No. 23-432

In the Supreme Court of the United States

OMAN FASTENERS, LLC,
Petitioner,
v.
UNITED STATES, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Federal Circuit

REPLY BRIEF FOR PETITIONER

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Without the rule of deference to the President's statutory interpretation that the Federal Circuit applied below, this case would be straightforward and the government would lose. The Court of International Trade explained why, without any deference, President Trump's tariffs challenged here failed to satisfy the ordinary meaning of Congress's procedural requirements in Section 232. *See* Pet. App. 35a–52a.

The government's brief in opposition asserts that "the President retains authority to modify [a previously enacted Section 232 tariff] as necessary in light of changed circumstances or new information." Opp. 7. But the implicit authority for a President to modify a Section 232 tariff with "modest adjustments" does not permit him "to transform" an older tariff *years later*, *Biden* v. *Nebraska*, 143 S. Ct. 2355, 2369 (2023), by newly restricting wholly distinct categories of derivative goods without any study and without any plausible connection to U.S. national

security. If the Federal Circuit had applied the plain terms of the Trade Expansion Act's requirements for Section 232 tariffs, it would be easy to see that the President did not decide to enact these tariffs "[w]ithin 90 days" of any "report" from the Secretary of Commerce that had *anything* to do with the regulated derivative articles. 19 U.S.C. § 1862(c)(1)(A).

The Federal Circuit's opinion unambiguously sustained the challenged tariffs only by deferring to the President's interpretation of the statutory phrases "[w]ithin 90 days" and "no later than the date that is 15 days after." 19 U.S.C. § 1862(c)(1)(A)–(B); *see* Pet. App. 10a–11a. The Federal Circuit relied on its doctrine from *Maple Leaf Fish Co.* v. *United States*, 762 F.2d 86 (1985), which holds that a plaintiff like Oman Fasteners cannot prevail by having the best reading of the statutory text on its side—the plaintiff must instead demonstrate "a *clear* misconstruction of the governing statute" or "a *significant* procedural violation." *Id.* at 89 (emphases added). The brief in opposition admits (on its penultimate page) that the decision below "applied" that doctrine "in this case." Opp. 13.

The government offers this Court no sound reason for denying review of that *Maple Leaf Fish* rule. No circuit split is possible. The government does not contend that *Maple Leaf Fish* is rarely applied or unimportant; on the contrary, it freely admits that "the Federal Circuit has 'repeatedly relied on the *Maple Leaf* formulation.'" Opp. 14 (quoting Pet. App. 10a–11a). The government gives no rebuttal to the petition's showing that this case presents an ideal vehicle for reviewing that deference doctrine. And the government also does not dispute that applying that deference will confer on the President a nearly boundless delegation of Congress's constitutionally assigned foreign-commerce authority.

The government's only asserted reason for denying certiorari is its contention that *Maple Leaf Fish* is sound. But the government cannot deny that the upshot of *Maple Leaf Fish* deference is that courts must accept something less than the best reading of the statute. That makes this case very similar to those this Court will hear this Term reconsidering deference under *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). If this Court holds in those cases that federal courts should apply the most natural meaning of statutory text without deference to the Executive branch agencies charged with implementing the provisions, then it will follow ineluctably that the Federal Circuit should not defer under *Maple Leaf Fish* to the Executive's interpretation of the provisions that Congress enacted to *constrain* him. *Maple Leaf Fish* deference is even more constitutionally suspect than *Chevron* because there is no plausible argument that Congress delegated to the President the responsibility to determine the meaning of the requirement that he must act "[w]ithin 90 days … ."

The petition for a writ of certiorari should be granted. At a minimum, the petition should be held until this Court re-considers *Chevron*.

A. The Federal Circuit's deference rule warrants this Court's review.

1. The brief in opposition does not deny that the *Maple Leaf Fish* deference doctrine is important and recurring, nor that this case is a perfect vehicle.

The doctrine is important because, with it, the President has virtually unbounded authority to convert a years- or decades-old tariff proclamation into new restrictions on derivative products—even distinctly different products in entirely different commercial markets. And the President can do so under *Maple Leaf Fish* without any obligation

to study whether the import of those derivative products would impact national security. So long as the Secretary previously investigated and the President regulated a loosely related article, *Maple Leaf Fish* permits the President years later to impose new tariffs or even ban importation of any product derived from that article, contrary to the statutory requirement that tariffs be based on a study supplying up-to-date information. The government does not contest the breadth of the presidential power conferred by *Maple Leaf Fish*; it instead warmly embraces being freed from any constraints under Section 232. *See* Opp. 8–9.

