

2019-1727

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**UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

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AMERICAN INSTITUTE FOR INTERNATIONAL STEEL, INC., SIM-TEX,  
LP, AND KURT ORBAN PARTNERS, LLC,  
Plaintiffs-Appellants,

v.

UNITED STATES AND KEVIN K. MCALEENAN, COMMISSIONER,  
UNITED STATES CUSTOMS AND BORDER PROTECTION,  
Defendants-Appellees.

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Appeal from the United States Court of International Trade in  
No. 18-cv-00152, Judges Jennifer Choe-Groves, Gary S. Katzmman, Claire R.  
Kelly

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**BRIEF OF BASRAI FARMS AS AMICUS CURIAE IN SUPPORT OF  
APPELLANTS**

August 16, 2019

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## FORM 9. Certificate of Interest

Form 9  
Rev. 10/17

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court **(and who have not or will not enter an appearance in this case)** are:

Mowry & Grimson, PLLC (Appearing in this court: Jeffrey S. Grimson, Kristin H. Mowry, Jill A. Cramer, Bryan P. Cenko).

Law Offices of Peggy A. Clarke (Appearing in this court: Peggy A. Clarke).

The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. *See* Fed. Cir.R. 47. 4(a)(5) and 47.5(b). (The parties should attach continuation pages as necessary).

None.

8/16/19

/s/ Jeffrey S Grimson

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Counsel

Jeffrey S. Grimson

Please Note: All Questions

Must be Answered

\_\_\_\_\_  
Printed Name of Counsel

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**STATEMENT OF THE IDENTITY, INTEREST AND AUTHORITY OF  
THE AMICUS CURIAE**

The American Institute for International Steel, Inc., Sim-Tex LP and Kurt Orban Partners, LLC (the “Appellants”) appeal the judgment of the Court of International Trade (“CIT”) in *Am. Inst. for Int’l Steel, Inc. v. United States*, 376 F. Supp. 3d 1335 (Ct. Int’l Trade 2019), Appx16, rejecting its facial challenge to Section 232 of the Trade Expansion Act of 1962, as amended, 19 U.S.C. § 1862 (“Section 232”), as an over-delegation of legislative power reserved to Congress. *See* Opening Brief of Plaintiffs-Appellants American Institute for International Steel, Inc. et al., ECF No. 32 (Aug. 9, 2019) (“AIIS Br.”). Basrai Farms files this amicus brief in support of the appellants.

Basrai Farms, located in Yuba City, California, grows both walnuts and prunes. In 1959, Sawarn Singh Basrai established Basrai Farms when he immigrated from Punjab, India to join his younger brother Parmjit in Yuba City. The brothers realized the dream of their father, Aujagar, of establishing a family farm in the United States. Today, Basrai Farms grows over 300 acres of walnuts and prunes. Overall, Californian walnut farmers produce approximately 99 percent of the total domestic production of walnuts in the United States and approximately two-thirds of world trade. *See California Walnut Industry Expects 10 Percent Bump in Crop Yield Over 2017*, THE PRODUCER NEWS (Sept. 10, 2018),

<http://www.producenews.com/markets-and-trends/24924-california-walnut-industry-expects-10-percent-bump-in-crop-yield-over-2017> (“*California Walnut Bump*”).

Basrai Farms has a substantial interest in this appeal because foreign countries have implemented retaliatory tariffs in response to the President’s decision to impose tariffs on steel and aluminum imports under Section 232. These tariffs directly target U.S. farms, factories and other enterprises, extending the impact of the President’s actions under Section 232 far beyond the steel and aluminum industries. Section 232, however, does not set forth how the President is supposed to weigh these concerns and conflicts between industries when deciding to implement tariffs. *See* AIIS Br. at 18. The retaliatory tariffs have had a direct impact on Basrai Farms. Basrai Farms submits this amicus brief to provide this Court with context surrounding the effects of the retaliatory tariffs imposed against the agricultural industry following the President’s imposition of Section 232 duties. The gravity of harm caused by the retaliatory tariffs supports appellants’ argument that the expansive authority granted to the President under Section 232 in violation of the constitution is the fault of an over-delegation by Congress. *See* AIIS Br. at 30-57.

Basrai Farms participated in the underlying action before the CIT as amicus curiae. This brief is permitted without leave of court pursuant to Federal Rule of Appellate Procedure 29(a)(2) because all parties consented to the filing of this brief.

Counsel for appellant, Don Cameron, and counsel for appellee, Tara Hogan, both consented via email on May 23, 2019.

### **STATEMENT REGARDING AUTHORSHIP OR FINANCIAL CONTRIBUTION**

Pursuant to Fed. R. App. P. 29(a)(4)(E), Basrai Farms states as follows: (A) no counsel for a party authored the brief in whole or in part; (B) no other party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and (C) no person — other than the amicus curiae or its counsel — contributed money that was intended to fund preparing or submitting the brief person.

### **INTRODUCTION AND SUMMARY OF ARGUMENT**

The very foundation of our government, the principle of separation of powers, is at stake in this case. The CIT denied appellants' motion for summary judgment seeking a declaration that Section 232 constitutes an impermissible delegation of legislative authority to the President. Appx16. The CIT found itself bound by the Supreme Court's decision in *Federal Energy Administration. v. Algonquin SNG Inc.*, 426 U.S. 548, 558-60 (1976) and only briefly addressed the underlying question on the merits in *dicta*. Appx13-16. Section 232 violates the non-delegation doctrine by failing to set forth an intelligible principle for the President to follow. *See* AIIS Br. at 31-35.

Retaliatory tariffs enforced by other countries in response to the President's implementation of Section 232 tariffs were specifically designed to target the agricultural industry, including walnut farmers like Basrai Farms. The significant impact on the agricultural industry extends the effects of Section 232 tariffs to virtually the entire American economy. Section 232 provides no guidance on how the President is to weigh these adverse financial consequences and national security concerns against any potential benefit to the steel and aluminum industries.

The gravity of the harm caused to the agricultural industry, and the fact that said harm is likely to continue, strengthens appellants' argument that this Court should address the merits of appellants' claim that Section 232 is an unconstitutional delegation of legislative authority.

