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A COMMENT ON STANDARD FURNITURE MANUFACTURING CO. V. UNITED STATES AND UNITED STATES INTERNATIONAL TRADE COMMISSION, 37 F.SUPP.3D 1365 (2014)

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INTRODUCTION

Even though the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA) was repealed almost ten years ago, it has continued to face constitutional challenges regarding whether it discriminates against domestic producers that opposed petitions for antidumping orders, and whether it unconstitutionally treats those domestic producers differently by rewarding domestic producers that supported the antidumping orders. While the belief that the CDSOA violated international trade agreements is widely held, U.S. courts have consistently held that the CDSOA is constitutional.

This case comment will discuss and analyze the U.S. Court of International Trade’s order issued in Standard Furniture Manufacturing, Co. v. U.S. and U.S. International Trade Commission rejecting constitutional challenges to the CDSOA.

I. HISTORY

In 1930, Congress passed the Tariff Act of 1930, commonly referred to as the Smoot-Hawley Tariff Act, which drastically raised tariffs on products imported into the U.S.\(^1\) Although the legislation began as a small measure to help American farmers, the Tariff Act of 1930 evolved into legislation protecting all sectors of the U.S. economy.\(^2\) The Tariff Act of 1930 also included remedies for

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domestic companies affected by the importation of foreign goods through its antidumping and countervailing duty provisions. 3 Antidumping laws seek to remedy injuries to U.S. companies caused by imported goods being sold at “less than fair value.” 4 The countervailing duty law addresses the importation of goods by producers benefitting from subsidies from foreign governments. 5

In 2000, Congress amended the Tariff Act of 1930 by enacting the CDSOA, also referred to as the Byrd Amendment. 6 The CDSOA directed the U.S. Customs and Border Protection (Customs) to distribute funds to eligible affected domestic producers (ADPs). 7 The funds were collected from antidumping and countervailing duties and assessed on imported products as part of a countervailing duty order, or an antidumping order, to reimburse the ADPs for eligible expenses. 8 Only producers that supported a petition for the antidumping order or a countervailing duty order, under which the funds were collected, could be classified as an eligible ADP to receive distributions from the funds. 9 ADPs indicated support for antidumping or countervailing duty orders by letter or responses to questionnaires issued by the Department of Commerce (Commerce) to producers affected by an imported product. 10 After issuing an antidumping or countervailing duty order, the CDSOA required the U.S. International Trade Commission (Commission) to forward to Customs a list of potentially eligible ADPs that could receive distributions of duties collected under that order. 11 Customs then published the list in the Federal Register and was responsible for distributing the funds to the eligible ADPs that filed certifications for the funds. 12

4 Id.
5 Id. at 4.
7 Id.
9 Id.
10 Id.
11 Id.
12 Id.
Other countries highly criticized the CDSOA, arguing it violated several international trade agreements to which the U.S. was a party. Eleven members of the World Trade Organization (WTO) challenged the CDSOA in a WTO dispute proceeding, arguing the CDSOA was inconsistent with several international trade agreements that included provisions governing antidumping, subsidies, and countervailing measures. The Appellate Body found the antidumping provisions were inconsistent with international trade agreements, and later authorized retaliation after it determined that the U.S. did not comply with its previous recommendation to revise the CDSOA. Although WTO decisions are not binding on the U.S., the U.S. generally complies with them as a matter of policy. Ultimately, Congress repealed the CDSOA in 2006, effective October 1, 2007. Although the CDSOA was repealed, annual distributions to eligible ADPs of antidumping and countervailing duties would continue for entries made prior to October 1, 2007. Distribution would continue to occur upon liquidation.

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13 See Appellate Body Report, United States—Continued Dumping and Subsidy Offset Act of 2000, ¶ 16, WTO Doc. WT/DS217/AB/R (adopted Jan. 16, 2003) (stating that WTO members challenging the action were Australia, Brazil, Canada, Chile, the European Union, India, Indonesia, Japan, Korea, Mexico, and Thailand. Argentina, Costa Rica, Hong Kong, China, Israel, and Norway also participated in the proceedings).

14 See id. (The countries challenging the CDSOA argued it was inconsistent with the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (antidumping Agreement), the General Agreement on Tariffs and Trade (GATT 1994), and the Agreement on Subsidies and Countervailing Measures (SCM Agreement)).


19 Id.
II. FACTS

In the case at hand, Standard Furniture Manufacturing (Standard) brought this action in 2013 in the U.S. Court of International Trade against the U.S. alleging the Commission and Customs violated the Administrative Procedure Act and CDSOA in denying Standard distributions of duties under CDSOA.\textsuperscript{20} Standard also brought facial and as-applied constitutional challenges to the CDSOA.\textsuperscript{21}

In 2003, the Commission began investigating whether the importation of wooden bedroom furniture from China was “causing or threatening to cause material injury to the domestic industry.” \textsuperscript{22} During the investigation, Standard replied to a questionnaire from the Commission and stated it opposed the petition to investigate whether the furniture industry was materially injured by the importation of wooden bedroom furniture at a less-than-fair-value rate.\textsuperscript{23} Eventually, in 2005, Commerce issued an antidumping duty order on wooden bedroom furniture imported from China.\textsuperscript{24} Accordingly, Standard was not on the Commission’s list of potentially eligible ADPs because it did not support the petition.\textsuperscript{25}

