No. 99-1434

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

THE MEAD CORPORATION

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

REPLY BRIEF FOR THE UNITED STATES

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TABLE OF AUTHORITIES

Cases:

Statute and regulation:

Miscellaneous:

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1. In 19 U.S.C. 1502(a), Congress expressly authorized the Customs Service to adopt and issue "binding rulings" to address and resolve tariff classification issues. Pursuant to that statute, the agency has specified that a (19 C.F.R. 177.9(a))

> ruling letter [thus] issued by the Customs Service * * * represents the official position of the Customs Service with respect to the particular transaction or issue described therein and is binding on all Customs Service personnel * * * until modified or revoked. In the absence of a change of practice or other modification or revocation which affects the principle of the ruling set forth in the ruling letter, that principle may be cited as author-

> ity in the disposition of transactions involving the same circumstances.

The court of appeals held in this case that these official, "binding" interpretations of the Tariff Act that have been formally adopted by the Customs Service in the precise manner that Congress has specified are entitled to "no deference" (Pet. App. 7a).[1] For the reasons stated in the petition, and especially in view of this Court's recent decision in *Christensen* v. *Harris County*, No. 98-1167 (May 1, 2000), that holding warrants this Court's plenary review.

This Court has long held that interpretive rulings that set forth the Treasury's formal interpretations of revenue laws such as the Tariff Act are to be sustained if they reflect a "sufficiently reasonable" elaboration of the statutory scheme. *Zenith Radio Corp.* v. *United States*, 437 U.S. 443, 450 (1978). In *Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944), on which this Court recently relied in the *Christensen* case, the Court emphasized that it "has long given considerable and in some cases

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[1] Respondent attempts to create the impression (Br. in Opp. 9) that the "binding rulings" adopted under this statute are not really binding because the regulations caution that they are "subject to modification or revocation without notice" (19 C.F.R. 177.9(c)) and apply "only with respect to transactions involving articles identical" to those addressed in the ruling request (19 C.F.R. 177.9(b)(2)). Respondent fails to cite the general regulatory provision which specifies that, unless modified or revoked, the classification rulings adopted by the agency under these procedures "may be cited as authority in the disposition of transactions involving the same circumstances." 19 C.F.R. 177.9(a). In stating that it would give no deference to such classification rulings (Pet. App. 7a), the court of appeals did not question that these rulings were properly adopted as "binding rulings" under 19 U.S.C. 1502(a).

decisive weight to Treasury Decisions and to interpretative regulations of the Treasury and of other bodies that were not of adversary origin." 323 U.S. at 140. As we explain in the petition in this case (Pet. 14-17), because Congress tasked the agency with the responsibility of formally developing and announcing these "binding rulings," the reasoning of this Court's decision in *Chevron* applies directly here: courts are to defer to the agency's reasonable interpretation of the statute because of the "presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows." *Smiley* v. *Citibank (South Dakota), N.A.*, 517 U.S. 735, 740-741 (1996).

This is not a case like *Christensen*, in which the Court recently concluded that a lesser standard of deference applies to an agency opinion issued in a format (such as correspondence) that "Congress has not authorized for that purpose" (1 Kenneth C. Davis & Richard J. Pierce, *Administrative Law Treatise* § 3.5, at 120 (3d ed. 1994), cited with approval at *Christensen* v. *Harris County*, *supra*, slip op. 11). In the present case, the format selected by the agency—the formal adoption and issuance of binding interpretive rulings—is *precisely* the format "authorized [by Congress] for this purpose." *Ibid.* And, in this context, this Court has long held that the rulings formally adopted by the Treasury to interpret the revenue laws of the United States in the manner (and format) that Congress has specified are entitled to substantial deference and are to be upheld if they "implement the congressional mandate in some reasonable manner." *United States* v. *Correll*, 389 U.S.

299, 307 (1967). See also *Zenith Radio* v. *United States*, 437 U.S. at 450; Pet. 13-19. The contrary ruling of the Federal Circuit in this case conflicts with this established precedent and therefore warrants this Court's review.

