19-1727

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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

Plaintiffs - Appellants

v.

UNITED STATES, KEVIN K. MCALEENAN, Commissioner of U.S. Customs and Border Protection,

Defendants - Appellees

Appeal from the United States Court of International Trade

in case no. 1-18-CV-00152, before a Three-Judge Panel consisting of Judge Claire R. Kelly, Judge Jennifer Choe-Groves, and Judge Gary S. Katzman.

REPLY BRIEF OF PLAINTIFFS-APPELLANTS – AMERICAN INSTITUTE FOR INTERNATIONAL STEEL, INC., and SIM-TEX, LP, KURT ORBAN PARTNERS, LLC.

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UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

American Ints. for Int'l Steel **v.** United States

Case No. 19-1727

CERTIFICATE OF INTEREST

Counsel for the:
☐ (petitioner) ■ (appellant) ☐ (respondent) ☐ (appellee) ☐ (amicus) ☐ (name of party)

certifies the following (use "None" if applicable; use extra sheets if necessary):

1. Full Name of Party Represented by me	2. Name of Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is:	3. Parent corporations and publicly held companies that own 10% or more of stock in the party
American Institute for International Steel, Inc.	American Institute for International Steel, Inc.	None. See attachment 1
Kurt Orban Partners, LLC	Kurt Orban Partners, LLC	None
Sim-Tex, LP	Sim-Tex, LP	None

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:

Morris, Manning & Martin, LLP: Donald Cameron, Julie Mendoza, R. Will Planert, Brady W. Mills
George Washington University Law School: Alan B. Morrison, Steve Charnovitz
Vanderbilt University Law School: Timothy L. Meyer
Law Offices of Gary Horlick: Gary N. Horlick

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5. 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

10/2/2019
Date

/s/ Donald B. Cameron
Signature of counsel

Please Note: All questions must be answered

Donald B. Cameron
Printed name of counsel

cc: _____

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Attachment 1

The American Institute for International Steel, Inc. (AIIS) is a trade association and does not have a parent corporation or a publicly held company that owns 10% or more of its stock. However, the following companies are publicly-owned members of AIIS: CSX Corporation, Geodis, Hyundai Corporation, JFE Steel, Mitsui & Co., Nippon Steel & Sumitomo Metal USA, Inc., and the Union Pacific Railroad.

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REPLY BRIEF OF PLAINTIFFS-APPELLANTS

I. SUMMARY OF ARGUMENT

The fundamental flaw in Appellees' brief is its failure to come to grips with the complete lack of any limits on what the President can do under section 232. Although they recognize that a requirement of proper delegation is that there be "boundaries," *see* Appellees' Br., ECF No. 49, at 8, 13, 17-18, and 23, and despite Appellants' emphasis on the lack of any limits at all on what the President may do with respect to imports under section 232 of the Trade Expansion Act of 1962, *as amended*, 19 U.S.C. § 1862, Appellees fail to identify a single action regarding imports that the President might take that would not be permitted under section 232. If, as Appellees tacitly admit, there are in fact no boundaries under section 232 and a court nevertheless finds an "intelligible principle" in the statute, then that phrase no longer has any meaning. In that event, Congress could give the President carte blanche to do whatever he wants in whatever area of law Congress chooses, a result that is inconsistent with basic principles of the separation of powers and is not the constitutional principle that governs this case.

To be specific regarding section 232, consider the front end, or trigger, requirement of an impact on "national security" needed for the President to take action. Appellees cite the various factors relating to national security set forth in section 232(d). Appellees' Br. at 2-3 (citing 19 U.S.C. § 1862(d)). Only later do they acknowledge that, in the facts giving rise to this case, the Defense Department

concluded that its requirements for steel needed for national defense were not threatened by the current level of imports. Appellees' Br. at 20, n.3 (citing Appx3056-3057). Appellees' response is that "national security," as defined in section 232, is much broader than national defense. This concession, however, only magnifies the problem. Congress's intent to delegate more authority cannot cure a non-delegation problem; indeed, its intent to delegate unfettered authority is precisely what creates the constitutional problem. Moreover, no one in this case argues that Congress could not pass a constitutional law giving the President broad discretion to respond to matters of national defense and foreign relations. But the rest of the factors that may be considered under the rubric of "national security" under section 232(d) include *anything* that affects the national economy or any industry within it. This means that any impact that any imported product might have on any aspect of the economy of the United States will suffice for section 232. In other words, there are no limits or boundaries on the front end, and Appellees and their supporting Amici suggest none.[1]

