

I. The Candlemakers' Petition

The year is 1845 and in Paris, French Candlemakers are growing concerned. Their industry, handed down from generation to generation, has thrived based, in no small part, on their careful and caring craftsmanship. It is their attention to detail that distinguishes them from competitors from other countries.

Their craftsmanship has opened up new opportunities in related fields, and soon they control not just the candle industry but every aspect of French lighting. The Candlemakers dominate the market in house lamps, streetlamps, oil lamps, snuffers and candle extinguishers. They even control the markets in the raw materials used to light the darkness.

Now they perceive a growing economic threat from a foreign intruder. The Candlemakers have petitioned the French Chamber of Deputies to seek trade protection from the foreign competitor because they cannot compete with its lower cost structure.

The Candlemaker's begin their Petition by expressing their gratitude to the Deputies for resisting the trendy Free Trade theory, adopted by the English and other European nations. The Free Traders have accepted the theme of Adam Smith's 1776 book, *The Wealth of Nations* which is based upon.

Ricardo's, "Law of Comparative Advantage." In Smith's view, a nation (say, "Country A") should stop protecting its own industries when an opportunity arises to take advantage of Country B's comparative advantage. Country B will, in turn, reciprocate by purchasing goods from Country A (or, perhaps some other nation) when it has a comparative advantage that allows for more efficient production. Pretty soon, all individuals all over the world benefit from avoiding inefficient use of resources, concentrating instead on producing only those products where they hold the advantage.

The Candlemakers considered this a barrel of woke nonsense and their Petition is summarized as follows:

"Dear Deputies, we honor your foresight in not falling for the Free Traders' short-term benefit of allowing the import of cheap substitutes for the French goods which have brought prosperity to our producers, their laborers and, ultimately, our fellow citizens. Your protectionism has brought honor to our country. We salute your allegiance and offer you the opportunity to expand your love of country by recognizing a threat to our industry from a foreign rival.

This rival floods the market with light provided far cheaper than ours. In fact, it is so cheap that the moment he appears, our customers desert us for him. They don't seem to realize

that they are deserting not just us but our beloved France! We fear that if left unchecked, he will destroy us.

THE RIVAL IS NO OTHER THAN THE SUN!

We ask for a law to require every window, door, crack, crevice or opening, no matter how small, in every French home be shuttered during daylight hours. This law will ensure that our industry, which has stood by its citizens, is not abandoned by them in our time of strife.”

I edited the Petition of the Candlemakers (written by Frederic Bastiat and published in an 1845 edition of the *Economist*). It is attached in its entirety to my paper. The Candlemakers’ lament, though written 180 years ago, contains many of the same arguments made over Protectionism (and more specifically, Tarif Protection) from Independence Day in 1776 to President Trump’s April 2nd declaration of “Liberation Day.”

Here is a summary of the Candlemakers’ arguments in support of protectionist laws. Listen for the arguments which mirror those from recent news stories concerning the recent Trump tariffs:

- The increased use of tallow (animal fat used to produce candles) from sheep and cows, will increase demand for those animals, which will increase the demand for their grazing meadows; and that will lead to more production of meat, wool, leather and, most of all, manure.
- The increased demand for lamp oil will increase the supply of Olive trees, which will grow abundantly on the fields and meadows due in part from the increased level of manure.
- Navigation will benefit as thousands of ships are built and sailors are employed to obtain the whale oil.
- The increase in the whaling fleet will provide a secondary benefit by strengthening our national defense.
- All of France, from the miserable miller to the poorest vendor of matches will benefit from the protectionism granted the Candlemakers.
- The Free Trade rationale ignores the benefit to France of owning its own sources of light. The argument that our gain as producers is offset by the loss to the Consumers from cheap sunlight is shortsighted.
Don’t forget that the Chamber adopted the position taken in our Petition in its past decisions. You have always favored job creation and high wages over consumer price increases.
- We know you are not hypocrites so just as you stood by French producers of coal, iron, corn, wheat and

cloth despite demands from consumers for cheaper goods imported from other nations, please stand by us now.

