Court of International Trade (March 25, 2019)

AMERICAN INSTITUTE FOR INTERNATIONAL STEEL, INC v. UNITED STATES

Article I, Section I of the U.S. Constitution provides that "all legislative Powers herein granted shall be vested in a Congress of the United States." U.S. Const. art. I, § 1. The Supreme Court established the standard by which delegations are to be judged in J.W. Hampton, Jr., & Co. v. United States, 276 U.S. 394, 409 (1928).

Since 1935 no act has been struck down as lacking an *intelligible principle*. See Panama Refining Co. v. Ryan, 293 U.S. 388 (1935).

Importantly for the challenge here, in *Algonquin*, the Supreme Court found that section 232 "easily" met the intelligible principle standard because

> **[i]t establishes clear preconditions to Presidential action[,] —[i]nter 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."**

This court is bound by Algonquin.

Because the statutory language here commits determinations to the President's discretion, the review available for presidential action has always been limited to constitutionality and action beyond statutory authority. Thus, there has been no change in the legal landscape since Algonquin as far as section 232 is concerned.

Admittedly, the broad guideposts of subsections (c) and (d) of section 232 bestow flexibility on the President and seem to invite the President to regulate commerce by way of means reserved for Congress, leaving very few tools beyond his reach.

To be sure, section 232 regulation plainly unrelated to national security would be, in theory, reviewable as action in excess of the President's section 232 authority.

However, identifying the line between regulation of trade in furtherance of national security and an impermissible encroachment into the role of Congress could be elusive in some cases because judicial review would allow neither an inquiry into the President's motives nor a review of his fact-finding.

For the foregoing reasons, the Plaintiffs' motion for summary judgment is denied, and the Defendants' motion for judgment on the pleadings is granted. Judgment will enter accordingly.

Claire R. Kelly, Judge
Jennifer Choe-Groves, Judge

March 25, 2019
New York, New York

Katzmann, Judge ……

The question before us may be framed as follows: Does section 232, in violation of the separation of powers, transfer to the President, in his virtually unbridled discretion, the power to impose taxes and duties that is fundamentally reserved to Congress by the Constitution? My colleagues, relying largely on a 1976 Supreme Court decision, conclude that the statute passes constitutional muster. While acknowledging the binding force of that decision, with the benefit of the fullness of time and the clarifying understanding borne of recent actions, I have grave doubts.

A review of Supreme Court jurisprudence, from the early days of the Republic, evinces affirmation of the principle that the separation of powers must be respected and that the legislative power over trade cannot be abdicated or transferred to the Executive.

The "intelligible principle" standard is the standard which has since been applied to determine whether there has been an impermissible delegation of legislative power.

Of course, as a lower court, it behooves us to follow the decision of the highest Court. It can also be observed that new developments and the record of history may supplement and inform our understanding of law.

To note these concerns is not to diminish in any way the reality, sanctioned under established constitutional principles, that in the workings of an increasingly complex world, Congress may assign responsibilities to the Executive to carry out and implement

its policy. Nor is it to ignore the flexibility that can be allowed the President in the conduct of foreign affairs. See United States v. Curtiss-Wright Export Corp, 299 U.S. 304 (1936). However, that power is also not unbounded, even in times of crisis. See Hamdi v. Rumsfeld, 542 U.S. 507, 536 (2004) (citing Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 587 (1952)).

In the end, I conclude that, as my colleagues hold, we are bound by Algonquin, and thus I am constrained to join the judgment entered today denying the Plaintiffs' motion and granting the Defendants' motion. I respectfully suggest, however, that the fullness of time can inform understanding that may not have been available more than forty years ago. We deal now with real recent actions, not hypothetical ones. Certainly, those actions might provide an empirical basis to revisit assumptions. If the delegation permitted by section 232, as now revealed, *does not constitute excessive delegation in violation of the Constitution, what would?*

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