No. 20-____

IN THE

Supreme Court of the United States

HYUNDAI HEAVY INDUSTRIES CO., LTD.,

Petitioner,

v.

UNITED STATES and
ABB, INC.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

PETITION FOR WRIT OF CERTIORARI

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February 5, 2021

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QUESTION PRESENTED

Whether the Federal Circuit erred by affirming, in conflict with the D.C. Circuit, the practice that an administrative agency may penalize the subject of an agency determination for failure to conform with a methodology, after the agency has altered that methodology and applied it retroactively in making its determination.

PARTIES TO THE PROCEEDING

Petitioner Hyundai Heavy Industries, Co., Ltd. was plaintiff before the United States Court of International Trade and plaintiff-appellant before the United States Court of Appeals for the Federal Circuit.

Respondent United States was defendant before the United States Court of International Trade and defendant-appellee before the United States Court of Appeals for the Federal Circuit.

Respondent ABB, Inc. was defendant-intervenor before the United States Court of International Trade and defendant-appellee before the United States Court of Appeals for the Federal Circuit.

CORPORATE DISCLOSURE STATEMENT

Hyundai Heavy Industries Holdings Co., Ltd. is a publicly owned company that owns more than 10% of the stock of Petitioner Hyundai Heavy Industries Co., Ltd.

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PETITION

Petitioner Hyundai Heavy Industries Co., Ltd. ("Hyundai") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit ("Federal Circuit").

OPINIONS BELOW

In 2018, the Court of International Trade ("CIT") issued an opinion in this case, App. 23a-63a, which is reported at 332 F. Supp. 3d 1331 (Ct. Int'l Trade 2018). In that opinion, the CIT affirmed the decision of the Department of Commerce (the "Department"), in part, and remanded the matter to the Department, in part. The Department issued its remand redetermination in 2018, and the CIT Trade affirmed that remand redetermination in 2019, App. 3a-22a, which is reported at 399 F. Supp. 3d 1305 (Ct. Int'l Trade 2019). Following an appeal by Hyundai, the Federal Circuit affirmed the decision of the CIT in 2020. That order of the Federal Circuit, App. 1a-2a, from which this Petition arises, is reported at 819 Fed. Appx. 937 (Fed. Cir. 2020).

JURISDICTION

On March 19, 2020, this Court issued an order stating that "the deadline to file any petition for a writ of certiorari due on or after the date of this order is extended to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing." On September 8, 2020, the Federal Circuit entered the judgment from which this Petition arises. App. 2a.

Based on this Court's March 19, 2020 order, the deadline for this petition is February 5, 2021.

28 U.S.C. § 1254(1) provides this Court with jurisdiction to review the Federal Circuit's judgment.

PROVISIONS INVOLVED

The relevant provisions of the United States Code and Code of Federal Regulations are set forth in Appendix D.

STATEMENT

This Petition presents a question that underlies the "explosive growth of the administrative state over the last half century[.]" *Kisor v. Wilkie*, 139 S. Ct. 2400, 2446 (2019) (Gorsuch, J., concurring). That is, when an administrative agency revises a methodology that is crucial to its decision in a given proceeding, may it apply that methodology retroactively, and then penalize the subject of that proceeding for a failure to conform with the revised methodology?

The answer to this question has the potential to affect countless individuals and entities that are the subject of administrative agency actions. Yet that same answer is dependent on the court reviewing the agency's decision.

Specifically, a split has developed between the two circuits predominantly responsible for the judicial review of administrative agency actions. One is the United States Court of Appeals for the D.C. Circuit ("D.C. Circuit"), the "de facto, quasi-specialized administrative law court" that "has exclusive jurisdiction over a variety of challenges to administrative action and hears a disproportionate share of the United States' administrative law cases." John M. Golden, *The Federal Circuit and the D.C. Circuit: Comparative Trials of Two Semi-Specialized Courts*, 78 GEO. WASH. L. REV. 553, 554 (2010) (internal quotation marks and citations omitted). The other is the United States Court of Appeals for the Federal Circuit ("Federal Circuit"), whose "jurisdiction features a broad but discrete spectrum" of exclusive subject matters including patents, international trade,

and veterans' affairs. *Id.* at 555; *see* 28 U.S.C. § 1295(a).