Nor is there any dispute that the Federal Circuit will continue to "repeatedly" defer to the President under *Maple Leaf Fish* without this Court's intervention. Opp. 14 (citation omitted). Just since Oman Fasteners's petition for a writ of certiorari, the Federal Circuit has again applied *Maple Leaf Fish* to uphold "the President's interpretation of" another trade statute, not because it was the best interpretation but because it was "not a clear misconstruction." *Solar Energy Indus. Ass'n* v. *United States*, 86 F.4th 885, 894, 902 (2023).

2. The government responds (Opp. 7) that this Court has denied review of "other petitions that have challenged the lawfulness of the steel tariffs." But none of those petitions—including the one arising from the same decision below in *PrimeSource Building Products Inc.* v. *United States*, No. 23-69—involved the same question here, which is whether the Federal Circuit should have determined those tariffs' legality by applying a rule of deference to the President's statutory interpretation.

The government is wrong in asserting that the *PrimeSource* petition denied earlier this Term "raised substantially the same question" and "similarly challenged the

[Federal Circuit's] application of the *Maple Leaf Fish* standard." Opp. 6–7, 14. The petitioner in *PrimeSource* presented two questions for this Court's review, neither of which concerned *Maple Leaf Fish* deference. Pet. in No. 23-69, at i. That petitioner asked this Court to "take the next step in its major-questions" jurisprudence by adopting a new non-delegation interpretive canon to "resolve ambiguity in favor [of] constraining the delegation," and then to apply that newly created narrow-construction canon to invalidate the steel tariffs. When discussing *Maple Leaf Fish*, the *PrimeSource* petitioner argued only that it "cannot be reconciled with" the new canon advocated by the petition. *Id.* at 20–23. The question presented here is materially different: Should courts considering challenges to a steel tariff apply the ordinary meaning of the terms of Section 232 or a special rule of deference to the President's interpretation of those requirements?

Contrary to the government's suggestion, this Court has not previously denied a petition for a writ of certiorari raising that question. The petitioners in *American Institute for International Steel, Inc.* v. *United States*, 139 S. Ct. 2748 (2019), and 141 S. Ct. 133 (2020), twice asked this Court to decide only constitutional non-delegation questions. Pet. in No. 18-1317, at i-ii; Pet. in No. 19-1177, at i. Likewise in *Transpacific Steel LLC* v. *United States*, 142 S. Ct. 1414 (2022), the petitioners raised another non-delegation challenge and asked this Court to decide if "the President acted outside of the scope of the statutory authority Congress granted." Pet. in No. 21-721, at i–ii. In *USP Holdings, Inc.* v. *United States*, 143 S. Ct. 1056 (2023), the petitioners asked whether the Secretary of Commerce's national-security-threat determination is judicially reviewable as arbitrary and capricious. Pet. in No. 22-565, at i. Not one of those petitions so much as men-

tioned *Maple Leaf Fish*, let alone asked this Court to review the Federal Circuit's deference rule.

3. Because *Maple Leaf Fish* deference is so obviously flawed, the government relegates its discussion of that doctrine to the last few paragraphs of its brief in opposition. But there is no hiding from the Federal Circuit's reasoning: That court *began* its review of the challenged tariffs by emphasizing its deference to the President's interpretation of the relevant statutory provisions. Pet. App. 10a. The government thus admits (as it must) that the decision below "applied" *Maple Leaf Fish*. Opp. 13.

Although the government tries to create the impression that the court of appeals' judgment could survive without deference to the Executive Branch, it fails. The government argues (Opp. 7) that President Trump's Proclamation 9980 regulating commercial products made from steel (like nails) lawfully modified the President's earlier proclamation regulating steel sheets, rods, ingots, and the like, because the President purportedly has the "general … power to amend [an] action" later to "respond[ ] to changed circumstances or new information." But Proclamation 9980 cannot plausibly be described as a mere "modification" of the then-years-old tariff on steel itself. Sheets and rods of steel have entirely different markets than nails made from steel; neither can be substituted for the other; and the national-security implications of each are obviously entirely unrelated.

