Washington and Lee University School of Law
Washington and Lee University School of Law Scholarly Commons

Supreme Court Case Files

Lewis F. Powell Jr. Papers

10-1975

Federal Energy Administration v. Algonquin SNG, Inc.

Lewis F. Powell, Jr.

Follow this and additional works at: https://scholarlycommons.law.wlu.edu/casefiles

Part of the Administrative Law Commons, Antitrust and Trade Regulation Commons, Constitutional Law Commons, and the International Trade Law Commons

Recommended Citation

Powell,, Lewis F. Jr., "Federal Energy Administration v. Algonquin SNG, Inc." (1975). *Supreme Court Case Files*. 641.
https://scholarlycommons.law.wlu.edu/casefiles/641

This Manuscript Collection is brought to you for free and open access by the Lewis F. Powell Jr. Papers at Washington and Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Supreme Court Case Files by an authorized administrator of Washington and Lee University School of Law Scholarly Commons. For more information, please contact christensena@wlu.edu.

Greg - May I see papers.

Grant

CADC invalidated action of President in imposing import tariffs on oil.

In view of closeness of issue (DC & Robb upheld power; Leventhal & Tamm found it unauthorized) & importance to national interests, the issue should be resolved.

DISCUSS

PRELIMINARY MEMO

October 31, 1975 Conference
List 3, Sheet 2

No. 75-382 CFX

FEDERAL ENERGY ADMINISTRATION v. ALGONQUIN SNG, INC., et al.

Cert to CA DC (Tamm, Leventhal; Robb, dissenting)

Federal/Civil

Timely

1. SUMMARY: This case raises the issue of the legality of the President's imposition of oil import tariffs under the Trade Expansion Act of 1962. The district court sustained presidential authority against a challenge that his power to curb oil imports was statutorily limited to such direct import controls as quotas. A divided C. DC disagreed, and held that indirect controls such as tariffs were beyond the bounds of proper control mechanisms.

The importance of this case makes it a potential grant, but Chris tells me that the comments of the memo-writer to the effect that the petitioner is very likely right may be too strong. Although she did not personally work on the case, scuttlebutt on the DC circuit has it that the only

(over)

2. FACTS: Official concern with the influx of imported oil is of relatively recent origin. Acting under the Trade Agreements Extension Act of 1955, President Eisenhower in 1959 established a Mandatory Oil Import Program. This program mandated several procedures: (1) petroleum importers were required to secure a license; (2) the country was divided into five importing districts; and (3) import quotas were established for each district. Although frequently amended, this program remained in effect from 1959 to May 1, 1973.

By presidential proclamation, President Nixon in 1973 signaled a major change in the import control mechanism. Under the new plan, the quota system was abolished. In its place, a schedule of license fees, to be paid by oil importers, was instituted. Under presidential timetables, fees would increase over a two-year period from 10.5 cents a barrel to 21 cents/bbl.

President Nixon's action was taken pursuant to § 232(b) of the Trade Expansion Act of 1962, 19 U.S.C. § 1862(b), the successor legislation to the 1955 measure under which President Eisenhower had acted. Section 232 (b) sets forth various procedures to be followed when imports of a particular article may affect national security. The operative language provides:

> "If the Secretary [of the Treasury] finds that such article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he shall so advise the President and the President shall take such action, and for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not threaten to impair the national security...." [Emphasis supplied.]

Early this year, Secretary of the Treasury Simon announced an investigation into the current level of oil imports in light of possible national security repercussions. A flurry of executive agency activity followed, with the result that, only 10 days later

Secretary Simon reported that petroleum products were indeed being imported at dangerously high levels.

Nine days after the Secretary's recommendation, President Ford issued Proclamation No. 4341, the document that gave rise to the present controversy. By the Proclamation's terms, the two-year fee schedules announced by President Nixon were accelerated. In addition, the Proclamation imposed supplemental fees of $3 per barrel on imported crude and $1.30/bbl on petroleum products. The supplemental fee on crude oil was to be imposed in three monthly steps of $1 each from February to April 1975, while the lower fee on petroleum products was to be added in March and April.

The system of supplemental fees proved to be the straw that broke the camel's back. Four days after the President's announcement, a veritable horde of plaintiffs rushed into federal district court. The plaintiffs included eight states and their governors, ten utility companies (including resp Algonquin SNG), and Father Drinan (D. Mass.). The complainants argued that the Nixon-Ford scheme of fees exceeded presidential authority granted by Section 232(b) of the Trade Expansion Act. Specifically, resps contended that the authority given to the President to "take such action... as he deems necessary to adjust the imports" [emphasis supplied] encompassed only such direct mechanisms as import quotas, the traditional method employed since 1959. Resps also urged that various procedural steps mandated by the Act were not followed prior to imposition of the fees and that no environmental impact statement had been filed.

The district court (D.D.C.) (Pratt) sustained the President's action. The court concluded:

> "It is our judgment that the license fee program is one of a number of possible actions covered in the non-defined phrase 'to adjust imports' contained in Section 232 (b) and that the program including the fee is a regulatory measure enacted for the protection of national security. Certainly, if the term includes quotas and even a complete embargo, as plaintiffs admit, it can responsibly be interpreted to include imports subject to fees, however steep." Petn., at 42a.

The court also determined that no procedural irregularity infected the President's action.

A divided CA DC reversed, concluding that fees on imports were unauthorized by the statute. The court based its determination on three factors:

A. Traditional "congressional control" over foreign trade.

An examination of various trade provisions indicated that congressional delegatio had been narrow and explicit in order to effectuate well-defined goals. As against this system, the President's interpretation of § 232 (b) "would represent an anomalous delegation of almost unbridled discretion and authority in the tariff area." Petn., at 14a.

B. Legislative History of § 232(b).

Congress opted for a generalized approach to import control, rather than providing for protection of particular commodities and establishing quotas for each. The intended scope of the authority, however, was to limit presidential action to direct controls. This intent was manifest in the floor debates, including a colloquy between Senators Saltonstall and Byrd in which the latter stated: "[The provision] simply leave to the President the power, in his discretion, to decide whether to impose a quota or reduce the imports.'" Petn., at 16a [Emphasis in original]. Contrary statements by senators interested in protecting indigenous industries in their home states were n dispositive. Thus, no significance could be attached to a statement by Senator Millik of Colorado to the effect that the President could take whatever action he deems

necessary, including the use of "tariffs, quotas, import taxes, or other methods of import restriction."

Finally, Congress' limited intent was suggested by its rejection in 1962 of a proposed § 353 to the Trade Expansion Act. Under the proposed provision, the President would have been given authority to impose duties on imports he found necessary in the "national interest." This proposal explicitly gave the President the same authority he claims implicitly from § 232 (b). The only conclusion to be drawn from the provision's rejection was that Congress did not confer by § 232(b) the authority the President now claims.

c. Recent case law as limiting the scope of permissible "fees."

