No. 13-1014

In the Supreme Court of the United States

NSK CORPORATION, ET AL., PETITIONERS

v.

INTERNATIONAL TRADE COMMISSION, ET AL.

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

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

The United States Court of International Trade (CIT) reviews determinations made by the Department of Commerce and the United States International Trade Commission in antidumping and countervailing duty proceedings. 19 U.S.C. 1516a(a)(2). The CIT's decisions are then subject to appellate review in the Federal Circuit. 28 U.S.C. 1295(a)(5). The statute providing for judicial review of antidumping and countervailing duty determinations states that "[t]he court shall hold unlawful any determination, finding, or conclusion found * * * to be unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. 1516a(b)(1)(B)(i). The question presented is as follows:

Whether the court of appeals correctly held that the CIT's review of an administrative determination for substantial evidence on the record is subject to de novo review on appeal.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-34a) is reported at 716 F.3d 1352. The opinions of the United States Court of International Trade are reported at 774 F. Supp. 2d 1296 (Pet. App. 35a-41a); 744 F. Supp. 2d 1359 (Pet. App. 65a-79a); 712 F. Supp. 2d 1356 (Pet. App. 131a-150a); 637 F. Supp. 2d 1311 (Pet. App. 256a-288a); 593 F. Supp. 2d 1355 (Pet. App. 378a-408a); and 577 F. Supp. 2d 1322 (Pet. App. 409a-454a). The determinations of the United States International Trade Commission are reported at USITC Pub. 3876 (Pet. App. 455a-643a); USITC Pub. 4082 (Pet. App. 289a-377a); USITC Pub. 4131 (Pet. App. 151a-255a); USITC Pub. 4194 (Pet. App. 80a-130a); and USITC Pub. 4223 (Pet. App. 42a-64a).

JURISDICTION

The judgment of the court of appeals was entered on May 16, 2013. A petition for rehearing was denied on October 25, 2013 (Pet. App. 644a-669a). On January 15, 2014, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including February 21, 2014, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The federal antidumping statute, 19 U.S.C. 1673 *et seq.*, directs the Department of Commerce (Commerce) to impose "antidumping duties" on foreign merchandise sold in the United States if two conditions are met. First, Commerce must determine that the 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). Second, the United States International Trade Commission (ITC or Commission) must determine that such sales are either materially injuring or threatening injury to an industry in the United States. 19 U.S.C. 1673(2). If both of these determinations are made, Commerce issues an order imposing an antidumping duty. 19 U.S.C. 1673.

The Commission and Commerce conduct "sunset" reviews of existing antidumping duty orders every five years. 19 U.S.C. 1675(c). The inquiries in a sunset review parallel those necessary to impose a duty in the first instance. Commerce must determine whether revocation of an order "would be likely to lead to continuation or recurrence of sales of the subject merchandise at less than fair value," 19 U.S.C. 1675a(c)(1), and the ITC must determine whether revocation "would be likely to lead to continuation or

recurrence of material injury" to a U.S. industry, 19 U.S.C. 1675a(a)(1). The antidumping duty order remains in place only if both agencies make affirmative determinations. 19 U.S.C. 1675(d)(2).

Interested parties who seek to challenge a final determination by Commerce or the Commission may obtain judicial review in the United States Court of International Trade (CIT). 19 U.S.C. 1516a(a)(2). The statute directs the CIT to "hold unlawful any determination, finding, or conclusion, found * * * to be unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. 1516a(b)(1)(B)(i). The Federal Circuit has exclusive jurisdiction to hear appeals from the CIT's decisions. 28 U.S.C. 1295(a)(5).[1]

2. This case arises out of a sunset review of antidumping duties on ball bearings imported from a group of countries including Japan and the United Kingdom. Pet. App. 4a-5a. In a sunset review beginning in 2005, Commerce issued an affirmative finding that ball bearings from the subject countries would likely be dumped on the U.S. market if the duties were lifted. *Id.* at 5a. After conducting a comprehensive review, the ITC found that lifting the duties on imports from most of the subject countries, including Japan and the United Kingdom, would likely lead to a material injury to the domestic industry. *Id.* at 5a-6a.