The statutory time limits in Section 232 demonstrate Congress's intention that tariffs must reflect accurate, timely information produced through a recent investigative study. There is no way to conclude that Proclamation 9980 complied with those time limits without deferring to the President's interpretation of them as the Federal Circuit did.

B. The government fails to justify the Federal Circuit's deference rule.

The brief in opposition's two-paragraph defense of *Maple Leaf Fish* deference (Opp. 13–14) fails to persuasively defend that doctrine.

1. *Maple Leaf Fish* deference denies Article III's promise of an independent judiciary

Maple Leaf Fish requires that courts interpret Congress's international-trade statutes not by fairly reading the text but by asking the "very limited" question whether the President "clearly misconstrued his statutory authority" or "violated an explicit statutory mandate." 762 F.2d at 89; *see* Pet. App. 10a. The Federal Circuit thus requires courts to "squint [their] eyes" when reading a statute and uphold a presidential action if any plausible reading—even one that requires "stretch[ing] (or shrink[ing]) its meaning"—would authorize it. *Dubin* v. *United States*, 599 U.S. 110, 133 (2023) (Gorsuch, J., concurring). That unconcern for the words that Congress wrote abdicates the constitutional promise that the laws will be applied to the people without "favor [toward] Congress or the Executive"—one of the "defining characteristics of Article III judges." *Stern* v. *Marshall*, 564 U.S. 462, 483–484 (2011); *see* The Federalist No. 78, at 466 (Rossiter ed. 2003) (Alexander Hamilton) ("The interpretation of the laws is the proper and peculiar province of the courts.").

The Federal Circuit's deference rule is especially pernicious in a case like this one, where it caused that court to look unskeptically at the Executive's interpretation of a statutory provision that he is not charged with implementing but that exists specifically to *constrain* his authority. The government insists that *Maple Leaf Fish* does not create a deference rule but rather a "limited" standard of review in "nonconstitutional challenges to

presidential action." Opp. 13–14 (quoting Pet. App. 10a–11a). But as the government itself acknowledges, a deferential standard of review applies only to those "'highly discretionary' decisions" that Congress vested in the President. Opp. 14 (quoting *Maple Leaf Fish*, 762 F.2d at 89). Congress did not even arguably delegate to the President the authority to interpret the very procedural provisions that it enacted to *cabin* his discretion.

2. *Maple Leaf Fish* deference shares all of *Chevron*'s faults, plus a few more.

Whatever the government wants to call it, *Maple Leaf Fish* requires courts to accept something less than the best reading of the law that Congress enacted. *Maple Leaf Fish* itself rejected the plaintiff's argument there not because it was not the best reading of the statute but because the plaintiff had not made a "substantial showing" that the President "misread[]" the statute. 762 F.2d at 90.

That makes the government's assertion (Opp. 14) that "the decision below would not be affected by this Court's forthcoming decisions in *Loper Bright* and *Relentless*" bewildering. *Chevron* and *Maple Leaf Fish* are strikingly similar. Both are "judge-made doctrine[s]." *Gutierrez-Brizuela* v. *Lynch*, 834 F.3d 1142, 1152 (10th Cir. 2016) (Gorsuch, J., concurring). Both are based on implicit policy judgments rather than statutory text. *See* David J. Barron & Elena Kagan, *Chevron's Nondelegation Doctrine*, 2001 Sup. Ct. Rev. 201, 212 (2001); *Maple Leaf Fish*, 762 F.2d at 89–90; Pet. App. 10a–11a. Both require courts to "abdicat[e] [their] judicial duty" by accepting something less than the best reading of the law. *Gutierrez-Brizuela*, 834 F.3d at 1152 (Gorsuch, J. concurring). And both "wrest from Courts the ultimate interpretive authority" only when the sub-optimal reading favors the Execu-

tive at the expense of the citizen whose property is on the line. *Michigan* v. *EPA*, 576 U.S. 743, 761 (2015).

It is irrelevant that "the President is not an 'agency'" for purposes of the Administrative Procedure Act (APA). *Contra* Opp. 13. The government seems to assume (or perhaps wish) that if this Court overturns *Chevron*, it will do so only because *Chevron* is inconsistent with the APA. *See* Opp. 13-14. But *Chevron* has been challenged primarily on constitutional grounds. *See* Pet'r Br. 23–28, *Loper Bright* v. *Raimondo*, No. 22-451 (July 17, 2023); Pet'r Br. 15–23, *Relentless, Inc.* v. *Dep't of Commerce*, No. 22-1219 (Nov. 20, 2023). And those constitutional concerns apply equally to *Maple Leaf Fish* deference.