In the majority's view, Congress could have permitted the President to impose license fees to off-set the administrative costs of the old quota program. In fact, however, the President conceived his authority as justifying a fee levied for "non-revenue purposes." This expansive interpretation of "fees" has been rejected by this Court in recent decisions, including National Cable Television Association, Inc. v United States, 415 U.S. 336. That case struck down the FCC's attempt to impose fees which were unrelated to the benefits conferred and were not necessary to cover the costs of administering the particular regulatory program involved.

Given these three bases, the court held the presidential fee program invalid. It therefore did not reach the resps' procedural arguments.

Judge Robb dissented. He found no statutory distinction between such control mechanisms as "quotas" or "embargoes" on the one hand and "license fees" on the other. Rather, the statute, in Judge Robb's view, broadly authorizes the President to take such action as he deems necessary, "without purporting to limit in any way the kind of action available to the President." Petn., at 30a.

The current status of oil tariffs is not entirely clear. Resps point out that the $.60/bbl. fee on imported refined petroleum products was removed as of September 22, 1975. As to the supplementary fee on crude oil, the principal bone of contention, the resps state that a presidential decision should be forthcoming shortly as to whether those fees will be eliminated.

3. CONTENTIONS: SG says (1) the question is of urgent importance, since the President has found the use of quotas to be unsuitable in controlling imports while avoiding temporary shortages; (2) the majority's decision rests upon an incorrect analysis of congressional intent since the floor debates clearly indicated a congressional understanding that the President could impose fees as an import control device; and (3) a broad interpretation of § 232 would not signal a departure from the traditional legislative pattern in this area, since § 351 (a)(1) of the same Act confers analogous authority on the President when imports threaten to injure a competitive domestic industry. Finally, Congress' rejection of proposed § 353 related to a broad provision addressed to the "national interest," not one more narrowly concerned with "national security" and accompanied by procedural safeguards.

Massachusetts responds that (1) the Administration has announced its intention to abandon the license fee program, so there is no compelling reason to take the case; (2) rules of strict statutory construction apply in order to save this statute from invalidity on grounds of excessive congressional delegation of power; the CA majority properly considered all relevant factors, including the failure in 1962 to enact proposed § 353, in determining Congress' intent; and (3) petrs can claim no relief in any event by virtue of procedural violations not addressed by CA DC.

Algonquin adds that (1) the CA's decision is not terribly important since it only rules out one of many ways in which the President can seek to curb imports; (2) the

Court will be embroiling itself in what has turned into a raging controversy between the Administration and Congress over appropriate energy policies; (3) the SG is belatedly offering new pieces of legislative history which he failed to mention before the CA; and (4) the CA's decision is correct under this Court's recent decisions limiting the ambit of permissible "fees" imposed by the executive branch.

4. DISCUSSION: The ever-changing status of import fees in the Administration's energy policies does not appear to cut against the importance of this case. The President continues to claim authority to impose such controls, and there is no indication that the entire system has been dismantled. In fact, much of the political maneuvering between the White House and Capitol Hill referred to by resps has occurred after the CA's decision in this case. There seems little danger of rendering an advisory opinion on the matter, and no one is arguing mootness on grounds of a presidential intent to abandon import fees. Nonetheless, it would perhaps be appropriate to request the SG to advise the Court of factual developments since the filing of his petition to clear up some of the uncertainties lingering in this case.

The appropriateness in taking the case is also suggested by the very high likelihood that the CA majority is dead wrong. The only clear-cut statement during the congressional debates as to the appropriate means of adjusting imports (that by Senator Milliken of Colorado) wholeheartedly supports the SG's interpretation. At the very least, no clear indication exists that the admittedly broad language of the statute was intended to permit the President to shut off imports entirely, while precluding a policy designed to render imported oil less competitive but at the same time allowing unlimit[ed] supplies of the high-priced foreign crude into American markets.

There are responses from the Commonwealth of Massachusetts and Algonquin, S

10/20/75 Starr Ops in petn.

BMT

reason Tamm voted the way he did was that he felt hemmed in by the legislative history. After looking through the papers filed here, petr. does appear to have a strong argument, but not quite as "clear and convincing" as the memo-writer makes out. (Still, there does appear to be arguable merit to his position; the case should be discussed at Conference).

TKD

Conference 10-31-75

Court CA - D.C. | Voted on ...., 19... | No. 75-382
Argued ...., 19... | Assigned ...., 19...
Submitted ...., 19... | Announced ...., 19...

FEDERAL ENERGY ADMINISTRATION, ET AL.

vs.

ALGONQUIN SNG, INC., ET AL.

9/10/75 Cert. filed.

The Trade Expansion Act is still the law. It has no termination date. Harry is doubtful as to CADC's juris. Should have gone to Ct of claims. If this is a tax, the Anti-Injunction Act would be applicable.

Grant

Invite parties to address juris. of DC & CADC & relevancy of Anti-Injunction Act.

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	POST	DIS	AFF	MERITS REV	AFF	MOTION G	D	ABSENT	NOT VOTING
Rehnquist, J		✓											
Powell, J		✓											
Blackmun, J		✓											
Marshall, J		✓											
White, J		✓											
Stewart, J		✓											
Brennan, J		✓											
Douglas, J							absent						
Burger, Ch. J		✓											

lfp/ss 4/16/76

VERY BOBTAIL BENCH MEMORANDUM

TO: Mr. Justice Powell DATE: April 16, 1976

FROM: Chris Whitman

No. 75-382 Federal Energy Administration v. Algonquin SNG, Inc.

This is a difficult and close case. The legislative history is sufficiently ambiguous that, I think, a convincing opinion could be written either way. My inclination, however, is to affirm - on the basis of an opinion very different from that written by CADC.

The CADC opinion on its face is completely unconvincing. There are obvious responses to every point it makes and obvious contrary interpretations of every statement in the legislative history upon which it relies. These have all been pointed out neatly by the SG and by a student author who has penned a note urging reversal in 89 Harv. L. Rev. 436 432 (Dec. 1975). But neither the SG nor the note-writer makes a good affirmative case for an interpretation of the statute that would give the President the power to impose fees. Instead, they both merely point out the holes in the arguments that CADC used to interpret the statute to mean that the President has no such power. The respondent's brief does a much better job than the CADC opinion in making the case against the President's power, and, unlike the SG and the Harvard note, it does build an affirmative case. That is why I'm inclined to affirm.

It is clear that the statute does not expressly draw the distinction between direct and indirect methods of affecting imports that CADC perceived. Respondent points out, however, that the phrase "to adjust the imports" can be fairly read - and has been read - to refer only to quotas, for quotas are the only means by which imports can be adjusted in a direct and predictable way.

