

OPINION

# Would the International Emergency Economic Powers Act Help Trump?

The candidate could potentially use the act to advance his national security plan.

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Over the past two weeks, Donald Trump has outlined his economic plan and his national security plan, reiterating some of the primary tenets of his campaign: The United States is threatened by a host of actors outside of our country, including China, South Korea, Mexico and the Islamic State group.

In his descriptions, the threats are manifest in various ways—immigration, unfavorable trade agreements, offshoring and outsourcing, and currency manipulation, to name a few. Trump's positions on trade and national security articulate a muscular U.S. response to these threats, but provide very little detail on the statutory authority to advance his agenda other than a reference to the Patriot Act as a basis for compelling Mexico to construct a border wall. This raises the question: How would he implement his international economic and national security provision under U.S. law?



The expansion of the presidential use of the International Emergency Economic Powers Act, 50 U.S.C. 1701-1707, offers one possible answer, which if applied in a novel and unprecedented manner could have significant consequences its authors did not foresee.

Enacted in 1977, the IEEPA provides the president with authority

to undertake a wide range of actions in response to “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.” For example, the president may investigate, regulate, void, prevent or prohibit any acquisition, importation,

exportation or dealing in transactions involving property in which any foreign country or a national thereof has an interest, subject to the jurisdiction of the United States.

## USED FOR SANCTIONS

The IEEPA has historically been used by presidents to implement U.S. sanctions on foreign parties and persons. For example, in 1979, President Jimmy Carter issued Executive Order 12170, by which the United States imposed sanctions on Iran. Every president since Carter has used the act for similar purposes—most recently in March 2016, President Barack Obama used it to enact measures against North Korea.

Despite the act's broad authority, federal courts—comforted by the fact that Congress can terminate a declaration of national emergency by joint resolution—have held the IEEPA does not represent an unconstitutional delegation of authority to the president. In fact, the act was passed in an effort to limit the president's authority to declare an indefinite state of national emergency during peacetime.

As the U.S. Court of Appeals for the Third Circuit wrote in its May 2011 ruling in *United States v. Ali Amirnazmi*, "IEEPA removed certain tools from the President's peacetime kit. ... IEEPA subjected the President's authority to a host of procedural limitations designed to ensure Congress would retain its essential legislative superiority in

the formulation of sanctions regimes erected under the Act's delegation of emergency power."

Trump does not have a record of public service that can be examined to determine whether he will break with presidential tradition and expand the use of IEEPA to accomplish his goals. However, the use of the act to single out foreign actors correlates closely with his transactional and litigious approach to issue resolution. The act is ideally suited to the task of extracting concessions and punishing recalcitrant partners—providing the ability to act quickly and unilaterally to respond to a wide range of perceived crises involving vexing third parties.

Examples of IEEPA's potential use by Trump abound: a Trump administration could attempt to wield IEEPA to restrict imports from Mexico, China, South Korea or other countries during North American Free Trade Agreement, World Trade Organization or other free trade agreement renegotiations or disputes. To the extent that immigration laws fall short in furthering Trump's plans for "extreme vetting" or other similar measures, IEEPA could provide additional authority to take action, such as seizing the assets of persons deemed a threat by a Trump administration. Emerging issues during his presidency could be afforded similar treatment.

Such actions would be subject to review by Congress, constitutional and statutory claims in U.S. federal

courts, and challenges from U.S. trading partners under international dispute-resolution mechanisms. To the extent they conflict with the will of Congress or are deemed by federal courts to violate the IEEPA or Constitution, they could be challenged and possibly overturned, but not before the actions are executed and their effects are felt.

Although directed at foreign actors, the consequences would have repercussions, unintentionally or otherwise, for companies, consumers and workers within the United States and could be used indirectly to target uncooperative or U.S. companies or those otherwise critical of Trump.

The lifting of the era of restraint in the use of IEEPA should not be viewed as unthinkable or far-fetched. Indeed, Congress should examine this issue now and make clear whether it would view such uses of IEEPA as proper. As Americans go to the polls, they deserve a clear statement of where the candidates and their representatives stand on a question affecting U.S. trade relations and national security, and the separation of powers between the political branches of government.

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