No. 25-1012

In the Supreme Court of the United States

HMTX INDUSTRIES, LLC, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

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

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the United States Trade Representative's modifications to duties imposed under 19 U.S.C. 2411(b), memorialized at 83 Fed. Reg. 47,974 (Sept. 21, 2018), 84 Fed. Reg. 20,459 (May 9, 2019), 84 Fed. Reg. 43,304 (Aug. 20, 2019), 84 Fed. Reg. 45,821 (Aug. 30, 2019), 84 Fed. Reg. 69,447 (Dec. 18, 2019), and 85 Fed. Reg. 3741 (Jan. 22, 2020), were too large to fall within the authorization granted by 19 U.S.C. 2417(a)(1) to "modify" the original duties.

PARTIES TO THE PROCEEDING

The petition for a writ of certiorari identifies all of the parties to the proceeding.

ADDITIONAL RELATED PROCEEDINGS

United States Court of International Trade:

HMTX Industries LLC v. *United States*, No. 20-cv-177 (Mar. 17, 2023)

In re Section 301 Cases, No. 21-cv-52 (Mar. 17, 2023)

United States Court of Appeals (Fed. Cir.):

HMTX Industries LLC v. *United States*, No. 23-1891 (Sept. 25, 2025)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-38a) is reported at 156 F.4th 1236. The opinion and order of the Court of International Trade (Pet. App. 112a-139a) is reported at 628 F. Supp. 3d 1235. A prior opinion and order of the Court of International Trade (Pet. App. 39a-111a) is reported at 570 F. Supp. 3d 1306.

JURISDICTION

The judgment of the court of appeals was entered on September 25, 2025. On December 4, 2025, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including February 20, 2026, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Section 301 of the Trade Act of 1974 (Act), Pub. L. No. 93-618, 88 Stat. 2041, as amended, 19 U.S.C. 2411, authorizes the United States Trade Representative (USTR), following an investigation and consultation, and subject to the President's direction, to take certain "appropriate and feasible" actions—including "impos[ing] duties or other import restrictions"—to "obtain the elimination of" any "act, policy, or practice of a foreign country [that] is unreasonable or discriminatory and burdens or restricts United States commerce." 19 U.S.C. 2411(b) and (c)(1)(B). Following a monthslong investigation and consultations with the public and advisory committees in 2017 and 2018, the USTR determined that China was engaged in unreasonable or discriminatory practices that burdened or restricted United States commerce. Pet. App. 8a-9a; see 19 U.S.C. 2414(a)(1). In accordance with the President's direction, the USTR imposed a 25% duty on $50 billion worth of Chinese imports under Section 301(b). 83 Fed. Reg. 28,710 (June 20, 2018); 83 Fed. Reg. 40,823 (Aug. 16, 2018); see Pet. App. 9a.

Instead of curtailing its practices, China retaliated by "rais[ing] tariffs on $50 billion worth of exports from the United States." Pet. App. 10a. Section 307 of the amended Act authorizes the USTR, after consultation and public engagement, and subject to the President's direction, to "modify or terminate" any action taken under Section 301 if it "is no longer appropriate," 19 U.S.C. 2417(a)(1)(C), or if "the burden or restriction on United States commerce * * * of the acts, policies, and practices[] that are the subject of such action has increased or decreased," 19 U.S.C. 2417(a)(1)(B). Invoking both Section 307(a)(1)(B) and (C), the USTR, after notice and

public comment and in accordance with the President's direction, modified the duties to include a 10% duty on an additional $200 billion worth of Chinese imports. 83 Fed. Reg. 47,974 (Sept. 21, 2018); see Pet. App. 10a-12a. Those goods are referred to as the "List 3" items.