The factor that influences me to urge affirmance is the sense I get from looking back over the tempetuous debates about foreign trade relations and the division of power between the President and Congress, that Congress never intended to grant to the President wide-ranging authority of the sort the SG claims was granted in § 1862(b). Under the SG's interpretation, the President can do anything that has any impact on imports, however remote, so long as he abides by the procedural requirements and finds a "national security" need.

The CADC opinion merely asserts that such an interpretation is contrary to everthing Congress has done in the past - for all other grants of authority to the President have been very narrowly defined. The respondent's brief - which I will not repeat here - provides the detail that makes that more convincing than a mere assertion.

Congress has been reluctant to grant - and the courts have been reluctant to infer a grant of - the power to tax, with the extraordinary discretion and arbitrariness that that power implies when exercised without any substantive standards.

And Congress in all the various Trade Acts has narrowly limited every delegation of power - except, the SG argues, this one. This is a hotly contested area, with a great and continuing debate over the proper approach to take - protection versus free trade. Yet there was no discussion at the time that § 1862(b) was enacted over whether the President should be given the power to impose duties or fees. Under the circumstances, I think it highly unlikely that Congress intended to do what the SG says it did. It could, however, have spoken much more clearly.

Chris

ss

Cert to CADC

75-382 FEA v. ALGONQUIN Argued 4/20/76

CADC invalidated (2-1) action of Pres. in imposing tariffs on importation of oil. Issue is one of statutory const.

Trade Expansion Act of 1962 authorized President to "adjust the imports" of any article if Sec. of Treasury finds imports "threaten to impair national security".

Ford in April 1975 [following Nixon's example] imposed substantial "supplemental fees" per bbl. on imported oil. This suit resulted, brought by several NE states, utilities, etc.

CADC construed "adjust the imports" as authorizing only the establishment of "quotas". It was said quotas alone "adjust" or control imports in a direct way.

Also, CADC thought Congress never intended to give Pres. power to impose taxes or fees on imports (but if Pres. may establish a zero quota, why should not he have power to reduce imports by a tax?)

Leg. history ambivalent. Issue is important. Effect of recent compromise between Pres & Congress ?

Re-enactment in 1974 is significant

Bork (SG)

Anti-Injunction Act not applicable.

Resp. agree that these "fees" are not "taxes" for purpose of Anti-Inj. — a view inconsistent with Resp's argument on merits

Pres. shifted from "quotas" to "fees" because former are too inflexible

Leg. hist. "allows no other interpretation".

This statute is in Title of Code dealing with Customs — thus some of Resps "parade of horrors" are inapplicable.

In 1973, Pres. Nixon used § 232 to impose fees & in 1974 Congress re-enacted the statute w/out changing language.

Bork (SG) - Cont.

This is not a "tax"

See pg 34 (Note 44) Resp. state reasons why a tax should not be inferred. But see p 26, Note 30, which says Pres. has power to declare a complete embargo, Thus, Resps. argue that power to tax is power to destroy yet Resps agree that Pres has power to destroy by declaring a total embargo.

No real issue of unlawful delegation of power.

Argument of absence of "uniformity" - but this is not properly before ct. CADC held no power to levy "fees" - not that "fees" ~~[illegible]~~ were imposed w/out uniformity.

Bellotti (AG of Mass) for Resp.

Argued only Anti-Injunction – which is a non-issue.

~~Dauis~~ Doudes (also for Resp).

This is a license fee that ~~it is a~~ reaches farther than a "tax".

~~As to~~ "Uniformity" argument ~~of~~ ~~S.G.~~ is relied upon to support view that 232 must be interpreted narrowly.

J. Stevens noted that ~~license~~ nothing in Const. requires license fees to be uniformity

Admits Pres. has "quota" power which could allow an embargo (see Note 30, p 20 of Resp's brief).

~~Many~~ Makes no difference whether this is viewed as a "tax" or a "fee".

Dondis (cont)
232, as interpreted by
?? Pres, violates Tariff clause of Const.

Bork (Rebuttal.

The 1962 amend was rejected because it was very broad & w/out standards. It was not limited to nat. defense. This is why Congress rejected it. (Resp. relies on failure of Congress to enact 1962 proposed amend that included express language as to fees)

75-382 FEA v. ALGONQUIN SNG, INC. Conf. 4/23/76

No. ________, __

Reverse 9 – 0

The Chief Justice Reverse statute clear Limited to nat. def.	~~xxxxxxxxx~~ Stevens, J. Reverse
Brennan, J. Reverse Agrees with C.J.	Stewart, J. Reverse not really at rest as wants to study leg. hist. more carefully.

White, J.

Reverse

Marshall, J.

Reverse

Blackmun, J.

Reverse

Powell, J.

Reverse

See my notes

Rehnquist, J.

Reverse

Joined
Stewart
White

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Marshall

Circulated: JUN 9 1976

Recirculated: ________

No. 75-382 - Federal Energy Administration, et al. v. Algonquin SNG, et al.

Received LFP 6/10 Join

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Section 232(b) of the Trade Expansion Act of 1962, Pub. L. No. 87-794, 76 Stat. 877, as amended by § 127(d) of the Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1993, 19 U.S.C. 1862(b) (Supp. IV), provides that if the Secretary of the Treasury finds that an "article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security," the President is authorized to

> "take such action, and for such time, as he deems necessary to adjust the imports of [the] article and its derivatives so that . . . imports [of the article] will not threaten to impair the national security." 1/

All parties to this case agree that § 232(b) authorizes the President to adjust the imports of petroleum and petroleum products by imposing quotas on such imports. What we must decide is whether § 232(b) also

authorizes the President to control such imports by imposing on them a system of monetary exactions in the form of license fees.

I

The predecessor statute to § 232(b) was originally enacted by Congress as part of the Trade Agreements Extension Act of 1955, Pub. L. No. 84-86, § 7, 69 Stat. 162, 166, see n. 13 <u>infra</u>, and amended by the Trade Agreements Extension Act of 1958. Pub. L. No. 85-686, § 8, 72 Stat. 673. The advisory function currently performed under § 232(b) by the Secretary of the Treasury was performed by the Director of the Office of Defense Mobilization (ODM) under the 1955 and 1958 statutes. But, like § 232(b), those statutes allowed the President, on a finding that imports of an article were threatening "to impair the national security," to "take such action as he deem[ed] necessary to adjust the imports of [the] article. . . ." In 1959, President Eisenhower, having been advised by the Director of ODM that "crude oil and the principal crude oil derivatives and products are being imported in such quantities and under such circumstances as to threaten to impair the national security," invoked the 1958 version of the provision and established the Mandatory Oil Import Program (MOIP). Pres. Proc. 3279, 24 Fed. Reg. 2781. The MOIP, designed to reduce the gap between domestic supply and demand by encouraging the development of domestic production and refinery capacity, imposed

a system of quotas on the importation of petroleum and petroleum products. The program was not wholly successful, however and in the face of domestic consumption which continued to grow faster than domestic production, Presidents Kennedy, Johnson, and Nixon each felt compelled to amend it by raising the permissible quota levels.

