No. 25-250

In the Supreme Court of the United States

DONALD J. TRUMP, ET AL., PETITIONERS

v.

V.O.S. SELECTIONS, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR PRIVATE RESPONDENTS

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RULE 29.6 STATEMENT

The full names of every party represented by undersigned counsel are V.O.S. Selections, Inc.; Plastic Services and Products, LLC, dba Genova Pipe; MicroKits, LLC; FishUSA, Inc.; and Terry Precision Cycling, LLC. None has any parent corporations, and no publicly held companies own 10% or more of the stock of any of these parties.

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INTRODUCTION

This Court's separation-of-powers decisions have consistently confined the President's powers to those granted by "an act of Congress" or "the Constitution itself." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 585 (1952). While respecting the President's robust constitutional authority over those executing the law, the Court has been vigilant to ensure that Congress has clearly granted any authority he asserts over Americans' private lives and property—"the country, its industries and its inhabitants." *Id.* at 643-644 (Jackson, J., concurring). And even when Congress speaks with such clarity, the nondelegation doctrine requires that it provide an "intelligible principle" to confine the President to executing Congress's will, not his own. *J.W. Hampton, Jr., & Co.* v. *United States*, 276 U.S. 394, 409 (1928).

The President has no independent constitutional authority to impose tariffs. Indeed, when the Framers enumerated Congress's "legislative Powers," the first was the "Power To lay and collect Taxes" and "Duties"—tariffs. U.S. Const. art. I, § 8, cl. 1.

No power was more fundamental. As James Madison wrote, the "power over the purse" is "the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people." THE FEDERALIST NO. 58. Until the 1900s, Congress exercised its tariff power directly, and every delegation since has been explicit and strictly limited.

Here, the government contends that the President may impose tariffs on the American people whenever he wants, at any rate he wants, for any countries and products he wants, for as long as he wants—simply by declaring longstanding U.S. trade deficits a national

"emergency" and an "unusual and extraordinary threat," declarations the government tells us are unreviewable. The President can even change his mind tomorrow and back again the day after that.

That is a breathtaking assertion of power, and one would expect to see an unequivocal grant of authority from Congress to support it—if the Constitution permits it at all. Yet the statute the President invokes, the International Emergency Economic Powers Act (IEEPA), never mentions tariffs, and in 50 years no other President has used it for that purpose.

The government essentially offers two defenses of its newfound powers. First, it asserts that IEEPA's grant of authority to "regulate * * * importation and exportation" necessarily includes the power to tax imports. But "regulate" does *not* ordinarily mean "tax." Without more, no one would understand laws authorizing "regulation"—which pervade the U.S. Code—to authorize *taxation*. The government can cite just *one* case, *United States* v. *Yoshida International, Inc.*, 526 F.2d 560 (C.C.P.A. 1975), that has ever read "regulate" to grant taxing powers.

The government says that decision is enough, because Congress was aware of the decision and it upheld tariff surcharges imposed by President Nixon under the Trading With The Enemy Act (TWEA), which used the same phrase—"regulate importation." But in direct response to Nixon's tariffs, which had been *invalidated* by the Customs Court, Congress gave the President *specific* tariff authority, not exceeding 15% rates or 150 days, to address the issue of "large and serious" trade deficits. 19 U.S.C. 2132(a)(1). Con-

gress then *repealed* TWEA outside wartime, substituting more limited peacetime powers in IEEPA. That is not an endorsement of broad tariff powers.

Even the appeals court in *Yoshida*, which reversed the Customs Court, rejected "unlimited" presidential power to set "whatever tariff rates he deems desirable" simply by declaring a "national emergency"—such a delegation of power would strike a "blow to our Constitution." 526 F.2d at 583, 577. The court was explicit that Nixon's tariffs, unlike those here, were "limited," "temporary," and did not "fix[] rates in disregard of congressional will." *Id*. at 577-578. It also held that Congress's new law for trade-deficit tariffs "now govern[s]." *Id*. at 582 n.33.

Second, the government calls the tariff power a "foreign affairs" and "national security" power and asks for deference to its interpretation in those fields. But the Framers, well aware that tariffs had foreign policy implications, still vested the power in *Congress*. Moreover, the burden of these taxes—soon to reach a trillion dollars—is borne by *Americans*. Taxing Americans is an odd way to combat foreign threats.

In recent years, Presidents have resorted to increasingly extravagant interpretations of vague terms in old laws to justify everything from a $450 billion student loan forgiveness plan to a nationwide eviction moratorium, a sweeping vaccination mandate, and a brand-new carbon-emissions regime. This Court invalidated each one, holding that unprecedented assertions of executive power having massive economic effects require especially clear statutory authority.

This case is no different. IEEPA contains no clear grant of tariff powers, let alone the sweeping powers asserted here. Indeed, if IEEPA were interpreted to

convey such boundless authority to tax the American people, it would constitute the most plainly unconstitutional delegation of legislative power in a century. The Court should affirm.

JURISDICTION

Respondents agree with the government and the courts below that the Court of International Trade had exclusive jurisdiction over this lawsuit.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Relevant constitutional and statutory provisions are reproduced in the appendix to this brief. App., *infra*, at 1a-44a.

STATEMENT

A. Constitutional and statutory background

1. Article I of the Constitution begins with the foundational principle that "[a]ll legislative Powers herein granted shall be vested in * * * Congress," and the first such power listed is "[t]o lay and collect Taxes, Duties, Imposts and Excises." U.S. Const. art. I, §§ 1, 8. The President cannot impose taxes on his own say-so. His role is to "faithfully execute[]" Congress's laws. *Id.* art. II, § 3. As James Madison put it, Congress "alone has access to the pockets of the people." THE FEDERALIST NO. 48.

All agree that tariffs are taxes, and (rhetoric aside) that it is Americans that must pay them. Pet.App.31a. The experience of these Respondents, small businesses that rely heavily on inputs and products that can be produced efficiently only abroad, is typical. These ever-changing tariffs multiply their costs, disrupt their supply chains, harm their relationships

with suppliers and customers, and make it impossible for them to plan. C.A.App.127-161.

The legal obligation of these tariffs falls entirely on American businesses, not foreign producers or governments. 19 U.S.C. 1505(a); 19 C.F.R. 141.1(b). And while respondents can attempt to pass on some of the burden to producers or consumers when those parties balk, respondents are left holding the bag.

The tariff's full effects have not yet been felt, but they are putting "upward pressure on inflation," making "goods * * * more expensive," and "reduc[ing] the size of the U.S. economy." Cong. Budget Office, *An Update About CBO's Projections of the Budgetary Effects of Tariffs* (Aug. 22, 2025).[1] That the tariffs raise substantial revenue (Gov't Br. 11) only underscores that they are taxes, not regulations.

2. Historically, "tariff changes were viewed as entirely the domain of Congress." U.S. Int'l Trade Comm'n, Pub. 4094, *The Economic Effects of Significant U.S. Import Restraints: Sixth Update 2009*, at 65 (2009). Although those changes often provoked charged disputes—take Henry Clay's American System in the 1830s, the McKinley tariffs of the 1890s, or the Smoot-Hawley Tariff Act of 1930—all were resolved by Congress, not unilateral executive action. "Setting tariff policy" was "a core Congressional function." Pet.App.11a.

Starting in 1934, Congress began enacting statutes authorizing the President to engage in negotiations that could alter tariffs within defined limits. The first was the Reciprocal Trade Agreements Act of

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[1] https://www.cbo.gov/publication/61697.

1934 ("RTAA"), 48 Stat. 943, 943-944. In the Trade Act of 1974, 88 Stat. 1978, Congress introduced a new "fast-track" procedure, under which Presidents must obtain advance authority for trade negotiations involving both tariff and non-tariff barriers, after which Congress must give the deals up-or-down votes. *E.g.*, Omnibus Foreign Trade and Competitiveness Act of 1988, 102 Stat. 1107, 1126; Trade Act of 2002, § 2103, 116 Stat. 933, 1004; Bipartisan Congressional Trade Priorities and Accountability Act of 2015, § 103, 129 Stat. 319, 333. Since 1988, when Congress has granted authority to implement agreements that require no congressional approval, it has allowed only tariff *reductions*. *Ibid.* The last statute granting either form of authority expired in 2021. See Pub. L. No. 114-26, § 103(a)(1)(A), 129 Stat. 319, 333.

Congress has also empowered the President to set tariffs rates unilaterally in certain circumstances, subject to specific substantive and procedural limits. These statutes all refer explicitly to "tariffs," "duties," or another synonym. *E.g.*, 19 U.S.C. 2132(a)(1) ("duties" addressing "large and serious United States balance-of-payments deficits"); 19 U.S.C. 1862 ("dut[ies]" addressing "national security" threats); 19 U.S.C. 2251(a), 2253 ("duties" addressing "serious injury" to "domestic industry").

3. Separately, Congress has passed laws authorizing the President during wartime—later extended to other emergencies—to impose economic sanctions on nations with whom we are in conflict. Other than one contested example in 1971 discussed in detail below, these statutes were never understood to authorize presidential tariffs.

The first, TWEA, was enacted during World War I. 40 Stat. 411 (1917). It was repealed, except during declared wars, in 1977, after Congress concluded that Presidents from Roosevelt to Nixon had treated it as "essentially an unlimited grant of authority." H.R. Rep. No. 95-459, at 7 (1977).

TWEA was replaced by IEEPA. 91 Stat. 1626 (1977). IEEPA applies only upon a presidential declaration of an "emergency," and only when there exists an "unusual and extraordinary threat" to national interests. IEEPA never mentions "tariffs" or "duties," but, like TWEA, it contains language permitting the President to "regulate" importation and exportation. That language had been interpreted by one court, in one case, to retroactively validate temporary tariff surcharges imposed by President Nixon in 1971.

That year, Nixon, facing an economic crisis related to the collapse of the gold standard, imposed a temporary 10% tariff on imports for the five months necessary to negotiate a new international monetary system. Proclamation 4074, 85 Stat. 926 (Aug. 15, 1971), *terminated in part by* Proclamation No. 4098, 36 Fed. Reg. 24,201 (Dec. 22, 1971). Nixon's surcharges were expressly capped to stay within the congressionally authorized Tariff Schedules, and he justified them under the Tariff Act of 1930 and Trade Expansion Act of 1962, *not* TWEA. *Ibid.*

By 1974, when the Customs Court addressed the tariffs, they had expired, and the only question was whether the plaintiffs would receive refunds. The Customs Court unanimously held that neither TWEA nor the statutes Nixon invoked authorized the tariffs. *Yoshida Int'l, Inc.* v. *United States*, 378 F. Supp. 1155, 1175-1176 (Cust. Ct. 1974).

Congress did not question the court's conclusion, but promptly enacted Section 122 of the Trade Act of 1974, 19 U.S.C. 2101 *et seq.*, which explicitly describes what the President "shall" do to impose tariff surcharges addressing "large and serious United States balance-of-payments deficits," while limiting those surcharges in amount (15%) and duration (150 days). 19 U.S.C. 2132(a).

The next year, the appellate court reversed the Customs Court. While rejecting Nixon's stated justifications for his tariff surcharges, it held that TWEA was "broad enough" to support them, reasoning that he had "imposed a limited surcharge, as a temporary measure calculated to help meet a particular national emergency," and did not "fix[] rates in disregard of congressional will." *Yoshida*, 526 F.2d at 577-578 (cleaned up). The court cautioned that it was not sanctioning "any future surcharge of a different nature" or "the exercise of an unlimited power." *Id.* at 577, 583. And it explained that future cases would be "govern[ed]" by Section 122, with which Presidents "must, of course, comply." *Id.* at 582 n.33.

In 1977, Congress repealed TWEA outside wartime. 91 Stat. 1625-1626. Congress also passed IEEPA, substituting new "authorities for use in time of national emergency which are both more limited in scope than those of [TWEA] and subject to various procedural limitations, including those of the" National Emergencies Act (NEA). H.R. Rep. No. 95-459, at 2. Among them is the power to "regulate * * * importation or exportation," 50 U.S.C. 1702(a)(1)(B)—the language used in TWEA. But nowhere did Congress indicate approval of the appellate court's reading thereof, and nowhere did IEEPA include the term "tariff" or any revenue-related terms.

For 50 years, no President read IEEPA to authorize unilateral presidential tariff-setting—until now.

B. The April 2, 2025, tariffs

On April 2, 2025, President Trump issued Executive Order 14,257, entitled "Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits." 90 Fed. Reg. 15,041 (April 7, 2025). The Order declared a national "emergency" based on "large and persistent" trade deficits. It imposed a global 10% *ad valorem* duty on "all imports," regardless of whether affected countries impose tariffs on U.S. products, the rates at which they do so, or the existence of governing trade agreements. *Id.* at 15,045. It also imposed higher rates—ranging from 11 to 50%—on 57 nations. *Id.* at 15,044, 15,049-15,050. The Order invokes one statute—IEEPA.

C. Proceedings below

1. Respondents sued, challenging the President's trade-deficit tariffs. Twelve states also sued. In May, the Court of International Trade (CIT) granted summary judgment invalidating all IEEPA-based tariffs. Pet.App.139a-197a.

The CIT held that IEEPA grants no "unbounded tariff authority." Pet.App.168a. Rather, IEEPA's "regulate * * * importation" language should be "read in light of its legislative history and Congress's enactment of more narrow, non-emergency legislation" governing tariffs, including Section 122. *Ibid.* The court also explained that "unlimited" tariff authority would unconstitutionally grant the President "legislative power." Pet.App.172a. The CIT granted both declaratory and injunctive relief. Pet.App.196a, 199a.

2. The government appealed. The Federal Circuit granted a stay and *sua sponte* set the case for hearing *en banc*. The *en banc* court affirmed the declaratory relief, but vacated the injunction. Pet.App.1a-136a.

a. The *en banc* court "agree[d] that IEEPA's grant of presidential authority to 'regulate' imports does not authorize the [challenged] tariffs." Pet.App.3a.

"[W]henever Congress intends to delegate to the President the authority to impose tariffs," the court explained, "it does so explicitly," but IEEPA "d[oes] not use the term 'tariff' or any of its synonyms." Pet.App.30a, 26a, 27a. Moreover, "[t]he power to 'regulate' has long been understood to be distinct from the power to 'tax,'" including by the Framers. Pet.App.31a. And Congress's other tariff statutes impose "specific substantive limitations and procedural guidelines" on "tariffs"—limitations IEEPA lacks. Pet.App.30a, 19a-21a.

The court disagreed that IEEPA "ratified *Yoshida II's* understanding of the term 'regulate.'" Pet.App.39a. But even assuming Congress did so, "*Yoshida II* was explicit" that "an unbounded tariff authority would *not* be permitted, [so] that understanding must be attributed to Congress as well." Pet.App.42a.

