

No. 25-1012

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In the Supreme Court of the United States

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HMTX INDUSTRIES, LLC, ET AL., PETITIONERS

v.

UNITED STATES, ET AL.

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

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**BRIEF OF AMICI CURIAE  
THE AMERICAN APPAREL & FOOTWEAR  
ASSOCIATION, THE CONSUMER  
TECHNOLOGY ASSOCIATION, THE  
NATIONAL RETAIL FEDERATION, AND THE  
RETAIL LITIGATION CENTER, INC.  
IN SUPPORT OF PETITIONERS**

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**Cases**

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*Util. Air Reg. Grp. v. EPA*,  
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Initiation of Section 302 Investigation,  
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Notice of Determination and Request  
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Request for Comments Concerning Proposed Modification of Action Pursuant to Section 301, 83 Fed. Reg. 33,608 (July 17, 2018) .....	4

**Other Authorities**

- Mary Amiti, Stephen J. Redding &  
David E. Weinstein, *The Impact of  
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Welfare*, J. Econ. Persps., Fall 2019.....10
- Consumer Tech. Ass'n, *Analysis of  
Section 301 Tariff Impacts on  
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- Aaron Flaaen & Justin Pierce,  
*Disentangling the Effects of the  
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- Gary Clyde Hufbauer, Megan Hogan &  
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- Office of the United States Trade  
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Office of the United States Trade Representative, Section 301 Docket (USTR 2019-0004) .....	20
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Press Release, Office of the United States Trade Representative, USTR Initiates 60 Section 301 Investigations Relating to Failures to Take Action on Forced Labor (Mar. 12, 2026).....	25
Press Release, Office of the United States Trade Representative, USTR Initiates Section 301 Investigations Relating to Structural Excess Capacity and Production in Manufacturing Sectors (Mar. 11, 2026).....	25
Kara M. Reynolds, <i>Costs of Trade Wars: The Distributional Consequences of US Section 301 Tariffs Against China</i> (Am. Univ. Dep't of Econ., Working Paper No. 2022-02, 2021) .....	11
Squawk Box, <i>Watch CNBC's Full Interview with Treasury Secretary Scott Bessent</i> (CNBC, Mar. 4, 2026).....	24
Kate Sullivan, <i>Supreme Court Axes Tariffs; Trump Responds With New Rate</i> , Bloomberg (Feb. 20, 2026) .....	23
U.S. Int'l Trade Comm'n, <i>Economic Impact of Section 232 and 301 Tariffs on U.S. Industries</i> (2023) .....	10
White House, <i>Fact Sheet: President Donald J. Trump Imposes a Temporary Import Duty to Address Fundamental International Payment Problems</i> (Feb. 20, 2026) .....	24

## **INTERESTS OF AMICI CURIAE<sup>1</sup>**

Amici curiae, the American Apparel & Footwear Association (“AAFA”), the Consumer Technology Association (“CTA”), the National Retail Federation (“NRF”), and the Retail Litigation Center, Inc. (“RLC”), are trade associations whose members have been harmed by the tariffs at issue here. AAFA; CTA; NRF; RLC’s affiliate, the Retail Industry Leaders Association (“RILA”); and the associations’ individual members submitted comments to the United States Trade Representative in the Lists 3 and 4 proceedings.

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<sup>1</sup> Pursuant to Rule 37.6, amici state that no counsel or party authored this brief in whole or in part and that no person other than amici or their counsel made a monetary contribution to its preparation or submission. Counsel of record for all parties received notice of this brief at least 10 days before its due date.

## INTRODUCTION AND SUMMARY OF ARGUMENT

When Congress has delegated its tariff powers, it has done so in confined situations, subject to strict constraints. As this Court recently observed, the tariff provisions of Title 19 of the United States Code set caps on tariff rates, limit tariffs' duration, or condition the imposition of tariffs by the executive on satisfaction of demanding procedural requirements. *Learning Res., Inc. v. Trump*, 146 S. Ct. 628, 639 (2026) (opinion of Roberts, C.J.); *see id.* at 676-77 (Kagan, J., concurring in part and concurring in the judgment).

Here, the United States Trade Representative (“USTR”) sought to evade these congressionally imposed limits, and the Federal Circuit allowed it to do so. Initially, USTR conducted a lengthy investigation under Section 301 of the Trade Act of 1974 into China’s unfair trade practices and, as a result, imposed tariffs on \$50 billion in Chinese goods (Lists 1 and 2). However, over a few months in 2018 and 2019, as part of an accelerating trade dispute with China, USTR purported to exercise its authority under Section 307 to “modify” its initial Section 301 action and go much further. These purported “modifications” were tariffs on another \$500 billion worth of Chinese goods (Lists 3 and 4), reflecting a ten-fold increase in the initial tariffs.

In imposing the Lists 3 and 4A tariffs, USTR far exceeded the modest authority Congress granted it under Section 307. That provision allows USTR merely to “modify” an action taken under Section 301, such as by making incremental adjustments to it. It

does not authorize USTR to impose massive new tariffs while skipping over Section 301's robust procedural requirements. That is true under a straightforward statutory construction of the word "modify." And it becomes even more true when applying the major questions doctrine. USTR's sweeping assertion of such modification authority is unprecedented, and the economic significance of these tariffs is undeniable. If Congress had meant to delegate to USTR such unbounded power in Section 307, it would have done so clearly.