In light of a Cabinet task force conclusion that the MOIP, as then constituted, was not fulfilling its objectives,[2] President Nixon, acting pursuant to § 232(b), radically amended the program in 1973. Pres. Proc. 4210, 38 Fed. Reg. 9645. The President suspended existing tariffs on oil imports and provided "for a gradual transition from the existing quota method of adjusting imports of petroleum and petroleum products to a long-term program for adjustment of imports of petroleum and petroleum products through . . . the institution of a system of fees applicable to imports of crude oil, unfinished oils and finished products". _Id_, at 9646. This amended program established a gradually increasing schedule of license fees for importers. With respect to crude oil, the fee was scheduled to increase from an initial 10 1/2 cents per barrel on May 1, 1973 to 21 cents per barrel on November 1, 1975. With respect to most finished petroleum products, the fee would rise gradually from 15 cents per barrel on May 1, 1973 to 63 cents per barrel on November 1, 1975.[3] _Id._, at 9649. While initially some oil imports were exempted

from the license fee requirements, the exemption levels were scheduled to decrease gradually so that by 1980 the fees were to be applicable to all oil imports.

President Nixon's 1973 program apparently did not wholly fulfill the objectives to which it was directed. Accordingly, the Secretary of the Treasury, acting pursuant to § 232(b), see n. 1 supra, initiated an investigation on January 4, 1975, "to determine the effects on the national security of imports of petroleum and petroleum products." Memorandum from Secretary of the Treasury Simon to Assistant Secretary of the Treasury MacDonald (Memorandum), App., at 154. While § 232(b) directs the Secretary "if it is appropriate [to do so, to] . . . hold public hearings or otherwise afford interested parties an opportunity to present information and advice" as part of such an investigation, 19 U.S.C. § 1862(b), the Secretary found that such procedures would interfere with "national security interests" and were "inappropriate" in this case. Memorandum, App., at 154. The investigation therefore proceeded without any public hearing or call for submissions from interested nongovernmental parties.

The Secretary submitted a report on his investigation to President Ford on January 14, 1975. Intimating that the measures then in force under § 232(b) had indeed not solved the problems to which they were directed, the Secretary indicated that the United States' dependence on foreign oil had continued to increase since 1966 and that foreign sources

currently accounted for well over a third of domestic consumption. The Secretary concluded that:

> "crude oil, principal crude oil derivatives and products, and related products derived from natural gas and coal tar are being imported into the United States in such quantities as to threaten to impair the national security [and] the foregoing products are being imported into the United States under such circumstances as to threaten to impair the national security." App., at 133.

Relying on his findings, the Secretary recommended to the President that:

> "appropriate action be taken to reduce imports of crude oil, principal crude oil derivatives and products, and related products derived from natural gas and coal tar into the United States." Ibid.

The President agreed with the results of the Secretary's investigation and concluded that it was "necessary and consistent with the national security to further discourage importation into the United States of petroleum, petroleum products, and related products." Pres. Proc. 4341, 40 Fed. Reg. 3965. Accordingly, invoking § 232(b) he issued a proclamation on January 23, 1975 which, effective immediately, raised the so-called "first-tier" license fees that were imposed in 1973 to the maximum levels previously scheduled to be reached only some months later. Ibid.[4] The proclamation also imposed on all imported oil, whether covered by the first-tier fees or not, a supplemental fee of $1.00 per barrel for oil

entering the United States on or after February 1, 1975. The supplemental fee was scheduled to rise to $2.00 a barrel for oil entering after March 1, 1975, and to reach $3.00 per barrel for oil entering after April 1, 1975.[5/] Finally, the proclamation reinstated the tariffs that had been suspended in April 1973. The Federal Energy Administration (FEA) soon after issuance of the proclamation amended its oil import regulations in order to implement it. 40 Fed. Reg. 4771-4776 (1975).

Four days after the proclamation was issued, respondents - eight states and their governors,[6/] ten utility companies,[7/] and Congressman Robert P. Drinan of Massachusetts - challenged the license fees by filing two suits against the Secretary of the Treasury, the Administrator of FEA and the Treasurer of the United States in the United States District Court for the District of Columbia. Seeking declaratory and injunctive relief, they alleged that the imposition of the fees was beyond the President's statutory authority under § 232(b), that the fees were imposed without necessary procedural steps having been taken, and that petitioners (hereinafter the Government) violated the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*, by failing to prepare an environmental impact statement prior to the imposition of the fees.

The District Court denied respondents' motions for preliminary injunctions and filed findings of fact and conclusions of law which, at the

request of respondents, it later declared would constitute its final judgments in the cases. See 518 F. 2d 1064 (1975) (appendix to dissenting opinion in Court of Appeals). The court found that § 232(b) is a valid delegation to the President of the power to impose license fees on oil imports. 518 F. 2d at 1064-1066. It further ruled that the procedures followed by the President and the Secretary of the Treasury in imposing the license fees fully conformed to the requirements of the statute. Id., at 1068. Finally, the court held that "in view of the emergency nature of the problem and the need for prompt action", id., at 1069, the Government was not required to file an environmental impact statement prior to imposition of the fees and hence was not in violation of NEPA. Id., at 1069.

Respondents' appeals from these judgments were consolidated with their petitions to the Court of Appeals for the D. C. Circuit for review of the FEA regulations implementing the license fee program. The allegations in the challenges to the regulations were substantially the same as those raised in the District Court actions, adding only a contention that the FEA had failed to follow certain procedural provisions of the Federal Energy Administration Act, 15 U. S. C. §§ 761 et seq. The Court of Appeals with one judge dissenting, held that § 232(b) does not authorize the President to impose a license fee scheme as a method of adjusting imports. 518 F. 2d 1051 (1975). According to the court, reading the statute to authorize the

action taken by the President "would be an anomalous departure" from "the consistently explicit, well-defined manner in which Congress has delegated control over foreign trade and tariffs." Id., at 1055. In the court's view, § 232(b)'s legislative history indicated that Congress' authorization of the President to "adjust the imports of [an] article" encompassed only the use of "direct" controls such as quotas and did not encompass the use of license fees. Id., at 1059. Finding no need to address any of the other issues that were raised, the court reversed the judgment of the District Court, instructed that court to enter appropriate relief for respondents, and set aside the challenged Federal Energy Administration regulations.

The Government sought this Court's review. We granted certiorari, 423 U.S. 923 (1975),[8] and now reverse. Both the words of § 232(b) and its legislative history lead us to conclude that it authorizes the action taken by the President in this case.[9]

II

A

Preliminarily, we reject respondents' suggestion that we must construe § 232(b) narrowly in order to avoid "a serious question of unconstitutional delegation of legislative power." Brief for Respondents, at 42. Even if § 232(b) is read to authorize the imposition of a license fee

system, the standards that it provides the President in its implementation are clearly sufficient to meet any delegation doctrine attack.