Finally, the court held that the notion that IEEPA provides "the President power to impose unlimited tariffs also runs afoul of the major questions doctrine." Pet.App.34a. Noting that these tariffs implicate "trillion[s]" of dollars, the court "discern[ed] no clear congressional authorization" for "tariffs of th[is] magnitude." Pet.App.36a-38a (quoting *Biden* v. *Nebraska*, 600 U.S. 477, 506 (2023)).

b. Judge Cunningham concurred (for four judges), explaining that IEEPA's "plain text" "does not authorize * * * any tariffs." Pet.App.48a. Further, the government's reading would render IEEPA "unconstitutional," as "a functionally limitless delegation of Congressional taxation authority." Pet.App.57a-58a.

c. Judge Taranto dissented (for four judges), reasoning that the phrase "regulate * * * importation" authorizes imposing tariffs. PetApp.66a.

SUMMARY OF ARGUMENT

I. Because the Constitution vests the power to impose tariffs in Congress, Presidents enjoy only the tariff authority delegated by statute. Since the Founding, Congress has delegated that authority only in laws expressly referencing "tariffs," "duties," "import fees," or the like—and only subject to strict limits.

The government nevertheless insists that IEEPA's general language allowing the President to "regulate importation or exportation" empowers him to impose tariffs for any product, nation, rate, or duration he likes—simply by declaring an "emergency" based on longstanding trade deficits that purportedly pose an "unusual and extraordinary" threat to U.S. interests. But IEEPA nowhere mentions tariffs, and no other President has read it to authorize them—let alone sweeping tariffs like these.

Nor is that surprising. The power to "regulate" is not the power to "tax." The Constitution itself distinguishes between them, subjecting taxation to more rigorous requirements and political accountability. Taxes can serve regulatory *purposes*, but the ordinary meaning of "regulate" entails imposing command-

and-control limits on activities and enforcing those limits with penalties—not taxing them.

Absent other textual signs, therefore, no one would understand laws authorizing "regulation" to authorize *taxation*. And none of IEEPA's other powers—asset freezes, embargoes, etc.—has anything to do with taxes. The government can cite no other example where "regulate" has been read to include taxing powers. Indeed, if "regulate" meant "tax," the President, empowered by a supercharged U.S. Code, could tax everything from autos to zoos.

The government rejoins that TWEA contained the same "regulate * * * importation" language that one lower court read to authorize the "limited" and "temporary" emergency tariff surcharges imposed by President Nixon. *Yoshida*, 526 F.2d at 577-578. But Congress never endorsed *Yoshida*'s interpretation of TWEA. Instead, it enacted a specific law authorizing tariffs to address "large and serious United States balance-of-payments deficits," capping them at 15% and 150 days, while *repealing* TWEA outside wartime. The House Report cited *Yoshida* only *once*, in a section detailing how "Successive Presidents have seized upon [TWEA's] open-endedness" in ways "quite different from what was envisioned" by Congress. H.R. Rep. No. 95-459, at 5, 8-9.

It is thus quite a stretch to say Congress adopted *Yoshida*'s statutory interpretation. But even if Congress *did*, that would not help the government. *Yoshida* explicitly held that TWEA did not grant the President power to "impos[e] whatever tariff rates he deems desirable," just by declaring a "national emergency." 526 F.2d at 578. And it made clear that, going forward, the President "must, of course, comply" with

Congress's newly enacted statute, which "now govern[s]" trade-deficit tariffs. *Id.* at 582 n.33.

The government's interpretation of IEEPA would also implicitly overrule several statutes that Congress enacted specifically to govern tariffs on imports that threaten "serious injury" to domestic industry (Section 201), implicate "national security" (Section 232), or involve "large and serious" trade imbalances (Section 122)—the stated purpose of these tariffs. It makes no sense to read IEEPA's general language to allow the President to circumvent these statutes' specific substantive and procedural limits—not to mention overturning every major trade deal since 1974, all codified by Congress. And the very existence of these tailored statutes belies the notion that IEEPA grants him unbounded power to impose tariffs whenever and however he sees fit.

The government's interpretation would also make a mockery of Congress's requirement that the President's actions address an "emergency" and an "unusual and extraordinary threat." As the President himself repeatedly stated, trade deficits are "persistent"—the antithesis of "unusual" or "extraordinary." The government says these conditions are not subject to "meaningful judicial review," as they concern foreign affairs. Br. 40. But tariffs tax the American people, and the Constitution vests the power to tax Americans in Congress. If IEEPA's limitations are not respected, every grant of "emergency" power will effectively become a blank check. That is not what the words mean, not what Congress intended, and not what the national interest requires.

For all these reasons, it is implausible that IEEPA abdicated a core congressional authority, vital to its

power of the purse. And that is doubly implausible given this Court's repeated holdings that assertions of executive power having vast economic consequences and lacking historical precedent require unambiguous authority from Congress. These tariffs exact trillions of dollars in taxes under a vague provision that, for 50 years, no other President read this way.

II. If IEEPA were interpreted as the government urges, it would be the most unbounded delegation of legislative power since *Schechter Poultry*. Long ago, this Court held (in a tariff case) that delegations of core legislative powers must be cabined by some judicially enforceable "intelligible principle." *J.W. Hampton*, 276 U.S. at 409. Just months ago, the Court reaffirmed that delegating the power to tax is unconstitutional unless Congress provides "a floor and a ceiling." *FCC* v. *Consumers' Research*, 145 S. Ct. 2482, 2501-2502 (2025). But IEEPA never mentions tariffs, so it sets neither a ceiling nor a floor. Thus, if the government's reading were correct, "[i]t would become [this Court's] painful duty" to say that it "was not the law of the land." *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 423 (1819).

ARGUMENT

I. IEEPA does not authorize the trade-deficit tariffs.

A. IEEPA's text does not grant tariff powers.

IEEPA provides that, upon declaring a national emergency, the President may "investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any * * * importation or exportation of * * * any property in which any foreign country or a national thereof has

any interest." 50 U.S.C. 1702(a)(1)(B). None of these terms plausibly conveys the power to tax. The government invokes the term "regulate," but it cannot bear that weight.

1. The ordinary meaning of "regulate" does not include the power to tax. Rather, the power to "regulate" ordinarily involves mandating conditions or limitations on an activity and enforcing them through criminal or civil penalties. The power to "regulate" tobacco or air quality is not the power to tax cigarettes or carbon emissions. No one would understand the words that way, absent something more specific in the text. It would make sense for a legislature to say an agency "may regulate vehicles entering the city *by charging tolls*." But absent the italicized phrase, no one would think the bare term "regulate" allowed the agency to tax cars, as opposed to imposing safety standards or numerical limits.

The government's definition does not dispel this common-sense understanding. It defines "regulate" as: "[to] fix, establish or control; to adjust by rule, method, or established mode; to direct by rule or restriction; to subject to governing principles or laws." Br. 32 (citing *Black's Law Dictionary* 1156 (5th ed. 1979)). None of those terms naturally includes taxing power. Rather, "to direct by rule or restriction" suggests the opposite. Regulations command conduct and make violations illegal; taxation raises the cost of lawful activities.

The associated-words canon ("noscitur a sociis") confirms as much. In IEEPA, "regulate" appears with eight other verbs, none of which involves any kind of tax. "[R]egulate" should be read like the others, especially given the constitutional context: Taxation, part

of the power of the purse, is a closely guarded *legislative* prerogative; regulation routinely involves *executing* laws. The patriots who rebelled against King George under the banner of "No Taxation Without Representation" believed they could not legitimately be taxed without a *legislative* vote.

The Constitution itself distinguishes the powers to tax and to regulate commerce, locating them in different clauses and attaching limits special to taxation. It requires that tax bills originate in the most representative branch (the House); that imposts and excises be "uniform" nationwide; and that direct taxes be apportioned. U.S. Const. art. I, § 7, cl. 1; *id.* § 9, cl. 4.

Recognizing that the power to tax is uniquely legislative, this Court has long held that "a tax cannot be imposed without clear and express words for that purpose." *United States* v. *Isham*, 84 U.S. (17 Wall.) 496, 504 (1873). The Court has applied that principle in several tariff cases, holding that any statutory ambiguity must "be resolved in favor of the importer, 'as duties are never imposed on the citizen upon vague or doubtful interpretations.'" *Hartranft* v. *Wiegmann*, 121 U.S. 609, 616 (1887). Without more, the term "regulate" lacks the "clear and unambiguous language" required of "tax[es] upon imports." *Eidman* v. *Martinez*, 184 U.S. 578, 583 (1902). "[R]epeated" cases so hold. *Ibid.*

2. The use of "regulate" throughout the U.S. Code provides further confirmation. For example, the SEC can "regulate the trading" of "securities" (15 U.S.C. 78i(h)(1), (2)), and EPA can "regulate emissions stand-

ards" (42 U.S.C. 7412(d)). But as the government concedes (Br. 31-32), these provisions do not authorize taxation.

Hundreds of statutes grant the power to regulate, and none has ever been understood to grant taxing powers. *E.g.*, 12 U.S.C. 4008(c)(1)(A)-(B) (the Federal Reserve may "regulate * * * the payment system"); 7 U.S.C. 608c(1) (USDA may "regulate" the "handling" of "agricultural commodit[ies]"); 10 U.S.C. 1587a(a) (the Secretary of Defense may "regulate" the "total compensation" of certain personnel); 21 U.S.C. 387a ("tobacco products * * * shall be regulated by the Secretary"); 28 U.S.C. 604(a)(7) (the Administrative Office of the U.S. Courts may "[r]egulate * * * annuities"). If "regulate" meant "tax," it would overturn the accepted understanding of all these laws.

Take the Communications Act, at issue in *Consumers' Research*. Section 201 allows the FCC to impose "regulations" on communications carriers. 47 U.S.C. 201(b). No one in *Consumers' Research* suggested that this section authorized taxing carriers. Rather, the dispute focused on whether Section 254—which requires carriers to "contribute" to a "universal service" fund—impermissibly delegated Congress's revenue-raising power. *Id.* § 254(d). The Court held that it did not, because Section 254 limits what the FCC may collect. 145 S. Ct. at 2501-2507. But if the government's position here were correct, the case was irrelevant because the FCC could have levied taxes free from Section 254's constraints, simply by calling them "regulations" under Section 201.

3. The government (Br. 24-25) and its amici (*e.g.*, Squitieri Br. 18) say taxes may be used for regulatory purposes. No doubt. *NFIB* v. *Sebelius*, 567 U.S. 519,

567 (2012). Taxation is a plenary power. Congress can tax for most any purpose (*Gibbons* v. *Ogden*, 22 U.S. (9 Wheat.) 1, 1 (1824)), just as it can regulate for most purposes. But it does not follow that agencies vested with powers to "regulate" can use the *means* of taxation to achieve their regulatory ends—any more than agencies can use the power to "tax" to issue command-and-control regulations. The powers may have overlapping purposes, but they remain distinct.

Granted, *Gibbons* and Justice Story's commentary describe taxes as a means for Congress to regulate commerce. But neither authority suggests that taxing power is necessarily included in statutory grants of regulatory power. Rather, *Gibbons* explains that the Constitution treats the "power to regulate commerce * * *, as being entirely distinct from the right to levy taxes," holding that tariffs fall under the taxing power even though "[duties] often are, imposed * * * with a view to the regulation of commerce." 22 U.S. at 201-202.

4. IEEPA's default one-year limit on emergencies further confirms that it does not authorize permanent or indefinite changes to U.S. law. The President's tariffs have no end date, and he intends them for the long haul. That is not what IEEPA is for.

B. IEEPA's context confirms that it does not delegate the tariff power.

1. The government insists that "regulate" must mean "tax" in IEEPA because it is paired with "importation," and tariffs are "a traditional and commonplace way to regulate importation." Br. 31. That argument proves too much. Taxes are a "traditional and commonplace way to regulate" everything from cigarettes to junk food. That does not mean the regulatory

mandates of FDA or USDA, which regulate tobacco and food safety, allow those agencies to tax Marlboros and Little Debbies.

Moreover, while taxes are commonly used for regulatory purposes, the converse is not true: Regulatory power is not commonly used to raise taxes, absent clear statutory support. Congress has jealously guarded its taxing authority, and it is anything but "traditional and commonplace" for Congress to divest it. Regulatory delegations are legion; tax delegations are rare and strictly limited. *Consumers' Research* 145 S. Ct. at 2519, 2525-2527 (Gorsuch, J., dissenting). And the notion that the phrase "regulate * * * importation" naturally connotes tariffs is belied by the government's inability to cite any statute that uses the phrase (or even a variant) in that way.

Beyond *Yoshida* (discussed *infra* at 24-29), the closest the government comes is *FEA* v. *Algonquin SNG, Inc.,* 426 U.S. 548 (1976). *Algonquin* upheld license fees on imports under an earlier version of Section 232 that permitted the President to "take such action, and for such time, as he deems necessary to adjust the imports of" articles so "such imports will not threaten to impair the national security." 19 U.S.C. 1862(b) (1970). Citing extensive legislative history indicating that Congress had expressly contemplated use of Section 232(b) to alter tariff rates, the Court read "adjust" to permit quotas *and* fees. *Algonquin*, 426 U.S. at 562-571.

The government suggests that *Algonquin*'s reading of Section 232 calls for an equally broad reading of IEEPA. Br. 28. But IEEPA uses the term "regulate," not "adjust," and Section 232(a) references "duties"—powerful evidence that Congress contemplated

tariffs. The government notes (Br. 28) that *Algonquin* never made this textual point, but that is not surprising, given then-current jurisprudence, which relied on legislative history when it appeared dispositive. Here, no legislative history supports IEEPA's application to tariffs.

2. The distinction between tariffs and regulations runs throughout Title 19, the U.S. Code volume governing customs and duties. While various provisions authorize tariffs, those provisions invariably use the word "tariff," "duty," or an equivalent. See 19 U.S.C. 1338, 1304, 1862, 2251, 2411. In contrast, Title 19 is packed with provisions that use "regulation" to refer to something other than tariffs. *E.g.*, 19 U.S.C. 1309 (authorizing withdrawal of articles from customs "under such regulations as the Secretary of the Treasury may prescribe"); *id.* § 1434 (authorizing Treasury "by regulation" to "prescribe the manner and format" for entry of foreign vessels); *id.* § 1552 (Treasury may prescribe "rules and regulations" governing entry of goods "without appraisement").

The government dismisses the inconvenient fact that IEEPA never mentions tariffs as a demand for "magic words." Br. 27. Not so. Congress has myriad ways to delegate tariff-related powers—it just did not do so *in IEEPA*. The government's pejorative allusion to "magic words" is simply an attempt to avoid the first rule of statutory interpretation—statutes must be read in light of the words they actually use.

3. Further confirmation comes from the wide body of provisions that (like IEEPA) are found outside Title 19 and that (also like IEEPA) empower the Executive to regulate importation to address public problems.