Amici wish to emphasize the vital importance of this issue and its far-reaching consequences. The Lists 3 and 4A tariffs have cost U.S. businesses and consumers billions of dollars, snarled supply chains, and hurt employment in multiple sectors. Instead of instituting these expanded tariffs using Section 301's robust process—as Congress had intended—USTR instead relied on Section 307's severely truncated process to vastly increase the tariffs. The Federal Circuit blessed an interpretation of the statute allowing USTR to do precisely that—and virtually ensuring that it will do so again. On the Federal Circuit's reading, USTR could bypass the tight restraints on its Section 301 authority by first imposing a modest tariff under Section 301, then ratcheting up the tariff 1,000-fold under Section 307—at any time and for virtually any reason. The word "modify" in Section 307 "cannot bear such weight." *Id.* at 637.

After *Learning Resources*, this case has become even more important. The Administration has already stated its intention to fall back on other tariff statutes, including Section 301 (and by extension

Section 307), to effectively reimpose the sweeping International Emergency Economic Powers Act (“IEEPA”) tariffs this Court invalidated. In fact, USTR has already initiated new Section 301 investigations into dozens of countries and declared that it intends to complete them within five months. Under the Federal Circuit’s decision here, USTR could then use Section 307 to repeatedly increase tariff rates set through the Section 301 process and extend them to additional imports—unrestrained by meaningful process or deliberation. The Executive should not be permitted to exercise such an extraordinary delegation of Congress’s core taxation authority without this Court’s review.

## ARGUMENT

### I. USTR EXCEEDED ITS STATUTORY AUTHORITY TO “MODIFY” A SECTION 301 ACTION

Section 301 permits USTR to take “appropriate” action if it determines, after investigation and consultation, that a foreign country has engaged in unfair trade practices. 19 U.S.C. § 2411(b). Section 307 in turn permits USTR to “modify or terminate” an action taken under Section 301 if certain conditions are met. *Id.* § 2417(a)(1).

After China retaliated against the Lists 1 and 2 tariffs USTR had previously imposed under Section 301 on \$50 billion worth of Chinese goods, USTR invoked its authority under Section 307 to “modify” its initial action. Request for Comments Concerning Proposed Modification of Action Pursuant to Section 301, 83 Fed. Reg. 33,608, 33,609 (July 17, 2018). The resulting Lists 3 and 4A tariffs were massive—

covering \$500 billion in goods and virtually all imports of Chinese products. Notice of Modification of Section 301 Action, 83 Fed. Reg. 47,974 (Sep. 21, 2018); Notice of Modification of Section 301 Action, 84 Fed. Reg. 43,304 (Aug. 20, 2019).

Those actions exceeded USTR's limited modification authority under Section 307. This Court has made clear that "statutory permission to 'modify' does not authorize 'basic and fundamental changes in the scheme' designed by Congress." *Biden v. Nebraska*, 600 U.S. 477, 494 (2023) (quoting *MCI Telecomms. Corp. v. AT&T Co.*, 512 U.S. 218, 225 (1994)). The word "'modify' connotes 'increment or limitation'" and "must be read to mean 'to change moderately or in minor fashion.'" *Ibid.* (quoting *MCI*, 512 U.S. at 225).

Here, USTR's Lists 3 and 4A actions were anything but "minor," "moderate[]," or "increment[al]." *Ibid.* Rather, the purported "modifications" were breathtaking in scope: they reflected a ten-fold increase in the original Section 301 action, sweeping in essentially all Chinese products. Indeed, as explained below, the Lists 3 and 4A tariffs have had a major (and negative) impact on the American economy. *Infra* pp. 9-12. By upholding this use of Section 307, the Federal Circuit essentially endorsed USTR's assertion of the power to impose tariffs on imports "of any product, at any rate, for any amount of time." *Learning Res.*, 146 S. Ct. at 637. Just as the words "regulate" and "importation" could not support the President's assertion of unlimited power to impose IEEPA tariffs, the word "modify" in Section 307 "cannot bear such weight." *Ibid.*

## II. WERE THERE ANY DOUBT ON THE SCOPE OF USTR'S MODIFICATION AUTHORITY, THE MAJOR QUESTIONS DOCTRINE DISPELS IT

Even if the statutory construction question were close, the major questions doctrine would easily tip the scales against USTR's position.

This Court has explained that there are “cases in which the ‘history and the breadth of the authority that [the agency] has asserted,’ and the ‘economic and political significance’ of that assertion, provide a ‘reason to hesitate before concluding that Congress’ meant to confer such authority.” *West Virginia v. EPA*, 597 U.S. 697, 721 (2022) (alteration in original) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159-60 (2000)). Because “[e]xtraordinary grants of regulatory authority are rarely accomplished through modest words, vague terms, or subtle devices,” this Court “presume[s] that Congress intends to make major policy decisions itself, not leave those decisions to agencies.” *Id.* at 723 (internal quotation marks omitted). Thus, the Court will “typically greet assertions of extravagant statutory power over the national economy with skepticism.” *Id.* at 724 (internal quotation marks omitted).

