

No. 25-250

IN THE
Supreme Court of the United States

DONALD J. TRUMP,
PRESIDENT OF THE UNITED STATES, *et al.*,
Petitioners,

v.

V.O.S. SELECTIONS, INC., *et al.*,
Respondents.

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

**AMICUS CURIAE BRIEF OF CARLA
ANDERSON HILLS AND ALAN WILLIAM
WOLFF, IN SUPPORT OF RESPONDENTS**

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INTEREST OF AMICI¹

Ambassador Carla Anderson Hills served as U.S. Trade Representative in the George H. W. Bush Administration from 1989 to 1993. During her term, Ambassador Hills was the primary U.S. negotiator of the North American Free Trade Agreement and led the United States delegation in the Uruguay Round of multilateral trade negotiations conducted within the framework of the General Agreement on Tariffs and Trade (GATT).

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¹ No counsel for a party authored this brief in whole or in part; and no such counsel, any party, or any other person or entity—other than amici curiae and their counsel—made a monetary contribution intended to fund the preparation or submission of this brief.

Ambassadors Hills and Wolff submit this amicus brief in their personal capacities only, to further their interest in the sound development of trade law.

INTRODUCTION AND SUMMARY OF ARGUMENT

Justice Felix Frankfurter famously observed in *Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579, 610-11 (1952) (Frankfurter, J., concurring), that “a systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned ... may be treated as a gloss on 'Executive Power' vested in the President by § 1 of Art. II.” As former diplomats and legal advisers who carried out prior presidents’ trade policies, Amici are familiar with the systematic, unbroken executive practices of implementing the United States’ trade laws. Based on that knowledge, Amici submit this brief to set forth their understanding of the history and usage of United States trade laws to inform the interpretation of the International Emergency Economic Powers Act (“IEEPA”), Pub. L. No. 95-233, tit. II, 91 Stat. 1626 (1977) (codified as amended at 50 U.S.C. § 1701 et seq.).

Amici do not express any view on whether a sanctions statute like IEEPA could serve as the legal basis for imposing tariffs directed to the end of enforcing a sanctions regime against an enemy or unfriendly power. Amici submit, however, that, prior to President Trump’s Executive Order 14,257, 90 Fed. Reg. 15,041 (April 7th, 2025) (hereinafter the “Global Tariff Order”), no president has ever invoked sanctions authority such as conferred by IEEPA to impose tariffs for the purpose of remedying trade deficits or otherwise protecting domestic industry from foreign competition. By claiming power to define

a completely new tariff schedule for such purposes pursuant to IEEPA's grant of power to "regulate ... any ... importation ... of ... [foreign] property," 50 U.S.C. § 1702(a)(1)(B), President Trump has radically departed from a systematic, unbroken legal tradition governing trade law.

Since the ratification of the Constitution, the unbroken executive practice has been to distinguish between authority from Congress to implement trade agreements and authority to impose economic sanctions. Trade authority delegated to the president has always been the means whereby Congress deals with protection of domestic industries from unfair or otherwise injurious import competition. Sanctions authority is the means of using economic pressure to deal with threats to national security from unfriendly or enemy powers. The fatal problem with the Global Tariff Order is that it uses IEEPA, a statute governing economic sanctions on unfriendly or enemy nations, against actual and perceived harms to American commerce from foreign competition more generally, in blanket fashion against imports of all products from all sources. Because such a reading of IEEPA is contrary to "[d]eeply embedded traditional ways of conducting government" that must "give meaning to the words of a text" otherwise unclear, *Youngstown*, 343 U.S. at 610 (Frankfurter, J., concurring), it cannot be a sound interpretation of IEPA's two words "regulate ... importation."

Contrary to the government's assertions, no president before has ever before attempted to use authority to impose economic sanctions as a means for correcting trade deficits. In particular, President Nixon specifically refused to invoke the Trading with the Enemy Act, ch. 106, 40 Stat. 411 (1917) ("TWEA"), IEEPA's predecessor statute, to address a balance of payments

crisis with a 10% surcharge on imports. Instead, President Nixon, like every president before him, invoked trade agreement law – specifically, the Trade Expansion Act of 1962, Pub. L. 87–794, 76 Stat. 872, codified at 19 U.S.C. ch. 7 to deal with the competitive effects of imports. As *United States v. Yoshida Int’l., Inc.*, 526 F.2d 560 (C.C.P.A. 1975) emphasized in upholding these surcharges, President Nixon’s surcharges deliberately stayed within the range of import duties approved by Congress, thereby respecting the limits on presidential authority imposed by trade agreement statutes.

