IN THE UNITED STATES COURT OF INTERNATIONAL TRADE

BEFORE: THE HONORABLE JENNIFER CHOE-GROVES
THE HONORABLE TIMOTHY M. REIF
THE HONORABLE LISA W. WANG

IN RE SECTION 301 FORCED LABOR CASES	Court No. 26-cv-03555-3JP

BRIEF AMICUS CURIAE OF CONSUMER WATCHDOG IN SUPPORT OF PLAINTIFFS' MOTION FOR JUDGMENT ON THE AGENCY RECORD

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

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I. INTEREST OF THE AMICUS CURIAE

The amicus curiae Consumer Watchdog is a non-profit, non-partisan public interest organization dedicated to protecting consumers from economic harm caused by unfair market practices, corporate abuses, and improper governmental actions. Consumer Watchdog has previously filed amicus briefs in support of two separate challenges to tariffs imposed by the Executive Branch because tariffs function as a regressive tax that disproportionately burdens working families and economically vulnerable consumers. Tariffs of the magnitude at issue here inevitably raise consumer prices and threaten the economic security of working families and small businesses.[1]

In addition to supporting Plaintiffs on the merits of their claims, this brief will emphasize the importance to consumers of immediate vacatur relief if the Court agrees with Plaintiffs that

[1] *See* Addendum, Part I (materials showing the extent to which the 2025 tariffs were passed on to purchasers).

these tariffs are unlawful. While the refund remedy may suffice for many importers, it does not help the millions of consumers to whom the tariffs are passed on by those who pay the tariffs when they are imposed. The victory by the challengers to the more than $160 billion in tariffs at issue in *Learning Res., Inc. v. Trump,* 607 U.S. 229 (2026), resulted in refunds to those who paid the tariffs, but not a dollar went to consumers on whom the cost of the tariffs eventually fell.

II. ARGUMENT

A. THE CHALLENGED TARIFFS ARE UNLAWFUL.

The issue in this case is the legality of the imposition by the Office of the United States Trade Representative ("USTR") of 10% or 12.5% tariffs on 99% of the products imported from 60 economies, comprised of 86 countries, under section 301(b) of the Trade Act of 1974, 19 U.S.C. § 2411(b). USTR claims that the failure to enact and enforce bans on imports from countries with forced labor in all 86 countries is the basis for these tariffs. *See* Def.'s Resp. in Opp'n to Rule 56.1 Mot. for J. on Agency R. ("Def.'s Br.") at 21, ECF No. 22. As the briefs of the Plaintiffs explain in full, section 301(b) has several central requirements, none of which are met by these tariffs. These features are clear from the text of section 301(b) on which USTR relies.

First, section 301(b) is directed at specific "unreasonable or discriminatory" trade practices from specific countries – "an act, policy, or practice of a foreign country." 19 U.S.C. § 2411(b). The notion that 86 countries have all harmed United States exporters by the same means defies logic and common sense.

Second, section 301(b) is directed at "an act, policy, or practice of **a** foreign country," which reaches only affirmative conduct by a country. *Id.* (emphasis added). But these tariffs are not directed at what other countries have done themselves–producing goods using forced labor–but at what they failed to do–enact or enforce an explicit ban on the imports of goods made by forced labor. Def.'s Br. at 12–13. Section 301(d)(3)(B)(iii) specifically addresses when forced labor is "unreasonable"–only if it "constitutes a persistent pattern of conduct" that "permits any form of forced or compulsory labor." 19 U.S.C. § 2411(d)(3)(B)(iii). Treating passive conduct as unreasonable is inconsistent with this express provision on this very topic. Allowing tariffs for such secondary conduct would massively expand section 301 far beyond what Congress has provided. Moreover, it would render 19 U.S.C. § 1307, which already bans the importation into the United States of products made with forced labor, largely unnecessary.

Third, section 301(b) is designed to protect U.S. exporters from an unfair act that "burdens or restricts United States commerce." 19 U.S.C. § 2411(b)(1). To come within section 301(b), the unreasonable or discriminatory conduct would have to harm U.S. exporters who make goods that compete with goods that have been made under the prohibited conditions that are covered by section 301. *See id.* In this case, U.S. goods would have to compete with goods produced using forced labor, such as clothing or shoes. But USTR has not even attempted to show that U.S. manufacturers generally are adversely affected by the conduct that it relies on, let alone that U.S. manufacturers have been harmed by the conduct relied on by USTR in each of the 86 countries whose imports will be subject to these tariffs.