Further retaliation, intransigence, and backsliding on China's part caused the USTR to increase the List 3 duties to 25% and to impose a 10% duty (later increased to 15%, then reduced to 7.5%) on an additional $120 billion worth of Chinese imports ("List 4A")—all invoking his authority under Section 307(a)(1)(B) and (C), after notice and public comment, and in accordance with the President's direction. 84 Fed. Reg. 20,459 (May 9, 2019); 84 Fed. Reg. 43,304 (Aug. 20, 2019); 84 Fed. Reg. 45,821 (Aug. 30, 2019); 84 Fed. Reg. 69,447 (Dec. 18, 2019); 85 Fed. Reg. 3741 (Jan. 22, 2020); see Pet. App. 12a-15a. A proposal to impose the latter set of duties on an additional $180 billion worth of Chinese imports ("List 4B") never took effect because the countries eventually reached a trade deal in late 2019 and signed an agreement in early 2020. Pet. App. 13a-15a.

Petitioners are importers of products subject to the List 3 and List 4A duties. Pet. App. 15a. They filed suit in the Court of International Trade (CIT) challenging those duties on various substantive and procedural grounds, including that the duties were unauthorized by Section 307. See *id.* at 53a. The CIT rejected all of petitioners' substantive challenges, holding that the "USTR exercised [his] authority consistent with Section 307(a)(1)(B) when [he] promulgated List 3 and List 4A." *Id.* at 81a; see *id.* at 67a-81a. The CIT also rejected nearly all of the procedural challenges, issuing a limited remand so that the USTR could more thoroughly respond to certain public comments. *Id.* at 81a-

108a. After the USTR on remand responded to those comments, the CIT sustained the USTR's determination and entered final judgment in the government's favor. *Id.* at 112a-139a.

2. The court of appeals affirmed. Pet. App. 1a-38a. The court held that the "USTR acted properly when [he] invoked Section 307(a)(1)(C) to promulgate the Lists 3 and 4A tariffs." *Id.* at 25a. Relevant here, the court rejected petitioners' contention that the ratio of value of the List 3 and List 4A goods ($320 billion) to the value of the goods subject to the original Section 301 duties ($50 billion) was too large for the List 3 and List 4A duties to qualify as "modifications" of those original duties under Section 307. See *id.* at 20a. The court explained that the Act "only defines 'modification' as a term which 'includes the elimination of any duty or import restriction,'" and thus "'does not *exclude* anything.'" *Id.* at 21a (first quoting 19 U.S.C. 2481(6), then quoting *Solar Energy Industries Association* v. *United States*, 86 F.4th 885, 896 (Fed. Cir. 2023)). The court thus concluded that "'modify' is indifferent to degrees of change," as evidenced by the inclusion of "elimination" in the definition, which "encompasses major changes because the relative impact of a duty could be large." *Ibid.*

The court of appeals rejected petitioners' reliance on the nondelegation and major-questions doctrines. Pet. App. 27a-30a. As to nondelegation, the court explained that "Section 307(a)(1)(C) plainly provides an intelligible principle for USTR's authority to modify a discretionary action" because it "'authorizes only those actions that would have been permissible in the first instance under Section 301(b),'" namely, "'those appropriate to obtain the elimination of the foreign practices

found to be unfair after a full investigation.'" *Id.* at 28a (citation omitted). As to major-questions, the court found "'clear congressional authorization'" in Section 307(a)(1)(C) for modifying duties imposed under Section 301, which the court contrasted with the executive actions at issue in *Biden* v. *Nebraska*, 600 U.S. 477 (2023), *West Virginia* v. *EPA*, 597 U.S. 697 (2022), and *V.O.S. Selections, Inc.* v. *Trump*, 149 F.4th 1312 (Fed. Cir. 2025) (en banc) (per curiam), aff'd, 146 S. Ct. 628 (2026), all of which the court characterized as involving attempts to "transform[]" the "very nature of the[] regulatory authority" conferred. Pet. App. 29a-30a (citation omitted).

ARGUMENT

Although petitioners raised many substantive and procedural challenges below, they have abandoned all of them here save one: They contend (Pet. 16-30) that the List 3 and List 4A duties exceeded the USTR's authority to "modify" the original Section 301 duties, 19 U.S.C. 2417(a)(1), because the original duties were imposed on $50 billion worth of imports while the List 3 and List 4A duties were imposed on more than $300 billion worth of imports. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court. No further review is warranted.