Congress has repeatedly reinforced the traditional understanding of presidential authority over tariffs by enacting specific limits on presidential authorities to impose tariffs. The Global Tariffs Order effectively nullifies these carefully calibrated limits on presidential authority, in violation of the canon that a statute addressing a specific problem is presumed not to be controlled or nullified by more general statutes.

The government’s reading of IEEPA’s ambiguous language is radically at odds with how every branch of the federal government, executive, judicial, and legislative, has understood presidential power over tariffs from the founding of the United States to the present. No plain language justifies such a subversion of longstanding legal tradition. For this reason, Amici urge this Court to affirm the decision of the Federal Circuit below.

THE ARGUMENT

I. SYSTEMATIC, UNBROKEN GOVERNMENTAL PRACTICE SHOULD CONTROL IEEPA’S GRANT OF PRESIDENTIAL POWER TO “REGULATE ... IMPORTATION ... OF PROPERTY.”

Purporting to exercise powers conferred by IEEPA, President Trump issued Executive Order 14,257, 90 Fed. Reg. 15,041 (April 7, 2025) (“Global Tariffs Order”), which imposed a global 10% ad valorem duty on “all imports from all trading partners” and higher tariff rates, ranging from 11 to 50 percent—on 57 countries. *Id.* at 15,049-50. The stated purpose of this Global Tariffs Order was “to rectify trade practices that contribute to large and persistent annual United States goods trade deficits.” As authority for the Global Tariff Order, President Trump invoked the International Emergency Economic Powers Act, Pub. L. No. 95-233, tit. II, 91 Stat. 1626 (1977) (codified as amended at 50 U.S.C. § 1701 et seq.). IEEPA authorizes the President to “deal with an unusual and extraordinary threat to which a national emergency has been declared” due to a threat originating outside the United States by “regulat[ing] ... the ... importation ... of [foreign] property.” 50 U.S.C. § 1702(a)(1)(B). According to the government, this power to “regulate ... the importation ... of property” gives the President the power to set aside all tariff rates negotiated pursuant to trade agreements authorized by statutes like the Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (codified as amended at 19 U.S.C. § 2101 et seq.).

Amici submit that this reading of IEEPA runs up against the United States’ systematic and unbroken practice of implementing trade laws since the ratification of the U.S. Constitution. That longstanding

practice should be determinative in construing IEEPA's grant of power to "regulate ... importation" for two reasons. First, IEEPA's text only very tenuously and ambiguously encompasses the power to set tariffs. Amici take no position on whether IEEPA's grant of power to "regulate ... importation" might authorize tariffs used to enforce sanctions against an unfriendly or enemy nation. Nothing in the phrase "regulate ... importation," however, unambiguously encompasses tariffs imposed for the purpose of controlling trade deficits or protecting American commerce from foreign competition. Second, this Court has long held that, where statutory text is ambiguous, the longstanding and continuous interpretations by the executive branch carry substantial weight in resolving such ambiguities.

Consider, first, the tenuousness of interpreting IEEPA's grant of regulatory authority to encompass the power to impose tariffs. As a matter of constitutional and statutory usage, the term "regulation" is rarely if ever used to convey a power to impose taxes and duties. Article I, §8 of the Constitution, for instance, defines the "Power To lay and collect Taxes, Duties, Imposts and Excises" and the power "To regulate Commerce with foreign Nations" in separate clauses using different verbs. Likewise, statutory language lacking such revenue-related language is ordinarily read to exclude a power to impose taxes. See, e.g., *Nat'l Cable Television Ass'n v. United States*, 415 U.S. 336, 340-41 (1974) (construing a statutory grant of the power to charge fees narrowly to exclude a power to impose charges unrelated to the benefits received by charged entities, reasoning that "[t]axation is a legislative function It would be such a sharp break with our traditions to conclude that Congress had bestowed on a federal agency the taxing

power that we read 31 U.S.C. § 483a narrowly as authorizing not a ‘tax’ but a ‘fee’”).