To overcome this skepticism, the agency must “point to ‘clear congressional authorization’ to justify” the authority it claims. *Biden*, 600 U.S. at 506 (quoting *West Virginia*, 597 U.S. at 723). “Oblique,” “elliptical,” or “cryptic” words do not suffice. *West Virginia*, 597 U.S. at 721, 723.

As several Justices recently noted, “[t]hese considerations apply with particular force where, as here, the purported delegation involves the core congressional power of the purse.” *Learning Res.*, 146 S. Ct. at 639 (opinion of Roberts, C.J.). If Congress were to relinquish its “most complete and effectual weapon” to another branch, “a reasonable interpreter would expect it to do so clearly.” *Ibid.* (internal quotation marks omitted).

Here, the major questions doctrine confirms that USTR statutorily overreached. *First*, as USTR itself admitted, these tariff actions are unprecedented: USTR has never invoked Section 307 to expand a trade action—let alone to this massive degree. C.A. App. 9778 n.6. *Second*, as in this Court’s past major questions cases and *Learning Resources*, these challenged actions implicate questions of deep “economic and political significance.” *Learning Res.*, 146 S. Ct. at 641 (opinion of Roberts, C.J.) (internal quotation marks omitted). The tariffs affect virtually all Chinese imports; they have cost American businesses billions of dollars, disrupted supply chains, and raised prices for consumers. *Third*, USTR cannot identify in Section 307 “clear congressional authorization” for such action. *Ibid.*

#### **A. This Use of Section 307 Authority Is Unprecedented And Transformative**

In case after case, this Court has declined to uphold executive assertions of “unheralded” power over “a significant portion of the American economy.” *West Virginia*, 597 U.S. at 722 (quoting *Util. Air Reg. Grp. v. EPA*, 573 U.S. 302, 324 (2014)). In *Biden v. Nebraska*, for example, the Court declined to read

congressional authorization to “waive or modify’ existing statutory or regulatory provisions applicable to financial assistance programs” to encompass the authority to cancel \$430 billion in student loans. 600 U.S. at 494. The Court observed that the Executive had “never previously claimed powers of this magnitude” under the statute at issue. *Id.* at 501. And in *Learning Resources*, several Justices admonished that “[t]he lack of historical precedent for the IEEPA tariffs, coupled with the breadth of authority that the President now claims, is a telling indication that the tariffs extend beyond the President’s legitimate reach.” 146 S. Ct. at 641 (opinion of Roberts, C.J.) (internal quotation marks omitted).

Similarly, the “unprecedented nature” and scope of the authority asserted here should give this Court “reason to hesitate” before finding the congressional grant of authority claimed. *West Virginia*, 597 U.S. at 721. USTR has never used its Section 307 modification authority to expand a trade action—let alone by multiple orders of magnitude. In its contemporaneous internal deliberations, USTR admitted it was “not aware of prior investigations where a Trade Representative was called upon to use Section 307 modification authority to increase the level of trade action in order to achieve the statutory goal of obtaining the elimination of harmful policies covered by the investigation.” C.A. App. 5922. And in the proceedings below, USTR conceded it has previously invoked Section 307(a)(1)(C) only “to reduce, terminate or delay section 301 actions.” C.A. App. 9778 n.6. For a statute that has been in effect in its current form for over a quarter century, this

historical practice is “telling.” *Learning Res.*, 146 S. Ct. at 640-41 (opinion of Roberts, C.J.).

Congressional practice confirms the unheralded nature of the power asserted. As six Justices noted, “[w]hat Congress has never done in a tariff provision is \*\*\* conferred power on the President to impose a tariff of any amount, for any time, on only his own say-so.” *Id.* at 677 (Kagan, J., concurring in part and concurring in the judgment); *see id.* at 639 (opinion of Roberts, C.J.) (“When Congress has delegated its tariff powers, it has done so in explicit terms, and subject to strict limits.”). Yet that is what USTR effectively claims Congress did here by granting it boundless “modification” authority.

**B. The Lists 3 And 4A Actions Are Of Vast Economic And Political Significance And Have Harmed U.S. Businesses And Consumers**

The “economic and political significance” of the Lists 3 and 4A tariffs is “staggering by any measure.” *Biden*, 600 U.S. at 502 (internal quotation marks omitted). Lists 3 and 4A covered \$500 billion in goods, representing virtually all Chinese imports. This Court has applied the major questions doctrine in cases with “\$430 billion,” “nearly \$50 billion,” and “billions of dollars in compliance costs” at stake. *Learning Res.*, 146 S. Ct. at 641 (opinion of Roberts, C.J.) (citing *Biden*, 600 U.S. at 483; *Alabama Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 594 U.S. 758, 764 (2021); and *West Virginia*, 597 U.S. at 714, respectively). The stakes here fall comfortably in that ballpark.

When USTR proposed Lists 3 and 4A, numerous commenters, including amici, their members, and other businesses, warned that the tariffs would damage the U.S. economy. They warned that the tariffs would snarl supply chains, C.A. App. 7396, and force U.S. businesses either to raise prices or to absorb the additional costs, C.A. App. 5465. They also explained that “tariffs simply act as a hidden, regressive tax on U.S. consumers,” C.A. App. 5467, disproportionately burdening middle- and low-income families, C.A. App. 7396.