- The Chamber has always said that the consumer wins when the producers win. In fact, you made the argument that the consumer and worker are one and the same. So, when you shut out the Sun, adding to the candlemakers' wealth, it allows us to spread our profits to our employees - who become consumers with the wealth we share.
- Remember the stiff tariff you imposed on oranges from Portugal? You reasoned that French orange producers deserved protection because Portuguese prices were only lower due to the natural warmth and longer growing season provided free of charge to Portugal by you know who; yes, that pesky enemy of France, the Sun. You set a tariff equal to the gratuitous advantage derived by the Portuguese based only on its location in a place where Mr. Sun shines longer. You did not give in to the Law of Comparative Advantage; you stood proud for France and its oranges. Well, under the same logic, you should grant us the same protection by passing our proposed law to ban the Sun's daytime product (he calls it "Sunlight") because it is 100% gratuitous.
- You nationalist Deputies did not stop with oranges either. Whether coal, iron, cheese or cloth, if it arrives in France cheaper as the result of lower costs than incurred here in France, you adjust the price with a tariff so that the French producer is allowed an even playing field and our workers' wages are preserved.

Deputies, here is the question we urge you to consider before voting on our Petition: Do you side with consumers and allow them the benefits presented in our case where the light is 100% free during the day, or will you stand with France and eliminate the gratuity received by foreign producers by banning the daylight in order to protect our labor, our investment and the country itself? (Remember those whaling ships added to our national defense!) Pick one or the other, dear Deputies but, please, be consistent.

(Note to Reader: Monsieur Bastiat's work was heavily edited by Monsieur GiaQuinta.)

You may be thinking, "Have I come to the right Quest Club meeting?" What does the price of candles in mid-19th Century France have to do with the History of American Tariff Laws? The Answer is a little bit of everything, thanks to the clever manner in which Bastiat posed the battle between Protectionism and Free Trade in his witty yet clever *Petition of the Candlemakers*. The seeming hypocrisy of the French

Trade Deputies in allowing daytime sunlight into French homes is less political or intellectual inconsistency as it is a reflection of the difficulty countries have choosing between the lofty aims of the Free Traders and the more pragmatic necessities of one's national interests; especially in a world where other nations are protecting their own economic and political agendas

This paper will discuss how the United States has vacillated between those competing interests throughout its history, beginning with the Revolutionary War up to the recent imposition of the Trump tariffs.

Along the way, I intend to lean into my personal love of Economics, which began as an undergraduate teaching assistant to Professor George Wilson in 1974. so be prepared, I may call on you!

I will conclude my paper by switching back to my attorney hat with an explanation of the case *Learning Resources, Inc.*

v. Trump which is pending before the United States Supreme Court. That case will likely decide whether the Trump tariffs passed under the International Economic Emergency Powers Act ("IEEPA") should be stricken for failure to meet the Constitutional constraints of art. 1, sec. 8 of the United States Constitution which delegates the power to impose tariffs to the Legislative Branch.

II. Tariffs in the United States

A. 1750 - 1850

There is no finer book on the history of trade and markets in the United States than the book, **Opening America's Market: U.S. Foreign Trade Policy Since 1776**, written by Alfred E. Eckes, Jr. I became quite frustrated in my attempt to provide a comprehensive look at the history of U.S. tariffs. The librarians and I searched in every corner of the library but to no avail. I stumbled across Dr. Eckes' masterpiece late in my research in a link. It is essential reading for anyone interested in the complete history of U.S. tariffs. I immersed myself in Dr. Eckes' beautifully written summary of Free Trade and Protectionism dating back to before the Revolutionary War. I urge those of you who love history or those who would like to better understand the complexity of trade and tariffs to check out his book on the **Hoopla App** or look for the book on Amazon. If only our national leaders would read his version of tariff history, the country might just avoid the many mistakes chronicled in his book, some of which I believe are now unfolding.

The history of tariff laws in the United States necessarily begins in the period prior to independence amidst pervasive Mercantilism. Mercantilism is defined in *The History of World Trade Since 1450* (Thomson Gale, J.J. McCusker, ed.

2006) as an "economic policy regime characterized by state intervention to protect domestic merchants and manufacturers." Smith's, *The Wealth of Nations*, describes it as a commercial system "based upon the popular folly of confusing wealth with money." The Mercantilists clung to the belief that the world held a fixed amount of wealth (in the form of gold and silver) requiring nations to fight for as much of it as they could control. Trade was viewed as a "zero sum game."

Mercantilism calls for domestic production of goods and the exportation of any excess, while resisting the urge to import goods. Mercantilists believe that since importing requires parting with a portion of the nation's store of gold or silver, it will result in a loss of national wealth and its status and power along with it. Mercantilism stresses protectionism and tariffs to protect domestic production and discourage imports.

