

TRUMP'S COFFEE FOR COUP ACCOUNTABILITY EMERGENCY

As a reminder, the trade war Trump launched on April 2 purports to address an emergency created by trade deficits in *goods* (not services).

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.) (NEA), section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), and section 301 of title 3, United States Code,

I, Donald J. Trump, President of the United States of America, find that underlying conditions, including a lack of reciprocity in our bilateral trade relationships, disparate tariff rates and non-tariff barriers, and U.S. trading partners' economic policies that suppress domestic wages and consumption, as indicated by large and persistent annual U.S. goods trade deficits, constitute an unusual and extraordinary threat to the national security and economy of the United States. That threat has its source in whole or substantial part outside the United States in the domestic economic policies of key trading partners and structural imbalances in the global trading system. I hereby declare a national emergency with respect to this threat.

[snip]

I have declared a national emergency arising from conditions reflected in large and persistent annual U.S. goods trade deficits, which have grown by over

40 percent in the past 5 years alone, reaching \$1.2 trillion in 2024. This trade deficit reflects asymmetries in trade relationships that have contributed to the atrophy of domestic production capacity, especially that of the U.S. manufacturing and defense-industrial base. These asymmetries also impact U.S. producers' ability to export and, consequentially, their incentive to produce.

Specifically, such asymmetry includes not only non-reciprocal differences in tariff rates among foreign trading partners, but also extensive use of non-tariff barriers by foreign trading partners, which reduce the competitiveness of U.S. exports while artificially enhancing the competitiveness of their own goods. These non-tariff barriers include technical barriers to trade; non-scientific sanitary and phytosanitary rules; inadequate intellectual property protections; suppressed domestic consumption (e.g., wage suppression); weak labor, environmental, and other regulatory standards and protections; and corruption. These non-tariff barriers give rise to significant imbalances even when the United States and a trading partner have comparable tariff rates.

That claim seems to have been forgotten in discussion of the 50% tariff Trump just threatened to place on Brazil.

Trump barely focused on his claimed emergency in his letter – posted to Truth Social – to Lula da Silva. Rather, he mentioned:

- The purported Witch Hunt against Jair Bolsonaro – the prosecution for Bolsonaro's

attempted coup – “that should end IMMEDIATELY!”

- Efforts to regulate social media in Brazil (largely with the goal of investigating and cracking down on insurrection), which Trump called “hundreds of SECRET and UNLAWFUL Censorship Orders to U.S. Social Media platforms, threatening them with Millions of Dollars in Fines and Eviction from the Brazilian Social Media market”

All that was in addition to (and before) the boilerplate language on goods included in the letter.

Mind you, that boilerplate would be nonsense in any case, because the US enjoys a trade surplus with Brazil. There could be no trade deficit emergency with Brazil because the US doesn't have one.

Which is one of the points Lula noted in response (ironically, on Xitter). The US says the US has a trade surplus with Brazil.

In light of the public statement made by U.S. President Donald Trump on social media on the afternoon of Wednesday (9), it is important to highlight the following:

[snip]

The claim regarding a U.S. trade deficit in its commercial relationship with Brazil is inaccurate. Statistics from the U.S. government itself show a surplus of \$410 billion in the trade of

goods and services with Brazil over the past 15 years.

Therefore, any unilateral tariff increases will be addressed in accordance with Brazil's Economic Reciprocity Law.

Sovereignty, respect and the unwavering defense of the interests of the Brazilian people are the values that guide our relationship with the world.

Which leaves solely the complaints pertaining to coup accountability: that Brazil fined Xitter when it refused to comply with legal and investigative demands, as well as the requirement that it have a local representative (through whom Brazil would enforce the law), as well as the complaint that Brazil is holding Bolsonaro accountable for the same crime that Trump himself committed.

Here's how Lula addressed those complaints.

Brazil is a sovereign nation with independent institutions and will not accept any form of tutelage.

The judicial proceedings against those responsible for planning the coup d'état fall exclusively under the jurisdiction of Brazil's Judicial Branch and, as such, are not subject to any interference or threats that could compromise the independence of national institutions.

In the context of digital platforms, Brazilian society rejects hateful content, racism, child pornography, scams, fraud, and speeches against human rights and democratic freedom.

