long as such authorities are exercised. The complaint maintains that no such consultation ever took place.

The complaint maintains that the economic and political significance of Mr. Trump’s tariffs is “staggering by any measure” and that the executive branch must have clear congressional authorization to enact them. The IEEPA does not provide such authorization.

The complaint maintains that Mr. Trump’s actions in imposing the tariffs are *ultra vires* and that the plaintiffs are entitled to a declaration that the IEEPA tariffs are null and void and that the plaintiffs are entitled to injunctive relief.

On April 23, the states of New York, Arizona, Colorado, Connecticut, Delaware, Illinois, Maine, Minnesota, Nevada, New Mexico, Oregon and Vermont commenced a separate action against the Trump administration in the US Court of International Trade maintaining that the president lacks the authority to impose tariffs and that tariffs must be approved by the US Congress.

There have been subsequent challenges to the tariffs through the US Court of International Trade, as well as a ruling by the court declining to immediately halt the implementation of the IEEPA tariffs.

These challenges will eventually result in various resolutions, though this will take time and court decisions are subject to appeal.

However, they suggest there are serious legal flaws with Mr. Trump’s IEEPA tariffs.

Congress, with its exclusive authority power over tariffs, could eliminate any uncertainty by declaring that the IEEPA means what it says and affirming that the IEEPA confers no power on the president over tariffs.

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