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[1] A parallel statutory scheme governs countervailing duties imposed on imported merchandise that benefits from certain subsidies by foreign governments. 19 U.S.C. 1671, 1675(c). The same judicial-review provisions apply to determinations made by Commerce and the Commission in countervailing-duty proceedings. 19 U.S.C. 1516a(a)(2) and (b)(1)(B)(i).

As relevant here, the ITC first found that it should "cumulatively assess" the effect of imports from all of the subject countries because those imports "would be likely to compete with each other and with domestic like products in the United States market." Pet. App. 6a; see 19 U.S.C. 1675a(a)(7). The Commission also found that revoking the duties would likely lead to material injury to the U.S. industry because producers in the subject countries had excess capacity, because those producers were underselling U.S. manufacturers even with the duties in place, and because lower-priced imports would gain additional market share if the duties were revoked. Pet. App. 6a.

3. Petitioners, who produce ball bearings in Japan and the United Kingdom, challenged the Commission's determination in the CIT. Pet. App. 6a-7a. In a series of orders, the CIT repeatedly concluded that aspects of the Commission's analysis were unsupported by substantial evidence. *Id.* at 7a-20a. The CIT concluded, *inter alia*, that the record did not support either the Commission's decision to cumulate imports from the United Kingdom with those from other subject countries, or the Commission's ultimate determination that revocation of the duties on imports from Japan and the United Kingdom would materially injure the domestic industry. *Id.* at 8a-9a, 12a-13a, 15a-16a, 18a-19a.

Although it reopened the record to take additional evidence in response to the CIT's concerns, the Commission initially adhered to its original conclusions. Pet. App. 10a-15a. After a total of four remands, however, the Commission ultimately concluded that it was "constrained by the [CIT's] remand instructions" to enter negative determinations as to the United

Kingdom and Japan. *Id.* at 17a, 19a-20a. The Commission entered these determinations under protest, reiterating its continuing belief that its original conclusions were supported by substantial evidence. *Id.* at 16a-17a, 19a-20a. The CIT affirmed the negative determinations. *Id.* at 20a.

4. The court of appeals reversed. Pet. App. 1a-34a. The court first noted that, under established circuit precedent, the court of appeals "conducts a de novo review of whether the Commission's determinations are supported by substantial evidence." *Id.* at 21a (citing *Nippon Steel Corp.* v. *ITC*, 494 F.3d 1371, 1378 (Fed. Cir. 2007)). The court emphasized that the substantial-evidence standard requires deference to the findings of the expert agency, and it concluded that the CIT had erred by substituting its own view of the record evidence for the one adopted by the Commission.

The court of appeals held that the ITC's decision to cumulate imports from the United Kingdom with those from the other subject countries was supported by substantial evidence. Pet. App. 26a. The court acknowledged that other record evidence "detract[ed] from" the ITC's conclusion. *Id.* at 27a. The court explained, however, that "[u]nder the substantial evidence standard, when adequate evidence exists on both sides of an issue, assigning evidentiary weight falls exclusively within the authority of the Commission." *Ibid.* (quoting *Nippon Steel Corp.* v. *United States*, 458 F.3d 1345, 1358 (Fed. Cir. 2006) (*Nippon Steel*)).

The court of appeals further held that "the Commission set out a sound factual basis for its conclusion that subject countries had the ability and incentive to

cause material injury to the domestic industry" if the duties were revoked. Pet. App. 32a. The court again emphasized that the "Presidentially-appointed, Senate-approved Commissioners" are the "expert factfinder[s]," and that when "there is an adequate basis" for the Commission's view of the record, "the [CIT], and this court, reviewing under the substantial evidence standard, must defer to the Commission." *Ibid.* (quoting *Nippon Steel*, 458 F.3d at 1359).