Adam Smith belittled the Mercantilists as crude thinking. He believed that countries who engage in taking advantage of each other's comparative advantages (resulting in their specialization of particular goods) will experience a positive sum game for each. He urged breaking the bonds between government and business to allow the invisible hand of free markets to direct production to the country where it is most

efficient. In the end, everyone benefits by avoiding waste by allowing the production of goods where it is most efficient.

Smith also believed that governmental involvement in markets to achieve non-economic goals only results in the inefficient allocation of resources to the detriment of all.

The Free Trade philosophy began spreading among the more developed nations but, as we know, every action has a reaction. The Protectionists would not be so easily defeated, and this came to include many of our founding fathers by around 1820, as will be addressed below.

B. Free Trade Followed by a Resurgence of Protectionism.

As Smith's push toward Free Trade in the late 18th Century and beyond, did not extinguish the protectionism of the Mercantilists. From the publishing of Adam Smith's magnum opus to this day, there was resistance from countries struggling to compete with more established nations. John Maynard Keynes was among those who took issue that trade policy should occur inside an economic bubble. (See, *Keynes 'Support for Broad Tariffs*, Rechenberg, Coalition for a Prosperous America, October 28, 2024). Those challenging a pure Free Trade policy defended a limited use of Protectionism as the only way infant industries would ever compete with the established economies of Europe.

The history of US trade policy from 1776 through 1850 vacillated between the two philosophies. The changes in policy were based upon our status as a developing nation as well as ever-changing foreign policy goals and revenue requirements. (See, Eckes, *supra*: Chapters 1-3)

The US had experienced the impact of the pre-Smith, English Protectionist policy and initially subscribed to his Free Trade roadmap to prosperity. In 1774, Benjamin Franklin proclaimed, "No Nation was ever ruined by trade, even, seemingly, the most disadvantageous." (Eckes, Chapter 1, p.33-34).

Eckes describes both Thomas Paine and Thomas Jefferson view that Free Trade was a natural, human right. As a Virginian, Jefferson, in particular, was attracted to the Law of Comparative Advantage. In 1785, Jefferson wrote in his *Notes on Virginia* on the need to take advantage of the economies of scale in the US agricultural industry, an advantage absent from the nascent U.S. manufacturing industry. He argued for a policy that would trade our established agricultural production for the machines produced by the English; a position that fell right in line with the Free Traders and Law of Comparative Advantage upon which it was based. Both Jefferson and John Adams argued for complete equality in the treatment of trading partners,

news not received well by the French, who bristled at equal treatment with the British, who they had fought on behalf of the colonists.

And the question, “Who Pays the Tarif?” (raised by the Candlemakers in their 1845 Petition and in today’s news stories) was on the minds of our Founders as they pondered the words of Adam Smith that, “The interest of the Consumer is almost constantly sacrificed to that of the producer.” (Eckes, *supra*, p.36). Since the U.S. relied entirely upon tariff revenue to run the government, it allowed them to espouse Free Trade principles while claiming that tariffs were acceptable when imposed for revenue collection only. Treasury Secretary Alexander Hamilton was one of the first to understand the limits of Free Trade philosophy in the face of establishing the U.S. manufacturing base. He began lobbying for a more pragmatic approach that recognized the unfairness of competing with the mature English manufacturing sector.

C. The Constitution Divides Commerce Powers.

As the Free Trader v. Protectionist debate was unfolding, our forefathers were busy with another important task, the drafting of our Constitution in 1789 to replace the Articles of Confederation.

As an ardent Red Sox fan (my dad was born in Brockton, Massachusetts and took me to my first major league game at Fenway) I was amused to learn that under the Articles of Confederation Massachusetts levied a tariff on both New York and Rhode Island (take that, Yankee fans!). Not to be outdone, Pennsylvania passed a tariff law on all of New England. Before things got totally out of hand, the drafters of the Constitution banned the practice taxing domestic production. King George and his “Taxation Without Representation” policies was fresh in mind leading the drafters to split the commerce powers between the legislative and executive branches. Article I, Section 8 gave to Congress the right to impose “duties and customs” and Article II, Section 2 gave the President the authority to execute treaties with other nations in the form of trade agreements.