USTR nonetheless charged ahead, and commenters’ fears became reality. As the United States International Trade Commission explained in a March 2023 report, “the cost of section 301 tariffs have been borne almost entirely by U.S. importers.”<sup>2</sup> Another study found that, by December 2018, the 2018 tariffs had already cost U.S. importers and consumers “\$3.2 billion per month in added tax costs and another \$1.4 billion per month in deadweight welfare (efficiency) losses.”<sup>3</sup> And a Federal Reserve study found that exposure to the tariffs has harmed overall manufacturing employment and resulted in rising input costs.<sup>4</sup>

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<sup>2</sup> U.S. Int’l Trade Comm’n, *Economic Impact of Section 232 and 301 Tariffs on U.S. Industries* at 145 (2023), <https://www.usitc.gov/publications/332/pub5405.pdf>.

<sup>3</sup> Mary Amiti, Stephen J. Redding & David E. Weinstein, *The Impact of the 2018 Tariffs on Prices and Welfare*, J. Econ. Persps., Fall 2019, at 187, 188-89, <https://www.aeaweb.org/articles/pdf/doi/10.1257/jep.33.4.187>.

<sup>4</sup> Aaron Flaaen & Justin Pierce, *Disentangling the Effects of the 2018-2019 Tariffs on a Globally Connected U.S.*

These negative effects have been felt by U.S. businesses across many sectors. Amicus Consumer Technology Association, for example, observed in July 2022 that “[m]ost of the tech products that have faced the highest Section 301 tariffs are on List 3”<sup>5</sup> and that consumer technology manufacturing jobs had performed “much worse” since the tariffs were imposed.<sup>6</sup> At that time, consumer technology companies had paid an estimated \$40 billion in Section 307 tariffs, diverting funds from research and development or job creation.<sup>7</sup>

The tariffs also have harmed U.S. consumers. One study found that the tariffs had cost the average U.S. household “at least \$160 per year” and disproportionately burdened low-income consumers, families with young children, and women.<sup>8</sup> Another analysis found that trade liberalization “could deliver a one-time reduction in consumer price index (CPI)

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*Manufacturing Sector 3*, Fin. & Econ. Discussion Series 2019-086 (Dec. 23, 2019), <https://doi.org/10.17016/FEDS.2019.086>.

<sup>5</sup> Consumer Tech. Ass’n, *Analysis of Section 301 Tariff Impacts on Imports of Consumer Technology Products* 9 (2022), [https://www.wita.org/wp-content/uploads/2022/08/CTA\\_Section-301-Tariff-Whitepaper.pdf](https://www.wita.org/wp-content/uploads/2022/08/CTA_Section-301-Tariff-Whitepaper.pdf).

<sup>6</sup> *See id.* at 15.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> Kara M. Reynolds, *Costs of Trade Wars: The Distributional Consequences of US Section 301 Tariffs Against China* 1 (Am. Univ. Dep’t of Econ., Working Paper No. 2022-02, 2021), <https://edspace.american.edu/reynolds/wp-content/uploads/sites/1780/2021/06/DistributionalCosts.pdf>.

inflation of around 1.3 percentage points,” amounting to relief of “\$797 per US household.”<sup>9</sup>

Nor have the Section 307 tariffs been effective in eliminating forced technology transfers and creating a level playing field for IP protection and enforcement—the practices the original Section 301 tariffs had targeted in the first place. Despite the tariffs, USTR subsequently noted only minimal progress on these issues, while highlighting continuing concerns about China’s unfair trade practices.<sup>10</sup>

### **C. USTR Cannot Identify The Clear Congressional Authorization Needed To Sustain Lists 3 And 4A**

USTR also cannot “point to clear congressional authorization” to justify its “extraordinary” use of Section 307. *Learning Res.*, 146 S. Ct. at 642 (opinion of Roberts, C.J.) (citation omitted).

As shown above, Section 307’s authority to “modify” a Section 301 action does not grant USTR the power to escalate that action into a full-blown trade war. *Supra* pp. 4-5. Rather, and as USTR’s historical practice confirms, the word “modify” in Section 307 is naturally understood as a grant of cabined authority to make modest adjustments to an

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<sup>9</sup> Gary Clyde Hufbauer, Megan Hogan & Yilin Wang, *For Inflation Relief, the United States Should Look to Trade Liberalization 1*, Peterson Inst. For Int’l Econ. (Mar. 2022), <https://www.piie.com/sites/default/files/documents/pb22-4.pdf>.

<sup>10</sup> See USTR, *2022 Special 301 Report* 44-53 (2022), <https://ustr.gov/sites/default/files/IssueAreas/IP/2022%20Special%20301%20Report.pdf>.

initial Section 301 action. Had Congress truly intended to convey in Section 307 such extraordinary power, “it would have done so expressly.” *Learning Res.*, 146 S. Ct. at 642.

### **III. ALLOWING USTR TO DRAMATICALLY EXPAND TARIFF ACTIONS USING SECTION 307 WOULD IMPERMISSIBLY CIRCUMVENT SECTION 301’S ROBUST PROCEDURAL REQUIREMENTS**

Section 307 lacks not only the clear congressional authorization required to justify the power claimed but also the rigorous procedural conditions attached to other statutory provisions granting executive tariff authority, including Section 301. The rushed Lists 3 and 4A process here illustrates that difference and confirms that Congress did not intend Section 307 to authorize the unbounded authority USTR asserts.