Fourth, section 301 operates to bring into balance situations in which another country has imposed unreasonable trade practices. *See* 19 U.S.C. § 2411(b)(2). Its effects are remedial, not punitive, and may be used only "to obtain the elimination of that act, policy, or practice." *Id.* However, USTR has failed to show that 10% or 12.5% tariffs perform that remedial function for each of the 86 countries that are subject to these tariffs. This notion of proportionality is supported by a limitation in the mandatory action requirements of § 2411(a)(3) under which any tariffs must be "in an amount that is equivalent in value to the burden or restriction being imposed by that country on United States commerce." USTR argues that the mandatory tariffs under section 301(a) are different from the discretionary tariffs that it imposed under section 301(b), but it never explains why Congress would insist on proportionality for mandatory tariffs but relax that requirement for those that are discretionary. *See* Def.'s Br. at 28, 47.

Defendants do not dispute that section 301 imposes limits on what USTR, or the President, can do beyond merely that their actions are "appropriate." 19 U.S.C. § 2411(c)(1)(B). Without such limits, section 301 would become the kind of wholly open-ended law that the Supreme Court found in *Learning Resources*, 607 U.S. at 230, and could not be used to impose the tariffs challenged there under the International Emergency Economic Powers Act, 50 U.S.C. § 1702 ("IEEPA"). The *Learning Resources* Court did not reach the claim that, if IEEPA authorized the President to issue those tariffs, it would violate the prohibition against excessive delegation of legislative authority, as most recently enunciated in *FCC v. Consumers' Rsch.*, 606 U.S. 656, 672–73 (2025). But if Defendants were to contend that section 301 is without boundaries, this Court would have to decide the delegation question.

Instead of arguing directly that section 301(b) has no requirements, USTR reinterprets section 301(b) from a statute targeting specific trade practices that harm U.S. companies into a provision that is as easily satisfied as Defendants unsuccessfully claimed IEEPA was in *Learning Resources*, 607 U.S. 229. But that is not what section 301(b) mandates. It requires an unreasonable trade practice by each country that burdens United States sellers of competing products, and for which the tariff imposed is needed to remedy that harm. 19 U.S.C. § 2411(b)(1). Instead, USTR has transformed section 301(b) into a provision in which it is enough if USTR can identify one unreasonable trade practice that is allegedly found in every covered country for which USTR can find any product that the trade practice is injuring a U.S. company.

See Def.'s Br. at 40–41.

The following example illustrates the parties' differing views on how section 301(b) operates. USTR has identified Poland as a country that purportedly does not adequately prevent products made with forced labor from being imported there. *See* PR-6 at 38–41. Poland imports tobacco from Malawi, and USTR found that some of that tobacco is produced with forced labor. According to USTR, U.S. manufacturers export tobacco to Poland, and they are injured because they have to compete in Poland with tobacco produced with forced labor in Malawi. *See id.* Therefore, a tariff of 10% on goods from Poland is appropriate to remedy that harm. *Notice of Actions in Section 301 Investigations of Acts, Policies, and Practices of Various Economies Related to the Failure of Each Economy To Impose and Effectively Enforce a Prohibition on the Importation of Goods Produced With Forced Labor*, 91 Fed. Reg. 47,318, 47,320 (July 28, 2026) ("Tariffs Order"). Assuming all those facts to be established, under a proper reading of section 301(b), those findings would only validate a 10% tariff on a sufficient number of products from Poland to eliminate Poland's targeted import practice.

But USTR reads section 301(b) to extend its authority to impose tariffs, based on the Poland situation and one or two other examples, to impose the 10% or 12.5% tariff on every country that USTR believes does not adequately police imports of forced labor. According to Defendants, it may impose these tariffs regardless of whether each of the 80 countries subject to these tariffs actually imports products made with forced labor, *and* most significantly, without having to show that those imports unfairly compete with the same U.S. products. *See* Def.'s Br. at 40–41. Although section 301(b) operates on a country-by-country, product-by-product basis, USTR incorrectly claims that, once it has identified an unreasonable trade practice, it can use section 301(b) to impose a 10% or 12.5% tariff on *every* product coming from any country that has that practice, as long as it can show that the unreasonable trade practice in at least one country may competitively harm one U.S. company there. *See id* at 9, 40–41. In short, USTR misreads section 301(b) to enable it to do on an international wholesale basis what the statute requires to be done on a country-by-country and product-by-product retail basis. That fundamentally flawed reading of section 301(b) should be rejected by this Court.

B. THE COURT SHOULD DIRECT THAT THE TARIFFS ORDER BE VACATED TO AVOID IRREPARABLE HARM TO CONSUMERS WHO WILL BEAR THE ULTIMATE COST OF THESE TARIFFS.