### **ARGUMENT**

Basrai Farms is one of many farms suffering immense harm from the effects of the President's decision to implement tariffs on imports of steel and aluminum under Section 232. For example, Bill Gordon, the owner of a 2,000-acre family farm in Minnesota, was forced to take out equity to cover an estimated loss of \$100,000 in 2018 resulting directly from the retaliatory tariffs. *See* Ryan McCrimmon, *Trump Tariffs Lead to Bleak 2019 Forecasts*, POLITICO (Oct. 23, 2018, 5:10 AM EDT), <https://www.politico.com/story/2018/10/23/trump-tariffs-farmers-agriculture-866450>. Similarly, retaliatory tariffs have forced Lorenda Overman, a corn and

soybean farmer from North Carolina, to sell her crops below cost and she has been unable to pay her workers. *See* Humeysra Pamuk, “*We Need it Now*”: *U.S. Farm Country Pins Hopes on China Trade Deal*, REUTERS (Mar. 6, 2019, 7:12 AM), <https://www.reuters.com/article/us-usa-trade-farmers/we-need-it-now-us-farm-country-pins-hopes-on-china-trade-deal-idUSKCN1QN1F7>. And these are just two of many examples of an entire agricultural industry suffering from the effects of retaliatory tariffs.

As detailed below, this Court should reverse the judgment of the CIT because Section 232 represents an unconstitutional delegation of authority by Congress to the President. Although an examination of the plain language of Section 232 is enough to prove that the statute represents an over-delegation of constitutional authority, retaliatory measures in response to the 232 tariffs implemented by the President further illustrate the unconstitutional breadth of the President’s actions by extending the impact of the tariffs to the entire U.S. economy. An examination of the effects of retaliatory tariffs on the U.S. agricultural industry not only provides further reasoning why this case is distinguishable from *Algonquin* but also strengthens appellants’ improper delegation claim.



**I. RETALIATORY TARIFFS ILLUSTRATE THE UNCONSTITUTIONAL LEVEL OF AUTHORITY GRANTED TO THE PRESIDENT UNDER SECTION 232 AND DISTINGUISH THIS CASE FROM *ALGONQUIN***

Retaliatory measures taken by other countries in response to the President's implementation of tariffs on steel imports under Section 232 extend the effects of these tariffs to virtually the entire American economy by detrimentally effecting the agricultural industry, including walnut farmers like Basrai Farms. The failure of the President to address, or even consider, the predictable impact of the retaliatory tariffs strengthens appellants' argument that *Algonquin* is not a barrier to reaching the merits of their delegation challenge. *See* AIIS Br. at 16.

The Constitution specifies that “{a}ll 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, § 1. Although Congress must have some flexibility to delegate some of its authority to function, there are nonetheless firm limits on this flexibility to maintain the boundaries of our constitutional system. *See Panama Refining Co. v. Ryan*, 293 U.S. 388, 421 (1935) (explaining that Congress “is not permitted to abdicate, or to transfer to others, the essential legislative functions with which it is thus vested”). The Constitution only allows for delegations by Congress to the executive branch where Congress has set forth “an intelligible principle to which the person or body authorized to {act} is directed to conform.” *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928)

(emphasis added). This is commonly referred to as the non-delegation doctrine. In analyzing constitutional non-delegation claims, courts look to the statute to see if Congress “has itself established the standards of legal obligation, thus performing its essential legislative function, or, by the failure to enact such standards, has attempted to transfer that function to others.” *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 530 (1935). This intelligible principle standard ensures that the public and, more relevant to the case at bar, *the judiciary* can “ascertain whether the will of Congress has been obeyed.” *Yakus v. United States*, 321 U.S. 414, 425-26 (1944).

Section 232(d) dictates that President “shall” adjust imports “in light of the requirements of national security,” and grants the President the authority to consider any element of the economy touched by the “displacement of any domestic products by excessive imports.” 19 U.S.C. § 1862(c)-(d). This expansive grant of authority fails to set forth sufficient guidelines by which the public, or this Court, can judge whether the President is executing the law, or, is instead creating the law in violation of the separation of powers principle that is the backbone of the Constitution. *See* AIIS Br. at 18-20 (setting forth how Section 232 “contains no boundaries the discretion of the President in adjusting imports into this country”). The CIT recognized that the statute “allows for a gray area where the President could invoke the statute to act in a manner constitutionally reserved for Congress but not

objectively outside the President's statutory authority, and the scope of review would preclude the uncovering of such a truth.” Appx15. Nonetheless, the CIT found that such concerns were “beyond {its} power to address, given the Supreme Court's decision in *Algonquin*.” Appx15.

As appellants set forth in their opening brief, “context matters” and here “the context in which this delegation challenge{} arises is vastly different from that in *Algonquin*.” AIIS Br. at 25. The Supreme Court has twice found that Congress violated the non-delegation doctrine. *See Panama*, 293 U.S. at 433; *Schechter*, 295 U.S. at 551. Justice Breyer in his dissent in *Clinton v. City of New York*, 524 U.S. 417 (1998) (Breyer, J. dissenting), explained that later cases where the Supreme Court found that certain statutes did not violate the delegation doctrine could be differentiated from *Schechter* because there the applicable statute “contained not simply a broad standard” but a standard that applied to “virtually all of American industry.” *Clinton*, 524 U.S. at 486 (Breyer, J. dissenting). In distinguishing the facts in *Clinton* from *Schechter*, Justice Breyer detailed that the Line Item Veto Act impacted a “particular set of expenditures within the federal budget” and “not the entire economy.” *Id.* at 487 (Breyer, J. dissenting). Here, although these tariffs were designed to target imports of steel and aluminum, the President’s actions have provoked retaliatory tariffs or other trade actions by U.S. trading partners against U.S. exports, extending the effects of the President’s actions to the entire economy.

By contrast, the principle claim that the Supreme Court examined in *Algonquin* was quite narrow, namely whether the President was authorized to implement licensing fees on one domestic industry, oil imports, under Section 232. See AIIS Br. at 21. Given the past uses of the statute and the narrow factual confines examined in *Algonquin*, the Supreme Court in *Algonquin*, as appellants note, simply could not have envisioned the impact of the President’s actions, like standards in *Panama* and *Schechter*, would have on the entire economy. See *id.* at 26. As Judge Katzmann succinctly detailed in his dubitante opinion at the CIT:

the fullness of time can inform understanding that may not have been available more than forty years ago. We deal now with real recent actions, not hypothetical ones. Certainly, those actions might provide an empirical basis to revisit assumptions.

