

Learning Resources

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Brent Skorup

FOR CENTURIES, AMERICA HAS RELIED ON TRADE WITH THE REST OF THE WORLD. THE POWER TO SET THE TERMS OF THAT TRADE-- TO TAX FOREIGN GOODS ENTERING THE COUNTRY-- BELONGS TO CONGRESS.

THE CONSTITUTION GRANTS CONGRESS THE POWER TO "LAY AND COLLECT TAXES, DUTIES, IMPOSTS, AND EXCISES." FOR GENERATIONS, CONGRESS DIRECTLY SET TARIFF RATES...

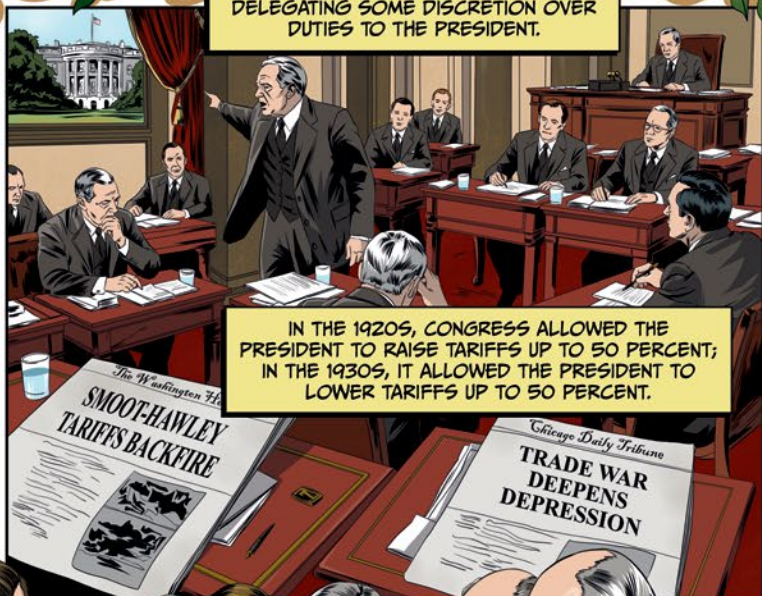
OVER GENERATIONS, CONGRESS BEGAN DELEGATING SOME DISCRETION OVER DUTIES TO THE PRESIDENT.

IN THE 1920S, CONGRESS ALLOWED THE PRESIDENT TO RAISE TARIFFS UP TO 50 PERCENT; IN THE 1930S, IT ALLOWED THE PRESIDENT TO LOWER TARIFFS UP TO 50 PERCENT.

...AND THEY ARE AMONG THE OLDEST TOOLS OF AMERICAN ECONOMIC POLICY.

1789
TARIFF SCHEDULE

1 cent	per pound of brown sugars
50 cents	per pair of boots
12.5%	tax on all goods imported from China or India



IN DECEMBER 1941, AFTER JAPANESE FORCES ATTACKED PEARL HARBOR, CONGRESS AMENDED THE TRADING WITH THE ENEMY ACT (TWEA)-- THE PRESIDENT COULD NOW "REGULATE IMPORTATION" DURING WARTIME OR A NATIONAL EMERGENCY.

ALTHOUGH, AT THE TIME, CONGRESS DIDN'T MAKE CLEAR WHAT THAT MEANT.

FIRST WAR
ACT -- 1941



WOULD TWEA'S REACH
EXTEND TO TARIFFS?



Tariffs



IN 1971,
PRESIDENT
RICHARD
NIXON
IMPOSED A 10
PERCENT
TARIFF ON
NEARLY ALL
IMPORTS.

YOSHIDA INT'L ZIP

TARIFF
SURCHARGE 10%

YOSHIDA INTERNATIONAL, A ZIPPER IMPORTER, SUED.

THE NIXON ADMINISTRATION DEFENDED THE TARIFFS
UNDER TWEA, ARGUING THAT ITS AUTHORITY TO
"REGULATE ... IMPORTATION"
INCLUDED THE POWER TO TAX IMPORTS.
YOSHIDA DISAGREED.