[1] Amici the American Iron and Steel Institute ("AISI") and the Steel Manufacturers Association ("SMA") contend that section 232 has "worked just as intended," by leading to increases in investment and output by the domestic steel industry. AISI's & SMA's Amici Br., ECF No. 59, at 11-12. AISI and SMA thus concede that the "national security" objective furthered by section 232 is the protection of the domestic steel industry and not national defense or foreign relations.

Nor are there any boundaries on the measures the President may impose to "adjust" imports of a specific product that he has determined may threaten national security. Appellants have detailed the open-endedness of these provisions in their Opening Brief and so will only highlight the most egregious here. *See* Appellants' Opening Br. at 18-20 and 30-45. The President initially chose to impose a 25% tariff here, *see* Appx3058-3064, but he could have chosen 100% or 5% while still "complying" with section 232. He subsequently doubled the tariff on imports from Turkey, *see* Appx3138-3142, and he could also have tripled it, or imposed similar additional tariffs on imports from any other country he designated, with no limits or conditions for choosing a country or on the amount of a further increase in tariffs. Or the President could have imposed quotas, again without numerical limits, instead of, or in addition to, tariffs, and could have done that for some countries but not others, all with total permission from section 232. Nor is the President limited to tariffs and quotas. *See* 19 U.S.C. § 1862(c)(1)(A)(ii) (placing no limits on the "nature and duration of the action" the president may take to adjust imports). He could adjust imports through the use of regulations, licenses, fees, or other charges. Again, Appellees agree with this interpretation of the statute, which means that no party before this Court argues for a construction of the statute with limits.[2]

[2] Appellees rightly point out that a non-delegation challenge to a statute is not a

Similarly, section 232 allows the President to treat very broad categories of products in the same fashion, or differently, as he chooses and without explanation. By way of illustration, although there are 177 categories of steel imports, which have many different specifications, uses, and availabilities in this country, here the President chose to treat them as if they were a single product – because he could. But he could also have treated them differently in terms of whether each would be subject to a tariff or a quota, and if so, in what amount(s). That is because section 232 neither commands that result nor precludes it, but leaves that choice up to the President.

Finally, although the significant adverse impacts on major sectors of the U.S. economy from the impositions of these tariffs were obvious from the start, section 232 did not require the President to take them into account, nor forbid him from doing so, because, like all other aspects of section 232, Congress gave him the unfettered power to do as he pleases.

Whatever Congress has done, it has surely not imposed any boundaries in section 232, and there is nothing to stop the President from imposing what he, in his absolute discretion, thinks is the best policy. And no court can rein him in

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challenge to the President's specific actions. Appellees' Br. at 11. Appellants invoke the facts giving rise to this case because Appellees interpret section 232 so broadly as to authorize the conduct that the President has actually undertaken. It is this incredibly broad construction of section 232, with which Appellants agree and which was not raised, briefed, or argued in *Algonquin*, that gives rise to the non-delegation problem.

when he does what he pleases. The most important part of Appellees' brief is not what it says, but what it does not say. Its utter failure to identify a single measure that the President might impose on imports that would violate section 232 establishes beyond a doubt that there are no boundaries in section 232 and that section 232 cannot survive this delegation challenge.[3]

Appellants' Opening Brief anticipated most of the arguments made by Appellees, but there are a few to which we further respond below.