5. The court of appeals denied petitioners' request for rehearing and rehearing en banc. Pet. App. 644a-669a.

a. Judge Wallach, joined by Chief Judge Rader and Judge Reyna, dissented from the denial of rehearing en banc. Pet. App. 655a-669a. The dissent argued that the court of appeals should abandon de novo review in favor of deference to the CIT, and should reverse a decision by the CIT only if that court had "misapprehended or grossly misapplied" the substantial-evidence standard. *Id.* at 656a-657a.

b. Judges Lourie, Dyk, Prost, Moore, and O'Malley concurred in the denial of rehearing en banc. Pet. App. 646a-655a. The concurrence explained that, in the analogous context of actions brought under the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, and heard initially in district court, "[e]very circuit" reviews a district court's substantial-evidence determinations de novo. Pet. App. 646a-647a. The concurring judges concluded that this established principle of judicial review governs the Federal Circuit's review of CIT decisions in antidumping cases. *Id.* at 655a. Those judges found "no legal justification" for "a rule requiring deference to the substantial evidence determinations of the [CIT]." *Id.* at 646a.

ARGUMENT

Petitioners contend (Pet. 16-33) that the Federal Circuit must defer to the CIT's substantial-evidence determinations. The court of appeals correctly rejected that argument, and petitioners identify no sound reason to adopt an unprecedented rule of deference applicable exclusively in the trade context. Further review is not warranted.

1. "For purposes of standard of review, decisions by judges are traditionally divided into three categories, denominated questions of law (reviewable *de novo*), questions of fact (reviewable for clear error), and matters of discretion (reviewable for 'abuse of discretion')." *Pierce* v. *Underwood*, 487 U.S. 552, 558 (1988). The applicable standard is usually determined either "by relatively explicit statutory command" or "by a long history of appellate practice." *Ibid.* Here, longstanding appellate practice establishes that a trial court's review of agency action based on an administrative record—including the trial court's determination whether the administrative decision is supported by substantial evidence—presents a question of law subject to de novo review. The text and history of the trade statutes confirm that Congress intended the Federal Circuit to follow that established practice in reviewing the CIT's substantial-evidence determinations in antidumping cases.

a. Although some statutes authorize direct review of particular administrative decisions in the courts of appeals, parties often seek review of agency action under the APA by filing suit in district court. In such cases, the district court does not act as a factfinder, and "the focal point for judicial review" is "the administrative record already in existence, not some new

record made initially in the reviewing court." *Camp* v. *Pitts*, 411 U.S. 138, 142 (1973). The underlying administrative proceeding may have involved questions of law, questions of fact, and mixed questions of law and fact. But "when a party seeks review of agency action under the APA, the district judge sits as an appellate tribunal," and "[t]he 'entire case' on review is a question of law." *American Bioscience, Inc.* v. *Thompson*, 269 F.3d 1077, 1083 (D.C. Cir. 2001); accord *Rempfer* v. *Sharfstein*, 583 F.3d 860, 864-865 (D.C. Cir. 2009), cert. denied, 559 U.S. 973 (2010); *University Med. Ctr.* v. *Shalala*, 173 F.3d 438, 440 n.3 (D.C. Cir. 1999).

Because the substantial-evidence determination in an agency-review case is an essentially legal one, a court of appeals owes no deference to a district court's resolution of that question. Indeed, because "the agency itself is typically owed deference," it would be "anomalous" or even "analytically impossible" for a court of appeals "to defer also to another court's review of the agency's action." *Novicki* v. *Cook*, 946 F.2d 938, 941 (D.C. Cir. 1991). Accordingly, when a statute provides for initial review of an agency's action in the district court, the district court and the court of appeals ultimately perform "the identical task": "[B]oth courts are to decide, on the basis of the record the agency provides, whether the action passes muster under the appropriate APA standard of review." *Florida Power & Light Co.* v. *Lorion*, 470 U.S. 729, 744 (1985).

That principle tracks the rule that applies when a district court considers the sufficiency of the evidence supporting a jury verdict, and the district court's ruling is subsequently challenged on appeal. Cf. *Allentown Mack Sales & Serv., Inc.* v. *NLRB*, 522 U.S.

359, 366-367 (1998) (*Allentown Mack*) (explaining that a court applying the substantial-evidence standard "must decide whether on [the administrative] record it would have been possible for a reasonable jury to reach the [agency's] conclusion"). Although the underlying issue is factual, the question whether a reasonable jury could have reached a given result based on a given record "is one of law." 9B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2540, at 658 (3d ed. 2008). A district court's decision on a motion for judgment as a matter of law therefore is reviewed de novo on appeal. *Id.* at 660-663. As in the agency-review context, deference is given to the view of the evidence taken by the fact-finder (the jury), not to the district court's decision whether the jury verdict should be set aside.

