No. 07-65

In the Supreme Court of the United States

PARKDALE INTERNATIONAL, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Department of Commerce (Department) permissibly applied its new policy for calculating the most accurate antidumping duty rate for entries of merchandise by a reseller to entries that predated final announcement of the new policy, where the reseller was given an opportunity to request that the Department determine an antidumping duty rate specific to the reseller if the reseller believed that the Department's policy would otherwise result in an unduly high rate.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 3a-12a) is reported at 475 F.3d 1375. The opinion of the Court of International Trade (Pet. App. 13a-40a) is reported at 429 F. Supp. 2d 1324.

JURISDICTION

The judgment of the court of appeals was entered on February 9, 2007. A petition for rehearing was denied on April 18, 2007 (Pet. App. 1a-2a). The petition for a writ of certiorari was filed on July 16, 2007. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(l).

STATEMENT

1. The antidumping statute protects domestic industries from harm resulting from unfair foreign competi-

tion by providing for the imposition of special duties where "foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value." 19 U.S.C. 1673(1). Antidumping duties are imposed "in an amount equal to the amount by which the normal value [*i.e.*, the price of comparable merchandise sold 'in the exporting country'] exceeds the export price [*i.e.*, the price 'in the United States']." 19 U.S.C. 1673, 1677a(a), 1677b(a)(1)(B)(i). This difference is called the "dumping margin." 19 U.S.C. 1677(35)(A).

The imposition of antidumping duties requires two independent determinations. First, the Department of Commerce (Department) must determine that subject merchandise was dumped during a period of investigation. 19 U.S.C. 1673(1). Second, the International Trade Commission must determine that the domestic industry was materially injured or threatened with material injury by virtue of dumped imports. 19 U.S.C. 1673(2). If both final determinations are affirmative, the Department must issue an antidumping duty order. 19 U.S.C. 1673d(c)(2), 1673e(a). Imports that are subject to an antidumping duty order are assessed an antidumping duty equal to the dumping margin for the goods. 19 U.S.C. 1673e(a)(1).

Once an antidumping duty order is in place, Customs and Border Protection (CBP) suspends liquidation of all entries of merchandise subject to the order. 19 U.S.C. 1673e(a). Importers of subject merchandise must instead post cash deposits to cover estimated antidumping duties. 19 U.S.C. 1673e(a)(3), and (c)(3). Liquidation, the final and conclusive assessment of all duties, see generally 19 U.S.C. 1500; 19 U.S.C. 1514(a) (2000 & Supp. V 2005), occurs later, after the Department has had an opportunity to determine the actual dumping

margin for the period in which the goods entered, 19 U.S.C. 1675(a)(2)(A). The cash deposit rate is either the rate calculated for a specific producer, exporter, or reseller during the initial antidumping investigation, or the "all-others" rate for all other exporters and producers. 19 U.S.C. 1673d(c). The Department has instructed CBP to use a hierarchy of the most to the least particularized rate for determining estimated duties: first, use the company-specific rate for the relevant producer, exporter, or reseller (*i.e.*, the first company in the chain of importation that knew that the goods were destined for the United States), if one has already been individually calculated; second, use the producer's rate, if the company is an intermediary (*e.g.*, a reseller or exporter) that does not have its own rate; and third, if no other rate applies, use the "all-others" rate. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 63 Fed. Reg. 55,362 (1998) (*1998 Notice*).

On an annual basis, on the anniversary of the antidumping duty order, the Department provides an opportunity for parties to request an administrative review of an individual company's sales to determine the actual dumping margin, if any, of that company's covered imports during the review period just concluded. See generally 19 U.S.C. 1675(a); *1998 Notice*, 63 Fed. Reg. at 55,362. Any interested domestic party may request an administrative review of the dumping margin of any producer, reseller, or exporter; any importer may request a review of the dumping margin of the producer, reseller, or exporter from which it imports subject goods; and any producer, reseller, or exporter may request a review of its own dumping margin. 19 C.F.R. § 351.213(b); *1998 Notice*, 63 Fed. Reg. at 55,362-55,363.