Each uses "regulation" to authorize restrictions on imports to mitigate harms that the imports may inflict; none uses "regulation" to authorize taxes—even though taxes might mitigate the harms.

For example, 46 U.S.C. 4304 authorizes the Secretaries of Transportation and Treasury to promulgate "regulations" governing "importation" of boats to ensure they meet U.S. safety standards, and 49 U.S.C. 32506 permits regulation of car imports for the same purpose. Meanwhile, 21 U.S.C. 971(c) authorizes the Attorney General to promulgate "regulations" governing importation of certain chemicals to prevent their "diver[sion] to" narcotics manufacturing. And 7 U.S.C. 7711 permits the Secretary of Agriculture to adopt "regulations" on "importation" of "plant pests" to prevent their domestic "dissemination." None of these regulations implies the power to tax.

4. Moreover, IEEPA grants the authority to "regulate * * * importation *or exportation*," and the Constitution flatly bars export taxes (while allowing their regulation). U.S. Const. art. I, § 9, cl. 5. Where a term's interpretation renders some applications of a statute unconstitutional, this Court will avoid that interpretation, lest the term become a "chameleon." *Clark* v. *Martinez*, 543 U.S. 371, 382 (2005). Because Congress is presumed to respect constitutional limits, *Boumediene* v. *Bush*, 553 U.S. 723, 738 (2008), the Court should not presume it was authorizing taxation via a term that authorizes regulating "exportation."

C. The tariff power is meaningfully distinct from the emergency authorities IEEPA actually conveys.

Reading "regulate * * * importation or exportation" to include tariff authority also conflicts with IEEPA's

"overall statutory scheme." *Turkiye Halk Bankasi A.S.* v. *United States*, 598 U.S. 264, 275 (2023) (FSIA, which governs civil cases, confers no criminal immunity). Those powers are conveyed in statutes (IEEPA and TWEA) that have long been understood to authorize embargoes, asset freezes, and similar economic sanctions on enemy nations. See *Dames & Moore* v. *Regan*, 453 U.S. 654 (1981). Indeed, TWEA was based on the law of war, which renders trade with enemy nations illegal. S. Rep. No. 65-111, at 1 (1917). Tariffs, which tax lawful trade with friendly nations, never had anything to do with it.

The dissent below disagreed, reasoning that tariffs are "just a less extreme, more flexible tool" for "controlling the amount or price of imports that, after all, could be barred altogether." Pet.App.97a. But that greater-includes-the-lesser theory is triply wrong.

First, the powers listed in IEEPA—including banning imports—are sanctions on foreign actors that originally applied only in wartime. Those powers address "unusual and extraordinary threat[s]" originating "*outside* the United States." 50 U.S.C. 1701(a). Tariffs, by contrast, tax Americans. Protecting Americans from taxation without a vote of their representatives is of far greater constitutional concern than protecting wartime enemies.

Second, tariffs raise revenue, creating different incentives than do remedies like embargoes. Even if the President has other reasons to impose tariffs, it is highly attractive to raise billions or trillions of dollars without dealing with congressional debate or rules on budget formation. See *West Lynn Creamery, Inc.* v. *Healy*, 512 U.S. 186, 193 (1994) (tariffs are "attractive" because they "raise[] revenue"). Banning imports, by

contrast, mostly creates deadweight loss. Thus, Congress had good reason to let Presidents impose embargos but not tariffs.

Third, history sharply distinguishes between traditional wartime powers for controlling foreign property and the power to tax. That issue arose squarely in the 1840s, when President Polk attempted to "defray[] the expenses of the [Mexican-American] war" by collecting "military contributions" from Mexican businesses seeking to trade with the United States. Message to Congress, Mar. 31, 1847, Exec. Doc. No. 1, 30th Cong., 1st Sess. 561 (1847). Polk argued that his "military right" under the law of war "to exclude commerce altogether * * * included the minor right of admitting it under prescribed conditions," such as paying duties. James K. Polk, *To the House of Representatives of the United States* (Jan. 2, 1849). Congress disagreed. A House Select Committee rejoined that a "[b]lockade is a usual, ordinary means of *executing* the law declaring war," but "[l]evying duties or imposts is exercising the power to *make* laws." H.R. Rep. No. 119, at 1, 5 (1849) (emphasis added). Congress rejected "compress[ing] these sovereign powers into mere incidents to the right of blockade," where "one is a sovereign power, the other an executive duty." *Ibid.*

This Court later found that President Polk could "exercise the belligerent rights of a conqueror" by requiring conquered *Mexican nationals* to pay "duties on imports" to "support" U.S. troops and the temporary government they had imposed. *Cross* v. *Harrison*, 57 U.S. (16 How.) 164, 190 (1853). But the Court made clear that it was the President's Commander-in-Chief powers that authorized imposing sanctions on conquered peoples; it did not suggest that the power

to blockade foreign commerce included the power to tax Americans.[2]

D. Statutory history confirms that IEEPA does not grant the power to impose tariffs.

If any doubt remained that IEEPA does not authorize tariffs, the statutory history would resolve it. IEEPA was enacted just three years after the Trade Act of 1974, which established a comprehensive framework for imposing tariffs and other trade barriers. It is that Act and its successors, not IEEPA, that Congress understood to govern tariffs.

The government's interpretation rests almost entirely on IEEPA's repetition of language from TWEA, which the appellate court in *Yoshida* read to allow limited tariff authority. But there is no reason to think Congress embraced that reading, and every reason to think it did not.

1. To begin with, *Yoshida* involved TWEA, a statute enacted during World War I to give the President wartime power to control trade with enemy nations.

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[2] Citing *Cross* and two other wartime examples, *Amicus* Professor Bamzai suggests history might support reading IEEPA to authorize taxes. Br. 13-15. But wartime precedents do not govern peacetime. *Youngstown*, 343 U.S. at 587. *Cross* and *Lincoln* v. *United States*, 197 U.S. 419, 428 (1905), involved duties on residents of occupied territories, *not* Americans. His other example, *Hamilton* v. *Dillin*, 88 U.S. (21 Wall.) 73 (1874), involved license fees imposed on cotton purchased from the Confederacy during the Civil War. The South was in a "state of insurrection," so the fees were *not* an "exercise of the taxing power, but of the war power," (*id.* at 93-94), and Congress ratified them (*id.* at 96-97).

TWEA was not used to impose tariffs, but rather conventional wartime measures like embargoes and licensing schemes that tightly controlled trade with hostile nations. Benjamin A. Coates, *The Secret Life of Statutes: A Century of the Trading with the Enemy Act*, 1 Modern Am. Hist. 151, 156-160 (2018).

Under President Franklin Roosevelt, Congress expanded TWEA to cover other national emergencies. Among the President's new authorities were the nine specific economic powers now found in IEEPA, including to "regulate * * * importation or exportation." 50 U.S.C. 1701(a). But while Presidents took full advantage of TWEA, imposing a host of "emergency" measures, no one even suggested that TWEA authorized tariffs until 1971.

That year, President Nixon faced "an economic crisis" involving an "exceptionally severe and worsening balance of payments deficit." *Yoshida*, 526 F.2d at 567. In response, he imposed temporary 10% supplemental tariffs not exceeding the rates in the statutorily authorized Tariff Schedules. *Id.* at 567-568. Even Nixon did not invoke TWEA, but rather trade laws allowing him to rescind past presidential proclamations of tariff rates. "Within less than five months," following a multilateral agreement reforming the monetary system, he lifted the tariffs. *Id.* at 568.

The Customs Court invalidated these tariffs, holding that neither TWEA nor the statutes invoked in the Order authorized them. *Yoshida*, 378 F. Supp. at 1175-1176. Congress did not disagree, but responded by enacting Section 122 of the Trade Act of 1974. The Senate Finance Committee Report explained that "in the light of" the Customs Court's decision, Section 122

would provide "explicit statutory authority" "to impose surcharges and other import restrictions for balance of payments reasons." S. Rep. No. 93-1298, at 87-88 (1974). Section 122 authorizes "special" "duties" to address "large and serious United States balance of payments deficits," but absent express congressional approval such tariffs are limited to 15% *ad valorem*, and 150 days. 88 Stat. 1987.

The Trade Act thus settled the question of tariff authority going forward, but the lawsuit seeking refunds of Nixon's tariffs remained. In 1975, the appellate court reversed. It reasoned that TWEA's "regulate * * * importation" language could authorize those tariffs, but repeatedly stressed their "limited" and "temporary" nature, explicitly holding that TWEA did not grant the President power to "impos[e] whatever tariff rates he deems desirable" simply by declaring a "national emergency." *Yoshida*, 526 F.2d at 583. And any future "surcharge" addressing "balance of payments problems" "must, of course, comply with" Section 122. *Id.* at 582 n.33.

Congress then repealed TWEA outside wartime, while enacting IEEPA to cover peacetime emergencies amounting to an "unusual and extraordinary threat." As the House Report explained, IEEPA provides "new authorities for use in time of national emergency which are both more limited in scope than those of [TWEA] and subject to various procedural limitations." H.R. Rep. No. 95-459, at 2. The Senate Report likewise stressed that IEEPA was not a blank check for presidential control of the economy. S. Rep. No. 95-488, at 5-6 (1977).

This history refutes the notion that IEEPA conveyed *any* unilateral tariff authority, let alone that asserted here. See Philip Zelikow, *The Tariff Powers Case: The Fissure that Led to the Quake*, Hoover Inst. (Oct. 13, 2025).[3]

2. Nevertheless, selectively citing IEEPA's legislative history, the government argues that Congress was aware of *Yoshida*, and that "when Congress 'adopts the language used in an earlier act,'" courts "presume that Congress 'adopted also the construction given' to that language." Br. 26 (citation omitted). That presumption does not hold here.

The government relies entirely on the House Committee Report. Br. 26. But even apart from relying on legislative history "at odds with the [statutory] language" and "extremely far reaching in terms of the virtually untrammeled and unreviewable power it would vest" (*S.E.C.* v. *Sloan*, 436 U.S. 103, 121 (1978)), such reliance is especially unfounded here. That Report—entitled "Reforming the Trading With the Enemy Act"—mentions *Yoshida* only *once*, in a background section recounting how "[s]uccessive Presidents have seized upon the open-endedness of [TWEA's] section 5(b) to turn that section into something quite different from what [Congress had] envisioned." H.R. Rep. No. 95-459, at 5, 8-9. That is scarcely an endorsement.

Nor did the Report endorse *Yoshida*'s reasoning, let alone suggest that *Yoshida* informs the meaning of "regulate." The entire reference was: "Although the lower court held that [TWEA did not authorize duties],

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[3] https://www.thefreedomfrequency.org/p/the-tariff-powers-case-the-fissure.

the Appeals Court reversed on the grounds that the existence of the national emergency made section 5(b) available for purposes which would not be contemplated in normal times." H.R. Rep. No. 95-459, at 5. The Report said nothing about *Yoshida*'s interpretation of TWEA's language.

It takes considerable chutzpah to read this as an endorsement of the expansive interpretation of presidential powers that IEEPA was intended to reform. Indeed, the Report's explanation of IEEPA's meaning conspicuously fails to mention either *Yoshida* or tariffs. And the section summarizing authorities carried forward from TWEA lists these: to regulate "transactions in foreign exchange," "banking transactions," "importing or exporting of currency or securities," and "to regulate or freeze any [foreign-owned] property." H.R. Rep. No. 95-459, at 15; see S. Rep. No. 95-488, at 5 (same). This list is incomplete, but presumably includes the most important powers. If Congress understood IEEPA to authorize tariffs or taxes—vastly important matters—it surely would have said so.

Further, the dominant theme of these post-Nixon statutes—whether the Trade Act, TWEA's repeal outside wars, the National Emergencies Act, or IEEPA—was reining in his expansive use of statutes. *Every* non-Administration hearing witness complained that TWEA lacked enforceable limits. H.R. Rep. No. 95-459, at 7-9. Even the Administration's witness agreed that TWEA should be narrowed. *Id.* at 9 (summarizing testimony). To read IEEPA as delegating tariff authority *broader* than Nixon's turns IEEPA on its head.

3. Finally, if Congress *did* adopt *Yoshida*'s understanding of "regulate * * * importation," it would not authorize sweeping tariffs. *Yoshida* was explicit that:

- It was sustaining only Nixon's "limited" and "temporary measure" addressing "a particular national emergency," not "sanction[ing]" any "unlimited power" (526 F.2d at 578, 583);
- Nixon's tariffs did not "fix[] rates in disregard of congressional will," but stayed within the rates and nondiscriminatory approach specified by Congress (*id.* at 577);
- Section 122 would "now govern[]" trade-deficit tariffs (*id.* at 582 n.33);
- The President could *not* "impos[e] whatever tariff rates he deems desirable," as that would "render our trade agreements program nugatory" and "subvert the manifest Congressional intent to maintain control over its Constitutional powers to levy tariffs" (*id.* at 577); and
- "The declaration of a national emergency is not a talisman enabling the President to rewrite the tariff schedules" and "cannot, of course, sound the death-knell of the Constitution" (*id.* at 583).

The government mentions none of this. But if Congress really did (silently) adopt *Yoshida*'s interpretation, *Yoshida*'s "explicit" recognition that "an unbounded tariff authority would *not* be permitted," even in emergencies, "must be attributed to Congress as well." Pet.App.42a.

E. Specific statutes governing the imposition of tariffs control over general language in IEEPA.

The government's reading of IEEPA is also foreclosed by multiple specific statutes that govern the President's ability to impose tariffs in situations involving threats to national security and the economy. It is axiomatic that "general" statutory language cannot overcome "express, specific congressional directive[s]" (*Guidry* v. *Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 376 (1990)), or "conditions" (*Youngstown*, 343 U.S. at 585-586)—even if the general statute is "later enacted" (*Radzanower* v. *Touche Ross & Co.*, 426 U.S. 148, 153 (1976)).

1. Sections 122, 232, and 201 govern the circumstances recited in the Executive Order.

Congress has enacted specific statutes governing each problem identified in the Executive Order.

First, Section 122 governs the President's response to "large and serious" trade deficits warranting emergency remedies. 19 U.S.C. 2132(a)(1). This is not some extra tool: It "shall" apply "whenever" deficits present "a fundamental international payments problem" warranting "special import measures." *Ibid.*

The Order principally justifies these tariffs as combating "large and persistent annual U.S. goods trade deficits" (90 Fed. Reg. at 15,043)—precisely what Section 122 governs. But the President did not invoke Section 122, perhaps because it limits unilateral tariff increases to 15% and 150 days. 19 U.S.C. 2132(a)(3). Fifty of the fifty-seven "reciprocal" tariffs exceed the 15% cap, and all apply indefinitely.

