

Sec. 2—Powers, Duties of the President Cl. 2—Treaties and Appointment of Officers

transfers legislative and treaty-making power to the President.”⁴³³ Although two Justices disagreed, the question has never been revived. However, in *B. Altman & Co. v. United States*,⁴³⁴ decided twenty years later, a collateral question was passed upon. This was whether an act of Congress that gave the federal circuit courts of appeal jurisdiction of cases in which “the validity or construction of any treaty . . . was drawn in question” embraced a case involving a trade agreement which had been made under the sanction of the Tariff Act of 1897. The Court answered: “While it may be true that this commercial agreement, made under authority of the Tariff Act of 1897, § 3, was not a treaty possessing the dignity of one requiring ratification by the Senate of the United States, it was an international compact, negotiated between the representatives of two sovereign nations and made in the name and on behalf of the contracting countries, and dealing with important commercial relations between the two countries, and was proclaimed by the President. If not technically a treaty requiring ratification, nevertheless, it was a compact authorized by the Congress of the United States, negotiated and proclaimed under the authority of its President. We think such a compact is a treaty under the Circuit Court of Appeals Act, and, where its construction is directly involved, as it is here, there is a right of review by direct appeal to this court.”⁴³⁵

The Lend-Lease Act.—The most extensive delegation of authority ever made by Congress to the President to enter into executive agreements occurred within the field of the cognate powers of the two departments, the field of foreign relations, and took place at a time when war appeared to be in the offing and was in fact only a few months away. The legislation referred to is the Lend-Lease Act of March 11, 1941,⁴³⁶ by which the President was empowered for over two years—and subsequently for additional periods whenever he deemed it in the interest of the national defense to do so—to authorize “the Secretary of War, the Secretary of the Navy, or the head of any other department or agency of the Government,” to manufacture in the government arsenals, factories, and shipyards, or “otherwise procure,” to the extent that available funds made possible, “defense articles”—later amended to include foodstuffs and indus-

⁴³³ 143 U.S. at 694. See also *Dames & Moore v. Regan*, 453 U.S. 654 (1981), in which the Court sustained a series of implementing actions by the President pursuant to executive agreements with Iran in order to settle the hostage crisis. The Court found that Congress had delegated to the President certain economic powers underlying the agreements and that his suspension of claims powers had been implicitly ratified over time by Congress’s failure to set aside the asserted power. Also see *Weinberger v. Rossi*, 456 U.S. 25, 29–30 n.6 (1982).

⁴³⁴ 224 U.S. 583 (1912).

⁴³⁵ 224 U.S. at 601.

⁴³⁶ 55 Stat. 31.