COURT OF CUSTOMS
AND
PATENT APPEALS

US
Gold Reserves

Tariffs

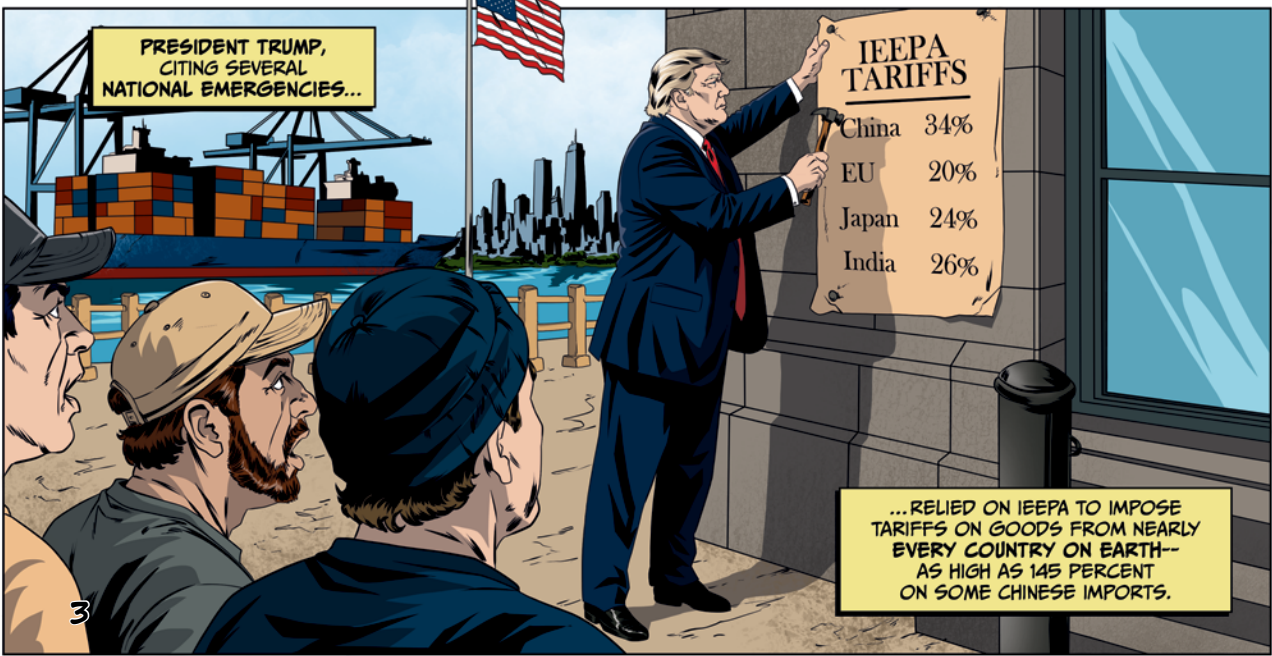
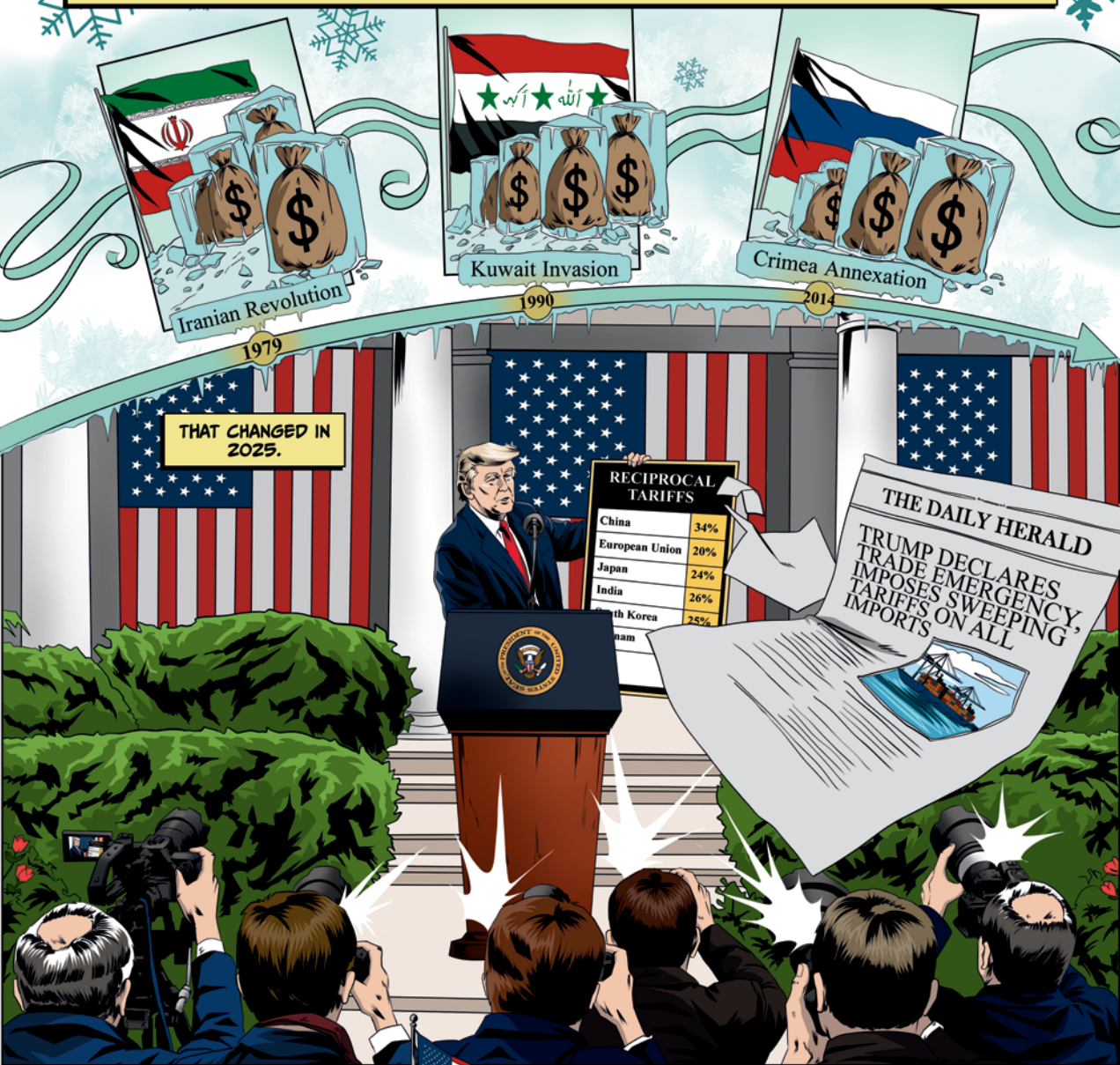
THE CUSTOMS COURT AGREED
WITH YOSHIDA AND REJECTED
THE TARIFFS, BUT THE
GOVERNMENT APPEALED.

