



Backgrounder on NFTC Amicus Brief in Section 232 Case

On May 17, 2019, NFTC filed an amicus brief with the U.S. Supreme Court in support of a legal challenge to the constitutionality of Section 232 of the Trade Expansion Act (Section 232). This law has been used by the Trump Administration to impose national security tariffs on steel and aluminum imports. NFTC's brief supports the plaintiffs in this case, the American Institute for Imported Steel (AIIS).

In the underlying case, AIIS challenged Section 232 on the grounds that it is an impermissibly broad delegation of trade authority to the President in violation of Article I of the United States Constitution, which grants Congress the power to regulate foreign commerce.

In its amicus brief filed on behalf of its 100 member companies, who collectively represent a significant portion of U.S. manufacturing and exports, NFTC argues that the actions taken on steel and aluminum demonstrate why this statute violates Constitutional norms relating to delegation of Congressional powers to the President.

- The Administration's imposition of tariffs and quotas on imported steel and aluminum has been sweeping and burdensome, creating a triple threat for affected U.S. businesses by imposing on them much higher costs of production and severely limiting the availability of needed input products; increasing their competitive disadvantage against similar foreign products produced with foreign inputs; and exposing their exports to retaliation in foreign markets.
- Rather than enhancing our national security, the Administration's use of the law has set the country on a long-term trajectory of major commercial conflict with our most trusted allies, who have historically been our most important security partners and most reliable trading partners.
- It is clear from the record of this case that the Administration's action was not motivated purely by national security concerns but by a desire to grant sweeping, open-ended import protection to a few favored industries. This was clearly not the purpose of Section 232.
- The steel and aluminum industries should have sought relief under Section 201 of the Trade Act of 1974, which has clearly defined standards for determining injury and specified limits on the amount and duration of import protection a President may grant. The fact that Section 232 has been interpreted by the President as giving him all the powers of Section 201 with none of its constraints is further proof that Section 232 should be found to grant too much power to the Executive. If allowed to stand, this policy of using the statute to achieve general economic policy goals in the guise of national security represents a significant undermining of Congressional authority.

Actions likely to be taken by the President in the coming days regarding the auto tariffs and the sweeping use of Section 232 in the autos sector is added evidence of the potential dangers posed by the statute's vague and overly broad grant of trade authority. The Administration has already begun a process to impose 232 restrictions on autos and has suggested that it intends to use the threat of Section 232 tariffs as a tool to negotiate trade restrictive quotas with key trading partners. However justified the Administration's desire to seek better reciprocity in our trade relations might be, this is clearly not the intended purpose of Section 232. The President has a full grant of trade negotiating authority to allow him to negotiate better access to other markets under Trade Promotion Authority procedures and also has power under Section 301 of the Trade Act of 1974 to take action against foreign unfair practices. Ignoring the procedures and requirements of those laws in preference for Section 232 is further proof of the statute's constitutionally impermissible scope.