Judge Taranto questioned the applicability of Section 122, reasoning that "balance-of-payments" deficits are not "balance-of-trade" deficits. Pet.App.116a-119a. The government does not make this argument, and for good reason: It artificially distinguishes between the flow of currency out of a country and the flow of goods into it. See Trade Scholars Br. In reality, the two are inextricably intertwined. As imports flow in, payments flow out. Indeed, it makes no sense for Congress to have placed a 15% cap on tariffs addressing the subset of trade deficits that are dire enough to cause "fundamental international payments problems," only to permit unlimited tariffs addressing other trade deficits under IEEPA.

Second, the Order maintains that the trade imbalance "compromise[s] * * * national security" by making the nation vulnerable to "supply chain disruption." 90 Fed. Reg. at 15,045. But Section 232, the subject of *Algonquin*, specifies what the Executive "shall" do if an "article is being imported" in quantities or circumstances that threaten "national security." 19 U.S.C. 1862(b). It provides for item-by-item import restrictions, after "appropriate investigation" by the Secretaries of Commerce and Defense. *Ibid.* In electing a remedy, the President must "consider[]" several specific factors. *Id.* § 1862(d). The President has not even purported to comply.

Third, the President asserted that trade "imbalances" have led to "the transfer of resources from domestic producers to foreign firms, reducing opportunities for domestic manufacturers." 90 Fed. Reg. at 15,044. Section 201 addresses precisely that scenario. Where the International Trade Commission determines "that an article is being imported" in "such in-

creased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing" similar articles, the President "shall take all appropriate and feasible action" to act "in accordance with this part." 19 U.S.C. 2251(a).

The statute goes on to require Commission recommendations and to specify factors the President must consider in selecting remedies including "duties." *Id.* § 2253(a)(3)(A); *id.* §§ 2251-2255. If the President disagrees with those recommendations, a joint congressional resolution is required. *Id.* §§ 2251(c), (d). Congress also set numeric limits on tariff adjustments (*id.* § 2253(e)(3)), and actions lasting over a year must be "phased down at regular intervals" (*id.* § 2253(e)(5)).

When Congress imposes specific "conditions" on the President's handling of a problem, he must comply, even if he considers them "too cumbersome, involved, and time-consuming for the crisis * * * at hand." *Youngstown*, 343 U.S. at 586. That principle fully applies here.

2. The government's contrary arguments lack merit.

The government acknowledges that other tariff statutes address the harms cited by the President. It contends that those statutes operate "in parallel" with IEEPA, giving the President a "choice" between them. Br. 39, 38. But that argument cannot be squared with the text of Sections 122, 232, and 201, each of which mandates what the President "shall" do in the relevant circumstances. Indeed, the only statute that uses the discretionary "may" is IEEPA. Thus, if the statutes conflict, IEEPA must give way.

The government also sees no conflict between the statutes because IEEPA governs situations involving "a declared emergency." Br. 38. But the other laws likewise govern emergencies, even if not by that name. Section 122 applies to "*fundamental* international payments problems" involving "*large and serious* United States balance-of-payments deficits." Section 232 governs imports that "threaten *national security*." And Section 201 addresses imports that pose a "*serious injury*, or the *threat* thereof," to "domestic industry." Moreover, Section 122 was enacted specifically to address crises like the one that prompted President Nixon's tariffs. There is no daylight between Section 122's reference to "large and serious" threats and IEEPA's reference to emergencies.

If the government is right about IEEPA, it entirely swallows these specific trade statutes.

F. Neither an "emergency" nor an "unusual and extraordinary threat" exists to justify the tariffs.

The tariffs also flunk IEEPA's requirements that they "deal with an unusual and extraordinary threat" as to which "a national emergency has been declared." 50 U.S.C. 1701(b). The President declared an emergency "arising from conditions reflected in a large and persistent annual U.S. goods trade deficits." 90 Fed. Reg. at 15,041. Without elaborating, he also declared the conditions "an unusual and extraordinary threat" to national security and the economy. *Ibid.* But as the President acknowledged (and the facts bear out), U.S. trade deficits are "annual" and "persistent"—the antithesis of "unusual" and "extraordinary."

1. IEEPA's "emergency" authorities are strictly limited.

IEEPA's "emergency" and "unusual and extraordinary threat" prongs are independent requirements. The President's emergency declaration does not mean that, factually or legally, there is an "unusual and extraordinary threat." Any other interpretation would violate the "elementary canon" that "a statute should be interpreted so as not to render one part inoperative." *Colautti* v. *Franklin*, 439 U.S. 379, 392 (1979). Congress added "unusual and extraordinary," which was *not* part of TWEA, to cabin what had been open-ended "emergency" invocations under the earlier statute. H.R. Rep. No. 95-459, at 7-9.

An "emergency" is a "sudden" and "unforeseen" event. *Black's Law Dictionary* (4th rev. ed. 1968); see *The Random House Dictionary of the English Language* 467 (unabridged ed. 1971) ("a sudden, urgent, usually unforeseen circumstance or occasion requiring immediate action."). To be "unusual and extraordinary," unforeseen threats must be "exceptional." *Id.* at 1568 (unusual: "not usual, common, or ordinary; uncommon in amount or degree; exceptional"); *id.* at 505 (extraordinary: "beyond what is usual, ordinary, regular, or established"); *Webster's Third New International Dictiona*ry 807 (1961) (extraordinary: "of, relating to, or having the nature of a proceeding or action not normally required by law or not prescribed for the regular administration of the law").

The House Report stressed that "emergencies are by their nature rare and brief" and "not to be equated with normal ongoing problems"; "emergency authorities" should be "employed only" for "a real emergency." H.R. Rep. No. 95-459, at 10; see *Youngstown*, 343 U.S.

at 650 (Jackson, J., concurring) (the Framers "knew the pressures [emergencies] engender for authoritative action" and "how they afford a ready pretext for usurpation"). Congress therefore authorized the President to act in unforeseen crises when it does not have time to legislate. But it had time to legislate here—*and did so*. The Constitution vests the tariff authority in Congress for a reason. As the most deliberative branch, it can consider competing interests. Deviations from normal legislative-executive power allocations should be rare.

2. IEEPA's limits are reviewable.

a. The government says courts cannot meaningfully review a President's invocation of an "emergency" *or* an "unusual and extraordinary" threat. Br. 41-43. But even in war, parties may "resort to the courts" to "challenge [a statute's] construction and validity" (*Ludecke* v. *Watkins*, 335 U.S. 160, 171 (1948)), even "to ascertain the existence of a state of war" (*Johnson* v. *Eisentrager*, 339 U.S. 763, 775 (1950)). Absent "'persuasive reason to believe' that Congress intended to preclude judicial review," this Court reviews executive compliance with statutory limits. *McLaughlin Chiropractic Assocs.* v. *McKesson Corp.*, 606 U.S. 146, 155-156 (2025); see *Zivotofsky ex rel. Zivotofsky* v. *Kerry*, 576 U.S. 1, 21 (2015).

Indeed, some of this Court's landmark cases reviewed executive decisions involving foreign affairs or national security. *E.g.*, *Hamdan* v. *Rumsfeld*, 548 U.S. 557 (2006); *Youngstown*, 343 U.S. at 583; *The Prize Cases*, 67 U.S. 635 (1862); *Little* v. *Barreme*, 6 U.S. 170 (1804). And when the Court defers to dubious executive claims, it sometimes regrets it. *Calvary Chapel Dayton Valley* v. *Sisolak*, 140 S. Ct. 2603, 2615

(2020) (Kavanaugh, J., dissenting op.) ("This Court's history is littered with unfortunate examples of overly broad judicial deference to" assertions of "emergency powers.").

If compliance with congressional limitations is held unreviewable whenever it touches foreign affairs, Congress will hesitate to delegate "emergency" powers when genuinely needed, for fear that Presidents will treat them as a free pass. That would not be good for future Presidents, for Congress, or for the nation.

b. Here, the Court need not decide whether a presidential "emergency" declaration is reviewable, as the additional requirement that the cited threat be "unusual and extraordinary" plainly is. IEEPA pointedly does not commit the latter requirement to a presidential finding, a key feature this Court has looked to in determining whether to defer to the President. *Trump* v. *Hawaii*, 585 U.S. 667, 685-686 (2018). When the same statute entrusts one finding to presidential declaration and makes another a free-standing requirement, the latter is reviewable. On the latter, the President's views deserve respectful consideration, but the ultimate question is whether there is, in fact, an "unusual and extraordinary threat" arising abroad. And here, the Court need not second-guess the President's judgment. He repeatedly called the trade deficit "persistent."

c. The government thinks it self-evident that judges lack "institutional competence to determine" this question. Br. 42. But even in foreign affairs, whether a circumstance is "unusual" or "extraordinary" is a matter of ordinary understanding. When trade deficits "persist[]" for decades, they are neither "rare" nor "brief." H.R. Rep. No. 95-459, at 10. And

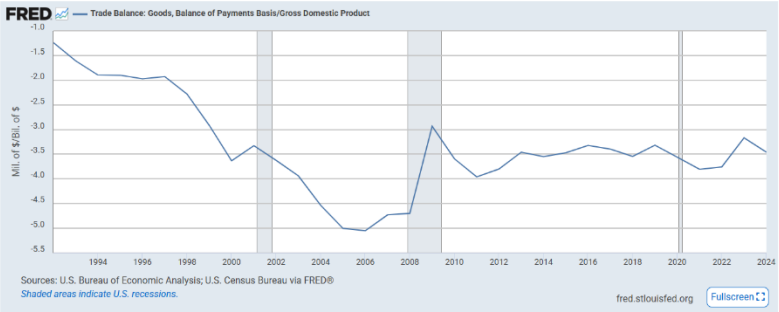
when Congress legislates, it is "emphatically" this Court's "duty" to decide whether the statute's limits have been honored. *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 178 (1803); accord *Loper Bright Enters.* v. *Raimondo*, 603 U.S. 369 (2024).

3. "Persistent" trade deficits that have lasted for 50 years are not "unusual and extraordinary."

Nine times, Executive Order 14257 describes trade imbalances as "large and persistent" and as a "feature of the global trading system," and the Treasury Secretary's affidavit attests that "[t]he United States has suffered trade imbalances for many decades." Mot. to Expedite 2a. They are right. The U.S. trade deficit "has been a consistent feature of the U.S. economy since the mid-1970s." C.A.App.215.

The Executive Order offers nothing to suggest this longstanding feature is "unusual" or "extraordinary." It says the goods deficit has "grown by over 40 percent in the past 5 years alone, reaching $1.2 trillion in 2024." 90 Fed. Reg. at 15,044. But this presents the data in cumulative absolute terms over a five-year span. Using the same data, but expressed in terms of annual rate of change, the trade deficit *rate* as a percent of GDP grew barely at all in the period referenced in the Order, from 4.0% to 4.1%—well below the 4.5% average since 2005. Compare U.S. Bureau of Economic Analysis, Table 1.1.5. Gross Domestic Product (accessed Oct. 20, 2025), with U.S. Bureau of Economic Analysis, Table 2.1. U.S. International Trade in Goods (accessed Oct. 20, 2025).

This Federal Reserve Bank chart[4] tells the story:



The trade balance as a percent of GDP worsened in the 1990s and early 2000s, improved from 2006 to 2010, and has held steady since.

The dissent below observed that persistent, gradually building deficits could suddenly become an "emergency" and an "unusual and extraordinary threat." Pet.App.93a. Maybe in theory, but as the numbers show, not in fact. In any event, Congress passed Section 122 specifically to combat "large and serious" trade deficits—further confirming that they are not an unanticipated "emergency," let alone "unusual" or "extraordinary."

The same is true of the particular sectors mentioned in the same Order. Declining manufacturing as a percentage of GDP is a long-term phenomenon,[5] even as growth in per capita GDP has outpaced other

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[4] https://fred.stlouisfed.org/graph/?g=1ML1T.

[5] Industrial Production and Capacity Utilization, Chart 1, Industrial Production, Capacity, and Capacity Utilization, Board of Governors of the Federal Reserve System, (Sept. 16, 2025), https://www.federalreserve.gov/releases/g17/current/.

leading economies. Manufacturing output has continued to rise, but it has been outpaced by production of services.[6] Moreover, American manufacturing depends on imports. Tariffs increase costs of critical inputs—especially those unavailable domestically—which *handicaps* American manufacturing. C.A.App.136; see We Pay the Tariffs Br.

The asserted vulnerabilities in the defense industrial base date to the end of the Cold War, and the Order identifies no atypical or sudden inflection point. Cong. Research Serv., *The U.S. Defense Industrial Base: Background and Issues for Congress* 5, 28 (updated Sept. 23, 2024).[7] Indeed, the Order itself states: "[B]ecause the United States has supplied so much military equipment to other countries, U.S. stockpiles of military goods are too low to be compatible with U.S. national defense interests." 90 Fed. Reg. at 15,043. Plainly, that is not the trade deficit's fault—arms exports *reduced* the deficit.

In sum, even *assuming* the trade deficit is a serious threat—which many economists dispute (Economists Br. 8-16)—it is not unusual, extraordinary, sudden, or unforeseen. It does not satisfy IEEPA.

G. Interpreting IEEPA to authorize these tariffs would violate the major questions doctrine.

This Court has long been "skeptic[al]" of claims that the government discovered "extravagant statutory power over the national economy" (*Utility Air Reg.*

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[6] https://www.imf.org/external/datamapper/NGDPDPC@WEO/ADVEC/USA?year=2025.

[7] https://www.congress.gov/crs-product/R47751.

Grp. v. *EPA*, 573 U.S. 302, 324 (2014)) in a "long-extant" and "vague statutory grant" "never" used "in that manner" (*West Virginia* v. *EPA*, 597 U.S. 697, 723 (2022)); see also *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000); *ICC* v. *Cincinnati, N. O. & T. P. R. Co.*, 167 U.S. 479, 494-495, 509 (1897). Congress rarely "hide[s] elephants in mouseholes." *Whitman* v. *Am. Trucking Ass'n*, 531 U.S. 457, 468 (2001).

The major questions doctrine reflects "separation of powers principles and a practical understanding of legislative intent." *West Virginia*, 597 U.S. at 723. The Court presumes "Congress intends to make major policy decisions itself," rather than delegating them. *Ibid.* (citation omitted). This principle is especially significant where, as here, Congress historically has kept a tight rein on delegations. Congress does not hide tariff- and tax-setting authority—core Article I functions—in general language of "regulation." If Congress intended IEEPA to authorize worldwide, variable, and enduring tariff regimes, it would have said so.

Indeed, the major questions canon has particular force in cases involving "emergency powers," which "tend to kindle emergencies" that "afford a ready pretext for usurpation" of Congress's limits. *Youngstown*, 343 U.S. at 650 (Jackson, J., concurring). Aware that "emergency powers," with their extraordinary impacts, "are consistent with free government only when their control is lodged elsewhere than in the Executive" (*id.* at 652, 650), this Court has repeatedly required a clear statutory basis for major, unprecedented policy changes—even in emergencies.

1. This Court invalidates unprecedented executive action that has major economic effects and lacks clear statutory support.