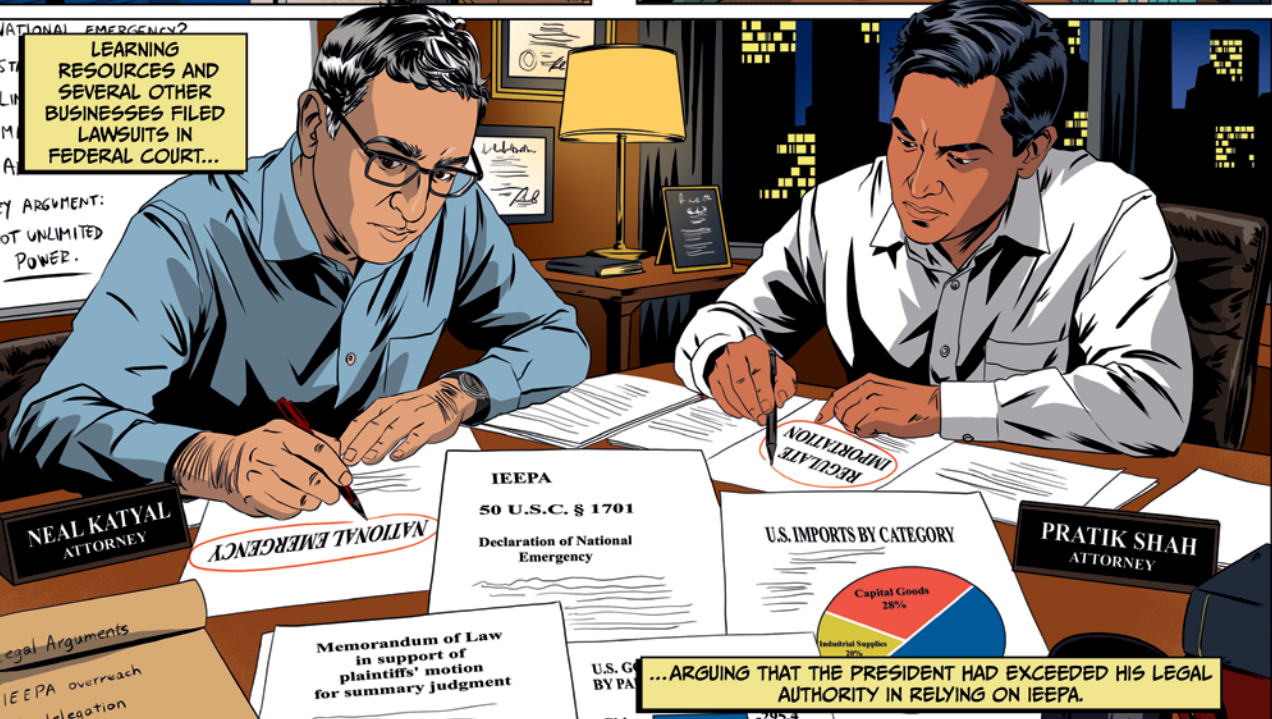
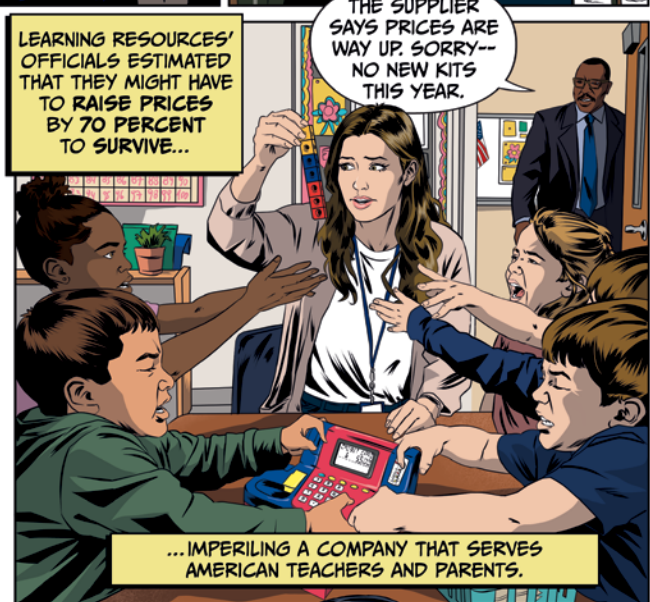
THE COURT OF CUSTOMS AND
PATENT APPEALS REVERSED--
"REGULATE ... IMPORTATION"
AUTHORIZED NIXON'S 10
PERCENT TARIFFS.