In Hampton & Co. v. United States, 276 U.S. 394 (1928), this Court upheld the constitutionality of a provision empowering the President to increase or decrease import duties in order to equalize the differences between foreign and domestic production costs for similar articles. In doing so, we stated:

> "If Congress shall lay down by legislative act an intelligible principle to which the [President] is directed to conform, such legislative action is not a forbidden delegation of legislative power." Id., at 409.

Section 232(b) easily fulfills that test. It establishes clear preconditions to Presidential action - inter alia, a finding by the Secretary of the Treasury that an "article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security." Moreover, the leeway that the statute gives the President in deciding what action to take in the event the preconditions are fulfilled is far from unbounded. The President can act only to the extent "he deems necessary to adjust the imports of such article and its derivatives so that such imports will not threaten to impair the national security." And § 232(c), see n.1 supra, articulates a series of specific factors to be considered by the President in exercising his authority under § 232(b).[10/] In light of these factors and our recognition that

"[n]ecessity . . . fixes a point beyond which it is unreasonable and impracticable to compel Congress to prescribe detailed rules . . ." American Power & Light Co. v. Securities and Exchange Commission, 329 U.S. 90, 105 (1946), we see no looming problem of improper delegation 11/ that should affect our reading of § 232(b).

B

In authorizing the President to "take such action and for such time, as he deems necessary to adjust the imports of [an] article and its derivatives," the language of § 232(b) seems clearly to grant him a measure of discretion in determining the method to be used to adjust imports. We find no support in the language of the statute for respondents' contention that the authorization to the President to "adjust" imports should be read to encompass only quantitative methods - i.e. quotas - as opposed to monetary methods - i.e., license fees - of effecting such adjustments.

Indeed, reading respondents' suggested limitation into the word "adjust" would be inconsistent with the range of factors that can trigger the President's authority under § 232(b)'s language. Section 232(b) authorizes the President to act after a finding by the Secretary of the Treasury that a given article is being imported "in such quantities or under such circumstances as to threaten to impair the national security." (Emphasis added.) The emphasized language reflects Congress' judgment that "not only the quantity of imports . . . but also the circumstances under which

they are coming in: their use, their availability, their character" could endanger the national security and hence should be a potential basis for Presidential action. 104 Cong. Rec. 10542-10543 (remarks of Rep. Mills). It is most unlikely that Congress would have provided that dangers posed by factors other than the strict quantitative level of imports can justify Presidential action but that that action must be confined to the imposition of quotas. Unless one assumes, and we do not, that quotas will always be a feasible method of dealing directly with national security threats posed by the "circumstances under which imports are entering the country," limiting the President to the use of quotas and barring the use of license fees would effectively and artifically prohibit him from directly dealing with some of the very problems against which § 232(b) is directed.

Turning from § 232's language to its legislative history, again there is much to suggest that the President's authority extends to the imposition of monetary exactions - i.e. license fees and duties. Looking at the original enactment of the provision in 1955 as well as Congress' periodic reconsideration of it in subsequent years, we find substantial grounds on which to conclude that its authorization extends beyond the imposition of quotas to the type of action challenged here.

During Congressional hearings on the Trade Agreements Extension Act of 1955, there was substantial testimony that increased imports were threatening to damage various domestic industries whose viability was

perceived to be critical to the national security.[12] In an effort to deal with the problem, the Senate Committee on Finance considered several proposals designed to supplement the existing statutory provision, known as the Symington Amendment[13] which barred reductions in duties "on any article if the President finds that such reduction would threaten domestic production needed for projected national defense requirements." Act of July 1, 1954, Pub L. No. 83-464 68 Stat. 360.[14] Among these amendments was one proposed by Senator Neely which provided in relevant part:

> "[T]he President shall take <u>such action as is necessary</u> to restrict imports of commodities whenever such imports threaten to retard the domestic development and expansion or maintenance of domestic production of natural resource commodities or any other commodities which he determines to be essential to the national security. . . ." Hearings on H. R. 1 before the Senate Committee on Finance, 84th Cong., 1st Sess. 1032-1033 (1955) (hereinafter cited as 1955 Senate Hearings).[15] (Emphasis added).

In explaining what action would be authorized under the Neely amendment, Senator Martin, one of its co-sponsors, explained that it authorized the President "to take such action as is necessary, including the imposition of import quotas <u>or the increase in duties</u>, to protect the domestic industry concerned." 1955 Senate Hearings, 2097 (emphasis added). Thus, the Neely amendment clearly would have given the President the authority to impose monetary exactions as a method of restricting imports.

While the Neely amendment was not reported out of committee, it is strikingly similar in language to the Byrd-Millikin amendment - the substitute provision that was reported out and eventually enacted into law. The Byrd-Millikin amendment authorized the President, after appropriate recommendations had been made by the Director of the Office of Defense Mobilization, to "take such action as he deems necessary to adjust the imports of [an] article to a level that will not threaten to impair the national security." S. Rep. No. 232, 84th Cong., 1st Sess., 14 (1955).[16] (Emphasis added). Given the similarity in the operative language of the two proposals, it is fair to infer that if, as Senator Martin stated, the Neely amendment was intended to authorize the imposition of monetary exactions, so too was the Byrd-Millikin amendment.

The debate on the Senate floor lends further support to this reading of the Byrd-Millikin amendment. Senator Millikin himself stated without contradiction that the amendment authorized the President "to take whatever action he deems necessary to adjust imports [including the use of] tariffs, quotas, import taxes or other methods of import restriction." 101 Cong. Rec. 5299 (1955). As a statement of one of the legislation's sponsors, this explanation of course deserves to be accorded substantial weight in interpreting the statute. National Woodworkers Manufacturers Assn. v. NLRB, 386 U.S. 612, 640 (1967); Schwegmann Bros. v. Calvert Distillers Corp., 341 U.S. 384, 394-395 (1951).[17]

Senator Millikin's statement does not stand alone. Senator Byrd, another of the amendment's sponsors, explained in colloquy with Senator Saltonstall that the amendment put all commodities "on the same basis as agricultural commodities. It simply leaves to the President the power, in his discretion, to decide whether to impose a quota or to reduce the imports." 101 Cong. Rec. 5297 (1955) (emphasis added). The reference in the emphasized phrase is to § 22 of the Agricultural Adjustment Act, the subject of an earlier exchange between Senator Byrd and Senator Thye. 101 Cong. Rec. 5296 (1955). Section 22 allows the President under certain circumstances to "impose such fees . . . or such quantitative limitations . . . as he finds . . . necessary" to protect the domestic production of an agricultural commodity. 7 U.S.C. § 624(b) (emphasis added). Senator Byrd's comparison of § 22 and the Byrd-Millikin amendment thereafter appears to reflect his understanding that Presidential authority under the amendment extended to the imposition of fees. 18/

Finally, we note two other statements on the floor of the Senate which lend direct support to the Government's reading of the Byrd-Millikin amendment. Senator Bennett stated that it was his understanding that the amendment would authorize use of "the entire scope of tariffs, quotas, restrictions, stockpiling and any other variation of these programs in order to protect a particular industry." 101 Cong. Rec. 5588 (1955). 19/ And Senator Barkley, a member of the Senate Committee on Finance,

expressed his understanding that the amendment would allow the President to "impose such quotas or take such other steps as he may believe to be desirable in order to maintain the national security." Id., at 5298 (emphasis added).