Amici do not challenge USTR’s authority to impose tariffs under Section 301. In fact, the business community at times may support certain Section 301 actions—so long as USTR faithfully complies with all the procedural safeguards Congress imposed. What amici object to here is USTR’s unprecedented use of Section 307 to explode a trade action and circumvent Section 301’s guardrails.

#### **A. Congress Conditioned USTR’s Authority To Act Under Section 301 On Strict Procedural Prerequisites**

As several Justices recently recognized, Title 19’s tariff provisions are “carefully confined.” *Learning Res.*, 146 S. Ct. at 677 (Kagan, J., concurring

in part and concurring in the judgment). “[I]n each and every instance” Congress has delegated that authority, it has “imposed tight restraints on the power given.” *Ibid.*; *see id.* at 639 (opinion of Roberts, C.J.) (“When Congress has delegated its tariff powers, it has done so in explicit terms, and subject to strict limits.”). And for good reason: as discussed (*supra* p. 7), a “reasonable interpreter” would expect Congress to jealously guard its “most complete and effectual weapon” and exercise caution in delegating the “core congressional power of the purse.” *Learning Res.*, 146 S. Ct. at 639 (opinion of Roberts, C.J.) (internal quotation marks omitted).

Turning to the provisions at issue here: Congress permits USTR to impose tariffs under Section 301(b), 19 U.S.C. § 2411(b), but only after USTR has satisfied a series of “demanding procedural prerequisites,” *Learning Resources*, 146 S. Ct. at 639 (opinion of Roberts, C.J.) (discussing, among other provisions, Section 301). Those requirements include: investigation, 19 U.S.C. § 2412; consultations with the relevant country and interested parties, *id.* § 2413; written factual findings, *id.* § 2414(c); notice and opportunities to comment, *id.* § 2414(b); and a twelve-month deadline to determine “appropriate” action, *id.* §§ 2411(b)(2), 2414(a)(2)(B).

Examining how two prior Section 301 processes have unfolded demonstrates how demanding, time-intensive, and solicitous of public input these congressionally imposed guardrails can be in practice.

**Ukraine, 2001:** In March 2001, USTR initiated a Section 301 investigation into Ukraine’s trade practices. Initiation of Section 302 Investigation, 66

Fed. Reg. 18,346, 18,346 (Apr. 6, 2001). USTR conducted a public hearing and received comments on the issues under investigation. Determination of Action to Suspend GSP Benefits Under Section 301(b), 66 Fed. Reg. 42,246, 42,247 (Aug. 10, 2001). USTR determined it would impose tariffs on Ukrainian products and published a preliminary list of products under consideration. *Id.* at 42,246-42,247. It invited public comment on the proposed list, with rebuttal comments due September 28, 2001. *Id.* at 42,247; Notice of Rescheduling in the Section 302 Investigation, 66 Fed. Reg. 48,898 (Sept. 24, 2001).

USTR later extended the investigation by three months because “the development of the final product list involved complex and complicated issues that required additional time.” Determination of Action to Increase Duties on Certain Products of Ukraine Pursuant to Section 301(b), 67 Fed. Reg. 120, 120 (Jan. 2, 2002). On December 21, 2001, USTR announced the final product list subject to tariffs. *Ibid.* The final list was much shorter than the proposed one: for example, titanium oxides, clothing, iron, nonalloy steel, snow skis, and hockey equipment were omitted from the final list.<sup>11</sup> Over nine months elapsed between USTR’s initiating the investigation and finalizing the tariffs, and over three months between the comment deadline on the proposed tariffs and their finalization.

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<sup>11</sup> *Contrast* Determination of Action to Suspend GSP Benefits Under Section 301(b), 66 Fed. Reg. at 42,248-42,250 (proposed tariff list), *with* Determination of Action to Increase Duties on Ukraine Pursuant to Section 301(b), 67 Fed. Reg. at 121 (final tariff list).

**Nicaragua, 2024-2025:** In December 2024, USTR initiated a Section 301 investigation into Nicaragua’s policies “related to labor rights, human rights, and the rule of law.” Initiation of Section 301 Investigation, 89 Fed. Reg. 101,088, 101,089 (Dec. 13, 2024). Based on its investigation, review of comments, and consideration of public hearing testimony, USTR proposed, among other actions, suspending an existing trade agreement’s benefits to Nicaragua and “applying tariffs of up to 100 percent on all Nicaraguan imports, immediately or phased in over a period of time up to 12 months.” Notice of Determination and Request for Comments Concerning Action Pursuant to Section 301, 90 Fed. Reg. 48,511, 48,512-48,513 (Oct. 23, 2025). USTR also issued a comprehensive report on the investigation<sup>12</sup> and again requested comment, *ibid.*

In response, USTR received over 2,000 written comments. Commenters opposing the proposed actions expressed concern about their broad scope, asserting that they would hurt U.S. consumers and workers and disrupt supply chains. Notice of Action, 90 Fed. Reg. 57,807, 57,808-57,809 (Dec. 12, 2025).