Shortly after the adoption of the Constitution, in 1796 George Washington gave his famous farewell address which included a warning to future generations. Eckes notes that Washington issued three warnings: that commerce be kept separate from alliances with other countries, that the country avoid becoming entangled in other’s disputes and that the U.S. show no preferences with its trading partners. (Take that France!)

D. The English Dump and the U.S. Protects.

By the turn of the 19th Century, the U.S. average tariff rates were about 8.5% due to the country's revenue requirements (the passage of the 1913 Income Tax was over one hundred years away). But our nation's early leaders were aware of the predatory instincts of their former King. While convenient to fall back on the need for revenue, the U.S. began tilting toward protectionism in response to the British decision to begin dumping its products on the U.S. in order to derail our infant industries. Eckes treatise quotes the English commerce minister, Lord Brougham's, observation that the sale of artificially low-priced goods to the U.S., "was well worth the loss to keep the United States from establishing industry." (See, Eckes, pg. 57, 58).

By around 1820, Jefferson, Adams and Madison had all but switched sides in the Free Trade/Protectionism debate. This followed the first imposition of a tariff to protect iron manufacturing (30%) in 1816. Free Trade soon came to be criticized by its detractors as, "Romantic Philanthropy" requiring a considerable leap of faith that those receiving U.S. payments for imports would reciprocate; especially given the state of the U.S. infant economy.

The Whig Party adopted the protectionist plank it is party's platform, pushing for tariffs in the same tone and substance

as the literary French Candelmakers. Lincoln adopted a strong pro-tariff position in the election of 1860 while the Democrats argued for Free Trade and lower tariffs. However, in every period there are examples where the sides changed based upon the prevailing mood in the country and in our foreign relations. One thing stands out: there is not a single issue being discussed during the present-day debate over tariffs that was not the

topic of debate throughout the 19th Century and beyond. For example, Protectionism in the 1850s was touted as a pro-labor, wage protector which resulted in a strange alliance between organized labor and business management. This is a quote from Pennsylvania Congressman Andrew Steward:

"Repeal the tariff, adopt free trade, and you will bring down labor here, in every department of industry, to the level of the labor of the serfs and paupers of Europe."

And Andrew Jackson's quote, "Forget their paupers lest we shall all be paupers ourselves."

By the end of the 19th Century, Eckes notes that, "Protectionism was the bulwark of the Republican Party." (See, Eckes, p.83) From the period between 1871 and 1913 tariff rates remained above 38%, the "Golden Era of Protectionism. There were intermittent Free Trade periods, most notably the elections of Grover Cleveland. Cleveland

spoke passionately about the impact of tariffs on consumers during periods of high inflation, but his terms did not change the overall acceptance of protectionist principles, although he cloaked them as a “tariff for revenue only” message reminiscent of the country’s early years.

With apologies to my friends who asked for a detailed examination of the Smoot Hawley tariff, time simply does not allow that here; but nor shall it be ignored. Almost every Quest paper includes an “aha” moment with the discovery of contrary views which clash with conventional wisdom. In this paper, it was the impact of the Smoot/Hawley tariff of 1932, widely viewed as the cause of the Great Depression.

My research, especially the Eckes explanation of Smoot Hawley, caused me to rethink its impact. Eckes and others note that the Depression was underway when the gargantuan tariff 60% tariff was passed and it continued another four years after FDR and Congress reversed course. In an article entitled, “Spare us the Ghosts of Smoot Hawley” by Robert Kuttner, he compliments Eckes’ work debunking the conventional wisdom and points out that “trade in duty-free products declined just as much as the ones subject to the tariff.” Those interested in rehabilitating poor Smoot may google whether his tariff really caused the Great Depression for a lively debate on that issue.

Regardless of one’s opinion of Smoot Hawley, the Democrats reduced tariffs in the mid-30s and they remained relatively low throughout then next eighty-five years (other than tariffs to protect the steel industry) until the election of Donald Trump in 2016 who in 2018, declared, “I love tariffs!”

III. Trump’s Tariffs and the Constitution.

When this topic was proposed, I doubt anyone would have predicted that it would conclude with an analysis of the Constitutional limits and constraints on the most far-reaching tariff campaign in over 100 years; but here we are. The past year has seen the average tariff level across all goods increase from under 3% to over 18%. But it is not just the prolific use of tariffs which is changing history but also the manner in which he has imposed his tariffs.