The case below – an appeal of a determination by the Department of Commerce (the "Department") pursuant to the Tariff Act of 1930, over which the Federal Circuit has exclusive jurisdiction – represents the controlling Federal Circuit precedent. Pursuant to that precedent, an agency may revise a methodology during an administrative proceeding, application of which will "permissibly involve retroactive effect." *SKF USA, Inc. v. United States*, 537 F.3d 1373, 1380-81 (Fed. Cir. 2008) (citation omitted). The D.C. Circuit takes a substantially more restrictive approach, citing "the rule that agencies may not alter rates {(and the methodologies upon which such rates are based)} retroactively" due to the need to "prevent unjust discrimination and . . . ensure predictability." *Oxy USA v. FERC*, 64 F.3d 679, 699 (D.C. Cir. 1995) (citations omitted).

The existence of conflicting standards in two circuits pertaining to a single question, which goes to the heart of administrative agencies' power, makes the need for this Court's review of this decision paramount. Individuals and entities subject to administrative agency decisions should reasonably expect consistent treatment, irrespective of the reviewing court.

I. Background

A. Statutory Framework for Antidumping Duty Proceedings

Pursuant to the Tariff Act of 1930, the United States will impose antidumping duties on imports of a product from one or more countries that the Department determines are "dumped" (*i.e.*, sold "at less than its fair value") and which the International Trade Commission determines cause "material injury" to a U.S. industry. 19 U.S.C. § 1673.

Upon receipt of a dumping allegation in a petition filed on behalf of a U.S. industry, each agency will independently investigate and make a preliminary determination, followed by a final determination, regarding each statutory element (dumping and material injury). 19 U.S.C. §§ 1673a-1673d. The subjects of such investigations – "respondents" – are the individual foreign producers and exporters of the product in question. *See* 19 U.S.C. § 1677f-1(c).

If both agencies issue final affirmative determinations, then the Department will issue an antidumping duty order, instructing Customs and Border Protection to assess duties equal to the "dumping margin" calculated by the Department for each individual respondent. 19 U.S.C. § 1673d(b)(1), (c)(1).

The dumping margin is the amount by which the "normal value" of the product under investigation exceeds the "export price or constructed export price" of the product under investigation. 19 U.S.C.

§ 1677(35)(A). The normal value is "the price at which the foreign like product is first sold . . . for consumption in the exporting country," 19 U.S.C. § 1677b(a)(1)(B)(i), whereas the export price or constructed export price is each "the price at which" the product under investigation "is first sold" for export to the United States. 19 U.S.C. § 1677a(a)-(b).

Antidumping duty orders are subject to annual "administrative reviews" in which the Department revises the applicable dumping margin, and in turn, the antidumping duties to be assessed. 19 U.S.C. § 1675(a)(1)(B), (C). The resulting duties are assessed on imports made during the applicable period of review. *See* 19 U.S.C. § 1675(a)(2)(A). As in an antidumping investigation, the Department will make a preliminary determination, followed by a final determination, in an administrative review. 19 U.S.C. § 1675(a)(3)(A).

Any interested party may challenge the final result of an antidumping duty investigation or administrative review before CIT. 19 U.S.C. § 1516a(a)(2); 28 U.S.C. § 1581(c). The CIT will hold such a determination unlawful if it is unsupported by substantial evidence on the record or otherwise not in accordance with law. 19 U.S.C. § 1516a(b)(1)(B)(i).

B. "Service-Related Revenue" and the Department's "Capping" Methodology

As explained *supra*, the Department will compare the normal value of the product under investigation to the constructed export price or export price of the same in order to calculate a dumping margin. Neither

normal value, export price, nor constructed export price may include any charges or revenue other than the price of the product itself, save for certain charges (*e.g.*, shipping and container costs). *See* 19 U.S.C. §§ 1677a(c), 1677a(d), 1677b(a)(6).

In particular, revenue associated with services that do not relate to the price of the product and that the respondent separately negotiates with its customer (*e.g.*, freight) may not be added to the calculation of normal value, export price, or constructed export price. *See* App. 85a-87a. Neither the statute nor the Department's regulations expressly state this. *See id.* Nor does the statute or the regulations define or otherwise provide guidance on when revenue is to be considered related to a service.