USTR’s final determination considered and addressed “the many comments that expressed concern regarding the possible impact and disruption to U.S. interests of taking broad action.” *Id.* at 57,809. On December 12, 2025, it announced a 15% tariff on

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<sup>12</sup> USTR, *Section 301 Investigation: Report on Nicaragua’s Acts, Policies, and Practices Related to Labor Rights, Human Rights and Fundamental Freedoms, and the Rule of Law* (Oct. 20, 2025), [https://ustr.gov/sites/default/files/files/Press/Releases/2025/Nicaragua%20Section%20301%20Report\\_0.pdf](https://ustr.gov/sites/default/files/files/Press/Releases/2025/Nicaragua%20Section%20301%20Report_0.pdf).

all Nicaraguan goods not covered by the existing trade agreement, phased-in over two years. *Id.* at 57,808. “[L]imiting the tariffs to goods” not covered by the trade agreement, USTR explained, “should limit the impact on U.S. exports to Nicaragua and U.S. companies producing in Nicaragua,” while still putting pressure on Nicaragua to eliminate its actionable policies. *Ibid.* And “the two-year phase-in should provide companies with the time to shift operations to other” countries. *Ibid.* It took USTR twelve months after it initiated the investigation to finalize these actions.

**B. USTR Should Not Be Permitted To Use Section 307’s Streamlined Modifications Process To Bypass Section 301’s Congressionally Imposed Procedural Safeguards**

In comparison, the truncated process under Section 307 carries limited procedural safeguards. It requires no additional investigation or factfinding before USTR may “modify” the original Section 301 action. *See* 19 U.S.C. § 2417(a). Under Section 307, all USTR must do is “consult” with representatives of the domestic industry affected and provide parties an opportunity to comment. *Id.* § 2417(a)(2). And as USTR stated below, while “an initial Section 301 action generally must be accompanied by a minimum 30-day notice period,” Congress “omitted any such requirement” for a Section 307 modification. USTR C.A. Br. 49-50 (citing 19 U.S.C. §§ 2411(b), 2414(b)(1)(A), 2417(a)(2)). This all makes sense if, as USTR’s historical practice confirms, Congress intended Section 307 to enable USTR only to *modify*—

namely, make modest adjustments to—an initial Section 301 action.

But given that Congress conditioned USTR’s authority to take an initial Section 301 action on strict procedural requirements, it makes no sense for Congress to have granted USTR “power to unilaterally impose tariffs of unlimited amount, duration, and scope” through USTR’s Section 307 modification authority, which is subject to far fewer procedural requirements. *Cf. Learning Res.*, 146 S. Ct. at 646 (declining to read into IEEPA a grant of such unlimited tariff authority). Yet that is what the decision below, taken to its logical conclusion, says Congress did. On the Federal Circuit’s reading, USTR could first impose inconsequential tariffs under Section 301, such that few would think to comment; then, using Section 307, USTR could “modify” those tariffs and increase them 1,000-fold. USTR would be “unconstrained by the significant procedural limitations” in Section 301 “and free to issue a dizzying array of modifications at will.” *Id.* at 640 (opinion of Roberts, C.J.). And because Section 307—unlike Section 301—requires so little process, affected parties would have difficulty finding any basis to challenge the purported “modifications,” however baseless or unconstrained.

Thus, if left to stand, the decision below would bless USTR’s end-run around Section 301’s important procedural safeguards. Any Administration could “escape the rigors” of Section 301 simply by citing some attenuated connection between the “modification” and the initial Section 301 action. *Id.* at 677 (Kagan, J., concurring in part and concurring in the judgment). USTR’s approach could also create

perverse incentives for businesses by forcing them to challenge every Section 301 action, no matter how insignificant, for fear that USTR would drastically increase the actions later under Section 307. This “gutting” of Title 19’s “carefully confined” tariff scheme is not what Congress “could have meant to accomplish” in granting USTR the limited authority to modify an initial Section 301 action. *Ibid.*

### **C. This Case Highlights The Inadequacy Of Section 307 As A Vehicle For Sweeping Tariff Authority**

The experiences of the business community (including amici’s members) with the Lists 3 and 4A tariffs illustrate how inadequate the truncated Section 307 process is for such sweeping actions.

In comparison, the Lists 1 and 2 process was significantly more robust. After a seven-month Section 301 investigation, USTR published a detailed, almost 200-page factfinding report.<sup>13</sup> It then issued notice of its determination that the investigated practices were actionable and requested public comment on the proposed Lists 1 and 2. Notice of Determination and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301, 83 Fed. Reg. 14,906, 14,906-14,954 (Apr. 6, 2018). USTR published notice of final List 1 on June 20, 2018, and final List 2 on August 16, 2018. Notice of Action and Request for Public

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<sup>13</sup> USTR, *Findings of the Investigation into China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of the Trade Act of 1974* (2018), <https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF>.

Comment Concerning Proposed Determination of Action Pursuant to Section 301, 83 Fed. Reg. 28,710, 28,711 (June 20, 2018); Notice of Action Pursuant to Section 301, 83 Fed. Reg. 40,823, 40,823-40,824 (Aug. 16, 2018). List 1 was finalized ten months after the Section 301 investigation was initiated; List 2 was finalized twelve months after the investigation was initiated.

