SUPREME COURT OF THE UNITED STATES

No. 97–2044

UNITED STATES, PETITIONER *v.* HAGGAR APPAREL COMPANY

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

[April 21, 1999]

JUSTICE STEVENS, with whom JUSTICE GINSBURG joins, concurring in part and dissenting in part.

Like the statutory provision it explicates, the Customs Service regulation at issue begins with a generally applicable standard for a duty exemption, and concludes with relatively specific examples that indicate how that standard should be interpreted. See Subheading 9802.00.80, Harmonized Tariff Schedule of the United States, 19 U. S. C. §1202 (listing operations taking place abroad that meet the standard); Item 807.00, Tariff Schedule of the United States, 19 U. S. C. §1202 (1982 ed.) (same); 19 CFR §10.16(c) (1998) (listing such operations that do not meet the standard). Surely the agency's effort to enumerate "significant" and common operations not to be considered incidental to the assembly process was both permissible and sensible. Nothing in the statute or its history convinces me otherwise; in my opinion, the regulation is clearly valid.

Respondent's strongest challenge to the judgment of the Customs Service is that the Service has misinterpreted and misapplied one of its excluded examples: "Chemical treatment . . . to impart new characteristics, such as . . . permapressing." 19 CFR §10.16(c)(4) (1998). With respect to the entries denied a duty exemption in this case, the fabric was resin treated in the United States at the textile

mill, but pressed and ovenbaked in Mexico after assembly. Yet the Service apparently granted a duty exemption for trousers respondent assembled from synthetic fabric; these trousers did not require ovenbaking or resin-treatment, but they were pressed in Mexico after assembly. See App. to Pet. for Cert. 8a–9a, 15a–16a; App. 33–34, 37–38. Respondent contends that the Service cannot treat pressing-plus-ovenbaking, but not pressing alone, as a species of chemical treatment that is not incidental to the assembly process.

There is a rather obvious answer to this contention. One can certainly discern a meaningful difference between merely pressing a synthetic fabric, on the one hand, and using ovenbaking (or perhaps extended pressing) to treat a fabric to which another substance has been added. Based on that difference, the Service could logically conclude, in accord with its understanding of its own regulation, that only the latter is a form of "chemical treatment" excluded from a duty exemption. Indeed, distinguishing these two operations in this fashion is the product of the kind of line-drawing decisions that must be made by agencies to which Congress has delegated the job of administering legislation that contains ambiguous terms. When lines must be drawn to determine whether a particular facility is a "stationary source" of air pollution, see *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), or whether an operation performed abroad was "incidental to the assembly process," there will always be cases on opposite sides of the line that are almost identical. That consequence, however, does not necessarily compromise the integrity of the line that the agency has drawn or the manner in which the rule was applied.

In my view, the regulation before us is a reasonable elaboration of the statute, and the Customs Service's denial of a duty allowance in this case was consistent with its regulation and well within the scope of its congression-

ally delegated authority. If we had not granted certiorari to decide the reasonableness of the regulation, I would agree with the Court's disposition of the case. See *Kumho Tire Co.* v. *Carmichael*, 526 U. S. __, __ (1999) (STEVENS, J., concurring in part and dissenting in part). But since we did direct the parties to enlighten us on these issues, and since I think the answer is clear, I would simply reverse the judgment of the Court of Appeals. I do, however, join Parts I, II, and III of the Court's well-reasoned opinion.