Where such revenue is related to a separately-negotiated service ("service-related revenue" or "SRR"), the Department "caps" the SRR by the associated expense paid by the respondent when determining the price of the product under investigation. *See* App. 39a. This "capping" methodology prevents prices from being overstated by ensuring that "revenues for services provided with the sale in excess of the related expense" are not included in the price of the product. App. 85a.

C. Legal Framework for the Application of "Adverse Facts Available"

In the course of an investigation or review, the Department will issue questionnaires to respondents soliciting data and information that it reviews in order to calculate a dumping margin. 19 C.F.R.

§§ 351.221(a), 351.221(b)(2), 351.301(c)(1). If a respondent "withholds" information, "fails to provide" it "in the form and manner requested," or otherwise "significantly impedes" the proceeding, the Department may use "facts otherwise available" in calculating a dumping margin, in lieu of the information and data submitted by the respondent to the Department. 19 U.S.C. § 1677e(a)(2). Before resorting to facts available, the Department "shall promptly inform" the respondent of any deficiency and provide "an opportunity to remedy or explain" it. 19 U.S.C. § 1677m(d).

The Department may further use an adverse inference in selecting the facts available if the respondent has "failed to cooperate by not acting to the best of its ability to comply with a request for information[.]" 19 U.S.C. § 1677e(b). This is known as "adverse facts available," or "AFA."

"Before making an adverse inference, Commerce must examine a respondent's actions and assess the extent of the respondent's abilities, efforts, and cooperation in responding to Commerce's requests for information." *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003). The Department may further disregard all data provided by the respondent and use "total" AFA "where none of the reported data is reliable or usable" if, for example, such data "exhibited pervasive and persistent deficiencies[.]" *Zhejiang Dunan Hetian Metal Co. v. United States*, 652 F.3d 1333, 1348 (Fed. Cir. 2011) (citation omitted).

D. Hyundai's Third Administrative Review

Hyundai participated as a respondent in the third administrative review of the antidumping duty order on large power transformers ("LPTs") from Korea, covering the period of review August 1, 2014 through July 31, 2015 ("POR3"). Hyundai had previously participated in the original investigation ("OI"), which led to the antidumping duty order, and the first ("POR1") and second ("POR2") administrative reviews.

In the POR3 review, the Department requested in the initial antidumping questionnaire ("*Initial Questionnaire*") that Hyundai separately "report revenue" and "identify the related expense(s) for each" instance of SRR. App. 432a. The Department did not define or provide guidance on when revenue was to be considered separate and related to a service.

Hyundai had responded to the Department's instruction to report SRR separately in the OI, POR1 review, and POR2 review, the last of which was ongoing at the time Hyundai prepared its response in POR3. In each prior proceeding, the Department had agreed with Hyundai's reporting, calculating a dumping margin based on Hyundai's submitted data and information. *See* App. 130a-133a; App. 140a-145a; App. 153a-159a.

Consistent with the Department's findings in those proceedings, Hyundai explained in response to the *Initial Questionnaire* that it did not have SRR to report. This was because Hyundai was required to provide services under the terms of sale of the LPT and invoiced the SRR with the price of the LPT (the

"Department's definition"). App. 428a-431a. In the OI and POR2 review, the Department concluded that there was no SRR to report in such cases. App. 124a-129a; App. 164a-172a. Hyundai clearly explained its reliance on the Department's definition in its response to the *Initial Questionnaire*, pointing to explicit statements by the Department that "its practice is to separate revenue and expenses 'that are not included in the term of sale.'" App. 428a-431a.

After Hyundai submitted its response to the *Initial Questionnaire*, ABB, Inc. ("ABB"), which filed the original antidumping duty petition, argued that Hyundai had not reported SRR correctly. *See* App. 421a-427a. Citing to Hyundai's sales documents from the prior (*i.e.*, POR2) administrative review, ABB claimed that, wherever documents contained line items for separate services, Hyundai was obligated to report SRR for those services ("ABB's definition"). *See id.*

The Department subsequently issued the final results for the POR2 review. *See* App. 111a-129a. As in the OI and POR1 review, the Department found that Hyundai had correctly reported SRR – that is, by not reporting SRR where the terms of sale required the provision of the services in question. *See* App. 127a-129a. It made this finding despite the fact that some of Hyundai's invoices included separate line items for SRR. Citing to the very same documents that ABB cited in the POR3 review, the Department concluded that there was "no indication that Hyundai improperly reported its sales data" because Hyundai's reported

SRR was consistent with its "reported terms of sale." App. 128a.