The major questions doctrine has taken on particular significance in recent cases. In *Alabama Association of Realtors* v. *HHS*, 594 U.S. 758 (2021), for example, the Court invalidated President Biden's attempt to impose an eviction moratorium during COVID-19. Biden invoked a 1944 law authorizing federal officials to adopt measures "necessary to prevent the * * * spread of" disease. *Id.* at 761. Even if the text plausibly authorized the moratorium, the Court explained, it would be an "unprecedented" intervention in American economic life. *Id.* at 765. And given the absence of prior interpretations that "ha[d] even begun to approach" the moratorium's "size or scope," the Court invalidated the policy. *Ibid.*

Similarly, in *NFIB* v. *OSHA*, the Court invalidated OSHA's mandate that "84 million Americans" get "a COVID-19 vaccine or undergo weekly medical testing at their own expense," where OSHA had "never before" used its occupational-hazards authority to impose such measures. 595 U.S. 109, 119 (2022). And in *West Virginia*, the Court invalidated EPA's nationwide cap on carbon-dioxide emissions, where it "had always set emissions limits" narrowly and in "an entirely different" way. 597 U.S. at 701.

Most recently, the Court invalidated President Biden's attempt to forgive $430 billion in student loans during COVID-19. *Biden*, 600 U.S. at 482. The Biden Administration invoked authority to "waive or modify any statutory or regulatory provision applicable to" the "student loans program" in connection with

a presidentially declared "national emergency." 20 U.S.C. 1098bb(a)(1). The government argued that the Act's "whole point" was "to ensure that in a national emergency," it had "substantial discretion" to mount an effective response. *Biden*, 600 U.S. at 501. But while the law might have been read to authorize loan forgiveness, the plan was different in magnitude and kind from "previous invocations," and its "economic and political significance" was "staggering." *Id.* at 501-502. As the Court put it, the government's interpretation gave the Executive "virtually unlimited power to rewrite" the law. *Id.* at 502-503. And the Court saw the "'consequential tradeoffs' inherent" in the program as "'ones that Congress would likely have intended for itself.'" *Id.* at 506 (citations omitted).

2. The major questions doctrine applies forcefully here.

The "major questions" doctrine fully applies here. For starters, "[t]he economic and political significance" of the tariffs is "staggering by any measure." *Id.* at 502 (quotations omitted). As the President proclaimed: "This is transforming our nation" on "every single * * * item that's built." President Donald Trump, *Remarks on New Tariffs* (Apr. 2, 2025).[8] The Tax Foundation estimates that these tariffs will impose $1.7 trillion in new taxes on Americans by 2035, reduce GDP growth by 0.6% per year, and reduce income by 1.1% in 2026 alone.[9] That is orders of magnitude larger than earlier "major questions" cases.

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[8] https://www.c-span.org/program/white-house-event/president-trump-delivers-remarks-on-new-tariffs/658000.

[9] York & Durante, Trump Tariffs: The Economic Impact of the Trump Trade War, Tax Foundation (Oct. 3,

E.g., *Biden*, 600 U.S. at 483 ("$430 billion"); *NFIB*, 595 U.S. at 120 ("billions of dollars").

Yet the tariffs' significance transcends the dollar amounts involved. The Order upends a century of trade law. Since 1922, with exceptions set by Congress itself, Congress has followed a policy of uniform tariff rates for most of the world, extending tariff rates negotiated for one trading partner to all nations with whom we have normal trade relations. D. Irwin, *Peddling Protectionism: Smoot-Hawley and the Great Depression* 362-366 (2011). The tariffs here, by contrast, vary by country for the same goods—Germany and Japan 15%, Vietnam 20%, Switzerland 39%, Brazil and India 50%—without regard to congressional policy or international agreements.

Since the Trade Act of 1974, Presidents wishing to renegotiate major trade deals have invariably asked Congress for that authority, in keeping with the system established in that landmark statute. See Cong. Research Serv., *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy* (June 15, 2015); Alan Wolff, *Evolution of the Executive-Legislative Relationship in the Trade Act of 1974*, 19(4) SAIS Rev. 16 (1975). The government's reading of IEEPA would mean that each of the last eight Presidents wasted massive time and effort attempting to secure Trade Promotion Authority from Congress. "What chumps!" *Ariz. State Legislature* v. *Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 825 (2015) (Roberts, C.J., dissenting).

2025), https://taxfoundation.org/research/all/federal/trump-tariffs-trade-war/.

A construction that would render decades of targeted trade delegations superfluous, displace Congress's carefully reticulated trade architecture, and walk away from major international agreements should be rejected absent an unmistakable directive.

3. The government's various attempts to avoid the major questions doctrine are unconvincing.

The government does not dispute the sweeping nature of these tariffs—indeed, it boasts that they will raise "trillions." Instead, it offers various reasons why the interpretative limits consistently applied to the President's predecessors should not apply to him.

a. First, citing Justice Kavanaugh's concurrence in *Consumers' Research*, 145 S. Ct. at 2516, the government says the major questions canon does not apply to "national security or foreign policy." Br. 34. Justice Kavanaugh gave two supporting reasons: First, the canon "does not reflect ordinary congressional intent in those areas"; and second, the President has "at least some independent constitutional power to act even without congressional authorization." 145 S. Ct. at 2516. Applied here, those reasons *support* applying the canon.

There is no need to speculate about "general congressional intent" concerning tariffs. Congress has jealously guarded its power to set tariff rates. It has passed dozens of tariff statutes every decade, and each time it delegates tariff-related authority, it does so explicitly and with strict limits. Thus, "ordinary congressional intent" *disfavors* a broad statutory delegation here.

Moreover, the President has no "independent" constitutional power to set tariffs. The Constitution puts that power squarely in Congress. As Justice Jackson's *Youngstown* concurrence put it, "Congress alone controls the raising of revenues," and being "Commander[-]in[-]Chief of the Army and Navy" does not make the President "Commander-in-Chief of the country." 343 U.S. at 643-644.

Finally, the government uses "national security" and "foreign policy" too loosely. Many domestic issues have foreign-policy implications and are the subject of diplomatic negotiations. That does not remove them from Congress's domain. The tariffs tax *Americans*, enriching the Treasury and having massive *domestic* effects. Indeed, for much of American history, Congress "treated the determination of import duties" as "an exclusively domestic concern." Irwin, *supra*, at 328.

b. Second, the government says the major questions canon applies only to agencies, not Presidents. But "[d]elegations to executive officers and agencies are * * * *de facto* delegations to the President." *Consumers' Research*, 145 S. Ct. at 2512 n.1 (Kavanaugh, J., concurring). Further, the presumption that "Congress intends to make major policy decisions itself" (*West Virginia*, 597 U.S. at 723) holds equally true for delegations to the President. *Nebraska* v. *Su*, 121 F. 4th 1, 17-18 (9th Cir. 2024) (Nelson, J., concurring). Not surprisingly, the courts reject any such distinction. *Louisiana* v. *Biden*, 55 F.4th 1017, 1031 n.40 (5th Cir. 2022); accord *Georgia* v. *President*, 46 F.4th 1283, 1295-1296 (11th Cir. 2022); *Kentucky* v. *Biden*, 23 F.4th 585, 606-608 (6th Cir. 2022).

c. The government next suggests that applying the major questions doctrine would require imposing "atextual" limits on IEEPA. Br. 33. Wrong again.

There is nothing "atextual" in reading "regulate" in its ordinary way rather than the government's unprecedented way. Nor is it "atextual" to enforce Congress's insistence that IEEPA be confined to "unusual" and "extraordinary" threats—or to say presidential power is constrained by Congress's specific trade statutes, like Sections 122, 232, and 201. The government worries that applying the major questions canon will generate line-drawing problems regarding "how much" authority "is too much." Br. 33. But this Court has repeatedly drawn that line, even where the President has declared an emergency. *E.g.*, *Biden*, 600 U.S. at 501. And it is better for the Court to draw hard lines (if hard lines they be) than to throw up its hands and say executive power is unlimited.

d. Finally, the government wrongly argues that *Dames & Moore* warrants "a broad reading" of IEEPA. Br. 35.

Dames & Moore involved two aspects of President Carter's orders resolving the Iranian hostage crisis. The first nullified attachments of Iranian financial assets. The Court upheld that order not by giving IEEPA a "broad reading" (*ibid.*), but by following its "plain language," which expressly permitted the President to "nullify" the assets (453 U.S. at 670-672).

The harder issue was the order suspending certain "claims of American citizens against Iran." *Id.* at 675. Although the government tried to shoehorn this order into IEEPA's text, such claims were "not in themselves transactions involving Iranian property or ef-

forts to exercise any rights with respect to such property," so IEEPA's "terms" "d[id] not authorize" suspending them. *Ibid.* The Court upheld the order based not on IEEPA's text, but on longstanding "congressional acquiescence in the President's power to settle claims" and legislative history referencing that acquiescence. *Id.* at 681-682. Neither exists here.

In sum, *Dames & Moore*—which counsels close attention to IEEPA's text and established practice—confirms that an unprecedented, worldwide tariff regime cannot rest on general words where Congress has elsewhere legislated with specificity.

II. The government's interpretation renders IEEPA an unconstitutional delegation of legislative power.

If the government is right, the President may tax Americans' import purchases at any rate, for any good, from any place, for any length of time, simply by declaring longstanding trade deficits an "emergency" and an "unusual and extraordinary threat"—both unreviewable determinations. Unencumbered by the trappings of bicameralism, the President can change course tomorrow, and again the next day, raising or lowering taxes for any reason. James Madison warned against precisely that:

> What prudent merchant will hazard his fortunes in any new branch of commerce when he knows not but that his plans may be rendered unlawful before they can be executed? What farmer or manufacturer will lay himself out for the encouragement given to any particular cultivation or establishment, when he can have no

> assurance that his preparatory labors and advances will not render him a victim to an inconstant government?

THE FEDERALIST NO. 62. Madison's solution: Laws must be made by a bicameral Congress after full deliberation.

There are myriad reasons to doubt that Congress ceded such sweeping powers to the President. *Supra* at 42-44. But let us offer another: It would unconstitutionally delegate *legislative* power to the *Executive*. See U.S. Chamber Br.; George Allen Br. 28-33. As Judge Cunningham observed, "enabl[ing] the President to set whatever tariff rates he wishes"—"a functionally limitless delegation"—would pose grave constitutional problems. Pet.App.59a, 58a. (Cunningham, J., concurring). When Congress, unlike the President, makes key policy decisions, that allows for democratic dialogue, while providing the constancy in the law that the Framers cherished. The government's extravagant reading, by contrast, runs headlong into the nondelegation doctrine.

A. The government's interpretation causes IEEPA to violate the nondelegation doctrine.

Recognizing that the "power over the purse" is "the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people" (THE FEDERALIST NO. 58 (Madison)), the Framers gave that power to Congress alone. This does not mean Congress is barred from granting presidents any tariff-related authority whatsoever. But any such grant must be guided by a judicially enforceable "intelligible principle" to ensure that the Executive is carrying out Congress's policy, not his own.

This Court has been circumspect in invalidating statutes for delegating excessive policy judgment. Yet no Justice has ever questioned the doctrine or its venerable "purpose"—"to enforce limits on the 'degree of policy judgment that can be left to those executing or applying the law.'" *Consumers' Research*, 145 S. Ct. at 2501 (quoting *Mistretta* v. *United States*, 488 U.S. 361, 416 (1989) (Scalia, J., dissenting)). All agree that Congress may not delegate "boundless authority"—it must establish "the 'general policy' the agency must pursue," identify "the 'boundaries' it cannot cross," and provide "sufficient standards to enable both 'the courts and the public [to] ascertain whether the agency' has followed the law." *Id.* at 2482, 2501, 2531, 2497; *id.* at 2524-2525 (Gorsuch, J., dissenting). And "[t]he 'guidance' needed is greater" when the government's actions "'affect the entire national economy.'" *Id.* at 2501 (citation omitted); see also *Dep't of Transp.* v. *Am. Ass'n of R.R.*, 575 U.S. 43, 70-83 (2015) (Thomas, J., concurring in the judgment); *id.* at 61-62 (Alito, J., concurring).

In its most recent nondelegation case, *Consumers' Research*, the Court allowed the FCC to require "contributions" (taxes) to support universal service, but only because Congress set a "floor" and a "ceiling" for such taxes. 145 S. Ct. at 2501-2502. The government could not collect whatever amount it wished, only that "sufficient" to fund universal service—neither "more" nor "less." *Ibid.* Had Congress allowed the FCC to "demand payments from carriers of any amount it wants up to $5 trillion," that would have placed no intelligible "limits" on its "policy judgment"—which is unconstitutional. *Id.* at 2501.

The FCC's assertion of authority was far narrower than that here. The President says he can set tariffs

at any level—whether 10% or 145%—changeable at will. There is no floor *or* ceiling, even a "$5 trillion" one. *Ibid.* The sky's the limit, and his actions "affect the entire national economy." *Id.* at 2497.

IEEPA lacks any of the constraints that Congress has imposed in laws expressly authorizing tariffs. The government claims complete discretion over duration, products, and countries—all can change tomorrow, short-circuiting legislative deliberation over vital tax policy matters affecting "the people's liberty." See *Gundy* v. *United States*, 588 U.S. 128, 153-155 (2019) (Gorsuch, J., dissenting) (nondelegation protects deliberation and political minorities).

If that interpretation is correct, IEEPA is the most "sweeping delegation of legislative power" since the National Industrial Recovery Act of 1935 (NIRA), which unlawfully gave the President "virtually unfettered" discretion to "prescrib[e] codes" governing "trade and industry." *A.L.A. Schechter Poultry Corp.* v. *United States*, 295 U.S. 495, 539, 542 (1935). And if that sweeping delegation should prevail, it would be exceedingly difficult to change, as a two-thirds supermajority in each House of Congress would be needed to surmount an expected presidential veto.

B. The government's defense of its sweeping authority is unconvincing.

In attempting to address the nondelegation problem, the government talks out of both sides of its mouth. On one side, it denies claiming unbounded tariff authority; on the other, it says such unbounded authority is needed. Neither argument is convincing.

1. The government cites four limitations that supposedly provide an intelligible principle. None is a serious limitation.

First, the government says the President must declare "emergencies" and "unusual and extraordinary threat[s]." Br. 46. That is not enough to make an unbridled delegation of legislative power constitutional. Under our Constitution, the Executive cannot wield unbounded power even in "cases of emergency." *Youngstown*, 343 U.S. at 586-588. Worse, the government says these determinations rest in the President's unreviewable discretion. Br. 41-42. That is not a *limitation*. It does not allow "'*the courts* * * * to ascertain whether the [President]' has followed the law." *Consumers' Research*, 145 S. Ct. at 2497 (emphasis added) (citation omitted). And if the President can unlock the power to tax by declaring a 50-year-old problem "unusual and extraordinary," the jig is up.