In Brazil, freedom of expression must not be confused with aggression or violent practices. All companies—whether domestic or foreign—must comply with Brazilian law in order to operate within

our territory.

This is not a trade emergency.

It's a democracy emergency.

A sovereignty emergency.

A coup accountability emergency.

And even if those were emergencies to the US, Trump has not declared a separate, "OMIGOD an ally might hold someone accountable for the same crime I committed," emergency to cover the real scope of this letter.

Trump's trade war has *already* been declared unlawful. Trump's attempt to use trade policies to help a fellow coup conspirator comes in the wake of a May 28 Court of International Trade judgement that Trump usurped the power of Congress in imposing these tariffs – the tariffs focused on trade deficits and fentanyl trafficking, as opposed to coup accountability.

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, essentially enabling him to impose any tariff rate he wants on any country at any time, for virtually any reason." Pls.' V.O.S. Mots. at 25; see also Pls.' Oregon Mots. at 19; Pls.' V.O.S. Reply at 22. Similarly, Plaintiffs suggest that Congress's use of the words "regulate . . . importation" does not indicate the clear mandate necessary to delegate "such unbounded authority to the President to make such decisions of 'vast economic and political significance,'" as the wide-scale imposition of tariffs. Pls.' Oregon Mot. at 18; see also Pls.' V.O.S. Reply at 17; Inst. for Pol. Integrity's Amicus Br. at 16–18. The Government counters

that IEEPA contains sufficient limitations: the President must declare a national emergency, the emergency expires after one year unless renewed, the emergency must be declared with respect to an “unusual and extraordinary threat,” and the powers must extend only to property in which a foreign country or foreign national has an interest. Gov’t Resp. to V.O.S. Mots. at 28–29.

The separation of powers is always relevant to delegations of power between the branches. Both the nondelegation and the major questions doctrines, even if not directly applied to strike down a statute as unconstitutional, provide useful tools for the court to interpret statutes so as to avoid constitutional problems. These tools indicate that **an unlimited delegation of tariff authority would constitute an improper abdication of legislative power to another branch of government.** Regardless of whether the court views the President’s actions through the nondelegation doctrine, through the major questions doctrine, or simply with separation of powers in mind, any interpretation of IEEPA that delegates unlimited tariff authority is unconstitutional. [my emphasis]

The CIT distinguished past tariffs from these Trump tariffs – again, tariffs that were tied exclusively to a trade deficit, not a coup accountability emergency – because they didn’t entail imposing “whatever tariff rates he deems desirable.”

While the court in *Yoshida II* ultimately reversed the lower court’s decision and upheld President Nixon’s tariffs, it upheld the tariffs on the basis that they were limited, “which is quite different from imposing whatever tariff rates he deems desirable.”

[snip]

Like the court in *Yoshida II*, this court does not read the words “regulate . . . importation” in IEEPA as authorizing the President **to impose whatever tariff rates he deems desirable**. Indeed, such a reading would create an unconstitutional delegation of power. See *id.*

Importantly, President Trump’s tariffs do not include the limitations that the court in *Yoshida II* relied upon in upholding President Nixon’s actions under TWEA. Where President Nixon’s tariffs were expressly limited by the rates established in the HTSUS, see Proclamation No. 4074, 85 Stat. at 927, **the tariffs here contain no such limit**. Absent these limitations, this is exactly the scenario that the lower court warned of in *Yoshida I*—and that the appellate court acknowledged in *Yoshida II*.

In sum, just as the court recognized in *Yoshida II*, the words “regulate . . . importation” cannot grant the President unlimited tariff authority. [my emphasis]

And, in language addressing Trump’s drug trafficking sanctions, CIT also said the President could not use tariffs to pressure a country to do what he wants (in that case, to do more on fentanyl trafficking).