Thereafter, the Department issued one of several supplemental questionnaires in the POR3 review ("*Supplemental Questionnaire*"), asking Hyundai to "clarify" its SRR reporting. App. 420a. Hyundai stated that it did not have separate SRR because, consistent with the Department's approach, ratified only a few months earlier in the final results of the POR2 review, all such services were performed in accordance with the terms of sale. *See* App. 416a-219a.

The Department subsequently issued the preliminary results for the POR3 review, in which it did not identify any deficiency with, or otherwise disagree with, Hyundai's reporting of SRR. App. 100a-110a. In turn, the Department used Hyundai's submitted information to calculate a dumping margin of 3.09 percent. App. 103a.

A month after issuing the preliminary results of the POR3 review, the Department took the unusual step of issuing another supplemental questionnaire ("*Post-Preliminary Questionnaire*").[1] *See* App. 415a. Therein, it requested that Hyundai revise its reporting of SRR to match ABB's definition. *See id.* This was the first time that the Department (1) had requested Hyundai to report SRR in this way, and (2) gave any

[1] The Department typically does not accept new factual information after the preliminary results of a proceeding, making the issuance of a supplemental questionnaire an uncommon occurrence. *See* 19 C.F.R. § 351.301.

indication that it might agree with ABB's definition, thereby changing its application of the "capping" methodology. The Department further requested that, if Hyundai believed "there were no additional expenses or revenues related to a sale," to "comment on" ABB's contention. *Id.*

In response, Hyundai provided a worksheet reporting SRR based on revenue separately listed in its sales documentation and the corresponding expenses. App. 414a (referring to "Attachment 3S-46"). Hyundai also provided a detailed, 20-page explanation, supported by documentary evidence, of why its reporting of SRR was correct under the Department's definition. App. 393a-414a. The Department did not notify Hyundai of any deficiencies prior to issuing the *Final Results*.

In the final results of the POR3 review, the Department disregarded SRR as reported in Hyundai's response to the *Initial Questionnaire*, and, based on Hyundai's reporting of SRR in part, assigned a total AFA dumping margin of 60.81 percent. App. 64a; App. 68a; App. 76a-99a.

The Department did not explain why the definition that it had applied in the OI, POR1 review, and POR2 review was no longer valid. *See* App. 76a-99a. The Department also disregarded SRR as reported in the worksheet provided in response to the *Post-Preliminary Questionnaire* under ABB's definition, concluding that it could not review the worksheet because Hyundai refused to report SRR "until the very late [*sic*] in this review process." App. 98a. The Department did not identify any specific errors in the

worksheet nor discuss why any such errors were so prevalent as to justify disregarding all of the data. *See* App. 94a-99a.

II. The 2018 Court of International Trade Opinion

Hyundai appealed the Department's decision to the CIT. The CIT concluded that the Department's decision to apply total AFA based on Hyundai's SRR reporting was supported by substantial evidence. App. 38a-45a. The CIT found that the Department's requests "informed" Hyundai that "its reporting of service-related revenue was deficient," and that Hyundai, which behaved with "intentional obtuseness," could not rely on the Department's prior statements and conclusions regarding SRR because "each review is separate and based on the record developed before the agency in the review." App. 42a-44a. The CIT agreed with the Department's finding that the worksheet submitted in the response to the *Post-Preliminary Questionnaire* contained errors, without specifying what they were. *See* App. 44a-45a.

III. The 2020 Federal Circuit Court of Appeals Order

Hyundai further appealed the CIT's decision to the Federal Circuit. Pursuant to its Rule 36, the Federal Circuit issued a summary affirmance of the CIT's decision without a written opinion. App. 1a-2a.

REASONS FOR GRANTING THE PETITION

I. The Split between the Federal Circuit and D.C. Circuit Regarding Retroactive Application of Revised Methodologies Undermines the Predictability and Reliability of Agency Action

A. The Federal Circuit's Affirmance in This Case Reinforces its Precedent that an Agency May Retroactively Revise a Methodology

The Federal Circuit affirmed the Department's use of total AFA to Hyundai on account of its conclusion that Hyundai failed to report SRR. This conclusion was based on the Department's revision to its "capping" methodology, which it applied retroactively. As detailed below, this affirmance reinforces the Federal Circuit's permissive approach toward an agency's retroactive application of a revised methodology.