Moving to the House debate following Senate passage of the Byrd-Millikin amendment, 101 Cong. Rec. 5655 (1955), and its acceptance with a minor modification by the House conferees, H. R. Cong. Rep. No. 745, 84th Cong., 1st Sess. 2, 6-7 (1955), we find further indications that it authorized the imposition of monetary exactions. In explaining the provisions of the amendment, Congressman Cooper, chairman of the House Ways and Means Committee and a member of the conference committee, indicated his concern in connection with the amendment that "any modification of a duty on imports or a quota would [because of retaliation from abroad] inevitably result in a curtailment of exports by the United States." 101 Cong. Rec. 8161 (1955) (emphasis added). Furthermore, as part of his explanation of the amendment, Cooper presented a letter he had received from Gerald D. Morgan, Special Counsel to the President, which expressed the Administration's understanding that under the amendment, the President's action to adjust imports "could take any form that was appropriate to the situation." 101 Cong. Rec. 8162 (1955).[20] Thus, when Congress finally enacted the Byrd-Millikin amendment's national security provision, 69 Stat. 166,[21]

not only had Members of both Houses indicated that the provision authorized the imposition of monetary exactions but the Executive Branch too had advised the Congress of its understanding of the broad scope of the authority that the amendment contained. 22/

Three years later, in the context of its consideration of the Trade Agreements Extension Act of 1958, Congress reexamined the Byrd-Millikin national security provision. In the course of its deliberations, the Subcommittee on Foreign Trade Policy of the House Ways and Means Committee had before it a 1957 report submitted to it by the Office of Defense Mobilization expressing the views of the Executive Branch that the imposition of new or increased tariff duties on imports . . . [was] authorized by the language adopted." 23/ Fully aware, therefore, of the fact that the Executive Branch then, as in 1955, understood the provision as authorizing the imposition / monetary exactions, the Committee nevertheless did not recommend any change in its wording to confine more narrowly the bounds of its authorization. On the contrary, the Committee in its report indicated approvingly its own understanding that the statute provided "those best able to judge national security needs [with] a way of taking <u>whatever action is needed</u> to avoid a threat to the national security through imports." H.R. Rep. No. 1761, 85th Cong., 2d Sess. 13 (1958).

While Congress made several procedural changes in the statute

and established criteria to guide the President's determination as to whether action under the provision might be necessary, it added no limitations with respect to the type of action that the President was authorized to take.[24/] Pub. L. 85-686, § 8, 72 Stat. 673, 678-679. The 1958 reenactment, like the 1955 provision, authorized the President under appropriate conditions "to take such action" "as he deems necessary to adjust imports. . ." 72 Stat. 678-679.

When the provision next came up for reexamination, it was re-enacted without material change as § 232(b) of the Trade Expansion Act of 1962. In its analysis, however, the Court of Appeals placed great emphasis on the fact that in the course of Congress' deliberations the Senate passed and the conference committee deleted, H.R. Conf. Rep. No. 2518, 87th Cong., 2d Sess. 13 (1962), an amendment which provided:

> "Notwithstanding any other provision of law, the President may, when he finds it in the national interest, proclaim with respect to any article imported into the United States - (1) the increase of any existing duty on such article to such rates as he finds necessary; (2) the imposition of a duty on such article (if it is not otherwise subject to duty) at such rate as he finds necessary, and (3) the imposition of such other import restrictions as he finds necessary." 108 Cong. Rec. 19573 (1962).

The Court of Appeals inferred from the rejection of this amendment that Congress understood the then existing grant of authority to be limited to the imposition of quotas. According to the court, the amendment would

have "explicitly [given] the President the same authority he claims derives implicitly from § [232(b)]" 518 F. 2d, at 1059, and Congress' refusal to enact the amendment was tantamount to a rejection of the Government's interpretation of the statute.

We disagree, however, with the Court of Appeals' assessment of the proposed amendment. The amendment was in reality far more than an articulation of the authority that the Government finds to be contained in § 232(b). Unlike § 232(b), the rejected proposal would not have required a prior investigation and findings by an executive department as a prerequisite to Presidential action. Moreover, the broad "national interest" language of the proposal, together with its lack of any standards for implementing that language, stands in stark contrast with § 232(b)'s use of the narrower criteron of "national security" and § 232(c)'s articulation of standards to guide the President in the invocation of his powers under § 232(b). In light of these clear differences between the rejected proposal and § 232(b), we decline to infer from the fact that the amendment was proposed or from the fact that it was rejected that Congress felt that the President had no power to impose monetary exactions under § 232(b).

Only a few months after President Nixon invoked the provision to initiate the import license fee system challenged here, Congress once again reenacted the Presidential authorization encompassed in § 232(b)

without material change. Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978, 1993 (1974). Making no mention of the President's action, both the Senate Committee report and the conference report, used the language of the statute itself to reaffirm that under § 232(b) the President "may take such action, and for such time as he deems necessary to adjust imports so as to prevent impairment of the national security." H. R. Conf. Rep. No. 93-1644, 93rd Cong. 2d Sess. 29 (1974); S. Rep. No. 93-1298, 93rd Cong., 2d Sess. 96-97 (1974). The Congressional acquiescence in President Nixon's action manifested by the reenactment of § 232(b) provides yet further corroboration that § 232(b) was understood and intended to authorize the imposition of monetary exactions as a means of adjusting imports.

Taken as a whole then, the legislative history of § 232(b) belies any suggestion that Congress, despite its use of broad language in the statute itself, intended to limit the President's authority to the imposition of quotas and to bar the President from imposing a license fee system like the one challenged here. To the contrary, the provision's original enactment, and its subsequent reenactment in 1958, 1962 and 1974 in the face of repeated expressions from Members of Congress and the Executive Branch as to their broad understanding of its language, all lead to the conclusion that § 232(b) does in fact authorize the actions of the President challenged here. Accordingly, the judgment of the Court of Appeals to the contrary cannot stand.