II. ARGUMENT

A. *Algonquin* Does Not Control This Case.

Appellees do not dispute that the plaintiffs' substantive objection in *Federal Energy Administration v. Algonquin SNG, Inc.*, 426 U.S. 548 (1976), was that the President had imposed a remedy that was not authorized by section 232. No one claimed that the level of importation of oil in 1975 did not threaten national security, nor that the amounts of the licensing fees chosen were excessive or without basis. Instead, the question before the Supreme Court was whether the President was limited to using quotas under section 232 and therefore lacked the

[3] During oral argument in the Court of International Trade ("CIT"), Judge Kelly asked whether the President could impose an embargo on the importation of peanut butter under section 232 and whether that could be challenged in court. In a series of exchanges with both counsel, *see* Appx3286, Appx3295-3296, Appx3306, Appx3313, counsel for the Government did not answer the question of whether such an order would be lawful, but was firm in the position that "in terms of can the Court look behind the President's national security determination, that's not subject to judicial review, and it has never been that case." Appx3296.

statutory power to use licensing fees.[4] In that narrow context, the plaintiffs also argued that the Supreme Court should affirm the D.C. Circuit's decision that the President lacked the statutory authority to impose licensing fees because construing section 232 to permit the use of license fees would render the breadth of the delegation excessive and unconstitutional. *See* Brief for Respondents, *Fed. Energy Admin. v. Algonquin SNG, Inc.*, 426 U.S. 548 (1976) (No. 75-382) 1976 WL 181335, at *9 ("The President's imposition of license fees on imported oil was beyond the scope of authority delegated to him by 19 U.S.C. 1862(b). Well established principles of statutory construction, legislative history, and the dire implications of the broad and unprecedented powers asserted by the President all establish that § 1862(b) authorizes adjustment of imports through use of direct mechanisms such as quotas, but not through indirect mechanisms such as license fees."). That challenge squarely focused on the legality of what the *President* did, in contrast to what plaintiffs there contended Congress had authorized him to do. Here, the challenge is to the constitutionality of what *Congress* did, or more

[4] "All parties to this case agree that § 232(b) authorizes the President to adjust the imports of petroleum and petroleum products by imposing quotas on such imports. What we must decide is whether § 232(b) also authorizes the President to control such imports by imposing on them a system of monetary exactions in the form of license fees." *Algonquin*, 426 U.S. at 551-52.

precisely what it failed to do, which further demonstrates that *Algonquin* cannot control this case.[5]

In their effort to equate the ruling in *Algonquin* with this challenge, Appellees cite *Bucklew v. Precythe*, 139 S. Ct. 1112 (2019), for the proposition that, if a court upholds a single application of a statute, such a "decision would preclude any contention" that the statute is facially unconstitutional. Appellees' Br. at 11. *Bucklew* says no such thing. *Bucklew* says that "[a] facial challenge is really just a claim that the law or policy at issue is unconstitutional in all its applications." 139 S. Ct. at 1127. But the converse is not correct: simply because one portion of the statute does not contain an unconstitutional delegation does not mean that the statute as a whole, or even other separate provisions, are immune from a delegation challenge.

Appellees properly observe that this Court should focus on the holding of *Algonquin*. *See* Appellees' Br. at 7, 9-11, and 13. But the "holding" of *Algonquin* is that the President had the authority under section 232 to use licensing fees and

[5] Appellees also mischaracterize our discussion of the Supreme Court's recent decision in *Gundy* as an argument that this Court should "disregard" *Algonquin*. Appellees Br. at 13-14. To the contrary, our discussion of *Gundy* simply underscored our argument that in *Algonquin*, as in all Supreme Court decisions under the non-delegation doctrine, the holding on the constitutionality of the delegation is necessarily informed by the Court's construction of the statute being reviewed. The Court made this point explicitly in *Gundy*, but it is also implicit in *Algonquin*'s admonition that its holding was limited to the particular actions under review in that case. *Gundy v. United States*, 139 S. Ct. 2116, 2126 (2019); *Algonquin*, 426 U.S. at 571.

not just quotas. 426 U.S. at 571. To be sure, to reach that conclusion, the Supreme Court ruled that it was not an improper delegation of legislative power for Congress to have given him that choice. But the Supreme Court did not, despite some broad language in the opinion which was cited by the court below and repeated by Appellees, conclude that all other delegation challenges that might be made to section 232 were precluded. The *Algonquin* Court did not have before it Appellees' construction of section 232 used to justify the President's actions in this case, which have taken advantage of the lack of limits in section 232 to impose the tariffs at issue here. There was no "looming problem of delegation" then, but there is a very real problem now. *Id.* at 560.