In accordance with *Florida Power & Light Co.*, every circuit has held that, when reviewing a district court decision assessing the sufficiency of agency action on the basis of an administrative record, the court of appeals must "apply the same legal standards that pertain in the district court and afford no special deference to that court's decision." *Associated Fisheries of Maine, Inc.* v. *Daley*, 127 F.3d 104, 109 (1st Cir. 1997) (*Associated Fisheries*).[2]

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[2] See also, *e.g.*, *City of New York* v. *Shalala*, 34 F.3d 1161, 1166 (2d Cir. 1994) ("no deference"); *Mercy Home Health* v. *Leavitt*, 436 F.3d 370, 377 (3d Cir. 2006) ("de novo"); *Ohio Valley Envtl. Coal.* v. *Aracoma Coal Co.*, 556 F.3d 177, 189 (4th Cir. 2009) (same), cert. dismissed, 131 S. Ct. 51 (2010); *Hernandez* v. *Reno*, 91 F.3d 776, 779 (5th Cir. 1996) (same); *Cissell Mfg. Co.* v. *United States Dep't of Labor*, 101 F.3d 1132, 1136 (6th Cir. 1996) (same); *Hanson* v. *Espy*, 8 F.3d 469, 472 (7th Cir. 1993) ("no deference"); *Friends of the Norbeck* v. *United States Forest Serv.*, 661 F.3d 969, 975 (8th Cir. 2011) ("de novo"), cert. denied, 132 S. Ct. 1973 (2012); *Sierra*

Petitioners assert (Pet. 25) that "the historical approaches to appellate review under the APA [are] too diverse" to supply guidance. But the decision on which petitioners rely addresses the problems that arise when a district court's decision is based not solely on the administrative record, but also on "matters of fact that *it* has determined, or upon evidence presented by witnesses in court." *Sierra Club* v. *Marsh*, 769 F.2d 868, 871-872 (1st Cir. 1985). As the First Circuit has since made clear, "no special deference" to the trial court's view of the evidence is warranted in the more typical case where the proceedings in that court did not "enlarge the administrative record." *Associated Fisheries*, 127 F.3d at 109. And as petitioners recognize (Pet. 20 n.6), the CIT's review of antidumping determinations is limited to the administrative record. 19 U.S.C. 1516a(a)(2) and (b)(2); see S. Rep. No. 249, 96th Cong., 1st Sess. 251-252 (1979) (1979 Senate Report). Petitioners cite no authority requiring deference to a district court's review of agency action based on an administrative record.

b. Congress enacted the current statutes governing judicial review of antidumping determinations in 1979. See Trade Agreements Act of 1979, Pub. L. No. 96-39, 93 Stat. 144. Under the prior statute, there was some uncertainty as to whether administrative antidumping determinations could be subject to de novo

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Club v. *Babbitt*, 65 F.3d 1502, 1507 (9th Cir. 1995) (same); *Lee* v. *United States Air Force*, 354 F.3d 1229, 1236 (10th Cir. 2004) ("no deference"); *Druid Hills Civic Ass'n* v. *Federal Highway Admin.*, 772 F.2d 700, 714 (11th Cir. 1985) ("no particular deference"); *Rempfer*, 583 F.3d at 864-865 (D.C. Cir.) ("de novo"); *Rio Grande, El Paso & Santa Fe R.R.* v. *Department of Energy*, 234 F.3d 1, 6 (Fed. Cir. 2000) ("no particular deference").

review by the United States Customs Court, the CIT's predecessor. 1979 Senate Report 251. The amendments were intended to "exclud[e] *de novo* review from consideration as a standard in antidumping and countervailing duty determinations." *Ibid.* Instead, Congress "entrusted the decision-making authority in [this] specialized, complex economic situation to administrative agencies," and directed that judicial review be governed by "traditional administrative law principles." *Id.* at 252.