Appx29 (Katzmann, dubitante). The substantial impact of retaliatory tariffs on the agricultural industry, as set forth in detail below, takes the present action outside of the context examined in *Algonquin* and, therefore, removes any alleged barriers from this Court addressing appellants’ argument on the merits.

## **II. THE U.S. AGRICULTURAL INDUSTRY, INCLUDING BASRAI FARMS, HAS BEEN GREATLY IMPACTED BY RETALIATORY TARIFFS**

The agricultural industry represents a significant component of the U.S. economy. In 2017, prior to the implementation of retaliatory tariffs, the U.S. Department of Agriculture (“USDA”) Economic Research Service estimated that “each dollar of U.S. agricultural exports stimulated an additional \$1.30 in business

activity” and generated an estimated 1,161,000 full-time civilian jobs.” Anita Regmi et al., CONG. RESEARCH SERV., R45728, MAJOR AGRICULTURAL TRADE ISSUES IN THE 116<sup>TH</sup> CONGRESS 2 (2019), *available at* <https://crsreports.congress.gov/product/pdf/R/R45728> (“CRS Trade Issues”). While an analysis of the plain language of Section 232 is enough to establish that the statute violates the non-delegation doctrine, *see* AIIS Br. at 35-41, an examination of the grave impact of the retaliatory tariffs on the agricultural industry further supports appellants’ argument that Section 232 represents an unconstitutional over-delegation of legislative authority to the President.

#### **A. The U.S. Agricultural Industry Depends on Exports**

The President’s 232 tariffs have led to massive retaliatory actions by other nations against U.S. exports. The retaliatory actions have had a significant impact on industries that depend to an outsized degree on exports, including the U.S. agricultural industry, which exports more than 20 percent of its total production. *See Percentage of U.S. Agricultural Products Exported*, USDA (May 30, 2018), <https://www.fas.usda.gov/data/percentage-us-agricultural-products-exported> (last visited August 10, 2019).<sup>1</sup> Overall, the United States exports more agricultural

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<sup>1</sup> The American Farm Bureau Federation estimates this percentage to be even higher at 25 percent. *See Perspectives on U.S. Agricultural Trade: Hearing Before the S. Comm. on Agric.*, 115th Cong. 1 (2018) (statement of the American Farm Bureau

products than it imports. *See* Hope Kirwan, *Trump Administration's Trade Policy Could Be A Factor In Wisconsin's US Senate Race*, WIS. PUB. RADIO (Sept. 11, 2018, 6:10AM), <https://www.wpr.org/wisconsin-farmers-feel-impact-tariffs-worry-about-future-trade>.

In selecting retaliatory measures, foreign countries specifically targeted agricultural commodities because they are heavily dependent on exports. *See* Tara Golshan, *Trump: "Tariffs are the Greatest." Also Farmers Need \$12 Billion in Aid Because of Tariffs.*, Vox (July 24, 2018, 1:00PM EDT), <https://www.vox.com/2018/7/24/17607484/trump-tariff-farmers-emergency-aid> (quoting Chart Hart, "a crop market specialist with Iowa State University," who explains that "'{agricultural products are} one of the few areas that the US has a surplus; it makes sense they would target that'"). In other words, it is no accident that export-dependent agricultural commodities make up 37 percent of U.S. exports facing retaliatory tariffs. *See* Manuela Tobias, *Retaliatory Tariffs Take Heavy Toll on U.S. Farmers*, POLITIFACT (Aug. 9, 2018, 10:19 AM), <https://www.politifact.com/truth-ometer/statements/2018/aug/09/sonny-perdue/retaliatory-tariffs-take-heavy-toll-farmers>; *see also* Jenny Hopkinson, CONG. RESEARCH SERV., R45448, PROFILES AND EFFECTS OF RETALIATORY TARIFFS ON

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Federation ), <https://www.fb.org/files/Trade-AFBBF-Statement-9-12-18.pdf> ("AFBBF Cong. Statement").

U.S. AGRICULTURAL EXPORTS Summary (2018), *available at* <https://crsreports.congress.gov/product/pdf/R/R45448> (“CRS Retaliatory Tariffs Report”) (“{C}ommodities for which US. exports to the retaliating countries represent 30% or more of its total exports include soybeans, sorghum, pork, cheese, apples, cherries, seafood, ginseng, whiskey, and some processed foods”); Joseph Parilla and Max Bouchet, *Which US communities are most affected by Chinese, EU, and NAFTA retaliatory tariffs?*, BROOKINGS Figure 3 (Oct. 2018), <https://www.brookings.edu/research/which-us-communities-are-most-affected-by-chinese-eu-and-nafta-retaliatory-tariffs/> (detailing that regional economies that specialize in agricultural and metals have “the highest share of exports in tariff-affected industries”). Overall, the United States food and beverage industry is the second-largest group affected by retaliatory tariffs. *See* Brock R. Williams et al., CONG. RESEARCH SERV., R45529, TRUMP ADMINISTRATION TARIFF ACTIONS (SECTIONS 201, 232, AND 301): FREQUENTLY ASKED QUESTIONS 15-16, Figure 7 (2019), *available at* <https://crsreports.congress.gov/product/pdf/R/R45529>.

## **B. Retaliatory Tariffs Target Both a Significant Proportion of Agricultural Exports and a Wide Array of Agricultural Products**

Foreign countries designed retaliatory duties to target a significant portion of agricultural exports both in terms of overall percentage of exports impacted and the number of commodities targeted.

In terms of overall percentages, using 2017 as an estimate, the commodities subject to retaliation had an export value of \$26.9 billion<sup>2</sup> in that year, constituting 18 percent of all U.S. agricultural exports. CRS Retaliatory Tariffs Report at 1. The total amount of retaliatory tariffs imposed on U.S. exports in 2018 was slightly lower at \$23.2 billion. *See* Rachel F. Fefer et al, CONG. RESEARCH SERV., R45249, SECTION 232 INVESTIGATIONS: OVERVIEW AND ISSUES FOR CONGRESS 18 (Updated April 2, 2019), *available at* <https://fas.org/sgp/crs/misc/R45249.pdf> (“CRS Overview for Congress”). The overall impact of retaliatory tariffs remains unknown as they remain in effect for many countries.