Appellees also appear to misunderstand the point Appellants made by referring to the final portion of the *Algonquin* opinion, in which the Court stated that it was not approving all actions that the President might take under section 232, but just what he did there. *See* Appellants' Opening Br. at 29 (citing *Algonquin*, 426 U.S. at 571). That statement is significant first because it supports Appellants' contention that a narrow, rather than a broad, reading of *Algonquin* is required. But second, it underscores that, whatever cases, such as *United States v. George S. Bush & Co.*, 310 U.S. 371 (1940), might have held regarding judicial review of Presidential decisions under statutes like section 232, the *Algonquin* Court did not consider itself precluded from reviewing the choice of remedies

available to the President to ascertain whether they complied with any limits under the statute. And it surely did not hold that a future court would be precluded from doing so, although it is now acknowledged by the parties and accepted by the CIT below that there is no judicial review of any of the discretionary determinations made by the President under section 232. *See, e.g.*, Appx12 (holding that Congress precluded judicial review of the President's discretion in choosing remedial action). Put another way, if the same claim made in *Algonquin* were made for the first time today, Appellees would argue – and the courts would agree – that the President's choice of actions to adjust imports is unreviewable, unlike what the Supreme Court concluded in 1976. For that reason, as well as the others set forth in this and Appellants' Opening Brief, *Algonquin* does not require this Court to affirm the decision below.

B. Section 232 Unconstitutionally Delegates Legislative Power To The President.

Appellants' Opening Brief and the Summary of Argument in this Reply Brief fully explain why section 232 does not contain the necessary boundaries to prevent it from being an unconstitutional delegation of legislative authority. Appellees respond by: (A) pointing to certain procedural provisions in section 232 that they contend serve to cabin the President's power; (B) citing to language in other delegation cases involving very different statutes to support this delegation; and (C) invoking the foreign affairs powers of the President to defend against

Appellants' challenge to what Congress failed to do when it wrote section 232. *See* Appellees' Br. at 17-29. We deal with those contentions in turn.

A. Although Appellees recognize that there needs to be both "procedural and substantive boundaries," *id.* at 19, the only limits in section 232 on which they rely are procedural and as such they do not substantively confine the ability of the President to do whatever he wants to adjust the level of imports of a particular product. To be sure, he must obtain a recommendation from the Secretary of Commerce, who is his appointee, serves at his pleasure, and, as was the case here, is asked by the President to undertake the investigation to determine whether imports threaten national security, as capaciously defined in section 232. *See* 19 U.S.C. § 1862(b)(3)(A); *see also* Appx436-438. The President may act only if he receives an affirmative finding, but he is not bound by whatever remedial recommendation, if any, the Secretary may make. *See* 19 U.S.C. § 1862(c)(1). Nor is the President bound by any underlying factual findings made during the Secretary's investigation, and he does not even have to explain any disagreement with such subsidiary findings or with any of the submissions made to the Secretary. Nor is the President bound by, or required to explain any disagreement with, the position of the Secretary of Defense. The President does have to file a report with Congress, but Congress has no ability to prevent him from carrying out his order, unless it can pass a law to that effect – over his certain veto. *See id.* at

§ 1862(c)(2). And of course there is no judicial review of any justifications for his actions that the President may provide. *See George S. Bush & Co.*, 310 U.S. at 380. In short, these procedural protections do nothing to limit the choices available to the President under section 232.[6]

Both parties agree that there is no judicial review of the President's exercise of his discretion under section 232. Amicus United States Steel Corp. ("U.S. Steel") appears to have some discomfort with that limitation and, in response, made the following assertion, which it supported only by a citation to *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935), in which the Court set aside the statute on delegation grounds. The Amicus' assertion is:

> Constitutional review, for example, would allow a court to set aside presidential Section 232 orders that are issued to punish the President's political opponents, that draw partisan distinctions, or that have some other constitutionally impermissible basis.

U.S. Steel Amicus Br., ECF No. 52, at 17. Leaving aside the question of whether any U.S. or foreign entity would have standing to assert such a constitutional violation, Appellants find nothing in section 232 that forbids the President from exercising his statutory discretion in the suggested manner or anything in any of the applicable judicial decisions that supports U.S. Steel's assertion of reviewability of the President's exercise of his unbounded discretion. And when discretion to the

[6] Appellants recognize that the courts may prevent the President from using section 232 against domestic products because it applies only to imports. *Independent Gasoline Marketers Council, Inc. v. Duncan*, 492 F. Supp. 614, 621 (D.D.C. 1980).