The Lists 3 and 4A process took less than half the time. When USTR proposed the tariffs, it received around 9,000 comments, nearly all expressing serious concerns about the proposed actions.<sup>14</sup> But despite the breathtaking scope of the proposed tariffs and the volume of comments received, USTR rushed to impose the final tariffs. The List 3 tariffs were finalized just 66 days after they were proposed and just eleven days after written comments were due, Notice of Modification of Section 301 Action, 83 Fed. Reg. at 47,974; Extension of Public Comment Period, 83 Fed. Reg. 38,760, 38,761 (Aug. 7, 2018); the List 4 tariffs just 95 days after they were proposed and just over a month after comments were due, Notice of Modification of Section 301 Action, 84 Fed. Reg. at 43,304; Request for Comments Concerning Proposed Modification, 84 Fed. Reg. 22,564, 22,564 (May 17, 2019).

Eight months after finalizing List 3, and without receiving any further comments, USTR increased the

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<sup>14</sup> See USTR, Section 301 Docket (USTR 2018-0026), <https://www.regulations.gov/docket/USTR-2018-0026> (last visited Mar. 26, 2026), (List 3); USTR, Section 301 Docket (USTR 2019-0004), <https://www.regulations.gov/docket/USTR-2019-0004> (last visited Mar. 26, 2026) (List 4).

duty rate on List 3 products from 10% to 25%. Notice of Modification of Section 301 Action, 84 Fed. Reg. 20,459, 20,459-20,460 (May 9, 2019). And just ten days after finalizing List 4, and again without receiving any further comments, USTR increased the rate on List 4 products from 10% to 15%. Notice of Modification of Section 301 Action, 84 Fed. Reg. 45,821 (Aug. 30, 2019). These unilateral rate adjustments illustrate USTR’s willingness to use Section 307 to make significant decisions on little more than a whim. *Cf. Learning Res.*, 146 S. Ct. at 640 (opinion of Roberts, C.J.) (“On this reading, \*\*\* the President is unconstrained by the significant procedural limitations in other tariff statutes and free to issue a dizzying array of modifications at will.”).

What is more, in imposing the Lists 3 and 4A “modifications,” USTR explicitly relied on China’s imposition of retaliatory tariffs on U.S. products—not any increased burdens or restrictions arising from the practices that USTR sought to address through its initial Section 301 actions.<sup>15</sup> This demonstrates USTR’s willingness to invoke Section 307 on grounds separate from the unfair trade practices that gave rise to the initial Section 301 actions, further

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<sup>15</sup> Press Release, USTR, Statement by U.S. Trade Representative Robert Lighthizer on Section 301 Action (July 10, 2018), <https://ustr.gov/about-us/policy-offices/press-office/pressreleases/2018/july/statement-us-trade-representative> (citing China’s “retaliation” in announcing the proposed List 3 tariffs); Requests for Comments Concerning Proposed Modification, 84 Fed. Reg. at 22,564 (citing China’s “response to the current action being taken in this investigation” in proposing List 4 tariffs).

underscoring the unbounded nature of the Section 307 authority USTR claims.

In finalizing Lists 3 and 4A, USTR failed to respond to a single comment, aside from conclusory assertions that its determinations “take[] account of the public comments.” Notice of Modification of Section 301 Action, 84 Fed. Reg. at 43,305; *see* Notice of Modification of Section 301 Action, 83 Fed. Reg. at 47,975 (claiming USTR had “carefully reviewed the public comments”).<sup>16</sup> USTR’s process in finalizing Lists 3 and 4A was so inadequate that the Court of International Trade (“CIT”), in its first opinion, found that USTR’s failure to respond to comments violated the Administrative Procedure Act. Pet. App. 88a-98a. The CIT noted that “[t]he standard that an agency’s response must meet is not particularly demanding.” Pet. App. 88a (internal quotation marks omitted). But it nonetheless concluded that USTR’s (lack of) response to comments on proposed Lists 3 and 4A fell short of even that low bar. On List 3, USTR “fail[ed] to apprise the court of the rationale for the product selection and how that rationale is responsive to the comments.” Pet. App. 96a. On List 4A, USTR “failed to connect the removal of subheadings to the comments or address comments that, for example,

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<sup>16</sup> List 4 was implemented in two tranches, Lists 4A and 4B. Notice of Modification of Section 301 Action, 84 Fed. Reg. at 43,305. List 4B’s imposition was eventually suspended indefinitely in a trade deal with China. Notice of Modification of Section 301 Action, 84 Fed. Reg. 69,447, 69,447 (Dec. 18, 2019).

urged the USTR to distinguish between parts and finished goods.” Pet. App. 97a.<sup>17</sup>

#### **IV. AFTER *LEARNING RESOURCES*, THE QUESTION PRESENTED HAS BECOME EVEN MORE IMPORTANT**

As petitioners explain, the question presented was important even before *Learning Resources* because of the Lists 3 and 4A tariffs’ massive economic impacts and the future ramifications of the Federal Circuit’s decision. Pet. 30-33.