IN 1977, CONGRESS RESPONDED TO THE NOVEL USES OF TWEA WITH THE INTERNATIONAL EMERGENCY
ECONOMIC POWERS ACT--IEEPA--WHICH LIMITED THE PRESIDENT TO ONLY TEMPORARY AUTHORITY TO
REGULATE FOREIGN COMMERCE DURING A NATIONAL EMERGENCY.

...BUT IEEPA
RETAINED
THE "REGULATE
IMPORTATION"
LANGUAGE
FROM TWEA.

FOR NEARLY 50 YEARS, PRESIDENTS USED IEEPA AS A "SANCTIONS" WEAPON IN FOREIGN RELATIONS--TO FREEZE ASSETS OF LEADERS AND BUSINESSPEOPLE OF HOSTILE NATIONS DURING DECLARED EMERGENCIES. NO PRESIDENT USED IT TO IMPOSE TARIFFS.





AT THE HEART OF THESE LAWSUITS: WHEN CONGRESS AUTHORIZED THE PRESIDENT TO "REGULATE IMPORTATION" DURING EMERGENCIES IN THE 1977 LAW, DID IT FORFEIT ITS TARIFF POWER TO HIM?

Article I

President's
Emergency Authority

THE GOVERNMENT ARGUED THAT IEPPA'S TEXT GAVE THE PRESIDENT BROAD, CLEAR AUTHORITY OVER TARIFFS.

CONGRESS GAVE THE PRESIDENT THIS POWER PRECISELY FOR MOMENTS OF ECONOMIC DISRUPTION AND FOREIGN THREATS.