When it published its lists of ADPs potentially eligible for annual distributions for duties on wooden bedroom furniture under the antidumping order for fiscal years 2011 and 2012, Customs did not

\textsuperscript{20} Standard Furniture Mfg. Co., 37 F.Supp.3d at 1366. Prior to this order, this court issued an order plaintiff’s motion to stay the proceedings, filed earlier in 2014. Standard Furniture Mfg. Co. v. United States, 2014 WL 2898561 \#1. In 2014, Standard filed a motion to stay the proceedings, arguing that the motion should be granted because a “substantially similar case,” Ashley Furniture Indus., Inc. v. United States, 734 F.3d 1306 (Fed. Cir. 2013), had a pending petition for writ of certiorari before the United States Supreme Court. \textit{Id.} The court denied the motion because Standard did not show how a stay of the proceedings would “promote judicial economy and efficiency rather than simply cause delay.” \textit{Id.} The court also opined that Standard was merely speculating that the outcome of the petition for writ of certiorari in Ashley would directly impact its case. \textit{Id.} The court previously granted Defendants’ motion to stay pending the Federal Circuit’s issuance of a mandate in that case. \textit{Id.}

\textsuperscript{21} \textit{Id.}

\textsuperscript{22} Standard Furniture Mfg. Co., 37 F.Supp.3d at 1366.

\textsuperscript{23} \textit{Id.}

\textsuperscript{24} \textit{Id.}

include Standard on the lists. Standard filed certifications with Customs on June 18, 2011 for fiscal year 2011, and on July 19, 2012, for fiscal year 2012, requesting to receive distributions from the antidumping duty order on wooden bedroom furniture. Customs denied both certifications.

III. Analysis

The court granted Defendants’ motion to dismiss and issued its order on December 31, 2014. The court concluded there were no facts indicating that Standard would be entitled to relief based on Standard’s statutory challenges arising out of the CDSOA and the Administrative Procedure Act (APA). Standard alleged the actions of the Commission and Customs were “arbitrary, capricious, and an abuse of discretion” and violated the APA and the CDSOA. Standard argued these agencies treated domestic producers differently, without a rational basis to do so, by limiting the definition of ADPs to producers who indicated their support for the petition in the Commission’s questionnaire, and excluding those who supported the petition but did not indicate support on the questionnaire. Standard relied on recent Federal Circuit decisions and argued the approach of restricting eligibility to producers who supported the petition was inconsistent with the purpose of the CDSOA to “reward domestic producers who support the petition through their conduct.” The court rejected this argument, noting the CDSOA specifically instructed

27 Id.
28 Id.
29 Id.
30 Id.
31 Id.
32 Id.
33 Standard relied on SKF USA, Inc. v. U.S. Customs and Border Prot., 556 F.3d 1337, 1342 (Fed. Cir. 2009) (holding the Byrd Amendment did not violate the First Amendment or the Equal Protection Clause) and PS Chex Sidney, L.L.C. v. U.S. Int’l Trade Comm’n, 684 F.3d 1374, 1382 (Fed. Cir. 2012) (holding a domestic producer supported the petition, thus was an ADP under the CDSOA, when it submitted two detailed responses: supporting the petition in its preliminary response, but taking no position in its final response).
the Commission to provide Customs with a list of ADPs based on an indication of support of the petition by letter or questionnaire response.\textsuperscript{35} Additionally, the court noted Standard misinterpreted the recent Federal Circuit decisions on which it relied, explaining that in those cases, the court held that Congress “permissibly, and rationally, concluded that those who did not support a petition through a letter or questionnaire response should not be rewarded.”\textsuperscript{36} Because Standard admitted it indicated opposition to the petition in its questionnaire responses, the court concluded Standard was disqualified from receiving annual distributions of duties collected under the antidumping order.\textsuperscript{37} Accordingly, the court concluded Standard was not entitled to relief because it is constitutional to limit ADP status to domestic producers that supported the petition.\textsuperscript{38}

Next, the court addressed Standard’s constitutional challenges to the CDSOA.\textsuperscript{39} Regarding the First Amendment, Standard alleged that requiring a domestic producer to support a petition by checking a box on a questionnaire was viewpoint discrimination, which violated the First Amendment.\textsuperscript{40} According to Standard, this requirement violated the First Amendment in its application because it discriminated against Standard for opposing the antidumping petition.\textsuperscript{41} Standard also claimed the Commission’s application of the CDSOA unconstitutionally limited Standard’s right to petition the government for redress of a grievance.\textsuperscript{42} In arguing unconstitutional violations of the Fifth Amendment, Standard alleged the Commission and Customs violated equal protection under the Due Process clause by creating a classification system that “implicat[e] Standard’s fundamental right of free speech,” and that the system was not narrowly tailored to a compelling government interest.\textsuperscript{43} Standard argued similarly-situated domestic producers were treated both differently and unconstitutionally under the CDSOA because application of the definition of ADP under the CDSOA to Standard resulted in