Consider, second, the importance of executive branch’s traditions of enforcement in clarifying such statutory ambiguities. As this Court has repeatedly observed, the executive branch’s interpretation of ambiguous statutory terms is entitled to substantial respect, especially when that interpretation was made contemporaneous with a statute’s enactment and consistently followed over a lengthy period of time. See, e.g., *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 386 (2024) (judicial respect for executive officials’ interpretations of statutes “are especially warranted when an Executive Branch interpretation was issued roughly contemporaneously with enactment of the statute and remained consistent over time”); *Zemel v. Rusk*, 381 U.S. 1, 11 (1965) (“The interpretation expressly placed on a statute by those charged with its administration must be given weight by courts faced with the task of construing the statute”); *Norwegian Nitrogen Products Co. v. United States*, 288 U.S. 294, 313, 315 (1933) (upholding Tariff Commission’s understanding of statutory hearing procedures by noting that “administrative practice, consistent and generally unchallenged, will not be overturned except for very cogent reasons if the scope of the command is indefinite and doubtful”); *United States v. Alabama Great Southern Railroad Co.*, 142 U.S. 615, 621 (1892) (relying on executive department’s “contemporaneous construction ... continued for nine years through six different administrations” to reject executive branch’s “sudden change” to a new reading of the statute).

In construing IEEPA in particular, this Court in *Dames & Moore v. Regan*, 453 U.S. 654 (1981) relied on longstanding executive practice to resolve IEEPA’s

ambiguities. In holding that IEEPA conferred on the President a power to nullify attachments against the Government of Iran's property, *Dames & Moore* emphasized "the history of [congressional] acquiescence in executive claims settlement." *Dames & Moore*, 453 U.S. at 678. In relying on this history, *Dames & Moore* quoted approvingly Justice Frankfurter's statement in *Youngstown Sheet & Tube* that "a systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned ... may be treated as a gloss on 'Executive Power' vested in the President by § 1 of Art. II." *Dames & Moore*, 453 U.S. at 686 (quoting *Youngstown*, 343 U.S. at 610–611).

Amici urge that this Court follow *Dames & Moore*'s presumption that "long-continued practice, known to and acquiesced in by Congress," *id.* at 686 (quoting *United States v. Midwest Oil Co.*, 236 U. S. 459, 474 (1915)), reflects the best reading of IEEPA's ambiguous grants of presidential powers to apply sanctions. Whether the phrase "regulate ... importation" can plausibly be read to confer a power to regulate imports for purposes already addressed by the numerous grants of trade agreement implementing authority enacted by Congress is a question that cannot be resolved without examining how the executive branch has carried out such statutes. As Justice Frankfurter observed in *Youngstown*, such "[d]eeply embedded traditional ways of conducting government cannot supplant the Constitution or legislation, but they give meaning to the words of a text or supply them." *Youngstown*, 343 U.S. at 610 (Frankfurter, J., concurring).

II. CONSTRUING IEEPA TO CONFER ON PRESIDENTS AN OPEN-ENDED POWER TO DEFINE TARIFF RATES CONTRADICTS THE UNITED STATES' SYSTEMATIC UNBROKEN PRACTICE IN IMPLEMENTING TRADE AGREEMENT LAW AND NULLIFIES CONGRESS' SPECIFIC STATUTORY LIMITS ON PRESIDENT'S TRADE AGREEMENT AUTHORITY.

Construed in light of the executive branch's systematic, unbroken understanding of presidential powers over tariffs, the Global Tariffs Order is illegal. Prior to the moment that President Trump signed the Global Tariffs Order, no president ever claimed an authority to set aside statutorily established tariff schedules by invoking a general statutory power to impose sanctions on enemy or unfriendly nations' imports. Instead, every president before President Trump has presumed that presidential power to set tariffs is governed by the procedures and limits contained in statutes specifically addressed to trade agreements and tariffs such as the Trade Act of 1974. Congress has repeatedly amended trade laws in light of this unbroken understanding, carefully circumscribing presidential power to implement tariffs for the purpose of protecting American commerce from foreign competition. Those specific limits on presidential tariff implementing authority would be effectively nullified by construing IEEPA to swallow up such limits with the two words "regulate ... importation."

A. Prior to the Global Tariffs Order, No President Had Ever Used Sanctions Authority to Impose Tariffs Inconsistent With Tariff or Trade Agreement Statutes.