Consistent with this goal, Congress required that antidumping determinations like those at issue here be reviewed on the record made before the agency. 19 U.S.C. 1516a(a)(2) and (b)(2). Congress also drew the applicable standard of judicial review from the APA, directing that a reviewing court "shall hold unlawful any determination, finding, or conclusion found * * * to be unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. 1516a(b)(1)(B)(i); see 5 U.S.C. 706(2)(E) (directing a reviewing court to "hold unlawful" agency actions found to be "unsupported by substantial evidence").[3]

As the concurring judges explained, there is consequently "every reason to believe that Congress intended the judicial review process in the trade area to track the more general review process in district courts and courts of appeals under the APA." Pet. App. 653a. When Congress enacted the Trade Agree-

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[3] Further confirming the parallel with the APA, Congress directed the CIT to set aside certain other administrative antidumping determinations if they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Compare 19 U.S.C. 1516a(b)(1)(A) and (B)(ii) with 5 U.S.C. 706(2)(A).

ments Act of 1979, the rule requiring de novo review of a trial court's assessment of agency action based on an administrative record was already well established. As the Eighth Circuit explained in a leading decision, "the appellate court must render an independent decision on the basis of the same administrative record as that before the district court," and "the identical standard of review is employed at both levels." *First Nat'l Bank* v. *Smith*, 508 F.2d 1371, 1374 (1974), cert. denied, 421 U.S. 930 (1975).[4]

Petitioners assert (Pet. 24) that a different standard of appellate review is appropriate here because Congress authorized the CIT "to engage in far more back-and-forth with the agency" than is "typical in an APA case." But petitioners' only statutory support for that assertion is a general provision stating that the CIT may remand for further proceedings if it "is unable to determine the correct decision on the basis of the evidence presented." 28 U.S.C. 2643(b). Courts engaged in APA review likewise have the ability—indeed, the obligation—to remand a case for further administrative proceedings if the administrative record is insufficient to allow a decision. See *Florida*

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[4] See also, *e.g.*, *Lubrizol Corp.* v. *Train*, 547 F.2d 310, 317 (6th Cir. 1976) (courts of appeals "assess the agency action anew without special deference to the district court's opinion"); *Bank of Commerce* v. *City Nat'l Bank*, 484 F.2d 284, 289 (5th Cir. 1973) ("independent review"), cert. denied, 416 U.S. 905 (1974); *Polcover* v. *Secretary of the Treasury*, 477 F.2d 1223, 1226-1227 (D.C. Cir.) ("identical review"), cert. denied, 414 U.S. 1001 (1973); *Leftwich* v. *Gardner*, 377 F.2d 287, 288 (4th Cir. 1967) (court of appeals "review[s] the same record and make[s] the same determination as made in the district court"); *Farley* v. *Celebrezze*, 315 F.2d 704, 705-706 (3d Cir. 1963) (court of appeals reapplies the substantial-evidence standard).

Power & Light Co., 470 U.S. at 744. Moreover, even in the context of Social Security appeals—where, as petitioner notes (Pet. 24), a special review provision allows "a degree of direct interaction between a federal court and an administrative agency alien to traditional review of agency action under the [APA]," *Sullivan* v. *Hudson*, 490 U.S. 877, 885 (1989)—courts of appeals afford no deference to the district court's decision and instead "review the administrative record de novo to determine whether there is substantial evidence supporting the Commissioner's decision." *Zabala* v. *Astrue*, 595 F.3d 402, 408 (2d Cir. 2010) (citation omitted).[5]

c. The year after the Trade Agreements Act of 1979 was enacted, the United States Court of Customs and Patent Appeals (CCPA) concluded that the statute mandated de novo appellate review of substantial-evidence determinations made by the Customs Court. *Armstrong Bros. Tool Co.* v. *United States*, 626 F.2d 168 (1980); see Pet. App. 652a-653a. And shortly after the Federal Circuit replaced the CCPA, that court likewise held that it would "apply[] anew the statute's express judicial review standard" requiring that administrative antidumping determinations be supported by substantial evidence. *Atlantic Sugar, Ltd.* v. *United States*, 744 F.2d 1556, 1559 n.10 (Fed. Cir. 1984). The Federal Circuit has applied this de novo standard for nearly three decades. See, *e.g.*, *Nippon Steel Corp.* v. *United States*, 458 F.3d 1345, 1350-1351 (2006); *Zenith Elecs. Corp.* v. *United States*, 99 F.3d