Breaking down the overall impact of retaliatory tariffs on a country-by-country basis, China, Canada, Mexico, Turkey and the European Union have all implemented tariffs against the United States in retaliation to Section 232 tariffs against their own exports.<sup>3</sup> The total value of exports subject to retaliation, using

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<sup>2</sup> The United States Trade Representative (“USTR”) and USDA have estimated the total amount of U.S. agricultural products subject to retaliatory tariffs at an even larger amount, totaling \$29.7 billion in 2017. CRS Retaliatory Tariffs Report at 1.

<sup>3</sup> The United States has reached agreements with the governments of Canada and Mexico to remove 232 tariffs on both countries. *The United States Announces Deal with Canada and Mexico to Lift Retaliatory Tariffs*, USTR Policy (May 17, 2019), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/may/united-states-announces-deal-canada-and>. Tariffs, however, can still be reintroduced if “surges in imports of specific steel and aluminum products occur.” In response, both Canada and Mexico agreed to lift their retaliatory tariffs on U.S. exports. *Id.* Nonetheless, for the time they were in place, retaliatory tariffs from Canada and Mexico had a significant impact on the U.S. agricultural industry as detailed below. Further, while retaliatory tariffs have been lifted by Canada and



the same commodities exported to the United States in 2017 as a comparison period, are as follows:

- The products subject to Chinese retaliatory tariffs imposed in response to both Section 232 and Section 301 tariffs<sup>4</sup> “were worth about \$20.6 billion.”
- The products subject to Canadian and Mexican retaliatory tariffs “accounted for approximately \$2.6 billion and \$2.5 billion in exports to reach respective country.”
- The products subject to European Union and Turkish retaliatory tariffs are “valued {at} about \$1 billion and \$250 million, respectively.”

CRS Retaliatory Tariffs Report at 5-10. In addition, effective May 2, 2019, India imposed retaliatory tariffs ranging from 10 to 50 percent. *Current Retaliatory Actions*, U.S. Dep’t of Commerce, [https://www.trade.gov/mas/ian/tradedisputes-enforcement/retaliations/tg\\_ian\\_002094.asp](https://www.trade.gov/mas/ian/tradedisputes-enforcement/retaliations/tg_ian_002094.asp) (last visited May 10, 2019).

The impact of retaliatory tariffs is further exacerbated because the countries engaging these efforts are major export markets for U.S. agricultural products. In terms of value, Mexico, Canada, China and the European Union are in the top five export markets for U.S. agricultural products. See CRS Retaliatory Tariffs Report at 1. Between 2014 and 2016, China alone “accounted for more than 16 percent of

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Mexico, they are still enforced by China, the European Union, Turkey and India. China alone is the fourth-largest customer of U.S. agricultural products. See Kate Rooney, *China’s Exit From US Agriculture Is A Devastating Blow To An Already Struggling Sector*, CNBC (Aug. 6, 2019), <https://www.cnbc.com/2019/08/06/china-agriculture-us-economy.html>.

<sup>4</sup> The significant harm imposed by Section 232 retaliatory measure was worsened by additional retaliation taken by China following the President’s enforcement of tariffs under Section 301 of the Trade Act of 1974, as amended 19 U.S.C. § 2411-14.

U.S. agricultural exports.” AFBF Cong. Statement at 1, *supra*. Indeed, the list of retaliatory tariffs by foreign countries is significant enough that the U.S. Department of Commerce has set up its own website to track various measures. *See Current Retaliatory Actions, supra*.

Besides having an impact on a significant percentage of total exports, retaliatory tariffs also cover a wide breadth of agricultural commodities, affecting “more than 800 U.S. agricultural and food products, including meats, grains, dairy products, specialty and horticultural crops, seafood, and alcohol.” CRS Retaliatory Tariffs Report at 1. And the number of Harmonized Tariff Codes (“HTS”) targeted by each country is significant:

- China initially implemented retaliatory tariffs on approximately 90 HTS codes in response to Section 232 tariffs. *See* Jenny Hopkinson, CONG. RESEARCH SERV. IN FOCUS, China’s Retaliatory Tariffs on U.S. Agricultural Products 1 (2019), *available at* <https://fas.org/sgp/crs/row/IF11085.pdf> (“CRS China’s Retaliatory Tariffs”). China subsequently implemented tariffs on roughly 870 additional HTS codes in response to later Section 301 tariffs imposed by the President. *See* CRS Retaliatory Tariffs at 2, Table I.
- Canada and Mexico, before later removing them, imposed retaliatory tariffs on approximately 24 and 16 HTS codes respectively. CRS Retaliatory Tariffs Report at 2, Table I.
- The European Union placed retaliatory tariffs on approximately 40 individual agricultural tariff subheadings. *See id.* at 3, Table I.
- Turkey targeted approximately 40 individual agricultural tariff subheadings for retaliation. *See id.*

### **C. Retaliatory Tariffs Have Significantly Decreased the Quantity and Price of U.S. Agricultural Exports**

Retaliatory tariffs have significantly decreased the quantity and prices of U.S. agricultural exports, which in turn has expansively impacted existing supply chains. These tariffs targeted certain agricultural sectors and states, specifically those states whose economies depend on agriculture.

Analyzing the impact of retaliatory tariffs on the total amount of U.S. agricultural exports, the USDA forecasted a decrease of \$1.5 billion in agricultural exports between FY2018 and FY2019. *See* CRS Trade Issues at 1. In fact, June 2019 represented the 11<sup>th</sup> straight month that exports of commodities targeted by retaliatory measures declined by more than 15 percent. *See America's Monthly Tariff Bill Spikes to \$6 Billion, U.S. Exports Continue to Decline*, FARMERS FOR FREE TRADE (Aug. 7, 2019), <https://tariffshurt.com/news/americas-monthly-tariff-bill-spikes-to-6-billion-u-s-exports-continue-to-decline>.