Since the ratification of the Constitution, presidents have exercised two distinct types of powers over imports from foreign nations. First, presidents have entered into trade agreements and set tariffs with nations by carrying out statutes enacted pursuant to Congress’ power to “lay taxes, duties, imports, and excises” in Article I, section 8, clause 1 of the United States Constitution. See generally Douglas Irwin, *Clashing over Commerce: A History of US Trade Policy* (2017) (providing a general history of United States’ tariff law and policy, including presidential implementation of tariff statutes). Second, presidents have exercised a “foreign policy” power to impose sanctions on foreign nations by blocking import of those nations’ goods and seizing assets of their nationals pursuant to federal statutes or congressional declarations of war. Aditya Bamzai, *Sanctions and the Emergency Constitution*, 172 U. Pa. L. Rev. 1917 (2018) (describing presidents’ trade-sanctioning power that formed backdrop for the Trading with the Enemy Act).

Prior to the Global Tariffs Order, no president had ever invoked IEEPA or any other earlier sanctions authority to adjust tariffs for the purpose of correcting trade deficits. Cong. Research Serv., *The International Emergency Economic Powers Act: Origins, Evolution, and Use* 60 (2025). The refusal of presidents to rely on IEEPA to justify control over tariffs is all the more striking because presidents have often invoked national security concerns, including but not limited to claims rooted in IEEPA, to justify a broad range of economic

regulation. Cong. Research Serv., International Emergency Economic Powers Act, at 30-32 (summarizing uses of IEEPA); Kathleen Claussen & Timothy Meyer, *Economic Security and the Separation of Powers*, 172 U. Pa. L. Rev. 1955,1972-74 (2024). Despite this expansion of national security concerns in general and IEEPA's scope, in particular, no president before the Global Tariffs Order ever attempted to disregard limits in trade agreement statutes to create purely presidential tariffs for the purpose of protecting domestic commerce from foreign competition. As officials who had formerly served in the Office of the United States Trade Representative, an office charged with "the primary responsibility for developing, and for coordinating the implementation of, United States international trade policy," 19 U.S.C. § 2171(c)(1)(a), Amici are familiar with the statutory authorities regarded as plausible bases for imposing tariffs. The Administrations in which Amici served during the 1970s and 1990s invoked neither TWEA nor IEEPA for the purpose of imposing tariffs.

Those few instances in which presidents have imposed financial exactions on property pursuant to their authority to safeguard national security from enemy powers illustrate the vast distance between the Global Tariffs Order and any conceivable executive precedent. In 1847, for instance, President Polk levied military contributions during the Mexican-American War from Mexican nationals whose property was otherwise subject to seizure under the law of war. Bamzai, 172 U. Pa. L. Rev. at 1932-35. Members of Congress complained that these contributions invaded Congress' prerogative to set tariffs, but no one claimed that these presidentially imposed exactions sought to protect American industry from foreign competition. Any such use of presidential power to sanction enemy

or unfriendly nations would too obviously subvert the tariff and trade agreement statutes with which Congress has always governed protection of American industry.

The government relies exclusively on a single alleged precedent for its action: President Nixon's Proclamation 4074 imposing a 10% supplemental duty for balance of payment purposes. Proclamation 4074—Imposition of Supplemental Duty for Balance of Payments Purposes, 36 Fed. Reg. 15724 (Aug. 17, 1971). . According to the government, Nixon's action was justified by the Trading with the Enemy Act, the predecessor to IEEPA. President Nixon, however, did not rely on the TWEA for his Proclamation. Instead, he invoked the Trade Expansion Act of 1962. *Id.* Moreover, in discussing the proposed surcharge with his advisers at Camp David, President Nixon specifically rejected any reliance on the TWEA, stating that he “didn’t like the connotation of the words ‘trading with the enemy’ as applied to Japan,” because “[t]hat smacks wrong from the point of view of international leadership.” Jeffrey E. Garten, *Three Days at Camp David: How a Secret Meeting in 1971 Transformed the Global Economy* 179-80, 208 (2014). Precisely because the nations subject to the surcharge were neither enemy nor unfriendly nations, Nixon disapproved of the use of the sanctions power against them.