The Trump Administration tariffs which are being challenged in the Supreme Court will have significant impact on their future use in attempts to achieve non-economic objectives and decide complex separation of powers issues. In the case, *Learning Resources, Inc. v. Trump*, the Court will decide the extent to which the Congress may abdicate its authority under art. I, sec. 8 to establish duties on imported goods. The outcome of the case will not only decide the future of Trump’s Liberation Day tariffs, it will decide the future of tariff setting in the United States. The case is on an

expedited path to resolution before the Supreme Court. Oral argument was heard on November 5, 2025, and a decision is expected soon.

Recall that the Continental Congress was reluctant to place tariff-setting in the hands of a single public official.

Hamilton, who as Secretary of Treasury was more pro-tariff than his contemporaries (after all, he had a government to fund), expressed concern over whether the executive could withstand the temptation for riches which could arise in the process of deciding whether to grant or remove tariffs. It was decided to give Congress not just the “power of the purse” but also the power to raise tariff revenue.

In Douglas Irwin’s book, *Clashing Over Commerce: A History of U.S. Trade Policy 2* (2017), Irwin asserts that although Presidents may not like it, Congress must be involved in major changes in trade policy that include the imposition of tariffs. This does mean that the executive has no role in the tariff process; in fact, some might argue that the President wields significantly more power than any other individual in government. But the President’s power is derivative and starts with an act of Congress. For example, Congress passed legislation in 1974 to allow the President to impose tariffs “to deal with large... trade deficits” so long as the tariff did not exceed 15% and expired after 150 days. (See Trade

Act of 1974). Title 19 of the US Code includes other examples of Congress extending tariff-setting authority to the Executive, which shared decision making recognizes the duty of the President to ensure that the laws of the United States are faithfully executed under art. II, sec. 3 of the Constitution. In each and every grant of tariff authority, Congress must retain oversight responsibility to avoid a constitutional challenge over an illegal delegation of an express power from one branch of government to another.

Should Congress delegate authority to the Executive branch in the absence of retaining its own power of review, there exists the danger that its legislation violates a duty imposed upon it by the Constitution. Congress has retained some degree of control to avoid such challenges in each legislative enactment extending tariff-setting to the Executive. Perhaps the best-known example of Congressional power-sharing is the Trade Expansion Act of 1962 in which the President is authorized to impose tariffs to protect the security of the United States. These tariffs are commonly referred to as Section 232 Tariffs. Congress was careful to retain the right to rescind such tariffs and required periodic reporting and/or subsequent approvals. The same limitations exist in Section 301 tariffs which may be imposed by the President to prevent unfair trade practices. Like the Section 232 tariffs, Congress retained the right to investigate the effects of

tariffs imposed under Section 301 and, although it has never done so, may pass a joint resolution terminating such tariffs.

This brings us to the 2025 Trump tariffs which were enacted on February 2, 2025 and thereafter. Trump described the tariff announcements as, “one of the most important days in American history.” (CBS News Report, April 2, 2025). The Trump tariffs raised alarm, not just due to their projected scope, but due to the statute relied upon to impose them - the International Emergency Economic Powers Act (commonly referred to as IEEPA.)

In their brief to the Supreme Court, the Learning Center Plaintiffs (and more recently Costco in its suit filed on November 28, 2025) state that, “No President in IEEPA’s history has relied on that law to issue any tariff” (Petitioner for Certiorare, p. 1) and for good reason since IEEPA, unlike other tariff-authorizing laws, never mentions granting the Executive tariff-setting power.

Moreover, the scope of the IEEPA tariffs is staggering. So, not only did Trump use a statute with no direct authority (and therefore no retained Congressional authority), he did so on a scale not seen in a century. Learning Centers brief cites JP Morgan analyses which include the following points:

- The IEEPA tariffs will likely hike taxes on Americans by 660 billion dollars annually.
- They will cause an increase in CPI of 2%.
- They will increase the US average effective tariff rate from 2.5% to 27%; and
- They will constitute the highest effective tariff rate in more than a century. (Citing, Sudeep Reddy, Politico, April 10, 2025).

Of course, these dire predictions rest upon the assumption that the tariffs Trump imposed from February through June, 2025, will remain in place since many have already been rolled back in reciprocal trade agreements. That is what occurred with respect to Japan, England and more recently, Brazil (due to the predicted increase in coffee prices). In a more critical discussion, the Chinese agreed to attempt to reach an agreement which non-agreement was announced by the Administration with great fanfare. As the President announced progress with China, the latter continued to solidify its trade agreements with the BRICS alliance (Brazil, Russia, India, China, Saudi Arabia and 12 other countries).