But this case has become even more important after that decision because the Administration has made clear that Section 301 will feature prominently in its efforts to reimpose the sweeping tariffs this Court invalidated. After *Learning Resources*, the Administration confirmed it would fall back on Section 301, among other tariff provisions, to “ensure continuity” in achieving its trade goals.<sup>18</sup> President

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<sup>17</sup> The CIT remanded to give USTR a second chance to explain its decisions. Pet. App. 98a-102a. The CIT subsequently found USTR’s explanation on remand adequate to support Lists 3 and 4, and the Federal Circuit affirmed that finding. Pet. App. 117a-136a (CIT); Pet. App. 30a-38a (Fed. Cir.). The Federal Circuit’s blessing of USTR’s truncated and inadequate Section 307 process will increase businesses’ perverse incentives to oppose even limited Section 301 actions out of fear they will later be dramatically increased without meaningful opportunity for input. *See supra* pp. 18-19.

<sup>18</sup> Press Release, USTR, Ambassador Greer Issues Statement on Supreme Court IEEPA Decision (Feb. 20, 2026), <https://ustr.gov/about/policy-offices/press-office/press-releases/2026/february/ambassador-greer-issues-statement-supreme-court-ieepa-decision> [hereinafter “USTR Press Release”]; *see, e.g.*, Kate Sullivan, *Supreme Court Axes Tariffs; Trump Responds With New Rate*, Bloomberg (Feb. 20, 2026),

Trump immediately imposed a temporary 10% global import tariff, invoking his authority under a different statute (Section 122), which caps tariffs' duration at 150 days.<sup>19</sup> USTR also vowed to “[i]nitiate several investigations under Section 301” “on an accelerated timeframe” to address allegedly unfair trade practices.<sup>20</sup> It stated that these investigations would target “most major trading partners” and a broad set of issues.<sup>21</sup> USTR subsequently announced it would complete the Section 301 investigations needed to impose new tariffs “to replace the levies struck down by the Supreme Court” “within five months.”<sup>22</sup> The Treasury Secretary confirmed that the Section 122 tariffs temporarily imposed by the President will endure and expand once USTR completes its Section 301 investigations, expressing his “strong belief that

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<https://www.bloomberg.com/news/articles/2026-02-20/trump-to-hold-press-briefing-following-court-s-tariff-ruling>.

<sup>19</sup> The White House, *Fact Sheet: President Donald J. Trump Imposes a Temporary Import Duty to Address Fundamental International Payment Problems* (Feb. 20, 2026), <https://www.whitehouse.gov/fact-sheets/2026/02/fact-sheet-president-donald-j-trump-imposes-a-temporary-import-duty-to-address-fundamental-international-payment-problems/>.

<sup>20</sup> USTR Press Release.

<sup>21</sup> *Ibid.*

<sup>22</sup> Tyler Kendall & Courtney Subramanian, *US Trade Probes Will Conclude Within Five Months, Greer Says*, Bloomberg (Mar. 3, 2026), <https://www.bloomberg.com/news/articles/2026-03-03/us-trade-probes-will-conclude-within-five-months-greer-says>.

the tariff rates will be back to their old rate within five months.”<sup>23</sup>

On March 11, USTR initiated a slew of Section 301 investigations into 16 countries.<sup>24</sup> It added that “there will be other Section 301 investigations on a country-specific basis, or maybe other tools or investigations that may come up.”<sup>25</sup> The next day, it initiated additional sweeping Section 301 investigations into 60 more countries.<sup>26</sup>

If the decision below is left uncorrected, nothing would keep USTR from repeatedly following this case’s playbook: initiate Section 301 investigations into dozens of countries (as it already has done in its effort to replicate the IEEPA tariffs), impose modest tariffs under Section 301 on imports from those

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<sup>23</sup> Squawk Box, *Watch CNBC’s Full Interview with Treasury Secretary Scott Bessent*, at 13:41-14:27 (CNBC, Mar. 4, 2026), <https://www.cnbc.com/video/2026/03/04/watch-cnbc-full-interview-with-treasury-secretary-scott-bessent.html>.

<sup>24</sup> Press Release, USTR, USTR Initiates Section 301 Investigations Relating to Structural Excess Capacity and Production in Manufacturing Sectors (Mar. 11, 2026), <https://ustr.gov/about/policy-offices/press-office/press-releases/2026/march/ustr-initiates-section-301-investigations-relating-structural-excess-capacity-and-production>.

<sup>25</sup> Dan Mangan, *Trump Administration Launches Section 301 Trade Probes into Mexico, China, EU, Others*, CNBC (Mar. 11, 2026), <https://www.cnbc.com/2026/03/11/trump-trade-investigations-ieepa-tariffs.html>

<sup>26</sup> Press Release, USTR, USTR Initiates 60 Section 301 Investigations Relating to Failures to Take Action on Forced Labor (Mar. 12, 2026), <https://ustr.gov/about/policy-offices/press-office/press-releases/2026/march/ustr-initiates-60-section-301-investigations-relating-failures-take-action-forced-labor>.

countries, then use Section 307 to expand those tariffs ten-, 100-, or 1,000-fold while bypassing Section 301's strict prerequisites.

Given the new prominence of Section 301 (and, by extension, Section 307), it is critical for this Court to address the scope of USTR's Section 307 modification authority and what, if any, limits it imposes. This case provides an ideal vehicle for the Court to do so.

### CONCLUSION

The petition should be granted.

Respectfully submitted,

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