

## Sec. 1—The Congress

## Legislative Powers

violated the neutral commerce of the United States. To the objection that this was an invalid delegation of legislative power, the Court answered briefly that “we can see no sufficient reason, why the legislature should not exercise its discretion in reviving the act of March 1st, 1809, either expressly or conditionally, as their judgment should direct.”<sup>101</sup>

The theory was used again in *Field v. Clark*,<sup>102</sup> where the Tariff Act of 1890 was assailed as unconstitutional because it directed the President to suspend the free importation of enumerated commodities “for such time as he shall deem just” if he found that another country imposed duties or other exactions upon agricultural or other products of the United States that he deemed “reciprocally unequal and unjust.” In sustaining this statute, the Court relied heavily upon two factors: (1) legislative precedents, which demonstrated that “in the judgment of the legislative branch of the government, it is often desirable, if not essential, . . . to invest the President with large discretion in matters arising out of the execution of statutes relating to trade and commerce with other nations,”<sup>103</sup> and (2) that the act did “not, in any real sense, invest the President with the power of legislation. . . . Congress itself prescribed, in advance, the duties to be levied, . . . while the suspension lasted. Nothing involving the expediency or the just operation of such legislation was left to the determination of the President. . . . He had no discretion in the premises except in respect to the duration of the suspension so ordered.”<sup>104</sup> By similar reasoning, the Court sustained the flexible provisions of the Tariff Act of 1922, whereby duties were increased or decreased to reflect differences in the cost of production at home and abroad, as such differences were ascertained and proclaimed by the President.<sup>105</sup>

**Standards.**—Implicit in the concept of filling in the details is the idea that there is some intelligible guiding principle or framework to apply. Indeed, the requirement that Congress set forth “intelligible principles” or “standards” to guide as well as limit the agency or official in the performance of his assigned task has been critical to the Court’s acceptance of legislative delegations. In theory, the requirement of standards serves two purposes: “it insures that the fundamental policy decisions in our society will be made not by an appointed official but by the body immediately responsible to the people . . . , [and] it prevents judicial review from becoming merely

<sup>101</sup> 11 U.S. (7 Cr.) at 388.

<sup>102</sup> 143 U.S. 649 (1892).

<sup>103</sup> 143 U.S. at 691.

<sup>104</sup> 143 U.S. at 692, 693.

<sup>105</sup> *J. W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394 (1928).