President is so unbounded so as to make any meaningful judicial review impossible, Congress is, in effect, delegating its power to make a law to the President, in contravention of the teachings of *Marshall Field & Co. v. Clark*, 143 U.S. 649, 692 (1892) ("That congress cannot delegate legislative power to the president is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the constitution."). But perhaps Appellees disagree.[7]

B. Appellants' Opening Brief explained why most of the cases relied on by Appellees do not support the constitutionality of section 232. As the Supreme Court's recent decision in *Gundy* makes clear, delegation challenges must be examined by focusing specifically on the terms of the statute at issue. 139 S. Ct. at 2126. The necessary corollary to that proposition is that other delegation cases are relevant only if their operative provisions are comparable to those in section 232. As explained in our Opening Brief, the statute at issue in each case relied on by Appellees had meaningful boundaries on either the trigger finding (unlike

[7] While it may be the current position of the Department of Justice that the absence of judicial review is of no significance, that was not always the case. In its reply brief in support of certiorari in *Department of the Interior v. South Dakota*, 519 U.S. 919 (1996) (No. 95-1956), 1996 WL 33438671, the Solicitor General, in a case involving a non-delegation challenge, defended its proposed remand to allow the court of appeals to assess a recent regulation that had added a right to judicial review, on the apparent ground that it would lessen the impact of the broad delegation there: "As Judge Murphy explained [in the court below], Pet. App. 16a-17a, the availability of judicial review can be an important factor in the non-delegation inquiry. See Pet. 23-24." *Id.* at *7-8.

"national security") or the available remedies (many had numerical caps), or both, and in most cases there was full judicial review to assure that the President or the designated agency stayed within the law.[8] By contrast, Appellees rely on the conclusory phrase "intelligible principle" without discussing how the statute was found to satisfy it, or they quote one broad phrase in a statute, while omitting the parts that establish the boundaries.

One case heavily relied on by Appellees illustrates the flaw in their approach. On pages 22-23 of their brief, Appellees cite *United States v. Yoshida International, Inc.*, 526 F.2d 560 (C.C.P.A. 1975), for their claim that courts routinely uphold delegations at least as broad as this one. The problem is that, as Appellants noted on page 55 of their Opening Brief, however open-ended some of the terms of that statute might have been, the tariff increases authorized by the statute could not exceed the levels in the existing tariff schedules, and increases were limited to articles for which there had been prior tariff concessions. *Yoshida*, 526 F.2d at 577. The same distinction also applies to another case featured by Appellees, *Opp Cotton Mills, Inc. v. Adm'r of Wage & Hour Div. of Dep't of*

[8] Appellants' Opening Br. at 48 (*Opp Cotton Mills, Inc. v. Adm'r of Wage & Hour Div. of Dep't of Labor*, 312 U.S. 126 (1941)); 48-49 (*Yakus v. United States*, 321 U.S. 414 (1944)); 50 (*Mistretta v. United States*, 488 U.S. 361 (1989)); 50, n.7 (*Touby v. United States*, 500 U.S. 160 (1991)); 51-52 (*Whitman v. American Trucking Associations, Inc.*, 531 U.S. 457 (2001)); 55 (*United States v. Yoshida International, Inc.*, 526 F.2d 560 (C.C.P.A. 1975)); and 55-56 (*Florsheim Shoe Co. v. United States*, 744 F.2d 787 (Fed. Cir. 1984)).

Labor, 312 U.S. 126, 135 (1941), where the wages to be set by the defendant could not exceed 40 cents an hour. *See* Appellees' Br. 18-19. Accordingly, the statutes in *Yoshida* and *Opp Cotton Mills* are simply not comparable to section 232, which contains no caps or limitations of any kind.

C. In a final effort to defend section 232 despite its lack of boundaries, Appellees contend that section 232 authorizes the President to take action in the field of foreign affairs and that, therefore, Congress's delegation in section 232 can be broader than it could be if the law related to purely domestic matters. Appellees' Brief 27-29. The first problem with that argument is that *Algonquin* did not treat section 232 as a law based in any way on the powers of the President, but instead focused solely on the authority granted to him by Congress under the statute. That approach is correct because section 232 does not depend on whether what another country did was unlawful or unfair. As section 232(d) makes clear, the focus is on the domestic economy: "*domestic* production needed for projected national defense requirements, the capacity of *domestic* industries . . . 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 . . ." 19 U.S.C. § 1862(d) (emphasis added).