NATIONAL EMERGENCIES HAD BEEN DECLARED, AND TARIFFS ALLOWED THE PRESIDENT TO RESPOND TO REAL THREATS TO THE U.S. ECONOMY AND AMERICANS.

THE BUSINESSES COUNTERED THAT IEPPA WAS NEVER INTENDED TO AUTHORIZE OPEN-ENDED TARIFFS ON EVERY TRADING PARTNER. IF IT WAS, THEN CONGRESS HAD SURRENDERED ITS MOST FUNDAMENTAL ECONOMIC POWER--AND, IMPROBABLY, IT TOOK NEARLY 50 YEARS FOR ANYONE TO NOTICE.

"REGULATE IMPORTATION" CANNOT MEAN CONGRESS HANDED THE PRESIDENT THE POWER TO REWRITE THE ENTIRE GLOBAL TRADING SYSTEM.

A DISTRICT COURT JUDGE RULED SWIFTLY: THE TARIFFS EXCEEDED PRESIDENTIAL AUTHORITY UNDER IEPPA.

CONGRESS DID NOT INTEND FOR THE LANGUAGE "REGULATE IMPORTATION" TO DELEGATE THE AUTHORITY TO IMPOSE TARIFFS.

THE SUPREME COURT THEN CONSOLIDATED THE CASES AND AGREED TO TAKE THEM UP ON AN EXPEDITED BASIS...

...A SIGN OF HOW URGENTLY THE JUSTICES VIEWED THE CONSTITUTIONAL STAKES.

BEFORE THE SUPREME COURT, THE GOVERNMENT'S ARGUMENT RESTED ON IEEPA'S TEXT THAT "REGULATE IMPORTATION" ENCOMPASSED TARIFFS...

THE PHRASE "REGULATE IMPORTATION" PLAINLY EMBRACES TARIFFS, WHICH ARE AMONG THE MOST TRADITIONAL AND DIRECT METHODS OF REGULATING IMPORTATION.

...AND ON THE PRESIDENT'S LONG-RECOGNIZED AUTHORITY OVER ANYTHING TOUCHING ON FOREIGN AFFAIRS.



COUNSEL, WHY EXACTLY DOES THE MAJOR QUESTIONS DOCTRINE NOT APPLY TO THE PRESIDENT IN THIS CASE?

IT'S NATURAL TO EXPECT CONGRESS TO CONFER MAJOR POWERS TO ADDRESS MAJOR INTERNATIONAL CRISES.

SEVERAL JUSTICES RAISED A CONSTITUTIONAL PRINCIPLE THE SUPREME COURT HAD INVOKED FREQUENTLY IN RECENT YEARS: THE "MAJOR QUESTIONS" DOCTRINE.

THE IDEA BEHIND THE MAJOR QUESTIONS DOCTRINE IS THAT WHEN A PRESIDENT CLAIMS AUTHORITY WITH ENORMOUS ECONOMIC AND POLITICAL CONSEQUENCES, CONGRESS MUST HAVE GRANTED THAT POWER CLEARLY--BECAUSE PRESIDENTS CANNOT FABRICATE HUGE, NEW POWERS FROM VAGUE LANGUAGE.

STUDENT DEBT IS OUT OF CONTROL, BUT CONGRESS REFUSES TO HELP. FIND A WAY!

I MAY HAVE ONE!

IN 2023, MOST OF THE COURT REJECTED PRESIDENT BIDEN'S ATTEMPT TO USE A NEARLY 20-YEAR-OLD STATUTE IN A NEW WAY TO FORGIVE OVER \$400 BILLION IN STUDENT LOANS.

Ed. Regulations

Ed. Laws

THE BUSINESSES' ATTORNEYS ARGUED THAT THE MAJOR QUESTIONS DOCTRINE REQUIRED CONGRESS TO CLEARLY GRANT SUCH ENORMOUS POWER OVER TARIFFS...

NOT SO FAST--

WE EXPECT CONGRESS TO SPEAK CLEARLY ON DECISIONS OF THIS ECONOMIC AND POLITICAL MAGNITUDE.

THE TARIFF POWER IS SOLELY CONGRESS' POWER. THERE MUST BE A PRESUMPTION THAT CONGRESS SPEAK CLEARLY BEFORE IT IS DELEGATED TO THE PRESIDENT.

...AND THE PHRASE "REGULATE IMPORTATION" FELL FAR SHORT OF THAT STANDARD.