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[5] See also, *e.g.*, *Seavey* v. *Barnhart*, 276 F.3d 1, 9 (1st Cir. 2001); *Imani* v. *Heckler*, 797 F.2d 508, 510 (7th Cir.), cert. denied, 479 U.S. 988 (1986); *Knox* v. *Finch*, 427 F.2d 919, 920 (5th Cir. 1970); *Leftwich*, 377 F.2d at 288; *Farley*, 315 F.2d at 705-706.

1576, 1578 (1996); *Matsushita Elec. Indus. Co.* v. *United States*, 750 F.2d 927, 932 (1984).

This "long history of appellate practice" in the Federal Circuit is itself strong support for retaining the current de novo standard. *Pierce*, 487 U.S. at 558. During this period, moreover, Congress has repeatedly amended Section 1516a, but it has never altered the de novo standard. See, *e.g.*, North American Free Trade Agreement Implementation Act, Pub. L. No. 103-182, § 411, 107 Stat. 2140; United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. No. 100-449, § 401, 102 Stat. 1878; Trade and Tariff Act of 1984, Pub. L. No. 98-573, § 623, 98 Stat. 3040.

2. Petitioners and their amici contend that a variety of functional considerations support deferential review of the CIT's decisions. Pet. 26-30; Law Professors Amicus Br. 4-16; Japan Bearing Amicus Br. 11-24. As petitioners appropriately concede (Pet. 17), such considerations are relevant only when a standard-of-review question "is one for which neither a clear statutory prescription nor a historical tradition exists." *Pierce*, 487 U.S. at 558-559. Here, both the statute and a uniform body of precedent make clear that the CIT's substantial-evidence determinations are reviewed de novo on appeal. In any event, petitioners' functional arguments are unpersuasive even on their own terms.

a. Petitioners contend (Pet. 27) that the CIT is "better positioned" to decide the issue in question. *Pierce*, 487 U.S. at 559-560. But in the two cases on which petitioners rely, this Court held that a trial judge was better positioned to decide an issue that involved the "supervision of litigation" in the judge's

own courtroom. *Id.* at 558 n.1 (awards of attorney's fees); see *Cooter & Gell* v. *Hartmarx Corp.*, 496 U.S. 384, 399-405 (1990) (Rule 11 sanctions). Here, in contrast, both the CIT and the Federal Circuit decide the case based on the same administrative record.

b. Petitioners also contend (Pet. 29) that "substantial evidence review" is not susceptible to "broad appellate rules" and instead should be left to trial judges. But courts of appeals routinely apply the substantial-evidence standard, both in reviewing district court decisions in APA suits and in deciding cases brought directly in the courts of appeals under specialized statutes. Indeed, this Court has recognized that in many contexts, "[w]hether on the record as a whole there is substantial evidence to support agency findings is a question which Congress has placed in the keeping of the Courts of Appeals." *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 491 (1951).

Petitioners seek a special rule of administrative law based on the complexity of the subject matter and the specialized nature of the tribunal. But this Court has consistently rejected such arguments, "[r]ecognizing the importance of maintaining a uniform approach to judicial review of administrative action." *Dickinson* v. *Zurko*, 527 U.S. 150, 154 (1999); see *Mayo Found. for Med. Educ. & Research* v. *United States*, 131 S. Ct. 704, 713 (2011) (declining "to carve out an approach to administrative review good for tax law only"). In *Zurko*, for example, this Court rejected the suggestion that the Federal Circuit's special expertise in patent matters justified more searching judicial review of factfinding by the United States Patent and Trademark Office. 527 U.S. at 154. The Court ac-

knowledged that, as "a specialized court," the Federal Circuit would approach the issues "through the lens of patent-related experience." *Id.* at 163. While recognizing that this experience informs the Federal Circuit's review under generally applicable standards, the Court rejected any suggestion that such specialization justified a departure from usual rules of judicial review. *Ibid.* The same conclusion is warranted here.