1. In asserting that the USTR exceeded his authority to "modify" the Section 301 duties solely by virtue of the magnitude of the goods subject to the List 3 and List 4A duties, petitioners principally rely on what they say is the "ordinary" meaning of "modify," namely, "to change moderately or in minor fashion." Pet. 16 (citation omitted); see *ibid.* (asserting that the word "carries 'a connotation of increment or limitation'") (citation

omitted). But the term also can be read to encompass larger changes or alterations, as long as they are not radically transformative. See, *e.g.*, 9 *The Oxford English Dictionary* 952 (2d ed. 1989) ("to alter or vary without radical transformation"). Examples abound. For instance, parties may agree to "modify" the terms of their contract by mutual assent without being limited to small changes. Cf. Noah Webster, *An American Dictionary of the English Language* (1st ed. 1828) ("To vary; to give a new form to any thing; as, to *modify* the terms of a contract."). And Congress's broad constitutional power to make exceptions to this Court's appellate jurisdiction "enable[s] the government to *modify* it in such a manner as will best answer the ends of public justice and security." *The Federalist No. 81*, at 552 (Hamilton) (J. Cooke ed. 1961) (emphasis added).

That broader reading is appropriate here. "When Congress takes the trouble to define the terms it uses, a court must respect its definitions as 'virtually conclusive,'" and "will not deviate from an express statutory definition merely because it 'varies from the term's ordinary meaning.'" *Department of Agriculture Rural Development Rural Housing Service* v. *Kirtz*, 601 U.S. 42, 59 (2024) (brackets and citations omitted). The Act here expressly provides that "[t]he term 'modification,' as applied to any duty or other import restriction, includes the elimination of any duty or other import restriction." 19 U.S.C. 2481(6). Congress's inclusion of "elimination" in the definition of "modification" necessarily precludes petitioners' narrower reading because completely eliminating a previously imposed duty obviously goes far beyond just an "increment[al]" or "minor" (Pet. 16) alteration to that duty. The court of appeals also held that by expressly defining what the term

includes, Congress implicitly made clear that the term does not *exclude* any changes or alterations that the term otherwise would encompass. See Pet. App. 21a.

Petitioners argue (Pet. 20) that because Section 307(a) was enacted "more than a decade after" the definitional provision, that definition does not apply. But the Act itself makes clear that the definition applies "[f]or purposes of this Act," § 601, 88 Stat. 2071, and Section 307(a) unquestionably is part of "this Act," see Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, sec. 1301(a), 102 Stat. 1164 ("Chapter 1 of title III of the Trade Act of 1974 (19 U.S.C. 2411 et seq.) is amended to read as follows:"). This Court has repeatedly rejected arguments materially similar to petitioners' argument here. *E.g.*, *Kirtz*, 601 U.S. at 50-51; *Kimel* v. *Florida Board of Regents*, 528 U.S. 62, 76-77 (2000).

Petitioners also suggest (Pet. 20) that because the statutory definition includes "elimination," applying that definition to Section 307(a)(1) would render superfluous the authorization to "modify *or terminate* any action" taken under Section 301, 19 U.S.C. 2417(a)(1) (emphasis added). That is incorrect. The definition's reference to "elimination" applies only with respect to a "duty or other import restriction," 19 U.S.C. 2481(6), leaving "terminate" in Section 307(a)(1) with meaningful work to do with respect to other actions that the USTR might take under Section 301, such as suspending trade-agreement concessions or entering into binding agreements, 19 U.S.C. 2411(c)(1)(A) and (D).

Petitioners' reliance (Pet. 16-18) on *Biden* v. *Nebraska*, 600 U.S. 477 (2023), and *MCI Telecommunications Corp.* v. *AT&T*, 512 U.S. 218 (1994), is misplaced. In *Nebraska*, the Court held that a statutory provision

authorizing the Secretary of Education to "waive or modify any statutory or regulatory provision applicable to" certain student-loan programs did not authorize the Secretary to unconditionally discharge $430 billion worth of such loans. 600 U.S. at 494 (citation omitted); see *id.* at 494-499. In *MCI*, the Court held that a statute authorizing the Federal Communications Commission to "modify any requirement" in a provision imposing an obligation on common carriers to file tariffs (*i.e.*, rate schedules) did not authorize the Commission to relieve a large number of carriers of the obligation to file tariffs altogether. 512 U.S. at 224 (citation omitted); see *id.* at 224-229. In both cases, the Court emphasized that "statutory permission to 'modify' does not authorize 'basic and fundamental changes in the scheme' designed by Congress." *Nebraska*, 600 U.S. at 494 (quoting *MCI*, 512 U.S. at 225).