Instead, like every other president dealing with trade relations under international agreements, President Nixon relied on – and respected the limits contained within – statutes authorizing trade agreements. In particular, President Nixon attempted to stay within the confines of his trade agreement authority under the Trade Expansion Act of 1962 by

exercising his power to terminate prior presidential proclamations reducing tariffs pursuant to the TEA section 255 (b) and similar earlier authority in section 350 (a) of the Reciprocal Trade Agreements Act of 1934 (“RTAA”), Pub. L. No. 73-316, 48 Stat. 943 (1934). He also refused to raise any tariff above the level previously set by Congress prior to trade negotiations. Proclamation 4074, *supra*. That President Nixon strove to comply with statutes governing tariffs rather than adopt a novel reading of the TWEA is further evidenced by the Nixon Administration’s defense of the surcharge under the General Agreement on Tariffs and Trade (“GATT”) before a GATT Working Party in September, 1971. Explaining why the surcharges were “not always, the maximum figure of 10%,” the Nixon Administration cited “the requirements of United States tariff laws.” GATT, Report of the Working Party on United States Temporary Import Surcharge, L/3573 at 19 (1971). https://www.wto.org/gatt_docs/English/SULPDF/90850025.pdf (last visited October 24th, 2025).

In *United States v. Yoshida Int’l., Inc.*, 526 F.2d 560 (C.C.P.A. 1975), the Court of Customs and Patent Appeals upheld President Nixon’s surcharges precisely because they respected the limits on presidential power contained in trade agreement statutes. In upholding Proclamation 4074, the *Yoshida* court mistakenly relied on the Trading with the Enemy Act, but the court also repeatedly emphasized that President Nixon’s surcharges were (1) consistent with the highest rates allowed by the tariff schedule approved by Congress and (2) imposed the surcharge only on articles that had received prior tariff concessions. “Far from attempting, therefore, to tear down or supplant the entire tariff scheme of Congress,” the *Yoshida* Court stated, “the President

imposed a limited surcharge, as ‘a temporary measure’... calculated to help meet a particular national emergency, which is quite different from ‘imposing whatever tariff rates he deems desirable.’” *Yoshida*, 526 F.2d at 577-78.

In particular, *Yoshida* emphasized that “[w]e do not have here, as was the case in *Youngstown*, what the Customs Court described as ‘legislative acts providing procedures prescribed by the Congress for the accomplishment of the very purpose sought to be obtained’ by a Presidential Proclamation. The surcharge did not run counter to any explicit legislation.” *Id.* at 578.

Both President Nixon and *Yoshida*, in sum, refused to approve any presidential adjustment of tariffs using sanctions authority for purposes already covered by trade agreement statutes. Any such presidential adjustment would subvert those trade agreement statutes’ careful procedural and substantive limits on presidential authority contained in those statutes. President Nixon respected this principle by refusing to invoke TWEA at all, while *Yoshida* respected this limit by construing President Nixon’s surcharges to be consistent with the limits on presidential power contained in the Trade Expansion Act of 1962. The Global Tariffs Order marks a radical departure from this tradition of respect for statutory limits on presidential power.

B. Congress Has Enacted Specific Limits on Presidential Power to Adjust Tariffs, Implying Congressional Disapproval of Presidential Use of IEEPA To Adjust Tariffs Rates For Reducing Trade Deficits.

The carefully crafted limits on presidential power to set tariffs in tariff agreement statutes further indicate Congress' acquiescence in this longstanding tradition. Those statutory limits would be a practical nullity if the President could circumvent them simply by invoking general authority under IEEPA to "regulate ... importation." Whatever the regulatory authority to impose tariffs for sanctions purpose under this provision, it cannot be plausibly read to confer power to impose tariffs for the purpose of correcting trade deficits in light of these limits in trade agreement statutes specifically tailored to address that purpose.

Between 1934 and 2015, Congress enacted a series of very limited tariff authorities granting to the president implementing power subject to carefully tailored limits and procedures. Congress adopted those constraints specifically to allay concerns about giving presidents unlimited power to set tariffs. The Reciprocal Trade Agreements Act of 1934, for instance, provoked complaints that the statute's conferring power on presidents to negotiate bilateral trade agreements without prior congressional approval was an unconstitutional delegation of legislative power. Douglas Irwin, *Clashing Over Commerce* at 426 (describing congressional deliberations over the RTAA). To allay such concerns, the RTAA placed a three-year time limit on presidential implementing authority, required presidents to make fact-findings that foreign import restrictions were "unduly

burden[some]” and limited proclamations of new tariffs to 50% of any existing duty.

Extended numerous times until 1961, the RTAA was superseded by the Trade Expansion Act of 1962, which granted implementing authority for five years, with an identical 50% limit on presidential power to adjust duties. The Trade Act of 1974 provided the same tariff implementing authority but limited any negotiated reduction to 40% of existing rates (except for tariffs at 5% or below) and increases to 20%.