If no administrative review is requested for a company, its entries are liquidated using the cash deposit rate. 19 C.F.R. 351.212(c). If an administrative review is requested for a company, its entries during the review period are instead liquidated at a rate based on the dumping margin determined as a result of that review. 19 U.S.C. 1675; 19 C.F.R. 351.212(b). If the review rate exceeds the cash deposit rate, then CBP collects the remainder, plus interest. If the review rate is less than the cash deposit rate, CBP refunds the difference, plus interest. 19 U.S.C. 1677g. The review rate, if a review is conducted, also becomes the basis for collecting cash deposits of estimated duties on future entries of that company. 19 U.S.C. 1675(a)(2)(C).

2. In 1998, the Department solicited comments concerning a clarification of procedures for determining the dumping margin when a reseller or other intermediary has been involved in the chain of commerce before importation. *1998 Notice*, 63 Fed. Reg. at 55,361.[1] The Department explained that its long-standing policy was to set company-specific rates based on the "first company in the commercial chain that knew, at the time the merchandise was sold, that the merchandise was destined for the United States." *Id.* at 55,362. The Department noted that it was "seldom possible to investigate resellers in an [initial] antidumping investigation." *Ibid.* If no reseller-specific rate was determined, and the importer identified the producer, the Department's policy was to instruct CBP "to apply the producer's cash deposit rate" for the reseller's entries, based on "the assumption that the producer knew that the merchandise

[1] The *1998 Notice* used the term "reseller" to refer "to any intermediary that could be an interested party," including "a reseller, a trading company, [or] an exporter." *1998 Notice*, 63 Fed. Reg. at 55,362.

was destined for the United States." *Ibid.* If no administrative review was requested of the producer or reseller in such a situation, their entries would be liquidated at the producer's cash-deposit rate because no more accurate rate would have been determined, and "no one is challenging the assumption * * * that the producer set the price of the merchandise which the reseller sold to the United States." *Id.* at 55,363.

The Department's *1998 Notice* addressed the question of how to liquidate entries when they had been entered at the producer's cash-deposit rate, but an administrative review later revealed that the price had been set by the reseller, and not the producer. The Department observed that such entries should not be liquidated at the producer's review rate because the producer did not set the price, and should instead be treated as the sales by the reseller itself. *1998 Notice*, 63 Fed. Reg. at 55,363. Resellers had contended that, in such circumstances, the entries should be liquidated at the cash-deposit rate (*i.e.*, the producer's cash-deposit rate) because no review had been requested of the reseller. *Ibid.* The Department explained in the *1998 Notice*, however, that liquidation at the producer's cash-deposit rate was inconsistent with the Department's policy to assess duties "based on the sales information of the first company in the commercial chain that knew" the goods were destined for the United States. *Ibid.* If a review demonstrated that the producer did not have such knowledge regarding a reseller's sales, then liquidation at a rate specific to the producer was inappropriate, and if there was no reseller-specific rate, the goods should be liquidated at the all-others rate. *Ibid.*

The Department recognized that, as a result of the policy clarification, resellers would have a greater inter-

est in participating in administrative reviews, because some would want to request administrative reviews of their own sales in order to ensure that their own entries would be liquidated at a reseller-specific rate, rather than at the all-others rate. *1998 Notice*, 63 Fed. Reg. at 55,363. The Department therefore provided that the policy clarification would apply only to "entries for which the anniversary date for requesting an administrative review is on or after the date of publication of a final notice on this issue." *Id.* at 55,362. The Department did not issue a final notice at that time.

3. On March 25, 2002, the Department published a second notice regarding the procedure for assessing duties for resellers, and again invited comment. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties; Additional Comment Period*, 67 Fed. Reg. 13,599.

Petitioner is a reseller of corrosion-resistant carbon steel flat products from Canada. On April 1, 2002, petitioner commented on the proposed reseller policy, stating:

> Canadian resellers had every reason to believe, at the time of importation, that their imports were subject to the existing practice, which has been either to apply automatic liquidation to all reseller entries, or to liquidate at the relevant manufacturers' rate, not to apply the 'all others' rate as a possible alternative rate depending on what the manufacturer did or did not know.

Pet. App. 6a-7a. As of the date of its comments, petitioner had made none of the entries that are at issue in the present litigation.