Indeed, the decision of the court of appeals in this case conflicts even with the lesser standard of deference described by this Court in *Christensen* for agency opinions that are adopted in a format that Congress has *not* specifically authorized. The holding of the court below that "no deference" would be accorded to the agency's "binding rulings," and the court's refusal to consider or address the reasoning set forth in those rulings, cannot be reconciled with the holding in *Christensen* that even informally stated agency opinions are entitled to "some deference" (slip op. 10, quoting *Reno* v. *Koray*, 515 U.S. 50, 61 (1995)), are "entitled to respect" from the courts, and should therefore, at a bare minimum, be reviewed to determine if they have the "power to persuade" (slip op. 11, quoting *Skidmore* v. *Swift & Co.*, 323 U.S. at 140). In the present case, the Federal Circuit held that no consideration whatever should be given to the content or reasoning of the agency's binding rulings. See Pet. App. 7a; Pet. 11. Because the holding of the Federal Circuit in this case thus conflicts with *all* of the possible standards of deference that could apply under *Christensen* or under this Court's pertinent prior decisions, the Court may wish to consider summary reversal in this case.

2. a. Respondent suggests (Br. in Opp. 13-15) that the question whether deference is owed to the agency's binding rulings is not properly presented in this case because that question was raised by the court of appeals on its own motion following this Court's de-

cision in *United States* v. *Haggar Apparel Co.*, 526 U.S. 380 (1999), and was not initially raised or addressed by the parties. Since the question was in fact litigated by the parties and was in fact decided by the court of appeals in this case, it is unquestionably properly presented in the petition in this case. And, since the court of appeals has selected this case as its vehicle for resolving the question of the deference owed to the agency's classification rulings, and has in fact resolved that question in this case, this case is also the most suitable case for review of this issue by this Court.[2]

Respondent errs in stating that any claim of deference has been "waived" (Br. in Opp. 13) because, before the Federal Circuit's decision in *Haggar* was reversed by this Court, the government had not pressed for deference to the agency's rulings in this case. The United States plainly did not acquiesce in the no-deference standard applied in the Federal Circuit during the period that the government was challenging that standard in the *Haggar* case. And, following the issuance of this Court's decision upholding the government's position in *Haggar*, the question of deference as applied in the specific context of this case was briefed by the parties and decided by the court of appeals. The court of appeals did not regard the government's orderly presentation of the deference issue first to this Court in *Haggar* to represent a "waiver" of the deference question in the present case. To the contrary, the court of appeals understood that the question of deference relates to its judicial responsibility correctly to interpret and apply the laws and

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[2] The Federal Circuit denied the government's petition for rehearing *en banc* in this case, thus indicating that it will not reconsider this matter without the intervention of this Court.

therefore understood that it was necessary for that issue to be addressed and resolved based upon this Court's precedents, including the recent decision of this Court in *Haggar*. See Pet. App. 7a-8a.

b. Respondent is incorrect in asserting (Br. in Opp. 13-16) that the record in this case is inadequate for plenary review by this Court of the underlying question of statutory interpretation. This case was submitted to the trial court on cross-motions for summary judgment. There are no facts in dispute. The ultimate question of law that governs this case—the proper tariff classification that applies to respondent's imported articles—requires application to these facts of the controlling provisions of the Tariff Act and the relevant interpretations of those provisions in the binding rulings of the Customs Service. The record of this case is plainly sufficient for this purpose.

Respondent nonetheless suggests (Br. in Opp. 15) that the rulings on which the United States relies are irrelevant in this case because respondent has challenged *duties* imposed on its goods and has not brought a challenge to the rulings themselves. Respondent seemingly suggests that, because direct judicial review of the relevant agency rulings was not sought, those rulings have been made irrelevant in determining the proper application of the tariff classification provisions to respondent's goods. That proposition, for which respondent cites no authority, is obviously flawed.[3]

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[3] Respondent asserts that *one* of the several agency classification rulings cited by the government in this case was not subject to direct attack when it was entered because the agency applied that ruling only prospectively and allowed the particular merchandise then at issue to enter duty free (Br. in Opp. 16). The present case, however, involves the application of such rulings to *different* shipments of goods to which the agency's binding rulings

The determination of the correct meaning of federal statutes is often based upon deference to interpretive rulings adopted in connection with, and applied first to, individuals other than the party who disputes that interpretation in subsequent litigation. See, *e.g.*, *United States* v. *Correll*, 389 U.S. at 306 (applying an agency ruling adopted 27 years before the decision in that case). The failure of the court of appeals to follow that settled principle of deference in this case warrants review by this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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Solicitor General

MAY 2000

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have been applied. Respondent may challenge the application of those rulings in this case regardless whether or not a direct challenge to each of the prior rulings would have been possible at the time it was first entered. The regulations expressly state that the agency's rulings may be cited as authority not only "with respect to the particular transaction" in connection with which they were issued but may also "be cited as authority in the disposition of transactions involving the same circumstances." 19 C.F.R. 177.9(a).