A final word is in order. Our holding today is a limited one. As respondents themselves acknowledge, a license fee as much as a quota has its initial and direct impact on imports, albeit on their price as opposed to their quantity. Brief for Respondents, at 26. As a consequence, our conclusion here, fully supported by the relevant legislative history, that the imposition of a license fee is authorized by § 232(b) in no way compels the further conclusion that _any_ action the President might take, as long as it has even a remote impact on imports, is also so authorized.

The judgment of the Court of Appeals is reversed and this case is remanded to that court for proceedings consistent with this opinion.

So ordered.

FOOTNOTES

1/ Section 232(b) provides in full:

> "Upon request of the head of any department or agency, upon application of an interested party, or upon his own motion, the Secretary of the Treasury (hereinafter referred to as the 'Secretary') shall immediately make an appropriate investigation, in the course of which he shall seek information and advice from, and shall consult with, the Secretary of Defense, the Secretary of Commerce, and other appropriate officers of the United States, to determine the effects on the national security of imports of the article which is the subject of such request, application, or motion. The Secretary shall, if it is appropriate and after reasonable notice, hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to such investigation. The Secretary shall report the findings of his investigation under this subsection with respect to the effect of the importation of such article in such quantities or under such circumstances upon the national security and, based on such findings, his recommendation for action or inaction under this section to the President within one year after receiving an application from an interested party or otherwise beginning an investigation under this subsection. If the Secretary finds that such article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he shall so advise the President and the President shall take such action, and for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not threaten to impair the national security, unless the President determines that the article

> is not being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security."

Section 232(c) of the Act, 19 U.S.C. 1862(c) (Supp IV) provides the President and the Secretary of the Treasury with guidance as to some of the factors to be considered in implementing § 232(b). It provides:

> "For the purposes of this section, the Secretary and the President shall, in the light of the requirements of national security and without excluding other relevant factors, give consideration to domestic production needed for projected national defense requirements, the capacity of domestic industries to meet such requirements, existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense, the requirements of growth of such industries and such supplies and services including the investment, exploration, and development necessary to assure such growth, and the importation of goods in terms of their quantities, availabilities, character, and use as those affect such industries and the capacity of the United States to meet national security requirements. In the administration of this section, the Secretary and the President shall further recognize the close relation of the economic welfare of the Nation to our national security, and shall take into consideration the impact of foreign competition on the economic welfare of individual domestic industries; and any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports shall be considered, without excluding other factors, in determining

whether such weakening of our internal economy may impair the national security."

2/ See Cabinet Task Force on Oil Import Control, The Oil Import Question 7 (1970).

3/ Under President Nixon's plan, motor gasoline was scheduled to reach its maximum fee of 63 cents on May 1, 1975. Appendix, at 97.

4/ The schedule under which exemptions from the fees, supra, were not to be eliminated until 1980, pages 3-4, was not altered.

5/ The supplemental fee increases scheduled to go into effect in March and April were twice deferred. See Pres. Proc. 4355, 40 Fed. Reg. 10437 (1975); Pres. Proc. 4370, 40 Fed. Reg. 19421 (1975). While the $2.00 fee finally went into effect on June 1, 1975, Pres. Proc. 4377, 40 Fed. Reg. 23429 (1975), it was never increased to $3.00. Indeed, on January 3, 1976, President Ford eliminated the $2.00 fee. Pres. Proc. 4412, 41 Fed. Reg. 1037 (1976). See note 8, infra.

6/ The states joining in the suit together with their governors were Connecticut, Maine, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island and Vermont. The State of Minnesota intervened as a plaintiff after the complaint was filed and is also a respondent here.

7/ The ten utility companies are Algonquin SNG, Inc., New England Power Co., New Bedford Gas and Edison Light Co., Cambridge Electric Light Co., Canal Electric Co., Montaup Electric Co., Connecticut Light and Power Co., Hartford Electric Light Co., Western Massachusetts Electric Light Co., and Holyoke Water Co.

8/ Subsequent to our granting certiorari, the President signed the Energy Policy and Conservation Act of 1975, Pub. L. 94-163, 89 Stat. 871. The Act is aimed at encouraging domestic oil production by gradually decontrolling the price of domestically produced crude oil. On January 3, 1976, indicating that "the purpose of the supplemental [oil import license] fee" will be served by the Act, the President announced the elimination of the supplemental fees imposed by Presidential Proclamation 4341. Pres. Proc. 4412, 41 Fed. Reg.

1037. He did not, however, eliminate the "first-tier" fees originally imposed by Presidential Proclamation 4210. Since respondents seek to enjoin the first-tier as well as the supplemental fees, the question here of whether § 232(b) grants the President authority to impose license fees remains a live controversy.

9/ Respondents' suits are not barred by the Anti-Injunction Act, 26 U.S.C. § 7421(a), which in relevant part provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person . . ." The Anti-Injunction Act applies to suits brought to restrain assessment of taxes assessable under the Internal Revenue Codes of 1954 and 1939. 26 U.S.C. §§ 7421(a), 7851(a)(6)(A), 7851(a)(6)(C)(iv). The license fees in this case are assessed under neither Code but rather under the authority conferred on the President by the Trade Expansion Act of 1962, as amended by the Trade Act of 1974. The fees are therefore not "taxes" within the scope of the Anti-Injunction Act.

10/ Respondents rely on our decision in National Cable Television Association Inc. v. United States, 415 U.S. 336 (1974), to support their delegation doctrine argument. But we find that case

clearly distinguishable from the one before us today. In National Cable Television, we held that the fees to be imposed on community antenna television systems should be measured by the "value to the recipient" even though the language of the general statute allowing fee-setting by federal agencies, 31 U.S.C. § 483(a), allows consideration not only of "value to the recipient" but also of "public policy or interest served and other pertinent facts." Ibid. The Court's conclusion that the words of the last-quoted phrase were not relevant to the CATV situation was apparently motivated by a desire to avoid any delegation doctrine problem that might have been presented by a contrary conclusion. 415 U.S., at 342. But what might be considered the open-ended nature of the phrase "public policy or interest served and other pertinent facts" stands in contrast to § 232(b)'s more limited authorization of the President to act only to the extent necessary to eliminate a threat of impairment to the national security and § 232(c)'s articulation of standards to guide the President in making the decision whether to act. See n. 1, supra.

11/ The amount of oil exempted from the "first-tier" license fees, see page 8, supra, imposed in 1973 varies among five geographical districts within the Nation. See Pres. Proc. 4341, 40 Fed. Reg. 3965

(1975), Pres. Proc. 4210, 38 Fed. Reg. 9645 (1973). Respondents seize on this fact to argue that the "first-tier" fee schedule contravenes Article I, § 1, cl. 8 of the Constitution which requires import duties to be uniform throughout the United States. But that issue is not properly before the Court. Sustaining respondents' uniformity clause argument would call not for invalidation of the entire license fee scheme, but only for elimination of the geographical differences in the exemptions allowed under it. This would represent not an affirmance of the judgments below which effectively invalidated the entire scheme and its implementing regulations, but rather a modification of those judgments. But since respondents filed no cross-petition for certiorari, they are at this point precluded from seeking such modification. See Mills v. Electric Auto Lite Co., 396 U.S. 375, 381 n. 4 (1970).