Plaintiffs have requested that this Court vacate the order authorizing the imposition of these tariffs under section 301(b). As explained above and in the briefs of the Plaintiffs, USTR has not come close to justifying worldwide tariffs of 10% or 12.5% under section 301(b) on the grounds that it has asserted. Because its order is applicable to all imports from the covered countries, the proper remedy is to vacate the order as provided by 5 U.S.C. § 706(2), directing courts to "set aside agency action" found to be unlawful.

Although the Government cites no precedent for its novel assertion that a plaintiff with an Administrative Procedure Act ("APA") cause of action must satisfy the permanent injunction factors before a court can vacate the unlawful agency action (as the statute commands and courts regularly do in APA cases), *see* Def.'s Br. at 60–61, those factors are nonetheless satisfied here. In *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006), the Supreme Court made clear the standard for granting a permanent injunction, at least in cases involving private parties:

> According to well-established principles of equity, a plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

Id. at 391. If this were simply a case in which importers claimed that the Government had unlawfully imposed tariffs on them, there would be no basis to vacate the Tariffs Order while the case proceeded on appeal. A full refund, plus statutory interest, would surely be considered adequate, and the importer would not have suffered an irreparable injury.

But those cases are very different, and the circumstances here clearly favor immediate relief. These tariffs have been imposed on almost all of the products from 86 countries, in an effort to replicate the tariff revenue from the unlawful IEPPA tariffs that produced approximately $165 billion in revenue in less than eleven months. As explained below, the harms that have been, and will continue to be, inflicted on importers, intermediaries, and consumers are of a different nature from the typical tariff case before this Court, and they surely differ significantly from the private party patent litigation in *eBay*, 547 U.S. 388. The real question on the vacatur issue is whether this Court may protect parties who are directly injured by these tariffs but are unable to sue because only those who actually pay the tariffs can bring a claim in this or any other Court.

Contrary to the Government's contention, this case is distinguishable from *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), in ways that compel a different result. The main dispute in *CASA* was under what circumstances a federal court may properly issue an injunction that benefits not just the named Plaintiffs but also non-parties, extending potentially to everyone subject to the action being challenged. 606 U.S. at 837–38. Three major aspects of *CASA* that led to the narrow ruling that precluded broad relief there do not apply here: (1) that action was brought against the President, who is not an agency, so that relief under the APA, 5 U.S.C. § 706(2), was not available. Here, Plaintiffs have sued an agency, USTR, and they have invoked the APA and 28 U.S.C. § 2640(e) which authorize courts to "set aside" or vacate unlawful agency actions, including these tariffs; (2) the claims at issue in *CASA* had been properly brought in many jurisdictions, and so there was a distinct possibility that the Defendants might prevail in some districts, creating a conflict not possible in this case where exclusive jurisdiction lies in this Court; and (3) there were no barriers that prevented anyone who alleged that they were harmed by the Executive Order in *CASA* from suing and obtaining full relief for themselves, whereas here, only the importer who pays the tariff can sue, and others who pay more for their goods due to the tariffs are not eligible to sue for a "refund" in this or any other Court. Thus, the scope of the permissible vacatur relief is not controlled by *CASA*, and the question is whether Defendants should be allowed to continue to collect tariffs found to be unlawful while the case continues on appeal.

The great remedial lesson learned from the Supreme Court's decision striking down the IEEPA tariffs in *Learning Resources*, 607 U.S. at 255, is that the only parties who will benefit from the refund of tariffs resulting from that decision are U.S. importers of record who paid the tariffs. Many importers passed on all or part of the cost of the unlawful tariffs to their customers, who in turn did the same to their customers, until the product on which the tariff was paid was sold to the ultimate consumer, who had no choice but to absorb the unlawful tariffs included in the purchase price. The result, which is such common knowledge that it could be subject to judicial notice, is that although the Supreme Court's decision may result in refunds of more than $160 billion to importers, those refunds will not benefit consumers because under the applicable statute, 28 U.S.C. § 1581(i), the persons who paid the tariffs are the only parties authorized to sue for refunds.[2] *Oregon v. United States,* Nos. 26-01472-3JP, 26-01606-3JP, 2026 WL

[2] *See* Addendum, Part II (materials on the operation of the refund process and the absence of any avenue by which a downstream purchaser may recover).