4. On May 6, 2003, the Department announced its final policy regarding resellers as an interpretation of its "automatic liquidation" regulation. *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 Fed. Reg. 23,954 (*Final Reseller Policy*). The *Final Reseller Policy* clarifies the assessment of non-reviewed resellers' entries and is substantially the same as the policy proposed in 1998. The clarification applies only to entries "for which the anniversary month for requesting an administrative review" is May 2003 or later. *Id.* at 23,956.

5. Three months later, in August 2003, the Department provided interested parties in connection with the antidumping order that covers petitioner's imports the opportunity to request administrative reviews with respect to entries made between August 1, 2002, and July 31, 2003. *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 68 Fed. Reg. 45,218. The notice reminded parties of the *Final Reseller Policy* and advised them to "be aware of this clarification in determining whether to request an administrative review." *Id.* at 45,219. Petitioner could have requested that the Department conduct an administrative review of its sales and thereby establish a company-specific antidumping duty rate for petitioner's entries, but it did not do so. Pet. App. 17a. Nor did any interested domestic party request a review of petitioner's entries. See Pet. 4.

Because no review was requested of petitioner's 2002-2003 entries, those entries were subject to the *Final Reseller Policy*. A party did, however, request an administrative review with respect to Stelco, the producer of most of petitioner's entered merchandise. Pet.

4. During the review it was determined that Stelco did not know at the time it sold the merchandise to petitioner that petitioner would resell it in the United States. See *Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Preliminary Results of Antidumping Duty Administrative Review*, 69 Fed. Reg. 55,138 (2004); Pet. 4. & n.1. Pursuant to the *Final Reseller Policy*, therefore, the Department applied the "all-others" rate to petitioner's entries, resulting in a rate of 18.71 percent, rather than the 4.24 percent Stelco-specific cash-deposit rate that had been collected for petitioner's products at the time they entered. Pet. App. 18a.

6. Petitioner brought suit in the Court of International Trade claiming that the *Final Reseller Policy* is impermissibly retroactive as applied to petitioner's 2002-2003 entries. The Court of International Trade upheld the Department's application of the *Final Reseller Policy* to those entries. Pet. App. 13a-40a. The court emphasized that (i) petitioner had no entitlement to liquidation at the cash deposit rate, because the final liquidation rate was always subject to determination after the close of the review period, *id.* at 30a-33a; (ii) petitioner had notice of the proposed reseller policy before the entries at issue were made, *id.* at 33a-34a; and (iii) petitioner was aware of the *Final Reseller Policy* and was given an opportunity to request a review to determine its reseller-specific rate for the subject entries, *id.* at 34a.

7. The court of appeals affirmed. Pet. App. 3a-12a. The court explained that "the United States uses a 'retrospective' assessment system," under which the rate used to determine the cash deposit of estimated antidumping duties is not the final rate, but instead "final liability for

antidumping * * * duties is determined after merchandise is imported." *Id.* at 10a (quoting 19 C.F.R. 351.212(a)). The court observed as well that the Department had applied the *Final Reseller Policy* only to liquidations that occurred after the policy had been adopted and published. *Id.* at 11a. Because "an overriding purpose" of the Department was to "calculate dumping margins as accurately as possible," it was appropriate to apply the more accurate methodology that the Department had in place at the time of final liquidation. *Ibid.* Moreover, as a general matter, petitioner had no "objectively reasonable settled expectation" that its entries would not be liquidated at a rate other than the cash deposit rate, and, more particularly, petitioner "could reasonably anticipate that adoption of the *Reseller Policy* was imminent" after the Department's 2002 notice, to which petitioner had responded with comments. *Ibid.*

ARGUMENT

The judgment of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is therefore unwarranted.

1. Petitioner contends that the Department's application of its new reseller policy to entries that pre-dated its adoption is impermissibly retroactive because it "impair[s] rights a party possessed when he acted, increase[s] a party's liability for past conduct, or impose[s] new duties with respect to transactions already completed." Pet. 10 (quoting *Landgraf* v. *USI Film Prods*, 511 U.S. 244, 280 (1994)). As this Court made clear in the very case upon which petitioner relies, however, a rule or policy is not retroactive "merely because it is applied in a case arising from conduct ante-

dating the statute's enactment or upsets expectations based in prior law. Rather, the court must ask whether the new provision attaches new legal consequences to events completed before its enactment." *Landgraf*, 511 U.S. at 269-270 (citation and footnote omitted). That admonition is particularly appropriate with respect to the calculation of antidumping duties, which, by statute, necessarily does not take place until long after the goods are entered.