The Government’s reading would cause the meaning of “deal with an unusual and extraordinary threat” **to permit any infliction of a burden on a counterparty to exact concessions, regardless of the relationship between the burden inflicted and the concessions exacted**. If “deal with” can mean “impose a burden until someone else deals with,” then **everything is permitted**. It means a President may use IEEPA to take whatever

actions he chooses simply by declaring them “pressure” or “leverage” tactics that will elicit a third party’s response to an unconnected “threat.” Surely this is not what Congress meant when it clarified that IEEPA powers “may not be exercised for any other purpose” than to “deal with” a threat. [my emphasis]

The Court of International Trade *has already* said doing this is *ultra vires*, well beyond Trump’s legal authority, precisely because Trump claims to have unlimited unreviewable authority to usurp Congress’ tariff authority. And it said so precisely because the claimed authority Trump was invoking was so unlimited, extending even to coercion regarding things entirely unrelated to trade.

And it’s not just the court that said it. The captioned challenge here, from a wine importer and other small businesses, is being lawyered by CATO associates. Another challenge is being lawyered by recipients of Koch funding. Among the amicus briefs submitted to the CIT was one signed by a weirdly bipartisan group of muckety-mucks, including right wingnuts like Steven Calabresi. And in recent days, before the Federal Court of Appeals (which will hold a hearing on Trump’s appeal on July 31), the Chamber of Commerce and a bunch of economists fronted by the American Enterprise Institute weighed in. The latter debunks both Trump’s assertion of emergency and his claim that tariffs will fix the purported emergency.

First, IEEPA requires the President to declare a national emergency based on an “unusual and extraordinary threat . . . to the national security, foreign policy or economy of the United States.” 50 U.S.C. § 1701(a). Trade deficits, however, have existed consistently over the past fifty years in the United States, for extended periods in the United States in the nineteenth century,

and in most countries in most years in recent decades. They are thus not “unusual and extraordinary.” See Part I, *infra*. Second, the existence of these ordinary and recurring trade deficits is not in and of itself a “threat . . . to the national security, foreign policy or the economy” of the United States. See Part II, *infra*. Third, even if the current trade deficit constituted an unusual and extraordinary threat to national security or the economy as required by IEEPA, the tariffs imposed under IEEPA by the President do not meaningfully reduce trade deficits and hence do not “deal with” the deficits as IEEPA requires. See Part III, *infra*.

With his coup accountability emergency, Trump has taken his unlawful tariffs – already opposed by a wide swath of right wing intellectuals, who are represented by lawyers who’ll get a fair hearing at SCOTUS – and made them far more abusive.

And he has done so with a trade partner for whom threats tied to China may backfire. After all, China has long substituted agricultural imports from Brazil, notably in soybeans, to replace US imports when Trump stages a tariff tantrum.

Trump has staged his coup accountability emergency with a trade partner that provides a notable proportion of America’s coffee imports. 50% tariffs on Brazilian coffee will undoubtedly provide a jolt to the system, but probably not the kind that will help Trump.

Donald Trump has threatened to impose a 50% tax on coffee in the United States for little other reason than Brazil won’t let his buddy overturn democratic elections with impunity.

That’s outrageous. It is quite clearly an instance of Trump threatening “whatever tariff rates he deems desirable” with the goal of “inflict[ing] a burden on a counterparty to

exact concessions, regardless of the relationship between the burden inflicted and the concessions exacted," both precisely the measure the CIT used to declare Trump's trade deficits unlawful.

But it clarifies the legal stakes on the one legal challenge on which right wingers have joined Democrats in droves to oppose Trump's abuses, because in this case the President is attempting to use tariffs completely divorced from a trade deficit to elicit concessions totally unrelated to the national good.

It was already the case that this is the legal challenge that plaintiffs had the best chance of winning – because SCOTUS treats economic stability differently, because right wing lawyers will argue it, because this is a clear separation of powers violation. Then Trump went and made the arbitrary, personalist nature of it far more explicit.

Update, 7/12: Ilya Somin, the lead lawyer on the existing challenge to Trump's tariffs, makes this point here.

If the president can use IEEPA to impose tariffs for completely ridiculous reasons like these, he can use it to impose them against any nation for any reason. That reinforces our argument that the administration's interpretation of IEEPA leads to a boundless and unconstitutional delegation of legislative power to the executive. A unanimous ruling in our favor by the US Court of International Trade concluded that IEEPA "does not authorize the President to impose unbounded tariffs" and that such "an unlimited delegation of tariff authority would constitute an improper abdication of legislative power to another branch of government."