Unlike the executive actions in those cases, the List 3 and List 4A duties here do not make "basic and fundamental changes" to the Act's scheme. Quite the contrary: Section 307(a) "authorizes only those actions that would have been permissible in the first instance under Section 301(b)," namely, "those appropriate to obtain the elimination of the foreign practices found to be unfair after a full investigation." Pet. App. 28a (citation omitted). Accordingly, modifications imposed under Section 307(a) necessarily comport with the Act's scheme because they are limited to actions appropriate to address the same problem that the original Section 301 actions addressed, as that problem has evolved over time. See 19 U.S.C. 2417(a)(1)(B) (authorizing action where the original burden or restriction "has increased or decreased"); 19 U.S.C. 2417(a)(1)(C) (authorizing action where the original response "is no longer appropriate").

That is the opposite of making a basic or fundamental change to the statutory scheme.

Although petitioners argued below that the List 3 and List 4A duties do not comply with the Act's substantive and procedural requirements, petitioners have abandoned those arguments in this Court. It therefore must be taken as given that those duties "would have been permissible in the first instance under Section 301(b)" to combat the same unfair practices that the USTR identified in his initial investigation, as those practices evolved over time and in reaction to the USTR's actions under Sections 301 and 307. Pet. App. 28a; see *id.* at 10a-15a (describing the back-and-forth). That distinguishes this case from *Nebraska* and *MCI*, where the agency actions were otherwise *prohibited* by the statutes at issue. See *Nebraska*, 600 U.S. at 495 (observing that the statute authorized complete discharge of borrower liability only "under certain narrowly prescribed circumstances"); *MCI*, 512 U.S. at 229-230 (explaining that the "tariff-filing requirement" is "the heart of the common-carrier section of the" statute, which contains many other provisions that "are premised upon the tariff-filing requirement").

Petitioners argue that the statutory provision in *Nebraska* authorizing the Secretary to "waive or modify" loan requirements is similar to Section 307(a), which authorizes the USTR to "modify or terminate" actions taken under Section 301—yet the Court nevertheless "concluded that 'modify,' even when paired with the authority to 'waive' provisions altogether, still carried" a narrower meaning. Pet. 21. But there is a difference between a contextual clue to the meaning of an undefined term and an express statutory definition of that term. Here, the meaning of "modify" in Section 307(a)

is informed not just by the contextual clue of the neighboring term "terminate," but by the Act's express definition of "modification" as including "elimination," 19 U.S.C. 2481(6). In contrast, the statute at issue in *Nebraska* (like the statute at issue in *MCI*) contained no statutory definition of "modify" or "modification." And as this Court has emphasized, statutory definitions are "virtually conclusive." *Kirtz*, 601 U.S at 59 (citation omitted).

Petitioners emphasize (Pet. 7, 18, 29, 31) that the Act imposes additional procedural requirements—namely, an investigation under Section 302 and consultations under Section 303—when initially imposing duties (or taking other actions) under Section 301 than when modifying those duties or actions under Section 307. But that does not mean modifications under Section 307 must be small in magnitude. Instead, those differing procedural requirements reflect the different inquiries under Sections 301 and 307. The purposes of the investigation and consultations are to determine whether the predicates for action under Section 301 exist in the first place—for example, that "an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States Commerce" and "action by the United States is appropriate." 19 U.S.C. 2411(b)(1) and (2). Upon such a determination, the USTR then *further* determines, subject to the President's direction, what "appropriate and feasible action" to take "to obtain the elimination of that act, policy, or practice." 19 U.S.C. 2411(b)(2).