1257669, at *10–11 (Ct. Int'l Trade May 7, 2026). Although there have been news reports that some large importers indicated that they might lower their prices or find some other way to pass on some of the refunds to their customers, there is no evidence that many companies are actually doing this, let alone that consumers who absorbed most of these costs will obtain any benefits from the IEEPA refunds that will be paid.[3]

The inevitable result, as applied to this case, is that no matter how quickly and decisively this Court acts, it cannot issue an injunction that will prevent irreparable harm to consumers from these illegal tariffs. Plaintiffs, wisely, did not seek a preliminary injunction, presumably in light of the APA's default vacatur remedy. As evidenced by the speed with which this Court was able to issue its decision in *Oregon v. United States,* striking down the section 122 tariffs, the period for which there will inevitably be harm to consumers can be kept to a minimum. *Id.* at *10–11. In addition, there is often a period after a tariff is imposed, especially controversial ones like these, in which, for a variety of reasons, importers do not immediately raise their prices to offset the effect of the tariff, thereby reducing the harm to intermediaries and consumers.[4]

The critical time for protecting consumers is when the Defendants seek a stay of the vacatur order pending appeal. In the ordinary tariff case, with only the interest of the party who actually paid the tariff, there might not be sufficient reason to order an immediate end to the collection of the unlawful tariffs. That is how the Government treated the injunctive orders in

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[3] The Addendum to this brief contains some of the many media reports showing that consumers are not benefitting directly from the IEEPA refunds. *See* Addendum, Part IV. It also cites to the reports that some consumers have filed class actions against major companies that obtained tariff refunds but did not share the refunds with their customers. *See* Addendum, Part V. By contrast, Federal Express, United Parcel Service, and DHL, which directly added any tariff imposed on the customer's bill, are reportedly rebating the refunds to their customers. *See* Addendum, Part VI.

[4] *See* Addendum, Part VII (describing the choice between raising prices and absorbing the cost of the tariff).

the IEEPA and section 122 cases, where it claimed that the promise to pay refunds, plus interest, justified the stay of the orders enjoining the collection of those tariffs. *See e.g.* Emergency Mot. for Stay Pending Appeal & Immediate Admin. Stay 25, *V.O.S. Selections, Inc. v. Trump*, Nos. 2025-1812, -1813 (Fed. Cir. May 29, 2025), 25, ECF No. 6. But that was before the post-Supreme Court lesson in *Learning Resources*, 607 U.S. 229, became apparent: that the consumer who is the ultimate payor of most, if not all, of the tariffs will not receive any of those refunds.

There is one other factor that should be considered in weighing the Government's inevitable request for a stay. As the judges of this Court are well aware, the process of providing for the hundreds of thousands of IEEPA refunds imposed massive burdens of time and money on this Court, the Executive Branch, and the claiming parties.[5] This is all the more certain given the Government's position in the ongoing IEEPA cases, that the Court can only order full refunds to parties in the litigation and cannot direct CBP to refund duties to non-parties.[6] Most of those costs – which cannot be "refunded" – can be avoided if the Court finds these tariffs to be unlawful and vacates them.

If the Court vacates this Tariff Order and Defendants ultimately prevail on appeal, the original order would be reinstated, and the Government may be entitled to seek to collect whatever is owed under the then-reinstated tariffs. Amicus does not understand the Government to take the contrary position. Moreover, all of the paperwork needed to assess the tariffs owed will have been completed when the goods arrive in this country, and the full force of the Federal

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[5] *See* Addendum, Parts VII, VIII (collecting accounts of importers and small businesses navigating the refund process, including partial and delayed disbursement and the cost of pursuing a claim).

[6] The Government has appealed this Court's orders directing U.S. Customs and Border Protection to refund IEEPA duties to all importers of record, contending that relief may run only to importers that filed suit. *See Atmus Filtration, Inc. v. United States*, No. 26-01259, 2026 WL 616128, at *1–2 (Ct. Int'l Trade Mar. 4, 2026); *V.O.S. Selections, Inc. et al. v. Donald J. Trump et al.*, Ct. No. 25-00066, Defendants' Notice of Appeal, ECF No. 91 (June 2, 2026).

Government can be used to collect the money owed, with interest.

Amicus recognizes that the Defendants will almost certainly appeal and seek a stay of any adverse ruling, but it urges this Court to reject the near-automatic full stays that it and the Federal Circuit have previously granted. Rather, this Court should grant a stay of no more than fourteen days and make it clear that this limited stay is being granted solely to enable the Defendants to attempt to persuade the Federal Circuit that they are correct on the merits. Because the equities so strongly favor the Plaintiffs, there should be no further stay of the vacatur order.

III. CONCLUSION

For the foregoing reasons and those set forth in the briefs of the Plaintiffs, the Court should rule that the challenged tariffs are not authorized by section 301 and should enter an order vacating the section 301 tariff determinations.

Respectfully submitted,

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