c. Finally, petitioners contend (Pet. 3, 28-30) that de novo review creates the sort of "wasteful" and "duplicative" review that Congress sought to eliminate in 1979. As the concurring judges below explained, however, Congress did not adopt the substantial-evidence standard to eliminate "duplicative" review at the court of appeals level. Pet. App. 649a-654a. Instead, Section 1516a was intended to eliminate the "time consuming and duplicative" process of judicial review in place in 1979, under which the Customs Court—the predecessor to the CIT—had often performed de novo review of agency findings of fact in antidumping and countervailing duty proceedings. H.R. Rep. No. 317, 96th Cong., 1st Sess. 181 (1979). Because de novo review of the agencies' fact-finding by the Customs Court had resulted in "redundant proceedings," and had given importers and foreign producers "three separate opportunities to present their claim," Congress adopted a standard of judicial review that eliminated the Custom Court's ability to make its own factual findings. *Ibid.*

Although the CIT is a more specialized court than is the Federal Circuit, it is not the entity with primary responsibility for antidumping determinations. That role is assigned to the expert agencies. By directing the CIT to apply the substantial-evidence standard,

Congress sought to ensure that the court would not duplicate or second-guess the Commission's assessment of conflicting evidence. In cases like this one, however, where the CIT rejects the Commission's antidumping determinations, the purpose and practical effect of petitioner's approach is to require the Federal Circuit to defer to the CIT's decision *rather than* to the Commission's, thus treating the CIT as the primary decision-maker. That approach subverts Congress's design.[6]

3. For the foregoing reasons, the court of appeals correctly "conduct[ed] a de novo review of the [CIT's] decision[], assessing whether the Commission's determinations were supported by substantial evidence." Pet. App. 22a. Petitioners identify no viable alternative standard of review, and they focus much of their criticism on issues not presented in this case.

a. Petitioners state (Pet. 26) that a "deferential standard" of review should apply, and they identify as one possibility the standard advocated by the dissent below—"whether the [CIT] misapprehended or grossly misapplied its own review standard." See Pet. App. 656a. The phrase "misapprehended or grossly misap-

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[6] Petitioners contend (Pet. 28-29) that the court of appeals failed to address the alleged deficiencies in the Commission's analysis that the CIT had perceived. That assertion is unfounded. The court of appeals considered the CIT's criticisms of the Commission's analysis as well as the detracting evidence cited by the CIT in its opinions. Pet. App. 6a-10a, 12a-13a, 15a-16a, 18a-20a, 25a-26a, 29a-31a. Ultimately, after reviewing the Commission's findings and the CIT's analysis, the court of appeals concluded that the Commission's determinations were supported by substantial evidence. *Id.* at 23a-31a. The court of appeals' approach in this case was consistent with the statutory standards and with applicable precedent.

plied" is drawn from *Universal Camera Corp.*, in which this Court announced that its "power to review the correctness of [the] application of" the substantial-evidence standard "ought seldom to be called into action" because the Court would "intervene only in what ought to be the rare instance when the standard appears to have been misapprehended or grossly misapplied." 340 U.S. at 490-491. That statement did not purport to announce a generally-applicable standard of appellate review, but rather reflected this Court's "self-imposed limits on its reviewing authority." Pet. App. 648a.

The Court confirmed that understanding in *Allentown Mack*, in which it reviewed the D.C. Circuit's conclusion that an NLRB decision was supported by substantial evidence. Although the dissent argued that the Court should be constrained by the "misapprehended or grossly misapplied" standard, the Court resolved the issue de novo, framing the question for decision as "whether [the NLRB's] conclusion is supported by substantial evidence on the record as a whole." 522 U.S. at 366; see *id.* at 389 (Breyer, J., concurring in part and dissenting in part). *Allentown Mack* thus made clear that the "misapprehended or grossly misapplied" standard is a self-imposed prudential limit consistent with this Court's statements that it is not "a court of error." Pet. App. 648a.