In determining whether modifications under Section 307 are warranted, the USTR revisits only that latter determination; for example, the USTR determines whether the previously taken action is "no longer ap-

propriate" or does not account for an "increase[] or decrease[]" in the burdens or restrictions caused by the acts, policies, or practices identified in the original investigation, sufficient to "obtain the elimination" of those acts, policies, and practices. 19 U.S.C. 2411(b)(2), 2417(a)(1)(B) and (C). A Section 307 modification therefore must be "tied to the original Section 301 action" and "tailored to achieve Section 301's statutory goal of eliminating the investigated conduct"—not any other conduct. Pet. App. 26a. Requiring a duplicative investigation and consultations to reidentify the same acts, policies, or practices that the USTR already identified would be pointless; indeed, it would effectively nullify the utility of Section 307. Congress sensibly did not impose such a scheme. And petitioners have abandoned any argument that the List 3 and List 4A duties seek to eliminate acts, policies, or practices *different* from those targeted by the original duties under Section 301.

Nothing in the Act constrains the USTR to respond to large increases or decreases in the burdens caused by the acts, policies, or practices identified in the investigation supporting the original Section 301 duties with only small modifications that would be inadequate to "obtain the elimination" of those acts, policies, or practices. 19 U.S.C. 2411(b)(2). Here, for instance, China responded to the initial duties under Section 301 not by eliminating or even curtailing its unreasonable trade practices, but by imposing retaliatory duties. The USTR and President thus reasonably determined that the original Section 301 duties were no longer appropriate to obtain the elimination of those unreasonable trade practices—and used the tools Congress provided in Section 307 to modify those duties to be better suited to obtain that elimination.

2. Petitioners contend that the major-questions doctrine "underscores" their argument that Section 307(a) does not authorize the List 3 and List 4A duties. Pet. 23; see Pet. 22-26. That contention lacks merit. The contours of the major-questions doctrine are debatable, but even the most exacting articulation states only that "when executive branch officials claim Congress has granted them an extraordinary power, they must identify clear statutory authority for it." *Learning Resources, Inc.* v. *Trump*, 146 S. Ct. 628, 649 (2026) (Gorsuch, J., concurring). The authority to promote "'safe and healthful working conditions'" does not clearly authorize a nationwide "vaccine mandate"; the authority to issue regulations "'necessary to prevent the transmission of communicable diseases'" does not clearly authorize regulating "landlord-tenant relations nationwide"; and the authority to "employ the 'best system of emission reduction'" does not clearly authorize "effectively clos[ing] many power plants." *Id.* at 647-649 (Gorsuch, J., concurring) (citations and ellipses omitted); see *id.* at 660 (Gorsuch, J., concurring).

Here, in contrast, the Act authorizes the USTR to "modify * * * any action" taken under Section 301, and one such action is "impos[ing] duties." 19 U.S.C. 2411(c)(1)(B), 2417(a)(1). The Act thus expressly authorizes the USTR to "modify" any "duties" previously "impose[d]" under Section 301. *Ibid.* The List 3 and List 4A actions modified duties previously imposed under Section 301. It is hard to imagine an action more clearly authorized by a statute. And petitioners have abandoned any arguments that the List 3 and List 4A duties violate other statutory requirements (such as being sufficiently connected to, and appropriate to obtain the elimination of, the unfair trade practices that

prompted the original Section 301 duties). The petition for a writ of certiorari rests solely on the argument that the magnitude of the modifications here is, in petitioners' view, too large.

Petitioners have not identified any sound basis to invalidate an otherwise clearly authorized agency action under the major-questions doctrine simply because the action is purportedly of too large a magnitude. Nothing in the Act limits the magnitude of a modification under Section 307; if anything, the Act directs the USTR to ensure that the actions taken or modified are sufficient to "obtain the elimination" of the unfair acts, policies, or practices. 19 U.S.C. 2411(b)(2). Without any textual guidance, petitioners' contention that Section 307 authorizes some modifications but not others, depending on their magnitude, would simply invite judges to gauge the legality of the USTR's modifications based on their own policy views of how much is too much. Such a regime would improperly twist the major-questions doctrine from one that restores power from unelected agencies to Congress, see *Nebraska*, 600 U.S. at 503, into one that transfers power to an unelected judiciary.