The emergence of BRICS demonstrates a hard truth, a strategy to isolate a country like China while imposing universal tariffs against those needed as allies is, well shall we say, doomed from the start?

But back to the issue before the Court, which is neither the magnitude of the IEEPA tariffs nor the trade agreements it

has or has not spun of. The Court is deciding whether these tariffs should have been
1
imposed in the first place.

Here is the dispute in a nutshell. The Administration claims that IEEPA contains language that allows the President to deal with “unusual or extraordinary” threats from outside the US. Section 1702 of IEEPA lies at the heart of the case: it states the President may:

investigate, block during the pendency of an investigation, *regulate*, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, *importation or exportation of*, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, *any property in which any foreign country or a national thereof has any interest by any person, or with*

¹ As a side issue, the Court will decide whether the issue of the Constitutionality of a tariff may bypass the Court of International Trade (CIT) (which has jurisdiction over tariff disputes) and proceed directly to the Federal District Court as the pending case did. Costco filed its case in the CIT as a pure refund case.

***respect to any property, subject to the jurisdiction of the United States.* (50 USC Section 1702(a)(1)(B)).**

I placed the key words in italics. If one reads only the italicized words, it becomes clear that the “key question” is whether the words “regulate ...importation” constitute a Congressional grant of authority to the President to impose tariffs. When a court interprets the legislative intent of a statute, it looks at several sources. The answer is found in:

- 1) the plain meaning, 2.) the context in which the statute is passed into law, 3.) the legislative history indicating from committee meetings and such, and 4.) Constitutional principles.

Those four factors were presented in two cases which examined the questions – one was initiated in the CIT and the other case was initiated in Federal District Court for the Washington, D.C. District. In both cases, the Court decided that IEEPA did not bestow the power to impose tariffs.

Here are the main takeaways from the oral argument before the Supreme Court on November 5, 2025:

Constitutional Interpretation.

- The word “regulate” appears in the Constitution but is not used in art. 1 section 8 which gives to Congress “the power to lay and collect Taxes, Duties, Imposts, and Excises.” Since the Constitution delegates the right to impose duties on Congress but does delegate the duty to *regulate* commerce and IEEPA uses the term regulate, there is a disconnect when the President contends that a statute authorizing regulation also includes the right to impose duties
- The Supreme Court in *Gibbons v. Ogden (1824)* addressed the difference between the powers to tax and regulate. Justice Marshall noted that they are separated into two different sections of the Constitution and are not used interchangeably in any single Constitutional section.
- Whenever Congress has authorized the President to impose a tariff it has expressly used the word *tarif*; When it has authorized the President to regulate commerce, it has expressly used the word *regulation*. But it has never used the terms interchangeably and no President has ever used one of the two grants of authority to perform the other.

Plain Meaning.

- The OED defines “regulate” as “control by rule” or “subject to restrictions.”
- Random House Dictionary defines “tarif” as “imposing duties or customs ... on imports or exports.”

- Past case law has determined that the essential characteristic of any tax is that it “produce at least some revenue” (*Nat. Fed’n of Indep. Bus. V. Sebelius*, 537 US 519, 564 (2012)).

IEEPA Itself.

- Perhaps the strongest argument against the use of IEEPA to impose tariffs is the statute itself. It never uses the word *tariff*! Congress has given the President broad powers to regulate imports through licensing and sanctions, both of which have occurred through the use of IEEPA but when Congress has intended to authorize tariff-setting, it has used the word tariff.

Unconstitutional Delegation.

- Finally, if IEEPA is interpreted to allow the President to impose tariffs of the magnitude enacted earlier this year with no mention in the law nor any provision with which to review them, the entire statute could be overturned as an improper delegation of authority in violation of the Constitution.