Second, the government claims emergency declarations under the NEA are "time limit[ed]." Br. 46. But that one-year limit can be extended in the President's sole discretion. The proof is in the pudding: Some 51 extant "emergency" decrees remain in effect, dating back *40-plus* years. Brennan Ctr. for Justice, *Declared National Emergencies Under the National Emergencies Act* (Oct. 2, 2025).[10]

Third, the government says Congress "extensively oversees the President in this area." Br. 46. But after *INS* v. *Chadha*, 462 U.S. 919 (1983), all that is left of congressional control are joint resolutions subject to

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[10] https://www.brennancenter.org/our-work/research-reports/declared-national-emergencies-under-national-emergencies-act.

presidential vetoes. Losing the legislative veto made it nearly impossible for Congress to police IEEPA's guidelines. Congress has *never* overcome a veto of legislation designed to end an emergency declaration. Cong. Research Serv., *National Emergencies Act: Expedited Procedures in the House and Senate* 14-18 (Feb. 3, 2025). And if legislating *afterwards* is "overs[ight]" (Br. 46), *every* delegation is constitutional.

Fourth, the government says an obscure corner of IEEPA that has never been invoked, Section 1702(b), limits presidential discretion. Br. 46. But that subsection lists items that the President might regulate under other IEEPA powers—communications, donations, baggage, etc. Each is irrelevant to tariffs, on which Section 1702(b) imposes zero limitations. It is like saying NIRA was not boundless because it did not apply to nonprofits.

The government is therefore caught on the horns of a dilemma. It cannot rely on time limits, oversight, or IEEPA's exceptions because none of them meaningfully constrain tariffs. And although IEEPA's "emergency" and "unusual and extraordinary threat" requirements could limit IEEPA's delegation if subject to meaningful judicial review, the government cannot tolerate real judicial review because the Order cannot survive any realistic, blinder-free analysis.

2. Aware that the tariff power it asserts is effectively unbounded, the government says nondelegation review is watered down in "foreign affairs" cases. Br. 43-45. Not so.

First, the President is not exercising "independent" or "exclusive" foreign affairs powers. *Consumers' Research*, 145 S. Ct. at 2516 (Kavanaugh, J., concurring).

The President's power to impose tariffs (on *Americans*) comes from Congress, and that is true whether he is asserting the power to tax foreign commerce or the power to regulate it—Article I vests both in Congress.

Second, *J.W. Hampton*—which established the "intelligible principle" test—involved tariffs, and it did not apply a weaker standard. 276 U.S. at 409. Nor did *Marshall Field & Co.* v. *Clark*, 143 U.S. 649, 692-693 (1892).

Even *United States* v. *Curtiss-Wright Export Corp.*—the high-water mark of deference—applied ordinary "intelligible principles" analysis. 299 U.S. 304, 322-329 (1936). In approving that delegation, the Court cited an "unbroken legislative practice," dating "almost from the [government's] inception." *Id.* at 322. Here, by contrast, *no* other President has used IEEPA to impose tariffs, and the events of *Yoshida* present the only other presidential claim of emergency tariff authority—a claim Nixon himself did not advance. Thus, "unbroken legislative practice" *and* unbroken presidential practice cut against the sweeping tariff powers asserted here.[11]

C. The Court can avoid nondelegation problems by rejecting the government's reading of IEEPA.

"[W]hen statutory language is susceptible of multiple interpretations, a court may shun an interpretation that raises serious constitutional doubts" and "adopt an alternative that avoids th[em]." *Jennings* v.

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[11] The government's other cases (Br. 46-47) involved powers that IEEPA explicitly granted with specific limits.

Rodriguez, 583 U.S. 281, 286 (2018). The saving interpretation need not be "the most natural"—only "'fairly possible.'" *Sebelius*, 567 U.S. at 563 (citation omitted). Here, the saving construction *is* the most natural one, as the nondelegation problem can be avoided simply by rejecting the government's implausible interpretation.

* * *

The Government reads IEEPA—which never mentions "tariffs," "taxes," or "revenue"—to empower the President to exercise Congress's power to levy "Taxes, Duties," and "Imposts." But for "all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations. Such institutions may be destined to pass away. But it is the duty of the Court to be last, not first, to give them up." *Youngstown*, 343 U.S. at 655 (Jackson, J., concurring).

CONCLUSION

For the foregoing reasons, this Court should affirm.

Respectfully submitted,

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APPENDIX

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APPENDIX A

U.S. Const. art. I, § 1:

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

U.S. Const. art. I, § 7, cl. 1:

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

U.S. Const. art. I, § 8, cl. 1:

The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

U.S. Const. art. I, § 9, cl. 4:

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or enumeration herein before directed to be taken.

U.S. Const. art. I, § 9, cl. 5:

No Tax or Duty shall be laid on Articles exported from any State.

U.S. Const. art. II, § 3:

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of

Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

APPENDIX B

International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1702):

50 U.S.C. § 1701

(a) Any authority granted to the President by section 1702 of this title may be exercised to deal with 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, if the President declares a national emergency with respect to such threat.

(b) The authorities granted to the President by section 1702 of this title may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this chapter and may not be exercised for any other purpose. Any exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency which must be with respect to such threat.

50 U.S.C. § 1702

(a) In general

(1) At the times and to the extent specified in section 1701 of this title, the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit—

(i) any transactions in foreign exchange,

(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,

(iii) the importing or exporting of currency or securities,

by any person, or with respect to any property, subject to the jurisdiction of the United States;

(B) 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 respect to any property, subject to the jurisdiction of the United States; and.

(C) when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to time, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes.

(2) In exercising the authorities granted by paragraph (1), the President may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in paragraph (1) either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of such paragraph. In any case in which a report by a person could be required under this paragraph, the President may require the production of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(3) Compliance with any regulation, instruction, or direction issued under this chapter shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this chapter, or any regulation, instruction, or direction issued under this chapter.

(b) Exceptions to grant of authority

The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly—

(1) any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value;

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 1701 of this title, (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances; or

(3) the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under section 4604 of this title, or under section 4605 of this title to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, or with respect to which acts are prohibited by chapter 37 of title 18; or

(4) any transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

(c) Classified information

In any judicial review of a determination made under this section, if the determination was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act) such information may be submitted to the reviewing court ex parte and in camera. This subsection does not confer or imply any right to judicial review.

Section 122 of the Trade Act of 1974
(19 U.S.C. § 2132(a)):

(a) Presidential proclamations of temporary import surcharges and temporary limitations on imports through quotas in situations of fundamental international payments problems

Whenever fundamental international payments problems require special import measures to restrict imports—

(1) to deal with large and serious United States balance-of-payments deficits.

(2) to prevent an imminent and significant depreciation of the dollar in foreign exchange markets, or

(3) to cooperate with other countries in correcting an international balance-of-payments disequilibrium,

the President shall proclaim, for a period not exceeding 150 days (unless such period is extended by Act of Congress)—

(A) a temporary import surcharge, not to exceed 15 percent ad valorem, in the form of duties (in addition to those already imposed, if any) on articles imported into the United States;

(B) temporary limitations through the use of quotas on the importation of articles into the United States; or

(C) both a temporary import surcharge described in subparagraph (A) and temporary limitations described in subparagraph (B).

The authority delegated under subparagraph (B) (and so much of subparagraph (C) as relates to subparagraph (B)) may be exercised (i) only if international trade or monetary agreements to which the United States is a party permit the imposition of quotas as a balance-of-payments measure, and (ii) only to the extent that the fundamental imbalance cannot be dealt with effectively by a surcharge proclaimed pursuant to subparagraph (A) or (C). Any temporary import surcharge proclaimed pursuant to subparagraph (A) or (C) shall be treated as a regular customs duty.

Sections 201-203 of the Trade Act of 1974 (19 U.S.C. §§ 2251-2253):

Section 201 (19 U.S.C. § 2251)

(a) Presidential action

If the United States International Trade Commission (hereinafter referred to in this part as the "Commission") determines under section 2252(b) of this title that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article, the President, in accordance with this part, shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

(b) Positive adjustment to import competition

(1) For purposes of this part, a positive adjustment to import competition occurs when—

(A) the domestic industry—

(i) is able to compete successfully with imports after actions taken under section 2254 of this title terminate, or

(ii) the domestic industry experiences an orderly transfer of resources to other productive pursuits; and

(B) dislocated workers in the industry experience an orderly transition to productive pursuits.

(2) The domestic industry may be considered to have made a positive adjustment to import competition even though the industry is not of the same size and composition as the industry at the time the investigation was initiated under section 2252(b) of this title.

Section 202 (19 U.S.C. § 2252)

(a) Petitions and adjustment plans

(1) A petition requesting action under this part for the purpose of facilitating positive adjustment to import competition may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry.

(2) A petition under paragraph (1)—

(a) shall include a statement describing the specific purposes for which action is being sought, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition; and

(b) may—

(i) subject to subsection (d)(1)(C)(i), request provisional relief under subsection (d)(1); or

(ii) request provisional relief under subsection (d)(2).

(3) Whenever a petition is filed under paragraph (1), the Commission shall promptly transmit copies of the petition to the Office of the United States Trade Representative and other Federal agencies directly concerned.

(4) A petitioner under paragraph (1) may submit to the Commission and the United States Trade Representative (hereafter in this part referred to as the "Trade Representative"), either with the petition, or at any time within 120 days after the date of filing of the petition, a plan to facilitate positive adjustment to import competition.

(5)

(a) Before submitting an adjustment plan under paragraph (4), the petitioner and other entities referred to in paragraph (1) that wish to participate may consult with the Trade Representative and the officers and employees of any Federal agency that is considered appropriate by the Trade Representative, for purposes of evaluating the adequacy of the proposals being considered for inclusion in the plan in relation to specific actions that may be taken under this part.

(b) A request for any consultation under subparagraph (A) must be made to the Trade Representative. Upon receiving such a request, the Trade Representative shall confer with the petitioner and provide such assistance, including publication of appropriate notice in the Federal Register, as may be practicable in obtaining other participants in the consultation. No consultation may occur under subparagraph (A) unless the Trade Representative, or his delegate, is in attendance.

(6)

(a) In the course of any investigation under subsection (b) of this section, the Commission shall seek information (on a confidential basis, to the extent appropriate) on actions being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition.

(b) Regardless whether an adjustment plan is submitted under paragraph (4) by the petitioner, if the Commission makes an affirmative determination under subsection (b), any—

(i) firm in the domestic industry;

(ii) certified or recognized union or group of workers in the domestic industry;

(iii) State or local community;

(iv) trade association representing the domestic industry; or

(v) any other person or group of persons,

may, individually, submit to the Commission commitments regarding actions such persons and entities intend to take to facilitate positive adjustment to import competition.

(7) Nothing in paragraphs (5) and (6) may be construed to provide immunity under the antitrust laws.

(8) The procedures concerning the release of confidential business information set forth in section 332(g) of the Tariff Act of 1930 [19 U.S.C. 1332(g)] shall apply with respect to information received by the Commission in the course of investigations conducted under this part, part 1 of title III of the North American Free Trade Agreement Implementation Act, title II of the United States-Jordan Free Trade Area Implementation Act, title III of the United States-Chile Free Trade Agreement Implementation Act, title III of the United States-

Singapore Free Trade Agreement Implementation Act, title III of the United States-Australia Free Trade Agreement Implementation Act, title III of the United States-Morocco Free Trade Agreement Implementation Act, title III of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act [19 U.S.C. 4051 et seq.], title III of the United States-Bahrain Free Trade Agreement Implementation Act, title III of the United States-Oman Free Trade Agreement Implementation Act, title III of the United States-Peru Trade Promotion Agreement Implementation Act, title III of the United States–Korea Free Trade Agreement Implementation Act, title III of the United States–Colombia Trade Promotion Agreement Implementation Act,,[1] title III of the United States–Panama Trade Promotion Agreement Implementation Act, and subtitle C of title III of the United States-Mexico-Canada Agreement Implementation Act [19 U.S.C. 4571 et seq.]. The Commission may request that parties providing confidential business information furnish nonconfidential summaries thereof or, if such parties indicate that the information in the submission cannot be summarized, the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

(b) Investigations and determinations by Commission

(1)

(a) Upon the filing of a petition under subsection (a), the request of the President or the Trade Representative, the resolution of either the Committee on

Ways and Means of the House of Representatives or the Committee on Finance of the Senate, or on its own motion, the Commission shall promptly make an investigation to determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

(b) For purposes of this section, the term "substantial cause" means a cause which is important and not less than any other cause.

(2)

(a) Except as provided in subparagraph (B), the Commission shall make the determination under paragraph (1) within 120 days (180 days if the petition alleges that critical circumstances exist) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(b) If before the 100th day after a petition is filed under subsection (a)(1) the Commission determines that the investigation is extraordinarily complicated, the Commission shall make the determination under paragraph (1) within 150 days (210 days if the petition alleges that critical circumstances exist) after the date referred to in subparagraph (A).

(3) The Commission shall publish notice of the commencement of any proceeding under this subsection in the Federal Register and shall, within a reasonable time thereafter, hold public hearings at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, to comment on the adjustment plan, if any, submitted

under subsection (a), to respond to the presentations of other parties and consumers, and otherwise to be heard.

(c) Factors applied in making determinations

(1) In making determinations under subsection (b), the Commission shall take into account all economic factors which it considers relevant, including (but not limited to)—

(a) with respect to serious injury—

(i) the significant idling of productive facilities in the domestic industry,

(ii) the inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit, and

(iii) significant unemployment or underemployment within the domestic industry;

(b) with respect to threat of serious injury—

(i) a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment) in the domestic industry,

(ii) the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development,

(iii) the extent to which the United States market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(c) with respect to substantial cause, an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers.

(2) In making determinations under subsection (b), the Commission shall—

(a) consider the condition of the domestic industry over the course of the relevant business cycle, but may not aggregate the causes of declining demand associated with a recession or economic downturn in the United States economy into a single cause of serious injury or threat of injury; and

(b) examine factors other than imports which may be a cause of serious injury, or threat of serious injury, to the domestic industry.

The Commission shall include the results of its examination under subparagraph (B) in the report submitted by the Commission to the President under subsection (e).

(3) The presence or absence of any factor which the Commission is required to evaluate in subparagraphs (A) and (B) of paragraph (1) is not necessarily dispositive of whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry.

(4) For purposes of subsection (b), in determining the domestic industry producing an article like or directly competitive with an imported article, the Commission—

(a) to the extent information is available, shall, in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production;

(b) may, in the case of a domestic producer which produces more than one article, treat as part of such domestic industry only that portion or subdivision of the producer which produces the like or directly competitive article; and

(c) may, in the case of one or more domestic producers which produce a like or directly competitive article in a major geographic area of the United States and whose production facilities in such area for such article constitute a substantial portion of the domestic industry in the United States and primarily serve the market in such area, and where the imports are concentrated in such area, treat as such domestic industry only that segment of the production located in such area.