Appellees' attempt to sustain the delegation here as an exercise of Presidential power over foreign affairs is also belied by the case that first enunciated the "intelligible principle" standard, *J. W. Hampton, Jr. & Co. v United States,* 276 U.S. 394 (1928), which relied solely on the powers of Congress to impose tariffs, like those in section 232. Nowhere in that opinion, written by former President and then Chief Justice William Howard Taft, is there any mention of any independent powers of the President, nor did President Calvin Coolidge in his proclamation imposing the tariff increases there. *See Hampton, Jr. & Co. v. United States*, 14 Ct. Cust. App. 350, 353-54 (1927) (containing the proclamation issued by President Coolidge on May 19, 1924). Nor was there any reliance on presidential power by the Court in the other Supreme Court tariff case relied on by Appellees, *Marshall Field & Co. v. Clark*, 143 U.S. 649 (1892). If independent presidential authority were a source for the exercise of those tariff powers, either the President or the Court would surely have mentioned them. [9]

Nonetheless, according to Appellees, "the President's independent constitutional authority over matters of national security and foreign affairs further confirms the constitutionality of Section 232." Appellees' Br. at 27. They cite *United States v. Curtiss-Wright Export Co*. 299 U.S. 304, 315 (1936), and argue

[9] Other than invoking his general powers under the Constitution, none of the President's proclamations in this case purported to rely on his foreign affairs powers, in contrast to the statutory powers which he specifically cited. *See, e.g.* Proclamation No. 9705, 83 Fed. Reg. 11,625 (Mar. 15, 2018), Appx3058-3064.

that "a delegation to the Executive that might otherwise be improper if confined to internal affairs may 'nevertheless be sustained on the ground that its exclusive aim is to afford a remedy for a hurtful condition within foreign territory.'" Appellees' Br. at 28. However, in *Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2089-90 (2015), the Court expressly declined the government's invitation to find "that the President has broad, undefined powers over foreign affairs," disavowing any suggestion to the contrary in *Curtiss-Wright*.

Appellees also cite Justice Jackson's tripartite framework in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring) ("When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate."). Appellees' Br. at 28. But *Youngstown* challenged the President's seizure of steel mills, not the constitutionality of what Congress did as Appellants do here. Indeed, Justice Jackson's framework for evaluating the President's power in light of what Congress has done is irrelevant for evaluating a case challenging a statute enacted by Congress as unconstitutional. Appellees, nonetheless, seem to argue that, if the President relies on an allegedly unconstitutional statute to take some action, the constitutionality of Congress's enactment of the statute can be defended on the grounds that the President had independent authority to take that action even if

Congress acted unconstitutionally. *See id.* at 28-29. This confuses the statutory interpretation question – what did Congress authorize – with the constitutional question – could Congress constitutionally authorize what the statute permits.

Finally, the logical conclusion of Appellees' assertion of presidential foreign affairs power here is that Congress could use that authority to pass a law permitting the President to impose tariffs at any level on any import that he chooses, or establish whatever quotas he finds necessary to protect domestic producers, and that would not be an unconstitutional delegation of legislative power. But Article I, section 1 of the Constitution gives Congress, not the President, "{a}ll legislative powers," which expressly include the power in section 8 to "lay and collect Taxes, Duties, Imposts, and Excises" and to "regulate Commerce with Foreign nations." U.S. Const. art. I § § 1, 8. Accordingly, the powers conferred by section 232 are legislative powers delegated from Congress to the President, and therefore he cannot rely on any independent authority he may have to impose these tariffs and thereby save section 232 from this delegation challenge.

III. CONCLUSION

For the foregoing reasons and those set forth in Appellants' Opening Brief, the judgment below should be reversed, and the Court of International Trade should be directed to enter judgment for Appellants, declaring that section 232 is unconstitutional and enjoining Appellees from enforcing it.

Respectfully submitted,

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FORM 30. Certificate of Service

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