

President Trump Announces New Sanctions Against China? Not Yet.

August 28, 2019

On August 23, 2019, U.S. President Trump wrote on his Twitter feed ([@realDonaldTrump](#)) that “[o]ur great American companies are hereby ordered to immediately start looking for an alternative to China.” He later cited the International Emergency Economic Powers Act (“IEEPA”) as authority for such an order.

What Does the President’s Statement Mean? The statement appears to threaten China with some form of U.S. economic sanctions targeting U.S. business’ relationships with China, particularly local manufacturing activities.

What is the U.S. Law Cited by the U.S. President? IEEPA authorizes the U.S. President to restrict transactions involving a foreign country or national after declaring a “national emergency” with respect to an “unusual and extraordinary threat” to the “national security, foreign policy, or economy of the United States,” “which has its source in whole or substantial part outside the United States.” See 50 U.S.C. § 1701. IEEPA, in some cases supplemented by more specific statutes, forms the basis for most U.S. economic and financial sanctions, including the sanctions targeting Iran, North Korea, Russia, Syria and Venezuela. A report issued in March 2019 by the Congressional Research Service indicates that U.S. Presidents have declared national emergencies under IEEPA 54 times, 29 of which are still ongoing.¹

Once the U.S. President has made the required declaration of emergency, the U.S. President has wide-ranging powers. These include the authority to “investigate, regulate, or prohibit” (i) “any transactions in foreign exchange”; (ii) any “transfers of credit or payments between, by, through, or to any banking institution” involving a foreign national or country; and (iii) “the importing or exporting of currency or securities,” as well as the authority to restrict dealings involving, or freezing, the property and property interests of foreign nationals and countries, in each case “by any person, or with respect to any property, subject to the jurisdiction of the United States.” 50 U.S.C. § 1702.

¹ See Congressional Research Service, *The International Emergency Economic Powers Act: Origins, Evolution, and Use* (Mar. 20, 2019) (available at: <https://fas.org/sgp/crs/natsec/R45618.pdf>).

Typically, the President delegates this authority to the Secretary of the Treasury, acting in consultation with the Secretary of State. In the past, measures against foreign countries and nationals have taken a wide variety of forms, including bans on imports, exports or new investments; restrictions on transactions in specific classes of goods, services and securities; and asset freezes (“blocking”).

So Are There New U.S. Sanctions Against China? Beyond the reference in the President’s Twitter account, there has been no announcement of, let alone an official declaration of, a national emergency under the procedures mandated by IEEPA (*i.e.*, no presidential proclamation transmitted to Congress and published in the Federal Register). Accordingly, there is no indication that the U.S. government has made a legally effective order to U.S. companies to “start looking for an alternative to China.”

Does the U.S. President Have Authority to Enforce an Order to Divest from China?

To date, IEEPA has not been used as a tool in trade negotiations. However, the authority granted by IEEPA to the U.S. President is broad, and U.S. courts typically are deferential to the Executive Branch in matters of foreign policy and national security.

As noted, any use of IEEPA’s authority is predicated on a declaration of national emergency regarding a threat posed by China to U.S. national security, foreign policy or economy. A successful legal challenge to any order promulgated under authority of IEEPA to address that national emergency (*e.g.*, forcing U.S. businesses to divest from China) likely would be difficult, as would attempts to recover from the U.S. government any resulting losses by affected U.S. companies (*e.g.*, a claim that the action resulted in a “taking” that required just compensation). Moreover, challengers also may face difficulties obtaining any meaningful interim relief. As a result, even if a challenge to such an order is ultimately successful, the practical result of the President’s action may nonetheless be an irreversible, and irreparable, impact on affected U.S. businesses.

Beyond legal challenges, the U.S. Congress may seek to terminate the President’s declared national emergency through a joint resolution of Congress enacted into law (either with the President’s signature or with necessary majorities in both houses of the U.S. Congress to override a presidential veto). See 50 U.S.C. § 1622(a)(1). Earlier this year, President Trump declared a national emergency under the National Emergency Act (the “NEA”), which closely parallels IEEPA, to take action on the southern border not approved by Congress; subsequently, the President successfully used his first veto action to halt a joint resolution under the NEA passed by both chambers of Congress seeking to terminate that national emergency.

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