In ruling on Hyundai's appeal, the Federal Circuit issued a summary affirmance pursuant to its Rule 36. App. 2a. A Rule 36 judgment "simply confirms that the trial court entered the correct judgment. It does not endorse or reject any specific part of the trial court's reasoning." *Rates Tech., Inc. v. Mediatrix Telecom, Inc.*, 688 F.3d 742, 750 (Fed. Cir. 2012). Such summary affirmance, therefore, "extends no further than the precise issues presented" in an appeal. *Anderson v. Celebrezze*, 460 U.S. 780, 784 n.5 (1983) (internal quotation marks and citations omitted).

The "precise issue presented" by Hyundai to the Federal Circuit arose from the Department's change to its "capping" methodology, which ultimately led the Department to apply total AFA to Hyundai in the POR3 final results.

The Department's methodology for reporting and "capping" SRR depended on how it defined SRR. App. 87a-88a, n.88 (referring to a "capping methodology" that applies to "both U.S. and home market revenues"). From the OI through the POR2 review, the Department's definition of SRR, as used in its "capping" methodology was clear: Hyundai did not have separate revenue to report if a service was provided in accordance with the terms of sale. App. 428a-430a. Hyundai repeatedly made clear to the Department that it was relying on this understanding of the methodology throughout the POR3 review. *See id.*; *see also* App. 416a-419a; App. 393a-414a. And, the Department likewise communicated its use of this definition in the methodology during the POR3 review, by applying it in the concurrent final results of the POR2 review. *See* App. 127a-128a.

Yet, belatedly, in the POR3 final results, the Department changed this methodology, after having notified Hyundai late in the administrative review, that it would require Hyundai to report SRR in accordance with ABB's definition – that is, wherever such revenue was separately listed in its sales documentation. *See* App. 415a. It then applied this methodology retroactively, penalizing Hyundai with AFA for both relying on its prior methodology, and for reporting SRR in accordance with the new

methodology because such reporting was submitted "late in this review process." App. 98a.

The Federal Circuit has elsewhere affirmed the Department's discretion to make such changes with retroactive effect. In *SKF USA, Inc. v. United States*, the Federal Circuit held that, as long as the Department "compl[ies] with the notice provisions of the statute, [c]hanges in methodology, like all other antidumping review determinations, permissibly involve retroactive effect." 537 F.3d at 1380-81 (internal quotation marks omitted) (quoting *Koyo Seiko, Co. Ltd. v. United States*, 516 F. Supp. 2d 1323, 1334 (Ct. Int'l Trade 2007)). The Federal Circuit's affirmance in this case thus reinforced its established precedent that retroactive application of an agency's changed methodology is permissible.

Other Federal Circuit decisions have likewise reinforced this permissive approach. *See*, *e.g.*, *Koyo Seiko Co. v. United States*, 551 F.3d 1286, 1290 (Fed. Cir. 2008) ("This court's decision in *SKF* . . . requires us to affirm Commerce's new model match methodology"). In *Huvis Corp. v. United States*, the Federal Circuit ruled that "Commerce need only show that its methodology is permissible under the statute and that it had good reasons for the new methodology." 570 F.3d 1347, 1353 (Fed. Cir. 2009). For example, "[i]mproving accuracy is generally a good reason for a change in methodology." *Id.* at 1355 (citing *SKF USA Inc.*, 537 F.3d at 1380). In outlining Commerce's broad ability to change methodologies in *Huvis*, the Federal Circuit did not place any restrictions on retroactive application. *See generally id.*

In sum, relevant precedent, including *SKF*, *Koyo Seiko*, and *Huvis Corp.*, confirms that the Federal Circuit gives the government virtually unfettered latitude to change methodologies, including during ongoing administrative reviews, and apply such revised methodologies retroactively.