The decrease in U.S. agricultural exports has had a permanent effect on existing supply chains. Many foreign countries are replacing U.S. exports with the same commodities produced in other countries. *See* CRS Retaliatory Tariffs Report at 4. For example, although the United States is a large exporter of soybeans, China can easily turn to other export sources such as Brazil, Argentina and Paraguay. *Id.*; *see also* CRS China's Retaliatory Tariffs at 1 (explaining China has already turned

to other countries like Brazil). As a result, U.S. products that were previously exported to foreign countries are now flooding domestic markets. For instance, U.S.-grown apples that were previously intended for export markets are now rapidly flooding the domestic Michigan market and depressing prices. *See* Chris Alpers et al., *Opinion: Tariffs Threaten Michigan Apple Growers*, DET. NEWS (Mar. 25, 2019, 11:00 PM ET), <https://www.detroitnews.com/story/opinion/2019/03/26/opinion-tariffs-threaten-michigan-apple-growers/3266791002/>. These shifts in supply chains away from U.S. exports will impact farmers for years to come even if the President removes Section 232 tariffs, following suit with Canada and Mexico, on the remaining countries still subject to these actions.

The impact has been particularly hard for U.S. pork, sorghum, soybean and dairy producers, among others. For example:

- Exports of U.S. pork products to China decreased by 58 percent in volume between September 2017 and September 2018. *See* AFBF Cong. Statement at 3, *supra*; *see also* Mike Dorning, *Trade War Seen Costing U.S. Pork Producers \$1 Billion*, BLOOMBERG (July 16, 2019) (“U.S. pork producers are losing \$1 billion annually because of the Trump administration’s trade war.”). While in effect, Mexican retaliatory tariffs cut hog prices by \$12 per animal. Laura Reiley, *China’s Retaliation Against New Trump Tariffs Will Send U.S. Hog Farmers Into a Tailspin*, WASHINGTON POST (May 17, 2019), [https://www.washingtonpost.com/business/2019/05/17/chinas-retaliation-against-new-trump-tariffs-will-send-us-hog-farmers-into-tailspin/?noredirect=on&utm\\_term=.6f708b228b15](https://www.washingtonpost.com/business/2019/05/17/chinas-retaliation-against-new-trump-tariffs-will-send-us-hog-farmers-into-tailspin/?noredirect=on&utm_term=.6f708b228b15).
- Between July and October 2018, U.S. cheese exports to China decreased by 51 percent in value as compared to the same period in 2017. Daren Bakst et al., *How the U.S.-China Trade Dispute Affects U.S. Agriculture: What you Should Know*, THE HERITAGE FOUND. 6 (Feb. 28, 2019), <https://www.heritage.org/sites/default/files/2019-02/BG3391.pdf>.

- U.S. sorghum exports to China are forecasted to decline from \$759 million to \$500 million between FY2018 and FY2019. *Id.*
- U.S. soybean exports to China dropped by more than 70 percent from September 2017 to May 2018 as compared to the same period in 2018 and 2019. *See* Rooney, *supra*. Overall, the implementation of a 25 percent retaliatory tariff on soybeans by China will decrease U.S. exports between an estimated 24 and 34 percent. Farzad Taheripour and Wallace Tyner, *Impacts of Possible Chinese 25% Tariff on U.S. Soybeans and Other Agricultural Commodities*, CHOICES, QUARTER 2 Table 1 (2018), [http://www.choicesmagazine.org/UserFiles/file/cmsarticle\\_638.pdf](http://www.choicesmagazine.org/UserFiles/file/cmsarticle_638.pdf). And prices have decreased by 20 percent since the implementation of retaliatory tariffs, *see* CRS China's Retaliatory Tariffs at 1-2, dropping to their lowest level in ten-years. *See* Bryan Lowry, *Farmers Are in Crisis. Lawmakers Can't Do Much to Help Unless Trump Agrees*, THE KAN. CITY STAR (May 18, 2019 5:00 AM), <https://www.kansascity.com/news/politics-government/article230523359.html>.
- In 2018, the National Milk Producers Federation estimates that retaliatory tariffs cost dairy farmers more than \$1 billion in lost income. Hope Kirwan, *Dairy Organizations Ask For More Aid From USDA As Retaliatory Tariffs Impact Profits*, WISC. PUB. RADIO (Oct. 26, 2018, 2:50 PM), <https://www.wpr.org/dairy-organizations-ask-more-aid-usda-retaliatory-tariffs-impact-profits>.

These supply chain changes will not be easy to reverse even if foreign countries remove their retaliatory tariffs. As one “third-generation corn, soybean and hog framer from Le Mars, Iowa” explained, “{i}t’s going to be a long time before we gain some of those markets back.” Pamuk, *supra*.

Retaliatory tariffs have been especially damaging to states whose economies depend upon agriculture. For example, retaliatory tariffs decreased Nebraskan farm revenue between approximately \$700 million and \$1 billion dollars in 2018. *A Path Forward on Trade: Retaliatory Tariffs and Nebraska Agricultura*, NEB. FARM BUREAU Table 2, <https://nefb.org/images/FEDeration/PDFs/A-Path-Forward-On->

Trade.pdf (“*Nebraska Path Forward Report*”). Prices for Nebraskan agricultural products decreased between \$0.14-\$0.21 per corn bushel, \$0.95-\$1.54 per soy bushel and \$17.81-\$18.80 per head of pork in 2018 alone. *Id.* at 2-3. Meanwhile, Iowa’s loss in gross state product from retaliatory tariffs currently measures between \$1 to 2 billion. Edward J. Balistreri et al., *The Impact of the 2018 Trade Disruptions on the Iowa Economy*, CTR. FOR AGRIC. AND RURAL DEV. IOWA STATE UNIV. 18-PB 25 (Sept. 2018), available at <https://www.card.iastate.edu/products/publications/pdf/18pb25.pdf> (“*CARD Study*”). Minnesota and Missouri soybean farmers have suffered massive losses from retaliatory tariffs combined with historic flooding. *See* Adam Belz, *As Trade Dispute Escalates, Minnesota Farmers Brace For Another Miserable Year*, STAR TRIBUNE (May 17, 2019 8:21AM), <http://www.startribune.com/as-trade-dispute-escalates-minnesota-farmers-brace-for-another-miserable-year/510041552/?refresh=true> (explaining that even though soybean farmers in Minnesota are exploring new markets, these markets “pale in comparison” to past business in China); *see also* Blake Hurst, *My Patriotic Friends And Neighbors Support The President, But They’ve Given About All They Can*, WALL ST. J. (May 17, 2019 4:48 PM ET), <https://www.wsj.com/articles/trumps-trade-war-with-china-is-taxing-missouri-farmers-11558126098> (detailing that Atchison Missouri farmers are facing a decline of \$10 million in gross income in 2019).