As with the RTAA, the Congress that enacted the 1974 Act deliberately placed limits on presidential authority to avoid delegating excessive power to the president. Alan Wm. Wolff, *Evolution of the Executive-Legislative Relationship in the Trade Act of 1974*, 19 SAIS Review of Int’l Affairs 16, 20 (1975) (describing concern that delegating unlimited presidential authority to remove non-tariff barriers would be unacceptable to Congress because it would violate the non-delegation doctrine). To ensure sufficient congressional control over non-tariff barriers, Congress adopted the requirement that presidentially negotiated agreements on such barriers be approved by Congress through a “fast track” procedure. *Id.* at 20-22.

After IEEPA was enacted in 1977, Congress extended presidential implementing authorities in 1979, 1988, 2002, and 2015. Trade Agreements Act of 1979, Pub. L. No. 96-39, § 1101, 93 Stat. 144 (1979) (extending “fast track” authority over non-tariff barriers); Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 1102(a)(2), 102 Stat. 1107 (1988); Trade Act of 2002, Pub. L. No. 107-210, § 2103(a)(2), 116 Stat. 933 (2002); Bipartisan Congressional Trade Priorities and Accountability Act of 2015, Pub. L. No. 114-26, § 103(a)(3), 129 Stat. 320 (2015). The last three of these

enactments deleted any possibility of raising tariffs above rates existing on their date of enactment. These authorities, always limited, finally expired in 2021.

The only authority to impose a blanket tariff in this suite of trade agreement authorities is the balance of payments authority in section 122 of the Trade Act of 1974, codified at 19 U.S.C. § 2132. Section 122, however, limits such authority by permitting a tariff of up to 15% to be applied for no longer than 150 days. Section 122 authorizes presidentially imposed tariffs only where “fundamental international payments problems require special import measures to restrict imports.” 19 U.S.C. § 2132(a). Such problems are further defined as “large and serious United States balance-of-payments deficits,” “an imminent and significant depreciation of the dollar in foreign exchange markets,” or a need “to cooperate with other countries in correcting an international balance-of-payments disequilibrium.” 19 U.S.C. § 2132(a)(1)-(3). Section 122’s balance of payments authority has never been exercised.

All the other trade authorities are far too selective to authorize the sorts of blanket tariffs imposed by the Global Tariffs Order at issue here.

Section 201 of the Trade Act of 1974, codified at 19 U.S.C. § 2252, allows the imposition of a tariff on imports of a product which are entering in quantities sufficient to injure an industry. This authority, however, requires an investigation and affirmative finding of the United States International Trade Commission. Even after such findings, no tariff can be imposed that is more than 50% ad valorem above the rate in existence nor last more than initially 4 years, for a total 8 years, of the imported article that caused the injury.

Section 301 of the Trade Act of 1974, codified at 19 U.S.C. § 2411, allows the imposition of a tariff on imports from a country to retaliate against that country for violation of the United States' rights under a trade agreement or its acts otherwise unfairly burden US commerce.

The broadest authority for presidential imposition of tariffs is likely provided by section 232 of the Trade Adjustment Act of 1962, codified at 19 U.S.C. § 1862. Section 232 allows the imposition of a tariff on a product in order to safeguard national security but only after the Secretary of Commerce makes a determination that an imported product poses a threat to national security and the President accepts the Secretary's findings. 19 U.S.C. §§ 1862(b), (c).

Separately, the trade laws allow the Secretary of Commerce and United States International Trade Commission to impose an offsetting antidumping or countervailing duty on a product after thorough investigation and finding of dumping or subsidy, causing injury to domestic producers. 19 U.S.C. § 1673. These are not, however, presidential authorities.

Finally, Section 338 of the 1930 Tariff Act, codified at 19 U.S. Code § 1338, allows the president to impose a tariff on imports from a country that discriminates against US trade in violation of the "most favored nation" principle. This authority has never been used in its 95-year existence.

In sum, Congress has for over more than eight decades set out a carefully calibrated and limited statutory scheme governing presidential imposition of tariffs for the purposes of protecting domestic commerce from injury from foreign imports or retaliating against other nations' unfair trade practices.

The Global Tariffs Order sidesteps all of these statutory limits and procedures to impose blanket tariffs on imports to accomplish precisely the same purposes as these trade laws.