B. The D.C. Circuit Has Taken a More Restrictive Approach toward Agencies' Retroactive Application of Methodological Revisions

Standing in contrast to the Federal Circuit, the Court of Appeals for the D.C. Circuit has taken a far more restrictive approach with respect to the issue of when an agency may revise its methodology in the course of an administrative proceeding, and whether an agency may apply that revised methodology retroactively.

In *Oxy USA v. FERC*, the petitioners challenged the refusal of the Federal Regulatory Energy Commission ("FERC") to apply a revised methodology for valuing the quality of petroleum. 64 F.3d at 698-700. The D.C. Circuit affirmed FERC's decision, citing "the rule that agencies may not alter rates" – and the methodologies upon which these rates are based – "retroactively" given the need to "prevent unjust discrimination" and "ensure predictability." *Id.* at 699-700 (citing *Arizona Grocery Co. v. Atchison, Topeka and Santa Fe Ry.*, 284 U.S. 370, 389 (1932); *Natural Gas Clearinghouse v. FERC,* 965 F.2d 1066, 1075 (D.C. Cir. 1992); *Town of Concord v. FERC*, 955 F.2d 67, 71 (D.C. Cir. 1992)). The exception to this rule, the D.C. Circuit explained, exists where the agency "warns

all parties involved that a change in rates is only tentative and might be disallowed" such that the "goals of equity and predictability are not undermined[.]" *Id.* at 699. The prohibition on retroactive ratemaking, including rates resulting from a revised methodology, remains the prevailing law in the D.C. Circuit. *See*, *e.g.*, *SFPP, L.P. v. FERC*, 967 F.3d 788, 798-803 (D.C. Cir. 2020).

Although this prohibition is rooted in FERC's specific subject matter, *see id.* at 801-02, there is nothing unique to any particular subject matter when considering "equity and predictability" – which are essential elements of the work of all administrative agencies. *Cf. Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 158 (2012) (stating that overly deferential treatment of agency behavior may frustrate "the notice and predictability purposes of rulemaking") (quoting *Talk America*, *Inc.* v. *Michigan Bell Telephone Co.*, 564 U.S. 50, 69 (2011) (Scalia, J., concurring)). Indeed, the D.C. Circuit has recognized an "implied ban on retroactive rulemaking" related to a change in methodology in other contexts. *See*, *e.g.*, *Catholic Social Serv. v. Shalala*, 12 F.3d 1123, 1126-28 (D.C. Cir. 1994).

In sum, the D.C. Circuit's significant restriction on agencies' retroactive applications of revised methodologies, with a focus on equity and predictability, demonstrably contrasts with the Federal Circuit's exceedingly deferential approach, which provides significant latitude to such agencies.

C. Resolution of this Circuit Split is Necessary to Ensure Equitable Treatment of Parties by Administrative Agencies

Resolving the split between the Federal Circuit and the D.C. Circuit is crucial when considering the outsize role of the administrative state in modern American society. "The administrative state wields vast power and touches almost every aspect of daily life" and the "authority administrative agencies now hold over our economic, social, and political activities" is significant. *City of Arlington v. FCC*, 569 U.S. 290, 313 (2013) (Roberts, J., dissenting) (internal quotation marks omitted) (quoting *Free Enterprise Fund* v. *Public Company Accounting Oversight Bd.*, 561 U.S. 477, 499 (2010)).

This Court has made clear that the subjects of administrative agency action are entitled to the equity and predictability that the D.C. Circuit has emphasized. "It is one thing to expect regulated parties to conform their conduct to an agency's interpretations once the agency announces them; it is quite another to require regulated parties to divine the agency's interpretations in advance or else be held liable when the agency announces its interpretations for the first time in an enforcement proceeding and demands deference." *Christopher*, 567 U.S. at 158-59.

This same logic would restrict agencies from penalizing parties by retroactively applying revised methodologies. Yet that is exactly what the Federal Circuit has affirmed in this case. The view that

retroactive application is permissible here because "each review is separate and based on the record developed before the agency in the review" raises the exact concern highlighted by this Court in *Christopher*. *See* App. 42a-44a.

The continuance of this circuit split, in which an agency's ability to penalize the subject of its review, based on a retroactively-applied, revised methodology, is inherently unreasonable. This case therefore presents an opportunity to resolve this inconsistency, and ensure that administrative agencies – irrespective of the reviewing court – treat parties in a fair and objective manner when issuing determinations based on revised methodologies.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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