(5) In the course of any proceeding under this subsection, the Commission shall investigate any factor which in its judgment may be contributing to increased imports of the article under investigation. Whenever in the course of its investigation the Commission has reason to believe that the increased imports are attributable in part to circumstances which come within the purview of subtitles A and B of title VII [19 U.S.C. 1671 et seq., 1673 et seq.] or section 337 [19 U.S.C. 1337] of the Tariff Act of 1930, or other remedial provisions of law, the Commission shall promptly notify the appropriate agency so that such action may be taken as is otherwise authorized by such provisions of law.

(6) For purposes of this section:

(a)

(i) The term "domestic industry" means, with respect to an article, the producers as a whole of the like or directly competitive article or those producers whose collective production of the like or

directly competitive article constitutes a major proportion of the total domestic production of such article.

(ii) The term "domestic industry" includes producers located in the United States insular possessions.

(b) The term "significant idling of productive facilities" includes the closing of plants or the underutilization of production capacity.

(c) The term "serious injury" means a significant overall impairment in the position of a domestic industry.

(d) The term "threat of serious injury" means serious injury that is clearly imminent.

(d) Provisional relief

(1)

(a) An entity representing a domestic industry that produces a perishable agricultural product or citrus product that is like or directly competitive with an imported perishable agricultural product or citrus product may file a request with the Trade Representative for the monitoring of imports of that product under subparagraph (B). Within 21 days after receiving the request, the Trade Representative shall determine if—

(i) the imported product is a perishable agricultural product or citrus product; and

(ii) there is a reasonable indication that such product is being imported into the United States in such increased quantities as to be, or likely to be, a substantial cause of serious injury, or the threat thereof, to such domestic industry.

(b) If the determinations under subparagraph (A)(i) and (ii) are affirmative, the Trade Representative

shall request, under section 332(g) of the Tariff Act of 1930 [19 U.S.C. 1332(g)], the Commission to monitor and investigate the imports concerned for a period not to exceed 2 years. The monitoring and investigation may include the collection and analysis of information that would expedite an investigation under subsection (b).

(c) If a petition filed under subsection (a)—

(i) alleges injury from imports of a perishable agricultural product or citrus product that has been, on the date the allegation is included in the petition, subject to monitoring by the Commission under subparagraph (B) for not less than 90 days; and

(ii) requests that provisional relief be provided under this subsection with respect to such imports;

the Commission shall, not later than the 21st day after the day on which the request was filed, make a determination, on the basis of available information, whether increased imports (either actual or relative to domestic production) of the perishable agricultural product or citrus product are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a like or directly competitive perishable product or citrus product, and whether either—

(i) the serious injury is likely to be difficult to repair by reason of perishability of the like or directly competitive agricultural product; or

(ii) the serious injury cannot be timely prevented through investigation under subsection (b) and action under section 2253 of this title.

(d) At the request of the Commission, the Secretary of Agriculture shall promptly provide to the Commission any relevant information that the Department of Agriculture may have for purposes of making determinations and findings under this subsection.

(e) Whenever the Commission makes an affirmative preliminary determination under subparagraph (C), the Commission shall find the amount or extent of provisional relief that is necessary to prevent or remedy the serious injury. In carrying out this subparagraph, the Commission shall give preference to increasing or imposing a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury.

(f) The Commission shall immediately report to the President its determination under subparagraph (C) and, if the determination is affirmative, the finding under subparagraph (E).

(g) Within 7 days after receiving a report from the Commission under subparagraph (F) containing an affirmative determination, the President, if he considers provisional relief to be warranted and after taking into account the finding of the Commission under subparagraph (E), shall proclaim such provisional relief that the President considers necessary to prevent or remedy the serious injury.

(2)

(a) When a petition filed under subsection (a) alleges that critical circumstances exist and requests that provisional relief be provided under this subsection with respect to imports of the article identified in the petition, the Commission shall, not later than 60 days after the petition containing the request was

filed, determine, on the basis of available information, whether—

(i) there is clear evidence that increased imports (either actual or relative to domestic production) of the article are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article; and

(ii) delay in taking action under this part would cause damage to that industry that would be difficult to repair.

(b) If the determinations under subparagraph (A)(i) and (ii) are affirmative, the Commission shall find the amount or extent of provisional relief that is necessary to prevent or remedy the serious injury. In carrying out this subparagraph, the Commission shall give preference to increasing or imposing a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury.

(c) The Commission shall immediately report to the President its determinations under subparagraph (A)(i) and (ii) and, if the determinations are affirmative, the finding under subparagraph (B).

(d) Within 30 days after receiving a report from the Commission under subparagraph (C) containing an affirmative determination under subparagraph (A)(i) and (ii), the President, if he considers provisional relief to be warranted and after taking into account the finding of the Commission under subparagraph (B), shall proclaim, for a period not to exceed 200 days, such provisional relief that the President considers necessary to prevent or remedy the serious injury. Such relief shall take the form of an increase in, or the imposition of, a duty on imports,

if such form of relief is feasible and would prevent or remedy the serious injury.

(3) If provisional relief is proclaimed under paragraph (1)(G) or (2)(D) in the form of an increase, or the imposition of, a duty, the President shall order the suspension of liquidation of all imported articles subject to the affirmative determination under paragraph (1)(C) or paragraph (2)(A), as the case may be, that are entered, or withdrawn from warehouse for consumption, on or after the date of the determination.

(4)

(a) Any provisional relief implemented under this subsection with respect to an imported article shall terminate on the day on which—

(i) if such relief was proclaimed under paragraph (1)(G) or (2)(D), the Commission makes a negative determination under subsection (b) regarding injury or the threat thereof by imports of such article;

(ii) action described in section 2253(a)(3)(A) or (C) of this title takes effect under section 2253 of this title with respect to such article;

(iii) a decision by the President not to take any action under section 2253(a) of this title with respect to such article becomes final; or

(iv) whenever the President determines that, because of changed circumstances, such relief is no longer warranted.

(b) Any suspension of liquidation ordered under paragraph (3) with respect to an imported article shall terminate on the day on which provisional relief is terminated under subparagraph (A) with respect to the article.

(c) If an increase in, or the imposition of, a duty that is proclaimed under section 2253 of this title on an imported article is different from a duty increase or imposition that was proclaimed for such an article under this section, then the entry of any such article for which liquidation was suspended under paragraph (3) shall be liquidated at whichever of such rates of duty is lower.

(d) If provisional relief in the form of an increase in, or the imposition of, a duty is proclaimed under this section with respect to an imported article and neither a duty increase nor a duty imposition is proclaimed under section 2253 of this title regarding such article, the entry of any such article for which liquidation was suspended under paragraph (3) may be liquidated at the rate of duty that applied before provisional relief was provided.

(5) For purposes of this subsection:

(a) The term "citrus product" means any processed oranges or grapefruit, or any orange or grapefruit juice, including concentrate.

(b) A perishable agricultural product is any agricultural article, including livestock, regarding which the Trade Representative considers action under this section to be appropriate after taking into account—

(i) whether the article has—

(i) a short shelf life,

(ii) a short growing season, or

(iii) a short marketing period,

(ii) whether the article is treated as a perishable product under any other Federal law or regulation; and

(iii) any other factor considered appropriate by the Trade Representative.

The presence or absence of any factor which the Trade Representative is required to take into account under clause (i), (ii), or (iii) is not necessarily dispositive of whether an article is a perishable agricultural product.

(c) The term "provisional relief" means—

(i) any increase in, or imposition of, any duty;

(ii) any modification or imposition of any quantitative restriction on the importation of an article into the United States; or

(iii) any combination of actions under clauses (i) and (ii).

(e) Commission recommendations

(1) If the Commission makes an affirmative determination under subsection (b)(1), the Commission shall also recommend the action that would address the serious injury, or threat thereof, to the domestic industry and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.

(2) The Commission is authorized to recommend under paragraph (1)—

(a) an increase in, or the imposition of, any duty on the imported article;

(b) a tariff-rate quota on the article;

(c) a modification or imposition of any quantitative restriction on the importation of the article into the United States;

(d) one or more appropriate adjustment measures, including the provision of trade adjustment assistance under part 2 of this subchapter; or

(e) any combination of the actions described in subparagraphs (A) through (D).

(3) The Commission shall specify the type, amount, and duration of the action recommended by it under paragraph (1). The limitations set forth in section 2253(e) of this title are applicable to the action recommended by the Commission.

(4) In addition to the recommendation made under paragraph (1), the Commission may also recommend that the President—

(a) initiate international negotiations to address the underlying cause of the increase in imports of the article or otherwise to alleviate the injury or threat; or

(b) implement any other action authorized under law that is likely to facilitate positive adjustment to import competition.

(5) For purposes of making its recommendation under this subsection, the Commission shall—

(a) after reasonable notice, hold a public hearing at which all interested parties shall be provided an opportunity to present testimony and evidence; and

(b) take into account—

(i) the form and amount of action described in paragraph (2)(A), (B), and (C) that would prevent or remedy the injury or threat thereof,

(ii) the objectives and actions specified in the adjustment plan, if any, submitted under subsection (a)(4),

(iii) any individual commitment that was submitted to the Commission under subsection (a)(6),

(iv) any information available to the Commission concerning the conditions of competition in domestic and world markets, and likely

developments affecting such conditions during the period for which action is being requested, and

(v) whether international negotiations may be constructive to address the injury or threat thereof or to facilitate adjustment.

(6) Only those members of the Commission who agreed to the affirmative determination under subsection (b) are eligible to vote on the recommendation required to be made under paragraph (1) or that may be made under paragraph (3). Members of the Commission who did not agree to the affirmative determination may submit, in the report required under subsection (f), separate views regarding what action, if any, should be taken under section 2253 of this title.

(f) Report by Commission

(1) The Commission shall submit to the President a report on each investigation undertaken under subsection (b). The report shall be submitted at the earliest practicable time, but not later than 180 days (240 days if the petition alleges that critical circumstances exist) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(2) The Commission shall include in the report required under paragraph (1) the following:

(a) The determination made under subsection (b) and an explanation of the basis for the determination.

(b) If the determination under subsection (b) is affirmative, the recommendations for action made under subsection (e) and an explanation of the basis for each recommendation.

(c) Any dissenting or separate views by members of the Commission regarding the determination and any recommendation referred to in subparagraphs (A) and (B).

(d) The findings required to be included in the report under subsection (c)(2).

(e) A copy of the adjustment plan, if any, submitted under section 2251(b)(4) of this title.

(f) Commitments submitted, and information obtained, by the Commission regarding steps that firms and workers in the domestic industry are taking, or plan to take, to facilitate positive adjustment to import competition.

(g) A description of—

(i) the short- and long-term effects that implementation of the action recommended under subection (e) is likely to have on the petitioning domestic industry, on other domestic industries, and on consumers, and

(ii) the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers and the communities where production facilities of such industry are located, and on other domestic industries.

(3) The Commission, after submitting a report to the President under paragraph (1), shall promptly make it available to the public (with the exception of the confidential information obtained under subsection (a)(6)(B) and any other information which the Commission determines to be confidential) and cause a summary thereof to be published in the Federal Register.

(g) Expedited consideration of adjustment assistance petitions

If the Commission makes an affirmative determination under subsection (b)(1), the Commission shall promptly notify the Secretary of Labor and the Secretary of Commerce of the determination. After receiving such notification—

(1) the Secretary of Labor shall give expedited consideration to petitions by workers in the domestic industry for certification for eligibility to apply for adjustment assistance under part 2 of this subchapter; and

(2) the Secretary of Commerce shall give expedited consideration to petitions by firms in the domestic industry for certification of eligibility to apply for adjustment assistance under part 3 of this subchapter.

(h) Limitations on investigations

(1) Except for good cause determined by the Commission to exist, no investigation for the purposes of this section shall be made with respect to the same subject matter as a previous investigation under this part, unless 1 year has elapsed since the Commission made its report to the President of the results of such previous investigation.

(2) No new investigation shall be conducted with respect to an article that is or has been the subject of an action under section 2253(a)(3)(A), (B), (C), or (E) of this title if the last day on which the President could take action under section 2253 of this title in the new investigation is a date earlier than that permitted under section 2253(e)(7) of this title.

(3)

(a) Not later than the date on which the Textiles Agreement enters into force with respect to the United States, the Secretary of Commerce shall publish in the Federal Register a list of all articles that are subject to the Textiles Agreement. An investigation may be conducted under this section concerning

imports of any article that is subject to the Textiles Agreement only if the United States has integrated that article into GATT 1994 pursuant to the Textiles Agreement, as set forth in notices published in the Federal Register by the Secretary of Commerce, including the notice published under section 3591 of this title.

(b) For purposes of this paragraph:

(i) The term "Textiles Agreement" means the Agreement on Textiles and Clothing referred to in section 3511(d)(4) of this title.

(ii) The term "GATT 1994" has the meaning given that term in section 3501(1)(B) of this title.

(i) Limited disclosure of confidential business information under protective order

The Commission shall promulgate regulations to provide access to confidential business information under protective order to authorized representatives of interested parties who are parties to an investigation under this section.

Section 203 (19 U.S.C. § 2253)

(a) In general

(1)

(a) After receiving a report under section 2252(f) of this title containing an affirmative finding regarding serious injury, or the threat thereof, to a domestic industry, the President shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

(b) The action taken by the President under subparagraph (A) shall be to such extent, and for such

duration, subject to subsection (e)(1), that the President determines to be appropriate and feasible under such subparagraph.

(c) The interagency trade organization established under section 1872(a) of this title shall, with respect to each affirmative determination reported under section 2252(f) of this title, make a recommendation to the President as to what action the President should take under subparagraph (A).

(2) In determining what action to take under paragraph (1), the President shall take into account—

(a) the recommendation and report of the Commission;

(b) the extent to which workers and firms in the domestic industry are—

(i) benefitting from adjustment assistance and other manpower programs, and

(ii) engaged in worker retraining efforts;

(c) the efforts being made, or to be implemented, by the domestic industry (including the efforts included in any adjustment plan or commitment submitted to the Commission under section 2252(a) of this title) to make a positive adjustment to import competition;

(d) the probable effectiveness of the actions authorized under paragraph (3) to facilitate positive adjustment to import competition;

(e) the short- and long-term economic and social costs of the actions authorized under paragraph (3) relative to their short- and long-term economic and social benefits and other considerations relative to the position of the domestic industry in the United States economy;

(f) other factors related to the national economic interest of the United States, including, but not limited to—

(i) the economic and social costs which would be incurred by taxpayers, communities, and workers if import relief were not provided under this part,

(ii) the effect of the implementation of actions under this section on consumers and on competition in domestic markets for articles, and

(iii) the impact on United States industries and firms as a result of international obligations regarding compensation;

(g) the extent to which there is diversion of foreign exports to the United States market by reason of foreign restraints;

(h) the potential for circumvention of any action taken under this section;

(i) the national security interests of the United States; and

(j) the factors required to be considered by the Commission under section 2252(e)(5) of this title.