The courts of appeals, in contrast, "are decidedly courts of error," Pet. App. 648a, and they are not permitted to adopt similar prudential limits on their review of lower-court decisions. Petitioners identify no case in which a court of appeals has adopted the "misapprehended or grossly misapplied" standard, and a number of courts have squarely rejected it. See

Polcover v. *Secretary of the Treasury*, 477 F.2d 1223, 1227 (D.C. Cir.), cert. denied, 414 U.S. 1001 (1973); *Celebrezze* v. *Bolas*, 316 F.2d 498, 501 (8th Cir. 1963); *Ward* v. *Celebrezze*, 311 F.2d 115, 116 (5th Cir. 1962); *Roberson* v. *Ribicoff*, 299 F.2d 761, 763 (6th Cir. 1962).

In *Salve Regina College* v. *Russell*, 499 U.S. 225 (1991), this Court rejected a similar effort to transplant one of its prudential limits on its own review into a standard of review to be applied by the courts of appeals. This Court on several occasions had "declined to review *de novo* questions of state law" decided by the district and circuit courts. *Id.* at 235 n.3. But the Court found "inexplicabl[e]" the suggestion that the courts of appeals could adopt the same deferential standard in reviewing district court determinations of state law. *Ibid.* The Court was "not persuaded that the manner in which [it] chooses to expend its limited resources in the exercise of its discretionary jurisdiction has any relevance to the obligation of courts of appeals to review *de novo* those legal issues properly before them." *Ibid.*

b. Petitioners also challenge two aspects of Federal Circuit precedent that are not implicated by this case.

First, petitioners repeatedly note (Pet. 3, 17, 32) the Federal Circuit's occasional statements that it does "not ignore the informed opinion of the [CIT]," *Diamond Sawblades Mfrs. Coal.* v. *United States*, 612 F.3d 1348, 1356 (2010) (citation omitted), or that it gives the CIT's decisions "due respect," *Suramerica de Aleaciones Laminadas, C.A.* v. *United States*, 44 F.3d 978, 983 (1994) (*Suramerica*). Petitioners assert that these statements constitute variations from de novo review and create uncertainty about the stand-

ard that will be applied in any particular case. In each such case, however, the Federal Circuit has made clear that its respect for the CIT's views does not constitute a form of deference or modify the applicable standard of review. See *Diamond Sawblades*, 612 F.3d at 1355 ("stepping into the shoes of the [CIT] and duplicating its review"); *Suramerica*, 44 F.3d at 982 ("reapplying the substantial evidence standard to the underlying ITC determination"). To the contrary, "a careful consideration of the [lower] court's legal analysis" is entirely consistent with de novo review, and "an efficient and sensitive appellate court" will "naturally consider [the lower court's] analysis in undertaking its review." *Salve Regina Coll.*, 499 U.S. at 232. The Federal Circuit's periodic acknowledgment that it gives careful consideration to the CIT's views simply makes explicit what is implicit in all review by "efficient and sensitive" appellate courts. *Ibid.*

Second, petitioners note (Pet. 3, 32) that the Federal Circuit has reviewed some CIT remand orders for abuse of discretion rather than de novo. But the court of appeals has applied that standard only when it has found that "the [CIT] d[id] not assess the sufficiency of the evidence supporting the Commission's determinations or require additional investigation by the Commission, but 'merely remand[ed] the matter for additional explanation that would clarify the Commission's determination.'" Pet. App. 21a (quoting *Altx, Inc.* v. *United States*, 370 F.3d 1108, 1117 (Fed. Cir. 2004) (brackets in original)). Decisions reviewing such remand orders are rare.[7] More importantly, the court

[7] The CIT's remands are interlocutory orders that are not immediately reviewable. See *Altx, Inc.*, 370 F.3d at 1116. Remand orders are generally reviewable once the CIT issues a final judg-

of appeals applies an abuse-of-discretion standard only when it concludes that the CIT has *not* decided whether an administrative determination is supported by substantial evidence. *Ibid.* The only issue presented in this case is the standard to be applied where, as here, the CIT *has* decided the substantial-evidence question.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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ment, but the large majority of appeals focus on the CIT's final decision and judgment, not its interlocutory remand orders. The court of appeals has applied the abuse-of-discretion standard only in a handful of appeals challenging interlocutory remand orders where the CIT had "simply request[ed] . . . further explanation of agency action," and "did not evaluate the substantiality of the Commission's evidence." *Id.* at 1117.