**D. The Nut Industry, Including Walnuts, Has Suffered from Decreased Exports and Lower Prices Caused by Retaliatory Tariffs**

Like most other agricultural industries, retaliatory tariffs have had a direct impact on the U.S. nut industry. China accounts for approximately 12 percent of U.S. almond exports, and following the imposition of retaliatory tariffs, export shipments of U.S. almonds fell by nearly half in 2018. *See* Allysia Finley, *California Farmers Are Trade-War Casualties*, THE WALL ST. J. (Sept. 19, 2018, 6:56 PM ET), <https://www.wsj.com/articles/california-farmers-are-trade-war-casualties-1537397773>. Similarly, China accounts for 40 percent of U.S. pistachio exports and farmers report that pistachio prices have fallen to the break-even point depending on crop size. *Id.*

Retaliatory tariffs have greatly harmed walnuts because walnut producers rely on exports. Californian walnut producers exported an estimated 63 percent of their shipments during the 2017-2018 season. *See California Walnuts Receive Trade Funding for Tariff Relief*, AG NET WEST (Mar. 11, 2019), <http://agnetwest.com/california-walnuts-receive-trade-funding-tariff-relief>. The walnut sector alone is facing retaliatory tariffs ranging from 15 to 100 percent from China, India and Turkey.<sup>5</sup> These three markets accounted for 15.4 percent of export

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<sup>5</sup> See Commc'n from the Delegation of China, *Immediate Notification Under Article 12.5 of the Agreement on Safeguards to the Council for Trade in Goods of Proposed Suspension of Concessions and Other Obligations Referred to in Paragraph 2 of*

shipments during the 2016-2017 crop year. *California Walnut Bump, supra*. The U.S. walnut industry has been hit hard by Turkey's retaliatory tariffs, which are the direct result of the 232 duties. Turkey is a major market for U.S. walnut producers. In 2017, it imported 23 percent of the total U.S. unshelled walnut exports, totaling approximately \$115 million. CRS Retaliatory Tariffs Report at 11. The USDA projected that U.S. agricultural imports to Turkey will decline approximately \$200 million from FY2019 to FY2018. *Id.* Like much of the agricultural industry, it will take U.S. producers years to reclaim these lost markets. Meanwhile, with nowhere to go, walnuts flood the domestic market, depressing prices further. Altogether, retaliatory tariffs will result in an estimated \$600 million net loss for the walnut

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*Article 8 of the Agreement on Safeguards*, WTO Doc. G/L/1218 (Apr. 3, 2018), available at <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/L/1218.pdf> (last visited May 12, 2019); Commc'n from the Delegation of Turkey, *Immediate Notification Under Article 12.5 of the Agreement on Safeguards to the Council for Trade in Goods of Proposed Suspension of Concessions and Other Obligations Referred to in Paragraph 2 of Article 8 of the Agreement on Safeguards*, WTO Doc. G/L/1242 (May 21, 2018), available at [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=245261,245265,245263,245266,245272,245286,245267,245269,245282,245258&CurrentCatalogueIdIndex=4&FullTextHas h=3](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=245261,245265,245263,245266,245272,245286,245267,245269,245282,245258&CurrentCatalogueIdIndex=4&FullTextHas h=3) (last visited May 12, 2019); Commc'n from the Delegation of India, *Immediate Notification Under Article 12.5 of the Agreement on Safeguards to the Council for Trade in Goods of Proposed Suspension of Concessions and Other Obligations Referred to in Paragraph 2 of Article 8 of the Agreement on Safeguards*, WTO Doc. G/L/1239 (May 18, 2018), available at <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/g/l/1239.pdf> (last visited May 12, 2019).



industry. *See* Christine Souza, *Retaliatory Tariffs Affect Walnut Markets*, AGALERT (Nov. 7, 2018), <http://www.agalert.com/story/?id=12281>.

**E. The Decrease in Total Exports and Prices Has Irreparably Harmed the Agricultural Industry Including Basrai Farms**

The decrease in U.S. agricultural exports and prices as a result of retaliatory tariffs caused and is continuing to cause irreparable harm to an already fragile agricultural industry.

In 2018, the USDA estimated that net farm income decreased by 13 percent. *See* McCrimmon, *supra*. This correlates with Chapter 12 bankruptcy filings by U.S. farmers being at their highest level in the last decade. *See* Pamuk, *supra*; *see also* Jesse Newman and Jacob Bunge, *This One Here Is Gonna Kick My Butt’—Farm Belt Bankruptcies Are Soaring*, WALL ST. J. (Feb. 6, 2019, 10:59 AM ET), <https://www.wsj.com/articles/this-one-here-is-gonna-kick-my-butt-farm-belt-bankruptcies-are-soaring-11549468759>. And farm loan delinquencies have reached a “near nine-year high.” Jeff Daniels, *Farmer Sentiment Takes Hit Amid Growing Worries Over Trade War*, CNBC (Mar. 5, 2019, 6:53 PM ET), <https://www.cnbc.com/2019/03/05/farmer-sentiment-takes-hit-amid-worries-over-trade-war-says-survey.html>. These defaults are particularly devastating on farmers because they often rely on loans to cover operating costs before the start of planting season. *See* Alexia F. Campbell, *Farmers Are Losing Patience With Trump’s Trade*

*War*, VOX (May 17, 2019 7:30am EDT), <https://www.vox.com/policy-and-politics/2019/5/17/18626664/farmers-trump-trade-war-china>. As a result of these delinquencies, recent surveys have shown that mental health problems “are rampant and rising among U.S. farmworkers.” Benjamin Fearnow, *Wisconsin Farmer Tells Fox News Suicides, Bankruptcy Rising in Rural U.S. Amid China Trade War*, NEWSWEEK (May 16, 2019 4:07 PM EDT), <https://www.newsweek.com/farmers-suicide-bankruptcies-rising-fox-news-china-trade-war-wisconsin-1428169>.

