

No. 05-986

In the Supreme Court of the United States

RENESAS TECHNOLOGY AMERICA, INC., PETITIONER

v.

UNITED STATES, ET AL.

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

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

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QUESTION PRESENTED

Whether the court of appeals correctly sustained the Department of Commerce's practice, in connection with administrative reviews of antidumping duties, of liquidating unreviewed entries from independent resellers at the cash deposit rate rather than the rate determined by a review of entries exported by the producer.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-2) is not published in the Federal Reporter, but is reprinted in 140 F. App'x 943. The opinion of the Court of International Trade (Pet. App. 4-19) is reported at 25 I.T.R.D. (BNA) 2147, and is available at 2003 WL 21972721.

JURISDICTION

The judgment of the court of appeals was entered on July 1, 2005. A petition for rehearing was denied on September 19, 2005 (Pet. App. 67-68). On December 5, 2005, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including February 2, 2006, and the petition was filed on that date.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

This case concerns a challenge to instructions given by the Department of Commerce (Commerce) to Customs and Border Protection to finally assess duties upon, *i.e.*, to “liquidate,” certain merchandise imported by petitioner that was subject to an antidumping duty concerning dynamic random access memory semiconductors (DRAMs) from the Republic of Korea. See Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea, 58 Fed. Reg. 15,467 (1993); Antidumping Duty Order and Amended Final Determination: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea, 58 Fed. Reg. 27,520 (1993). The liquidation instructions contested by petitioner were issued subsequent to Commerce’s final determinations after conducting administrative reviews of the antidumping order. See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 61 Fed. Reg. 20,216 (1996); Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 62 Fed. Reg. 965 (1997).

The facts of this case are identical in all material respects to those in another case, arising out of the same antidumping order and the same liquidation instructions, in which a petition for a writ of certiorari is currently pending, *Hitachi High Technologies America*,

Inc. v. United States (Hitachi), No. 05-918 (filed Jan. 17, 2006). The decisions of the Court of International Trade in the two cases, which were issued by the same judge (Goldberg, J.) on the same day, are identical with the exception of the parties' names. Compare Pet. App. 4-19 with 05-918 Pet. App. 7a-23a. Likewise, the court of appeals' decision in petitioner's case was issued by the same panel on the same day as the decision at issue in the *Hitachi* petition, compare Pet. App. 1-2 with 05-918 Pet. App. 1a-6a, and the decision in this case disposed of the appeal on the basis of the decision in *Hitachi*, which the court of appeals noted was "materially indistinguishable." Pet. App. 2.¹ We therefore incorporate by reference the statement set forth in the government's brief in opposition in *Hitachi*, a copy of which is provided herewith to petitioner.

ARGUMENT

The arguments advanced by petitioner are largely the same as those articulated by petitioner in the *Hitachi* petition. Compare Pet. 17-27 with 05-918 Pet. 11-17. We therefore incorporate by reference the argument set forth in the government's brief in opposition in *Hitachi*. Any additional arguments presented by petitioner do not alter the conclusion that the decision of the court of appeals is correct and that review by this Court is not warranted.

It is notable that, in contrast to *Hitachi*, petitioner here acknowledges (Pet. 19-21) that the supposed conundrum faced by importers that *Hitachi* urges as a basis of review, see 05-918 Pet. 15-16—*i.e.*, the assertion that

¹ *Hitachi High Technologies America, Inc.*, was formerly known as *Nissei Sangyo America, Ltd.*, and the court of appeals caption bears the earlier name. See 05-918 Pet. App. 1a.

importers must either purchase from producers directly and forego competitive pricing or acquiesce in paying the allegedly inflated “all others” rate—can, in fact, be avoided if “the importer requests a review of its reseller.” Pet. 19. Petitioner claims that a separate review of its reseller would have been “redundant” and “pointless” because petitioner “followed the market” and therefore, petitioner asserts, its reseller “should have had the same review result as LG [Semicon Co., Ltd.]” Pet. 20-21. Plainly, neither Commerce nor this Court is obliged to accept on faith petitioner’s claim that its unidentified third-party reseller was not engaging in independent dumping behavior.

Petitioner also argues (Pet. 25-26) that Commerce’s policy, adopted in 2003, of liquidating imports from unreviewed independent resellers at the “all others” rate (see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 Fed. Reg. 23,954) is inconsistent with Commerce’s policy of requiring cash deposits at the rate established for the producer. Because the policy to liquidate at the “all others” rate was adopted only prospectively for administrative reviews requested after the new policy was finally promulgated, see *id.* at 23,961, and was not applied to petitioner, there is no occasion for the Court to review that policy at this time.

In any event, Commerce has explained why the producer’s cash deposit rate is used as the estimated antidumping duty for all imports of that producer’s merchandise. Because it lacks any better information at the time of entry, Commerce operates on “the assumption * * * that the producer made the U.S. sales.” 68 Fed. Reg. at 23,958. As Commerce described:

while entry was made at the producer's cash-deposit rate under a reasonable assumption at the time of entry that the producer was involved in the U.S. transaction, through the administrative review the producer identified its actual customers and importers for its U.S. sales and only entries involving those customers and importers are appropriately assessed duties based on the results of the review.

Ibid. Petitioner's argument, in effect, attempts to turn Commerce's pragmatic policy of using the producer's cash deposit rate as an estimated dumping duty until the administrative review provides importer-specific data into an entitlement to have imports from an independent reseller liquidated at the producer's rate. Neither the statutory text nor logic compels such a result.

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

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