Following *Landgraf*, the court of appeals, like other circuits, considers "the 'nature and extent of the change of the law,' 'the degree of connection between the operation of the new rule and a relevant past event,' and 'familiar considerations of fair notice, reasonable reliance, and settled expectations.'" *Princess Cruises, Inc.* v. *United States*, 397 F.3d 1358, 1362-1363 (Fed. Cir. 2005) (quoting *Landgraf*, 511 U.S. at 270; citing *Marrie* v. *SEC*, 374 F.3d 1196, 1206-1209 (D.C. Cir. 2004) (applying the *Landgraf* factors); *McCoy* v. *Gilbert*, 270 F.3d 503, 509 (7th Cir. 2001) (same)). Applying that standard, the court of appeals correctly held that application of the *Final Reseller Policy* to the entries here at issue was not impermissibly retroactive.

The *Final Reseller Policy* is not a rule that governs a reseller's primary conduct at the time of importation. Rather, it is a policy under which the Department determines the antidumping duty at which entries should be liquidated. The *Final Reseller Policy* is designed to ensure that resellers, such as petitioner, are not assigned low dumping margins to which they are not entitled, and the relevant "event" to which the policy relates is the process for determining the most accurate rate for liquidation. Indeed, as a policy regarding adjudication, rather than the primary act of importation, the Depart-

ment's policy is not even subject to the general presumption that agencies are not to engage in retroactive rulemaking.

Moreover, petitioner had notice, before the time for requesting an administrative review, that the Department would not apply the producer's rate if the producer did not set the price of petitioner's sales, but rather that under the *Final Reseller Policy*, the Department would apply the "all-others" rate. Had petitioner believed that the "all-others" rate was higher than its own dumping margin, it was free to ask the Department to determine a reseller-specific antidumping duty based on petitioner's own sales. Thus, under the familiar *Landgraf* factors, the Department's application of the "all-others" rate to petitioner was not impermissibly retroactive.

a. "[T]he United States uses a 'retrospective' assessment system under which final liability for antidumping and countervailing duties is determined" after entry. 19 C.F.R. 351.212(a), 351.213(a); see 19 U.S.C. 1675(a) (providing for the calculation of the rate of antidumping duties owed on already-completed entries). As a result, importers pay cash deposits of estimated duties at entry, with full awareness that the final rate of duty may be calculated and assessed years in the future, at the time of liquidation.

An importer can claim no settled expectation that its goods will be assessed at a particular rate when liquidation ultimately occurs. Petitioner acknowledges that at the time of entry, an importer pays only "a cash deposit of estimated duties" and that it "agrees to pay whatever antidumping duties are ultimately assessed on those goods." Pet. 12 (internal quotation marks omitted). Petitioner further concedes that the importer cannot know "[t]he precise amount of liability" until "liquida-

tion, after the goods have been entered and there has been an opportunity for administrative review of the entries to determine the amount of liability." Pet. 13; Pet. 14 (acknowledging that "[r]esellers do import with knowledge that ultimate *duties* owed may change").

Indeed, petitioner acknowledges that, at the time of the entries here at issue, a reseller could not even know the *manner* in which the ultimate duty would be determined. Pet. 13. Although a reseller *might* have its entries automatically liquidated at the producer's cash-deposit rate, it was not entitled to such treatment. Rather, resellers, including petitioner, were always subject to the possibility that the Department would conduct an "administrative review" of their entries to determine a "reseller-specific duty margin" based on the reseller's own sales behavior. *Ibid.*

As the court of appeals held, it is "an overriding purpose of Commerce's administration of antidumping laws" to "calculate dumping margins as accurately as possible" for purposes of final liquidation. Pet. App. 11a. The Department's adoption of the *Final Reseller Policy* does not regulate the importer's primary conduct at the time of entry. Rather, it represents an attempt by the Department to ensure that its own process for determining antidumping duties for purposes of final liquidation allows it to do so "as accurately as possible." *Ibid.* The Department determined that automatic liquidation of resellers' entries at the producer's cash-deposit rate is *not* an accurate assessment of the dumping margin for those entries when the Department has determined through the administrative review process that the producer was not involved in setting the price. 63 Fed. Reg. at 55,363. Once the Department has determined that the *producer's* rate is inapposite to the entries, its other

options are to assess the entries at a reseller-specific rate, or the "all-others" rate. *Ibid.*