12/ See, e.g., Hearings on H.R. 1 before the House Committee on Ways and Means, 84th Cong., 1st Sess., 1006 (analytical balance industry), 1266 (petroleum industry) (1955); Hearings on H.R. 1 before the Senate Committee on Finance, 84th Cong., 1st Sess., 602 (lead and zinc mining industry), 721 (coal mining industry) (1955).

13/ The Symington amendment is currently codified in some-

what modified form at 19 U.S.C. § 1862(a).

14/ In contrast to the Senate Committee on Finance, the House Committee on Ways and Means concluded that the Symington amendment was adequate to deal with any potential threats to the national security posed by foreign imports. H.R. Rep. No. 50, 84th Cong., 1st Sess. 44 (1955).

15/ A separate portion of the Neely amendment would have placed quotas on petroleum imports. 1955 Senate Hearings, at 1032.

16/ Unlike the Neely amendment, see note 15, *supra*, the Byrd-Millikin amendment did not single out any named industries for protection by quotas.

17/ Differing with the Court of Appeals, we do not believe that the fact that Senator Millikin represented a State that might have benefitted from an expansive reading of the statute "blurs [the] probative value," 518 F.2d. at 1058, of his explanation. Many if not most pieces of legislation are sponsored by Members of Congress whose

constituents have a special interest in their passage, but we have never let this fact diminish the weight we give a sponsor's statements.

18/ Moreover, Senator Byrd's reference in the above-quoted exchange to the power of the President under the amendment "to impose a quota or to reduce imports", 101 Cong. Rec. 5297, also suggests that he understood that power to extend beyond the imposition of quotas. See Note, 89 Harv. L. Rev. 432, 435 n. 31 (1975).

19/ The Court of Appeals characterized Senator Bennett's remarks as going to "the entire bill and other existing laws." 518 F.2d, at 1057. However, our examination of the context of his remarks persuades us that they were more probably made in specific reference to the Byrd-Millikin amendment.

20/ A copy of the Morgan letter was also sent to Senator Byrd, Chairman of the Senate Committee on Finance. See 101 Cong. Rec. 8162 (1955).

21/ As finally enacted the amendment provided:

"In order to further the policy and purposes of this section, whenever the Director of the Office of Defense Mobilization has reason to believe that any article is being imported into the United States in such quantities as to threaten to impair the national security, he shall so advise the President, and if the President agrees that there is reason for such belief, the President shall cause an immediate investigation to be made to determine the facts. If, on the basis of such investigation, and the report to him of the findings and recommendations made in connection therewith, the President finds that the article is being imported into the United States in such quantities as to threaten to impair the national security, he shall take such action as he deems necessary to adjust the imports of such article to a level that will not threaten to impair the national security."

22/ We are not unmindful that, as respondents point out, much of the debate in both Houses referred to the Byrd-Millikin amendment in the context of giving the President the power to impose import quotas. See, *e. g.*, 101 Cong. Rec. 5572 (1975) (remarks of Sen. Humphrey); *id.*, at 5582, 5584 (remarks of Sen. Douglas); *id.*, at 5593 (remarks of Sen. Monroney); *id.*, at 1668 (remarks of Rep. Flood); *id.*, at 1671 (remarks of Rep. Perkins). But nowhere do the Congressional debates reflect an understanding that under the amendment the President's authority was to be *limited* to the imposition of quotas. In light of this fact, we feel fortified in attaching substantial weight to the positive indications discussed above that the authority was not so limited.

23/ Foreign Trade Policy, Compendium of Papers on United States Foreign Trade Policy Collected by the Staff of the Subcommittee on Foreign Trade Policy of the House Committee on Ways and Means, 643 (1957).

24/ Indeed, while under the 1955 provision the President was authorized to act only on a finding that "quantities" of imports threatened to impair the national security, the 1958 provision also authorized Presidential action on a finding that an article is being imported "under such circumstances" as to threaten to impair the national security. Trade Agreements Extension Act of 1958, Pub. L. No. 85-686, 72 Stat. 676, 678-679. See pages 10-11, *supra*.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

/

June 10, 1976

Re: 75-382 - Federal Energy Admin., et al. v. Algonquin SNG, et al.

Dear Thurgood:

You have written a fine opinion which I am happy to join.

This thought occurred to me while reading it. We regularly accord special deference to an interpretation of a statute by the agency charged with responsibility for administering it. It seems to me that that rule should be applied to a statute giving specific authority to the President, particularly when it concerns foreign affairs and national security. I wonder if you might add a short paragraph acknowledging that the President's construction of a statute of this kind is entitled to a presumption of validity, or special respect from a coordinate branch of government, or something to that effect. I make the suggestion because my instincts tell me that this opinion has more importance for the future than most of our cases this Term.

In all events, I join without reservation.

Respectfully,

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 10, 1976

No. 75-382 - FEA v. Algonquin SNG

Dear Thurgood,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

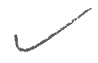
Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 10, 1976



RE: No. 75-382 Federal Energy Administration v. Algonquin SNG, et al.

Dear Thurgood:

I agree.

Sincerely,

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 10, 1976

Re: No. 75-382 - Federal Energy Administration v. Algonquin SNG

Dear Thurgood:

Please join me.

Sincerely,

Mr. Justice Marshall

Copies to Conference

June 11, 1976

No. 75-382 Federal Energy Administration v. Algonquin

Dear Thurgood:

Please join me.

Sincerely,

Mr. Justice Marshall

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 11, 1976

Re: No. 75- 382 - Federal Energy Administration v. Algonquin

Dear Thurgood:

Please join me.

Sincerely,

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

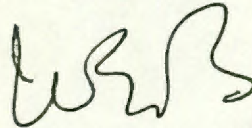
June 14, 1976

Re: 75-382 - Federal Energy Administration
v. Algonquin SNG

Dear Thurgood:

I join your proposed June 9 opinion.

Regards,



Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 14, 1976

Re: No. 75-382 - FEA v. Algonquin

Dear Thurgood:

Please join me. I would prefer not to add the short paragraph John has suggested.

Sincerely,

H. A. B./ws

Mr. Justice Marshall

cc: The Conference

THE C. J.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. P. S.
				5/5/76				
Join TM 6/14/76	agree 6/10/76	Join TM 6/10/76	Join TM 6/10/76	typed draft 6/10/76	Join TM ~~[illegible]~~ 6/14/76	Join TM 6/11/76	Join TM 6/11/76	Join TM 6/10/76
				1st draft 6/14/76				

75-382 FEA v. Algonquin