Petitioners emphasize (Pet. 23, 25) that the USTR "has never relied on Section 307 to increase tariffs" and has invoked Section 307 to modify actions taken under Section 301 "only five other times in the provision's four-decade history." But the authority to "modify" duties plainly encompasses the authority to increase those duties, as evidenced by the fact that Section 307 authorizes modification when "the burden or restriction on United States commerce * * * has *increased or decreased*." 19 U.S.C. 2417(a)(1)(B) (emphasis added); see Pet. App. 21a. Although petitioners argued below that Section 307(a)(1)(C) categorically forbids increasing du-

ties, see *id.* at 23a, they have abandoned that argument in this Court. And that the USTR has invoked Section 307 in the past, even if on only a few occasions, proves that the actions here are neither "unheralded," *Utility Air Regulatory Group* v. *EPA*, 573 U.S. 302, 324 (2014), nor discovered in some "little-used backwater" of a statute, *West Virginia* v. *EPA*, 597 U.S. 697, 730 (2022).

3. Petitioners err in suggesting (Pet. 26-28) that reading Section 307 to authorize the List 3 and List 4A duties would violate the nondelegation doctrine, even if only under constitutional avoidance. That doctrine requires that Congress set forth "an intelligible principle to which the person or body authorized to [act] is directed to conform." *J.W. Hampton, Jr., & Co.* v. *United States*, 276 U.S. 394, 409 (1928). Congress must therefore delineate "both 'the general policy' that the agency must pursue and 'the boundaries of its delegated authority,'" so that "both 'the courts and the public [can] ascertain whether the agency' has followed the law." *FCC* v. *Consumers' Research*, 606 U.S. 656, 673 (2025) (brackets and citations omitted).

Even assuming that the doctrine applies with full force in this foreign-policy context, but see *Consumers' Research*, 606 U.S. at 706-707 (Kavanaugh, J., concurring); *Gundy* v. *United States*, 588 U.S. 128, 170-171 (2019) (Gorsuch, J., dissenting), Section 307 satisfies those standards. The general policy is clear: "to obtain the elimination" of acts, policies, or practices that burden or restrict United States commerce, 19 U.S.C. 2411(b)(2), by taking "appropriate" action in response to changing conditions, 19 U.S.C. 2417(a)(1)(C); see 19 U.S.C. 2417(a)(1)(B). The boundaries are likewise clear: the modified action must be "tied to the original Section 301 action" and "must be tailored to achieve

Section 301's statutory goal of eliminating the investigated conduct." Pet. App. 26a.

Petitioners do not contend that Section 301's authorization of duties violates the nondelegation doctrine; nor do they contest that the List 3 and List 4A duties could have been imposed as an original matter under Section 301 itself. That defeats any argument that Congress's authorization of those duties violates the Constitution. If anything, accepting petitioners' view that Section 307 authorizes only some duties, and not others, would blur the boundaries of delegated authority and make it impossible for courts and the public to "ascertain whether the agency has followed the law," *Consumers' Research*, 606 U.S. at 673 (internal quotation marks omitted).

4. Petitioners contend (Pet. 32) that the question presented warrants "immediate review" in light of this Court's recent holding that "the grant of authority to 'regulate . . . importation'" in the International Emergency Economic Powers Act, Pub. L. No. 95-223, Tit. II, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*), "does not authorize the President to impose" duties. *Learning Resources*, 146 S. Ct. at 646. According to petitioners, because *Learning Resources* might spur the government to increasingly rely on Sections 301 and 307 to impose and modify duties in the future, this Court should race to address the meaning of the word "modify" in Section 307 now. The opposite conclusion is true. If the USTR imposes and then later modifies duties under Sections 301 and 307 in the near future, the Court will have ample opportunity to address the scope of those provisions, making review in this case inappropriate and unnecessary.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 2026