Such a reading of IEEPA effectively nullifies the carefully tailored delegation of limited presidential authorities contained in over eight decades of trade legislation. The Global Tariffs Order describes its purposes as addressing “trade deficits” resulting from “a lack of reciprocity in our bilateral trade relationships,” citing deficiencies “in the General Agreements on Tariffs and Trade (GATT) and seven subsequent tariff reduction rounds.” Executive Order 14257 at 15,041-42. The statutes described above, however, are expressly directed at exactly these problems. The Global Tariffs Order also alleges that “non-tariff barriers ... deprive U.S. manufacturers of reciprocal access to markets around the world.” *Id.* at 15,042. Dealing with such concerns about trade deficits and lack of trading reciprocity, however, are precisely the subject matter of the trade agreement laws summarized above. Relying on IEEPA’s authorization to “regulate ... importation ... of [foreign] property” replaces deliberately crafted congressional limits with an unlimited presidential power that Congress expressly rejected.

Such a reading of IEEPA defies the well-established principle of statutory construction that a “statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum.” *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976). *See also N.L.R.B. v. SW General, Inc.*, 580 U.S. 288, 305 (2017) (“[I]t is a commonplace of statutory construction that the specific governs the general”)(quoting *RadLAX Gateway*

Hotel, LLC v. Amalgamated Bank, 566 U.S. 639, 645 (2012)); *Morton v. Mancari*, 417 U.S. 535, 551 (1974) (“Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment”). The justification for this canon of construction is fully applicable to this case. The more specific statutes – here, Congress’ numerous trade agreement laws – indicate that “the mind of the legislator has been turned to the details of a subject, and he has acted upon it.” *Radzanower*, 426 U.S. at 153 (quoting T. Sedgwick, *The Interpretation and Construction of Statutory and Constitutional Law* 98 (2d ed. 1874)). Those statutory limits are specifically focused on precisely the topics covered by the Global Tariffs Order. For the words of those trade agreement statutes to “have any meaning at all,” the “statute ... treating the subject in a general manner” – here, IEEPA – must be construed narrowly to exclude what the specific statutes cover. *Id.* If IEEPA’s bare authorization for presidents to “regulate ... importation ... of [foreign] property” covers presidential efforts to secure trade reciprocity and thereby eliminate trade deficits, then the words of trade agreement laws summarized above truly do not “have any meaning at all.” Any president who felt constrained by the statutory constraints that Congress deliberately imposed to limit presidential power over tariffs could cast those constraints aside by relying on IEEPA.

The Global Tariff Order’s disregard for the detailed and comprehensive statutory scheme that deals with the problem of trade reciprocity and trade deficits runs exactly parallel to President Truman’s executive order in *Youngstown Sheet & Tube v. Sawyer*. As with the topic of trade deficits and trade reciprocity, Congress

in *Youngstown* had specifically and repeatedly addressed the topic of executive seizures: As Justice Frankfurter emphasized in his concurrence, “Congress has frequently—at least 16 times since 1916—specifically provided for executive seizure of production, transportation, communications, or storage facilities.” *Youngstown*, 343 U.S. at 597-98 (Frankfurter, J., concurring). Moreover, as with trade agreement statutes that the Global Tariff Order here ignores, Congress had “qualified this grant of power with limitations and safeguards” suggesting that “Congress deemed seizure so drastic a power as to require that it be carefully circumscribed whenever the President was vested with this extraordinary authority.” *Id.* at 598. Justice Frankfurter inferred from these specific enactments that Congress had supplanted whatever general executive power President Truman might otherwise have possessed to seize steel factories: “Congress has expressed its will to withhold this power [of generally seizing property pursuant to Article II executive power] from the President as though it had said so in so many words.” *Id.* at 602.

Justice Frankfurter’s conclusion regarding Article II applies just as well to President Trump’s reliance on an unconstrained power to impose sanctions under IEEPA. Congress has expressed its will to withhold the use of such power to remedy trade deficits and non-reciprocal trade “as though it had said so in so many words” by legislating so specifically on these topics with trade agreement laws. Combined with every prior presidents’ refusal to claim any such power under IEEPA or similar sanctioning power under TWEA, Congress’ enactments conferring but limiting authority over tariffs for the end of addressing trade

deficits precludes any interpretation of IEEPA as authorizing the Global Tariff Order.

CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the Federal Circuit below.

Respectfully submitted,

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