Petitioner does not contend that its producer's (*i.e.*, Stelco's) cash-deposit rate, which was used to calculate petitioner's estimated duties, is, as a factual matter, an accurate calculation of petitioner's dumping margin. To the contrary, petitioner concedes that "[t]here is no dispute" that Stelco "did not know at the time that it sold the merchandise [to petitioner] that the merchandise was destined for the United States." Pet. 4 n.1. Thus, the Department was correct not to liquidate petitioner's entries at the admittedly inaccurate Stelco rate.

As the above demonstrates, the *Final Reseller Policy* governs not petitioner's behavior in setting import prices, but the Department's method of determining the most accurate and appropriate antidumping duty rate based on the evidence available to it during the administrative review process, *i.e.*, the adjudication of the dumping margin for reseller's entries. Because the *Final Reseller Policy* "regulate[s] the secondary conduct of litigation and not the underlying primary conduct of the parties," it is not genuinely retroactive in the disfavored sense discussed in *Landgraf*. *Hughes Aircraft Co.* v. *United States ex rel. Schumer*, 520 U.S. 939, 951 (1997) (citing *Landgraf*, 511 U.S. at 275). Moreover, as Justice Scalia noted in his concurring opinion in *Bowen* v. *Georgetown University Hospital*, 488 U.S. 204, 216 (1988), the presumption against retroactive agency rulemaking has no application to agency adjudications, "where retroactivity is not only permissible but standard," *id.* at 221, because, by its nature, adjudication concerns "the determination of past and present rights and liabilities," *id.* at 219 (quoting *1947 Attorney General's Manual on the Administrative Procedure Act* 14);

see also *id.* at 224 ("where no preexisting interpretive rule construing [statutory] requirements is in effect, nothing prevents the agency from acting retroactively through adjudication"). Petitioner acknowledges that "[a]n administrative review is a mechanism for establishing an appropriate producer- or reseller-specific duty margin for particular entries," *i.e.*, it is an adjudication. Thus, petitioner's retroactivity arguments fail for that reason alone.

b. But even if the *Final Reseller Policy* is subjected to a full *Landgraf* analysis, petitioner's arguments still fail. Petitioner contends that "[t]he change in default rule altered the calculus for petitioner and other similarly situated importers in deciding whether, and how much, to import." Pet. 13. But that argument lacks force in light of the fact, which petitioner acknowledges, that petitioner made its importation decisions with full realization that its goods could be subject to a reseller-specific antidumping duty if one were determined during the course of the administrative review. See *ibid.* When the time for requesting administrative reviews arrived, the *Final Reseller Policy* had changed the manner for determining assessment rate for resellers who set their own prices, but it was still open to petitioner to request a review and thereby obtain a reseller-specific antidumping duty rate based on its own sales practices—a rate that petitioner had always known, even at the time of entry, could be the ultimate outcome of the review and liquidation process. Petitioner had, by its own admission, no entitlement to the inaccurate producer rate, and its own failure to request a rate based on its own sales behavior does not render the Department's application of the *Final Reseller Policy* impermissibly retroactive.

Moreover, before petitioner made any of the entries at issue here, it received "fair notice" of the change in policy that was more than sufficient to eliminate any "reasonable reliance" or "settled expectations" that petitioner may have had based on the old practice. *Landgraf*, 511 U.S. at 270. In March 2002, before petitioner entered any of the subject merchandise, it received notice that the Department's practice for determining final liquidation rates was subject to change. It also had forewarning at that time that any new policy "would apply to all entries for which the anniversary date for requesting an administrative review is on or after the date of publication of a final decision on this issue." 67 Fed. Reg. at 13,599.