Further, unemployment has rapidly increased in the agricultural sector. One study conducted by Purdue University found that the decrease in agricultural exports could “result in the reallocation of 45,000 farm, ranch, and processing workers.” CRS Retaliatory Tariffs Report at 4. In Nebraska, retaliatory tariffs have cost between \$164 million and \$242 million in lost labor income and between 4,068 and 5,997 jobs. *Nebraska Path Forward Report* at Table 2. In Iowa, labor income declined from “\$366 to \$484 without federal offsets and \$245 to \$364 million with federal offsets.” *Card Study* at 1. To put these losses in perspective, every job created as a result of Section 232 tariffs has cost steel users approximately \$650,000. Gary C. Hufbauer and Euijin Jung, *Steel Profits Gain, but Steel Users Pay, Under Trump’s Protectionism*, PETERSON INST. FOR INT’L ECON. (Dec. 20, 2018, 10:45 AM), <https://piie.com/blogs/trade-investment-policy-watch/steel-profits-gain-steel-users-pay-under-trumps-protectionism>. Similarly, the revenue generated from these

tariffs is less than what the United States has spent in supporting struggling farmers as discussed below. See Ana Swanson and Jim Tankersley, *Tariffs on China Don't Cover the Costs of Trump's Trade War*, N.Y. TIMES (July 15, 2019), <https://www.nytimes.com/2019/07/15/business/trade-war-tariffs-revenue.html>; see also Trade Statistics, CUSTOMS AND BORDER PROTECTION, <https://www.cbp.gov/newsroom/stats/trade> (last updated Aug. 14, 2019) (showing that CBP has collected approximately \$8 billion in duties from 232 tariffs). The costs of retaliatory tariffs, therefore, greatly outweigh any alleged benefits from Section 232 tariffs.

Basrai Farms has itself felt the repercussions of the President's Section 232 tariffs. Basrai Farms' processor/handler sells its walnuts exclusively to international markets. As noted, following the imposition of Section 232 duties, walnuts were targeted by China, India and Turkey for retaliatory tariffs ranging from 15 to 100 percent. This hurt Basrai Farms badly. In 2017, Basrai Farms produced a total of 737,200 lbs of walnuts. The gross-per-pound value ranged from \$1.25 to \$1.33 depending on the nut variety. Basrai Farms' entire 2017 walnut crop was valued at \$935,151. The total crop for 2018 was 772,140 lbs. Today's disrupted market means the anticipated price, however, is only in the \$.65-\$.70 per-pound range. At this price, when finally settled, Basrai Farm's expects gross revenue for its 2018 walnut crop to be only \$518,192. This amount will barely cover farm operational

expenses. Global price declines have and will continue to cause significant economic loss. Disregarding the effects of retaliatory tariffs, Basrai Farms' expected gross revenue for the 2018 crop would have been approximately \$996,878, representing an anticipated profit reduction of \$478,686. While the harm to Basrai Farms, an exporter, has been direct, as walnuts have been shut out of foreign markets, an oversupply in the domestic market caused further price declines, affecting even farmers who do not export.

**F. Efforts by the Executive Branch Are Not Enough to Stem the Harm Inflicted by Retaliatory Tariffs**

The executive branch has recognized the precarious position of its agricultural industry by attempting to ameliorate the economic harm caused by the President's decision to impose Section 232 tariffs. The USDA first authorized up to \$12 billion to "assist agricultural producers to meet the costs of disrupted markets." *Press Release No. 0167.18: USDA Announces Details of Assistance for Farmers Impacted by Unjustified Retaliation*, U.S. DEP'T OF AGRIC. (August 27, 2018), available at <https://www.usda.gov/media/press-releases/2018/08/27/usda-announces-details-assistance-farmers-impacted-unjustified>.

Many trade groups, however, have publicly acknowledged that federal relief packages will not be enough to cover the damage caused by retaliatory tariffs. For example, the Western Growers, "an association that represents specialty crop

producers, has stated that the \$12 billion plan falls ‘substantially short’ of what many producers affected by the retaliatory tariffs need.” CRS Retaliatory Tariffs Report at 19 (internal citation omitted). The AFBF, the “largest general farm organization,” explained that the relief provided by the USDA would “only help producers through a few months.” *Id.* The American Soybean Association has urged the USDA to focus on expanding access for U.S. exports to the Chinese market while also increasing its efforts to identify new markets in other countries. *See* CRS China’s Retaliatory Tariffs at 2.

Not only were the funds insufficient to combat the total damage caused by the tariffs themselves, but application procedures to obtain these funds also contained multiple flaws that prevented farmers from accessing much needed relief. Overall, the first round of payments favored larger producers because relief was linked to crop production. *See* Humeyra Pamuk, *Bulk Of Trump's U.S. Farm Aid Goes to Biggest and Wealthiest Farmers: Advocacy Group*, REUTERS (July 30, 2019), <https://www.reuters.com/article/us-usa-trade-farming/bulk-of-trumps-u-s-farm-aid-goes-to-biggest-and-wealthiest-farmers-advocacy-group-idUSKCN1UP28K> (“*Farm Aid*”) (highlighting that the “top 1% of aid recipients received an average of more than \$180,000 while the bottom 80% were paid less than \$5,000 in aid”). Not only did the first round of payments disfavor small farms, but money flowed to foreign-owned businesses and individuals who were not even working on farms. *See*

Laura Reiley, *Trump Administration Reveals Details of \$16 Billion Farm Bailout in U.S. Trade War*, WASH. POST (July 25, 2019), <https://www.washingtonpost.com/business/2019/07/25/trump-administration-reveals-details-billion-farm-bailout-us-trade-war/>.

As a result of these inequities in the application process, individual farmers have similarly stated that these payments will not solve the problem. Charles Atkinson, a Kansan soybean farmer, asserted that government relief funds “{does not} fully make up for what growers have lost in recent years.” Kevin Hardy et al., *Missouri, Kansas Farmers Rely on Federal Bailout Money — Including GOP Congresswoman*, THE KAN. CITY STAR (Aug. 5, 2019 5:00 AM), <https://www.kansascity.com/news/politics-government/article233291312.html>.

Mike Haag, an Illinois hog farmer, estimated that the money he will receive from the USDA will only cover a few weeks of animal feed and a tractor payment. *See Jesse Newman, Farmers Say Aid Won’t Cover Tariff Damage, THE WALL STREET JOURNAL* (Sept. 27, 2018 5:56 AM), [https://www.wsj.com/articles/farmers-say-aid-wont-cover-tariff-damage-1537974178?mod=hp\\_listb\\_pos1](https://www.wsj.com/articles/farmers-say-aid-wont-cover-tariff-damage-1537974178?mod=hp_listb_pos1). Finally, Tom Giessel, a wheat farmer, explained that he will receive \$5,000 from USDA, which is only 10 percent of the cost to fertilize his crops next year. *Id.*

Banks have also noted that these relief efforts are insufficient, expressing concerns that farmers are simply too far behind on loan payments. Alexia F.