Indeed, *Maple Leaf Fish* deference is even more constitutionally suspect than *Chevron* for two reasons. The first is the problem mentioned above: *Chevron*, for all its faults, at least extends deference to statutory terms that Congress has tasked the Executive Branch with implementing; whereas *Maple Leaf Fish* defers to statutory terms adopted to *constrain* the Executive. Second, *Chevron* deference comes on the back end, after courts first "exhaust all the 'traditional tools' of construction." *Kisor* v. *Wilkie*, 139 S. Ct. 2400, 2415 (2019) (quoting *Chevron*, 467 U.S. at 843 n.9). "[O]nly when that legal toolkit is empty," *ibid.*, and courts still have to "squint" to make sense of the text do they "accede to a reasonable interpretation by the implementing agency," *Little Sisters of the Poor Saints Peter & Paul Home* v. *Pennsylvania*, 140 S. Ct. 2367, 2397 (2020) (Kagan, J., concurring). But under *Maple Leaf Fish*, the squinting comes first: the Federal Circuit *begins* the case by looking for reasons to uphold the Executive action, not to discern the best meaning of the statutory text. *See* Pet. App. 10a. Except in the most "limited circumstances," the judiciary becomes little more

than the President's rubber stamp. *See Silfab Solar, Inc.* v. *United States*, 892 F.3d 1340, 1346 (Fed. Cir. 2018) (applying *Maple Leaf Fish*).

If this Court reaffirms in *Loper Bright* or *Relentless* that it is the duty of the judiciary to say what the law is regardless of how the Executive Branch might read it, then at the absolute minimum it will be necessary to vacate the Federal Circuit's decision below and remand for further consideration in light of this Court's decision.

3. *Maple Leaf Fish* deference produces an unconstitutional delegation of legislative power.

If the Federal Circuit's deference rule were sustained, then the Trade Expansion Act would unconstitutionally remove every meaningful guardrail on the Executive's exercise of *Congress's* constitutionally assigned foreign-commerce power. This Court previously rejected a non-delegation challenge to a predecessor of Section 232 precisely because it found that the statute's procedural requirements sufficiently cabined Congress's delegation. *Federal Energy Admin.* v. *Algonquin SNG, Inc.*, 426 U.S. 548, 559 (1976). Specifically, the Secretary had to find and the President had to agree that imports of "an article" threatened national security. *Ibid.* The Federal Circuit's rule affording wide deference to the President's own view of Section 232's procedural requirements effectively reads them out of the statute.

Here, the Secretary never found that imports of derivative products—commercial products made from steel, like nails—threatened national security. 85 Fed. Reg. 40,202, 40, 203–40,204 (July 6, 2020). The Secretary did not investigate derivative steel products at all, and his report did not mention them. So the President never agreed with any report finding that the derivative products regu-

lated by Proclamation 9980 threatened national security. The President thus acted against those derivatives without any of the "clear preconditions to Presidential action" that *Algonquin* relied on. 426 U.S. at 559.

The government argues that there is no delegation problem because the statute permits the President to adjust the imports of derivatives based on a report about articles. Opp. 11–12. But the statute also now requires the President to determine the nature and duration of his action on derivatives within 90 days of the Secretary's report and to implement his action within 15 days of that decision. The Federal Circuit's decision allowing the President to arbitrarily exhume ancient reports or proclamations on main articles as a basis for new restrictions on entirely distinct derivative products would create the very "looming problem of improper delegation" that this Court in *Algonquin* was concerned about. 426 U.S. at 560.

Contrary to the government's contention, this case is not about whether the Court should "read Section 232 narrowly." *Contra* Opp. 11. Oman Fasteners asks only that the statutory requirements be read *fairly*, without a thumb on the scale for the President's interpretation of the very provisions that Congress used to limit the authority delegated to him.

CONCLUSION

The petition for a writ of certiorari should be granted. Alternatively, the petition should be held for *Loper Bright* and *Relentless*.

Respectfully submitted,

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