Indeed, as the court of appeals noted (Pet. App. 11a), petitioner's April 2002 comments in response to the March 2002 notice (which also predates the entries here at issue) reflect petitioner's own awareness that it could not rely on the old practice of automatic liquidation of resellers' entries at the producer's cash-deposit rate. See Pet. App. 6a (quoting petitioner's comment that "*until issuance of that March 25, 2002 notice*, Canadian resellers had every reason to believe" that liquidation would be at the producer's or reseller's own rate) (emphasis added).

2. Petitioner further urges (Pet. 17-27) the Court to grant the petition for a writ of certiorari in order to resolve a conflict on that final point—the significance of petitioner's own awareness of the proposed change to the Department's practice—among the court below and other circuits regarding whether reliance "is to be assessed subjectively, objectively, or not at all in a retroactivity analysis." Pet. 17. That disagreement among the circuits does not warrant this Court's review, and

even if it did, this case would not present an appropriate opportunity for addressing the issue.

For the reasons discussed above, the court of appeals' decision was correct, without regard to petitioner's lack of subjective reliance. The court emphasized that the "triggering event" was "liquidation, or commencement of the administrative review," and not the entry of petitioner's goods, Pet. App. 10a, and that the policy's application was "prospective" because it was applied to reviews and liquidations that post-dated its adoption, *id.* at 11a. The court looked to "considerations of fair notice, reasonable reliance, and settled expectations" only to "remove any doubt." *Ibid.* Although the court cited petitioner's own submission as evidence of lack of reliance, the standard the court applied was whether petitioner had an "objectively reasonable settled expectation." *Ibid.* Thus, the absence of any subjective reliance on the part of petitioner was not essential to the court of appeals' holding that the Department's application of the *Final Reseller Policy* to petitioner's entries was not impermissibly retroactive.

Moreover, the circuit conflict that petitioner contends exists, and urges the Court to resolve in this case, consists almost entirely of cases that address the retroactive application of one statute, the Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA). See Pet. 18-25. Although the United States has acknowledged that there appears to be a conflict between one decision of the Third Circuit and the decisions of other courts of appeals with respect to the retroactive application of IIRIRA, we have explained that the conflict does not require this Court's review. See U.S. Br. at 13-15, *Rodriguez-Zapata* v. *Gonzales*, 127 S. Ct. 2934 (2007) (No. 06-929). In light of the considerable time

that has passed since IIRIRA's enactment, that disagreement will soon become irrelevant, and, moreover, only a few courts of appeals have considered the question in light of new regulations issued by the Department of Justice. *Ibid.* This Court has consistently declined to grant review to address the issue of IIRIRA's retroactive application in cases that involve that statute. See *Rodriguez-Zapata* v. *Gonzales*, 127 S. Ct. 2934 (2007); *Appel* v. *Gonzales*, 127 S. Ct. 659 (2006); *Sidhu* v. *Gonzales*, 127 S. Ct. 495 (2006); *Hernandez-Castillo* v. *Gonzales*, 127 S. Ct. 40 (2006); *Thom* v. *Gonzales*, 546 U.S. 828 (2005); *Stephens* v. *Ashcroft*, 543 U.S. 1124 (2005); *Reyes* v. *McElroy*, 543 U.S. 1057 (2005). Plainly, the purported conflict with respect to IIRIRA does not support the grant of review in a case that does not involve that statute in any way.[2]

3. Petitioner's additional contention (Pet. 10, 27-30) that retroactivity analysis must necessarily "be assessed from the time that an actual rule change is promulgated, not when a potential rule change is floated for public comment," Pet. 10, is contrary to this Court's precedent. In *United States* v. *Carlton*, 512 U.S. 26 (1994), the Court observed, in the process of upholding the retroactive application of a corrective amendment to the tax law, that "the amendment was proposed by the IRS in January 1987 and by Congress in February 1987," shortly after the initial statute was enacted and many months before the final amendment was adopted. *Id.* at

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[2] The only non-IIRIRA case from another court of appeals that petitioner cites as evidence of the purported conflict is the D.C. Circuit's decision in *Marrie*, which, according to petitioner, considered "reliance as a tie breaker." Pet. 25. As discussed in the text, see pp. 14-15, *supra*, that is precisely how the court of appeals utilized evidence of petitioner's lack of reliance in this case. See Pet. App. 11a.

33. Thus, it was appropriate for the court of appeals to consider the fact that the public was advised of the Department's proposed change before petitioner's imports took place.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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