Campbell, *US Farms Are Going Bankrupt at an Alarming Rate. Trump's Trade War is Partially to Blame.*, VOX (Nov. 27, 2018, 5:30 PM EST), <https://www.vox.com/policy-and-politics/2018/11/27/18114566/trump-trade-war-china-farm-bankruptcy>. In sum, trade groups, individual farmers, and even the banks themselves are all in agreement that payments authorized by the USDA cannot fully remediate the significant harm caused by retaliatory tariffs.

In May, the President authorized a second round of \$16 billion in relief. *See* Swanson and Tankersley, *supra*. The UDSDA recently announced the details for this support package, which closely resembles the previous aid package. *See Press Release No. 0114.19: USDA Announces Details of Support Package for Farmers*, U.S. DEP'T OF AGRIC. (July 25, 2019), *available at* <https://www.usda.gov/media/press-releases/2019/07/25/usda-announces-details-support-package-farmers>. Although no longer linked to crop production, this second round of payments is linked to acreage which experts argue still favors larger farms. *See* Pamuk, *Farm Aid*, *supra*. Given the similarity to the previous aid package, many groups have already expressed similar concerns to those detailed above. *See, e.g.*, Josh Zumbrun and Jesse Newman, *U.S. Farmers, Wanting a Trade Deal, Brace for Aid Package Some Fear Will Fall Short*, WALL ST. J. (updated May 17, 2019 9:36 ET), <https://www.wsj.com/articles/u-s-farmers-wanting-a-trade-deal-brace-for-aid-package-they-fear-will-fall-short-11558085400> (quoting Roger Johnson, president

of the National Farmers Union, who explained aid packages “are not sufficient to address the permanent damage the trade war has inflicted on agricultural export markets).

**G. The Harm Caused by Retaliatory Tariffs Is Likely to Continue and Get Worse**

Not only are government efforts to combat retaliatory tariff damage ineffective, but further retaliation is highly likely. The United States currently has an ongoing Section 232 investigation on motor vehicles, which could lead to additional retaliation measures if the United States moves forward with tariffs.<sup>6</sup> The value of automobiles and parts potentially subject to these tariffs is significantly larger than U.S. imports of steel and aluminum. CRS Overview for Congress at 25. To illustrate, in 2018, the United States imported \$50 billion of motor vehicles and parts from the European Union, which has threatened to implement equal retaliatory measures against U.S. exports if additional Section 232 tariffs are imposed. *Id.* at

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<sup>6</sup> Although the President announced that the United States will delay implementing tariffs for six months while the United States Trade Representative negotiates with Japan and European, there is no guarantee that tariffs will not be later enforced given that the Secretary of Commerce made an affirmative finding that imports of automobiles threaten national security. *Presidential Proclamation, Adjusting Imports of Automobiles and Automobile Parts Into the United States* (May 17, 2018), <https://www.whitehouse.gov/presidential-actions/adjusting-imports-automobiles-automobile-parts-united-states/>. And the mere threat of future tariffs is impacting the agricultural industry.



20. If additional Section 232 tariffs are placed on automobiles, one study estimated that GDP would “fall by an additional 0.30 percent (\$74.97 billion), resulting in 0.20 percent lower wages and 232,462 fewer full-time equivalent jobs.” Erika York et al., *Tracking the Economic Impact of U.S. Tariffs and Retaliatory Actions*, TAX FOUND. (May 31, 2019, last updated Aug. 13, 2019), <https://taxfoundation.org/trade-china-tariffs-economic-impact/>.

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In sum, foreign countries have introduced retaliatory tariffs against the U.S. agricultural sector, an industry heavily dependent on exports, in response to the President’s implementation of Section 232 tariffs. These retaliatory tariffs have significantly decreased the total amount and price of U.S. agricultural exports, including walnuts. As a result, net farm income has decreased while unemployment has increased. Basrai Farms in particular has suffered severe price costs. Efforts by the USDA are insufficient to alleviate the harm caused by retaliatory tariffs, which is only likely to continue as countries may introduce additional retaliatory measures.

### **III. THE GRAVITY OF THE HARM FELT BY THE AGRICULTURAL INDUSTRY SUPPORTS APPELLANTS’ ARGUMENT THAT SECTION 232 REPRESENTS AN UNCONSTITUTIONAL OVER-DELEGATION OF LEGISLATIVE AUTHORITY**

The impact of the retaliatory tariffs on the agricultural industry strengthens appellants’ argument that, besides certain procedural requirements, there is no limit

the President's authority to act under Section 232. *See* AIIS Br. at 35-40. Specifically, the statute grants the President the authority to favor particular industries, in this case the steel and aluminum industries, to the detriment of any and all others without providing guidance on how the President is to weigh these trade-offs. *See id.* at 40 (explaining that "section 232 does not contain so much as a hint as to how the President is to resolve the tradeoffs between the benefits to the protected domestic industry, versus the harms to the many parts of the economy adversely affected by import protection"). By failing to require that the President assess the likelihood of collateral damage caused by retaliatory measures imposed on U.S. exports, especially agricultural exports, Section 232 fails to set forth an intelligible principle for the President to ascertain the will of Congress. Section 232, therefore, unconstitutionally extends the President's authority to adjust imports over the entire economy regardless of any impact on "national security." 19 U.S.C. § 1862 (c)(3)(A)(ii). As Judge Katzman details in his dubitante opinion, "{i}f the delegation permitted by section 232 . . . does not constitute excessive delegation in violation of the Constitution, what would?" Appx29 (Katzmann, dubitante).

## CONCLUSION

For the foregoing reasons, the judgment of the CIT should be reversed with instructions that the Court enter judgment for the plaintiffs (a) declaring that section

232 is unconstitutional and that the steel tariffs and quotas imposed pursuant to it are unlawful, and (b) enjoining their further use.

Respectfully submitted,

Aug. 16, 2019  
Dated

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**UNITED STATES COURT OF APPEALS FOR THE FEDERAL  
CIRCUIT**

American Institute For  
International Steel, Inc., et al v. United States  
No. 2019-1727

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Amicus Curiae in Support of Appellant

August 16, 2019