(3) The President may, for purposes of taking action under paragraph (1)—

(a) proclaim an increase in, or the imposition of, any duty on the imported article;

(b) proclaim a tariff-rate quota on the article;

(c) proclaim a modification or imposition of any quantitative restriction on the importation of the article into the United States;

(d) implement one or more appropriate adjustment measures, including the provision of trade adjustment assistance under part 2 of this subchapter;

(e) negotiate, conclude, and carry out agreements with foreign countries limiting the export from foreign countries and the import into the United States of such article;

(f) proclaim procedures necessary to allocate among importers by the auction of import licenses quantities of the article that are permitted to be imported into the United States;

(g) initiate international negotiations to address the underlying cause of the increase in imports of the article or otherwise to alleviate the injury or threat thereof;

(h) submit to Congress legislative proposals to facilitate the efforts of the domestic industry to make a positive adjustment to import competition;

(i) take any other action which may be taken by the President under the authority of law and which the President considers appropriate and feasible for purposes of paragraph (1); and

(j) take any combination of actions listed in subparagraphs (A) through (I).

(4)

(a) Subject to subparagraph (B), the President shall take action under paragraph (1) within 60 days (50 days if the President has proclaimed provisional relief under section 2252(d)(2)(D) of this title with respect to the article concerned) after receiving a report from the Commission containing an affirmative determination under section 2252(b)(1) of this title (or a determination under such section which he considers to be an affirmative determination by reason of section 1330(d) of this title).

(b) If a supplemental report is requested under paragraph (5), the President shall take action under

paragraph (1) within 30 days after the supplemental report is received, except that, in a case in which the President has proclaimed provisional relief under section 2252(d)(2)(D) of this title with respect to the article concerned, action by the President under paragraph (1) may not be taken later than the 200th day after the provisional relief was proclaimed.

(5) The President may, within 15 days after the date on which he receives a report from the Commission containing an affirmative determination under section 2252(b)(1) of this title, request additional information from the Commission. The Commission shall, as soon as practicable but in no event more than 30 days after the date on which it receives the President's request, furnish additional information with respect to the industry in a supplemental report.

(b) Reports to Congress

(1) On the day the President takes action under subsection (a)(1), the President shall transmit to Congress a document describing the action and the reasons for taking the action. If the action taken by the President differs from the action required to be recommended by the Commission under section 2252(e)(1) of this title, the President shall state in detail the reasons for the difference.

(2) On the day on which the President decides that there is no appropriate and feasible action to take under subsection (a)(1) with respect to a domestic industry, the President shall transmit to Congress a document that sets forth in detail the reasons for the decision.

(3) On the day on which the President takes any action under subsection (a)(1) that is not reported under paragraph (1), the President shall transmit to Congress a

document setting forth the action being taken and the reasons therefor.

(c) Implementation of action recommended by Commission

If the President reports under subsection (b)(1) or (2) that—

(1) the action taken under subsection (a)(1) differs from the action recommended by the Commission under section 2252(e)(1) of this title; or

(2) no action will be taken under subsection (a)(1) with respect to the domestic industry;

the action recommended by the Commission shall take effect (as provided in subsection (d)(2)) upon the enactment of a joint resolution described in section 2192(a)(1)(A) of this title within the 90-day period beginning on the date on which the document referred to in subsection (b)(1) or (2) is transmitted to the Congress.

(d) Time for taking effect of certain relief

(1) Except as provided in paragraph (2), any action described in subsection (a)(3)(A), (B), or (C), that is taken under subsection (a)(1) shall take effect within 15 days after the day on which the President proclaims the action, unless the President announces, on the date he decides to take such action, his intention to negotiate one or more agreements described in subsection (a)(3)(E) in which case the action under subsection (a)(3)(A), (B), or (C) shall be proclaimed and take effect within 90 days after the date of such decision.

(2) If the contingency set forth in subsection (c) occurs, the President shall, within 30 days after the date of the enactment of the joint resolution referred to in such subsection, proclaim the action recommended by the Commission under section 2252(e)(1) of this title.

(e) Limitations on actions

(1)

(a) Subject to subparagraph (B), the duration of the period in which an action taken under this section may be in effect shall not exceed 4 years. Such period shall include the period, if any, in which provisional relief under section 2252(d) of this title was in effect.

(b)

(i) Subject to clause (ii), the President, after receiving an affirmative determination from the Commission under section 2254(c) of this title (or, if the Commission is equally divided in its determination, a determination which the President considers to be an affirmative determination of the Commission), may extend the effective period of any action under this section if the President determines that—

(i) the action continues to be necessary to prevent or remedy the serious injury; and

(ii) there is evidence that the domestic industry is making a positive adjustment to import competition.

(ii) The effective period of any action under this section, including any extensions thereof, may not, in the aggregate, exceed 8 years.

(2) Action of a type described in subsection (a)(3)(A), (B), or (C) may be taken under subsection (a)(1), under section 2252(d)(1)(G) of this title, or under section 2252(d)(2)(D) of this title only to the extent the cumulative impact of such action does not exceed the amount necessary to prevent or remedy the serious injury.

(3) No action may be taken under this section which would increase a rate of duty to (or impose a rate) which is more than 50 percent ad valorem above the rate (if any) existing at the time the action is taken.

(4) Any action taken under this section proclaiming a quantitative restriction shall permit the importation of a quantity or value of the article which is not less than the average quantity or value of such article entered into the United States in the most recent 3 years that are representative of imports of such article and for which data are available, unless the President finds that the importation of a different quantity or value is clearly justified in order to prevent or remedy the serious injury.

(5) An action described in subsection (a)(3)(A), (B), or (C) that has an effective period of more than 1 year shall be phased down at regular intervals during the period in which the action is in effect.

(6)

(a) The suspension, pursuant to any action taken under this section, of—

(i) subheadings 9802.00.60 or 9802.00.80 of the Harmonized Tariff Schedule of the United States with respect to an article; and

(ii) the designation of any article as an eligible article for purposes of subchapter V;

shall be treated as an increase in duty.

(b) No proclamation providing for a suspension referred to in subparagraph (A) with respect to any article may be made by the President, nor may any such suspension be recommended by the Commission under section 2252(e) of this title, unless the Commission, in addition to making an affirmative determination under section 2252(b)(1) of this title, determines in the course of its investigation under section 2252(b) of this title that the serious injury, or threat thereof, substantially caused by imports to the domestic industry producing a like or directly

competitive article results from, as the case may be—

(i) the application of subheading 9802.00.60 or subheading 9802.00.80 of the Harmonized Tariff Schedule of the United States; or

(ii) the designation of the article as an eligible article for the purposes of subchapter V.

(7)

(a) If an article was the subject of an action under subparagraph (A), (B), (C), or (E) of subsection (a)(3), no new action may be taken under any of those subparagraphs with respect to such article for—

(i) a period beginning on the date on which the previous action terminates that is equal to the period in which the previous action was in effect, or

(ii) a period of 2 years beginning on the date on which the previous action terminates,

whichever is greater.

(b) Notwithstanding subparagraph (A), if the previous action under subparagraph (A), (B), (C), or (E) of subsection (a)(3) with respect to an article was in effect for a period of 180 days or less, the President may take a new action under any of those subparagraphs with respect to such article if—

(i) at least 1 year has elapsed since the previous action went into effect; and

(ii) an action described in any of those subparagraphs has not been taken with respect to such article more than twice in the 5-year period immediately preceding the date on which the new action with respect to such article first becomes effective.

(f) Certain agreements

(1) If the President takes action under this section other than the implemention [1] of agreements of the type described in subsection (a)(3)(E), the President may, after such action takes effect, negotiate agreements of the type described in subsection (a)(3)(E), and may, after such agreements take effect, suspend or terminate, in whole or in part, any action previously taken.

(2) If an agreement implemented under subsection (a)(3)(E) is not effective, the President may, consistent with the limitations contained in subsection (e), take additional action under subsection (a).

(g) Regulations

(1) The President shall by regulation provide for the efficient and fair administration of all actions taken for the purpose of providing import relief under this part.

(2) In order to carry out an international agreement concluded under this part, the President may prescribe regulations governing the entry or withdrawal from warehouse of articles covered by such agreement. In addition, in order to carry out any agreement of the type described in subsection (a)(3)(E) that is concluded under this part with one or more countries accounting for a major part of United States imports of the article covered by such agreement, including imports into a major geographic area of the United States, the President may issue regulations governing the entry or withdrawal from warehouse of like articles which are the product of countries not parties to such agreement.

(3) Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively small number of the larger importers.

Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. § 1862):

(a) Prohibition on decrease or elimination of duties or other import restrictions if such reduction or elimination would threaten to impair national security

No action shall be taken pursuant to section 1821(a) of this title or pursuant to section 1351 of this title to decrease or eliminate the duty or other import restrictions on any article if the President determines that such reduction or elimination would threaten to impair the national security.

(b) Investigations by Secretary of Commerce to determine effects on national security of imports of articles; consultation with Secretary of Defense and other officials; hearings; assessment of defense requirements; report to President; publication in Federal Register; promulgation of regulations

(1)

(A) Upon request of the head of any department or agency, upon application of an interested party, or upon his own motion, the Secretary of Commerce (hereafter in this section referred to as the "Secretary") shall immediately initiate an appropriate investigation to determine the effects on the national security of imports of the article which is the subject of such request, application, or motion.

(B) The Secretary shall immediately provide notice to the Secretary of Defense of any investigation initiated under this section.

(2)

(A) In the course of any investigation conducted under this subsection, the Secretary shall—

(i) consult with the Secretary of Defense regarding the methodological and policy questions

raised in any investigation initiated under paragraph (1),

(ii) seek information and advice from, and consult with, appropriate officers of the United States, and

(iii) if it is appropriate and after reasonable notice, hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to such investigation.

(B) Upon the request of the Secretary, the Secretary of Defense shall provide the Secretary an assessment of the defense requirements of any article that is the subject of an investigation conducted under this section.

(3)

(A) By no later than the date that is 270 days after the date on which an investigation is initiated under paragraph (1) with respect to any article, the Secretary shall submit to the President a report on the findings of such investigation with respect to the effect of the importation of such article in such quantities or under such circumstances upon the national security and, based on such findings, the recommendations of the Secretary for action or inaction under this section. If the Secretary finds that such article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the Secretary shall so advise the President in such report.

(B) Any portion of the report submitted by the Secretary under subparagraph (A) which does not contain classified information or proprietary information shall be published in the Federal Register.

(4) The Secretary shall prescribe such procedural regulations as may be necessary to carry out the provisions of this subsection.

(c) Adjustment of imports; determination by President; report to Congress; additional actions; publication in Federal Register

(1)

(A) Within 90 days after receiving a report submitted under subsection (b)(3)(A) in which the Secretary finds that an article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the President shall—

(i) determine whether the President concurs with the finding of the Secretary, and

(ii) if the President concurs, determine the nature and duration of the action that, in the judgment of the President, must be taken to adjust the imports of the article and its derivatives so that such imports will not threaten to impair the national security.

(B) If the President determines under subparagraph (A) to take action to adjust imports of an article and its derivatives, the President shall implement that action by no later than the date that is 15 days after the day on which the President determines to take action under subparagraph (A).

(2) By no later than the date that is 30 days after the date on which the President makes any determinations under paragraph (1), the President shall submit to the Congress a written statement of the reasons why the President has decided to take action, or refused to take action, under paragraph (1). Such statement shall be included in the report published under subsection (e).

(3)

(A) If—

(i) the action taken by the President under paragraph (1) is the negotiation of an agreement which limits or restricts the importation into, or the exportation to, the United States of the article that threatens to impair national security, and

(ii) either—

(I) no such agreement is entered into before the date that is 180 days after the date on which the President makes the determination under paragraph (1)(A) to take such action, or

(II) such an agreement that has been entered into is not being carried out or is ineffective in eliminating the threat to the national security posed by imports of such article,

the President shall take such other actions as the President deems necessary to adjust the imports of such article so that such imports will not threaten to impair the national security. The President shall publish in the Federal Register notice of any additional actions being taken under this section by reason of this subparagraph.

(B) If—

(i) clauses (i) and (ii) of subparagraph (A) apply, and

(ii) the President determines not to take any additional actions under this subsection,

the President shall publish in the Federal Register such determination and the reasons on which such determination is based.

(d) Domestic production for national defense; impact of foreign competition on economic welfare of domestic industries

For the purposes of this section, the Secretary and the President shall, in the light of the requirements of national security and without excluding other relevant factors, give consideration to domestic production needed for projected national defense requirements, the capacity of domestic industries to meet such requirements, existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense, the requirements of growth of such industries and such supplies and services including the investment, exploration, and development necessary to assure such growth, and the importation of goods in terms of their quantities, availabilities, character, and use as those affect such industries and the capacity of the United States to meet national security requirements. In the administration of this section, the Secretary and the President shall further recognize the close relation of the economic welfare of the Nation to our national security, and shall take into consideration the impact of foreign competition on the economic welfare of individual domestic industries; and any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports shall be considered, without excluding other factors, in determining whether such weakening of our internal economy may impair the national security.

(d) 1 Report by Secretary of Commerce

(1) Upon the disposition of each request, application, or motion under subsection (b), the Secretary shall submit

to the Congress, and publish in the Federal Register, a report on such disposition.

(2) Omitted.

(f) Congressional disapproval of Presidential adjustment of imports of petroleum or petroleum products; disapproval resolution

(1) An action taken by the President under subsection (c) to adjust imports of petroleum or petroleum products shall cease to have force and effect upon the enactment of a disapproval resolution, provided for in paragraph (2), relating to that action.

(2)

(A) This paragraph is enacted by the Congress—

(i) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedures to be followed in that House in the case of disapproval resolutions and such procedures supersede other rules only to the extent that they are inconsistent therewith; and

(ii) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

(B) For purposes of this subsection, the term "disapproval resolution" means only a joint resolution of either House of Congress the matter after the resolving clause of which is as follows: "That the Congress disapproves the action taken under section 232 of the Trade Expansion Act of 1962 with respect to petroleum imports under _____ dated _____.", the

first blank space being filled with the number of the proclamation, Executive order, or other Executive act issued under the authority of subsection (c) of this section for purposes of adjusting imports of petroleum or petroleum products and the second blank being filled with the appropriate date.

(C)

(i) All disapproval resolutions introduced in the House of Representatives shall be referred to the Committee on Ways and Means and all disapproval resolutions introduced in the Senate shall be referred to the Committee on Finance.

(ii) No amendment to a disapproval resolution shall be in order in either the House of Representatives or the Senate, and no motion to suspend the application of this clause shall be in order in either House nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this clause by unanimous consent.