SUMMARY OF IEEPA TARIFFS

It is worth noting that the President did not simply dip his toe into the IEEPA stream; he performed the equivalent to the Rodney Dangerfield Triple Lindy. He issued tariffs and rescinded them on successive days in some cases. For example, here is the history of the IEEPA tariffs imposed on China from earlier this year up to October:

- February 1: additional 10% tariff on China for its failure to address the Synthetic Opioid Supply;
- March 1: doubled the drug related tariff to 20%;
- April 2: Eliminated an exemption from tariffs on goods under \$800;
- Also on April 2, the President imposed a 10% tariff on all trading partners with higher rates ranging from 11% to 50% on a country specific basis.
- The President was not finished. On April 8, in response to retaliatory treatment from China, he raised their tariff by another 50% to 84%.
- After considerable thought and deliberation (a little tongue in cheek) the next day, April 9, the President suspended all of the uniform tariffs on the rest of the world for 90 days, *except for China*, which he raised yet again from 84% to 125%. Meanwhile, the original 20% fentanyl tariff was left in place which took the tariff on China to 145%.
- This 145% tariff remained until May 14 when the President paused the reciprocal tariff on China for 90 days but retained the 20% drug trafficking tariff and universal 10% tariff.
- Two weeks later on May 30, things got serious. the President issued the following post on Truth Social: **China “HAS TOTALLY VIOLATED ITS**

AGREEMENT

WITH US... So much for being Mr. NICE GUY!"

Trump imposed significant IEEPA tariffs on Brazil (40%), India (25%), Japan (15%) and China and Section 232 (National Security Tariffs) applied globally on steel and aluminum at 50% except for England at 25%. If the IEEPA tariffs are found to have been imposed improperly, the refund issue, discussed below, must reflect the imposition chaos which will present its own complexity.

Regardless of where the tariff spinner comes to rest, the Trump tariffs are historical by any measure. The average tariff rate has risen from 2.5% to about 18%, its highest average rate since, the Smoot Hawley tariffs of 1932.

In the wake of these tariffs, the President suggested last week that tariff revenues will reach into the trillions (they currently stand at about 250B). He predicted that the revenue is growing so fast that it may even allow for the elimination of the Income Tax! Also last week he tied Nucor's announcement of a new steel mill to the imposition of his tariff policy. **Disclaimer:** New billion-dollar steel mills

are not usually conceived, planned and announced within a six (6) month period so the cause and effect cited by the President should be looked at cautiously.

I decided to skip over the mechanics of the reporting requirements imposed on importers with the U.S. Customs and Border Protection Agency (CBP). I did, however, discuss the topic with a woman whose job it is to file the paperwork and make the ACH payments to CBP on behalf of her employer. The number of changes has, not surprisingly, created significant challenges for importers trying to file accurate and timely reports; she said it is a nightmare.

WHAT HAPPENS NEXT

It has not been easy summarizing the history of tariffs in the U.S. in the midst of an historical shift in tariff policy by the Trump Administration. But the shift is not just in the nearly 10-fold increase in the average tariff numbers. The more important change, in my opinion, is the dramatic shift back to the use of tariffs to achieve foreign policy, political and other non-economic goals. But regardless of the rationale, the current policy signals the advent of a robust period of protectionism unlike anything we have experienced since the period beginning in about 1850 through 1932.

This morning, I awoke early to add this week's tariff news to my paper because Costco filed suit seeking the return of the amounts collected from it by CBP since the February announcement of the IEEPA tariffs. Costco and other importers face deadlines to file challenges which, if missed, will result in the waiver of refunds. Some legal commentators have suggested that the Court may rule prospectively only or preserve

refunds for only those companies with active cases. Whether this prompted Costco's suit is between the company and its lawyers.

Costco, like many importers, did not pass on the IEEPA tariff costs to its customers as it watched the unfolding legal challenge. It will be interesting to see how the Court handles refund requests to companies who did pass the costs to their customers. In that case, the Court may have to decide who is entitled to the refund and how to find them. Costco, unlike Learning Centers, filed its claim in the Court of International Trade (CIT). Costco joins Kawasaki and others who hope to recoup the billions in payments of IEEPA tariffs should the Supreme Court rule against the Administration.

The potential refunds of IEEPA tariff revenue plus back interest will add yet another historical milestone to the country's tariff tale, since never in our history has the treasury been required to pay tariff refunds in the hundreds of billions. No one can predict how or even whether the government will meet the logistical challenges of refunding the amounts owed.

After going back over my paper, especially the cleverly written 1845 Petition, it occurred to me that the solution to the current tariff dilemma may be beyond the grasp of human capability. Perhaps it will take the intervention of a higher being. In that vein, I suggest we leave today's meeting and make our way a few blocks east to the Cathedral of the Immaculate Conception where we borrow a page from one of the traditions of Catholic prayer by walking to the vestibule and in honor of Frederic Bastiat, we proceed to the back vestibule where each of us might strike a match and light a candle!