\textsuperscript{35} Id.
\textsuperscript{36} Id.
\textsuperscript{37} Id.
\textsuperscript{38} Id.
\textsuperscript{39} Id.
\textsuperscript{40} Id.
\textsuperscript{41} Id.
\textsuperscript{42} Id.
\textsuperscript{43} Id.
discrimination between domestic producers who expressed support for
the petition regarding the antidumping order and producers who did
not.44

The court rejected Standard’s constitutional challenges based on
precedent in the Federal Circuit, upholding the constitutionality of the
CDSOA.45 In 2009, in SKF USA, Inc., the Federal Circuit held that
the CDSOA did not violate the First Amendment, nor did it violate
equal protection under the Fifth Amendment’s Due Process Clause.46
The court in Standard found a distinct factual similarity between SKF
and Standard’s case; both SKF and Standard were excluded from ADP
status, which would result in receiving an annual distribution of duties
after each expressed opposition to a petition for an antidumping
order.47 Accordingly, the court explained Standard did not allege any
facts that would differentiate it from SKF; and therefore, it rejected
Standard’s constitutional challenges.48

Therefore, after rejecting all of Standard’s claims, both statutory
and constitutional, the court granted Defendants’ motion to dismiss.49
The court reiterated that Standard failed to allege any facts that would
entitle it to relief.50

The Court of International Trade properly dismissed Standard
Furniture’s case due to the overwhelming constitutional precedent
supporting the CDSOA. In SKF, the Commission denied SKF’s
petition for annual distributions under an antidumping order because
it found that SKF was not an eligible ADP.51 When reviewing the
petition for the antidumping order, the Commission sent questionnaires
to domestic producers to collect data. The Commission used this data to assist in its determination of whether the industry had
been materially injured.52 SKF indicated that it opposed the

44 Id.
45 Id.
46 556 F.3d 1337, 1342 (Fed. Cir. 2009).
48 Id.
49 Id.
50 Id.
51 SKF USA, Inc., 556 F.3d at 1340.
52 Id. at 1343.
antidumping petition in its questionnaire response.\textsuperscript{53} Accordingly, after Commerce issued the antidumping order, SKF discovered it was not on the list of eligible ADPs published in the Federal Register.\textsuperscript{54} Upon discovery that its certifications were denied, SKF brought an action to challenge the constitutionality of the CDSOA.\textsuperscript{55} The Federal Circuit upheld the constitutionality of the CDSOA, holding it did not violate the First Amendment or equal protection under the Fifth Amendment.\textsuperscript{56} First, the court noted that SKF’s opposition to the antidumping petition was not likely a “protected First Amendment activity.” However, the court explained that “rewarding those who support government enforcement is at least constitutional if those provisions satisfy the standards governing commercial speech.”\textsuperscript{57} The court then analyzed the CDSOA’s First Amendment constitutionality using the traditional commercial speech analysis under \textit{Central Hudson}.\textsuperscript{58} Under \textit{Central Hudson}, the government may regulate lawful and non-misleading commercial speech so long as there is a substantial government interest, the regulation “directly advances” the asserted government interest, and the regulation is “not more extensive than necessary to serve that interest.”\textsuperscript{59} In \textit{SKF}, the court applied \textit{Central Hudson} and held that the government had a substantial interest—arising from Congress’ broad constitutional power to regulate trade—in preventing dumping.\textsuperscript{60} The court also held that the CDSOA advances the government’s interest in preventing dumping by “rewarding parties who assist in this enforcement.”\textsuperscript{61} The court explained that these types of rewards are generally constitutional and that there is no precedent to indicate otherwise.\textsuperscript{62} Last, the court held that the CDSOA was not overly broad, noting the government frequently and heavily relies on both petitions for antidumping orders and questionnaires for dumping investigations.\textsuperscript{63} The court further

\textsuperscript{53} \textit{Id.}
\textsuperscript{54} \textit{Id} at 1345.
\textsuperscript{55} \textit{Id} at 1345-46.
\textsuperscript{56} \textit{Id} at 1354.
\textsuperscript{57} \textit{Id.} at 1354–55.
\textsuperscript{58} \textit{Id.} at 1355.
\textsuperscript{59} \textit{Id.} (citing \textit{Central Hudson Gas & Elec. Corp. v. Public Service Comm’n of NY}, 447 U.S. 557 (1980)).
\textsuperscript{60} \textit{SKF USA, Inc.}, 556 F.3d at 1360.
\textsuperscript{61} \textit{Id} at 1355.
\textsuperscript{62} \textit{Id} at 1356.
\textsuperscript{63} \textit{Id} at 1357.
explained the support provision in the questionnaire did not exist solely to determine eligibility for distributions. The support provision worked to gather information to aid in the government’s determination of whether there was material injury to the industry because of dumping. Standard did not allege any facts in its case that would indicate that the CDSOA, as applied to Standard, would survive the Central Hudson analysis, especially as Standard’s circumstances are substantially similar to those in SKF. Most importantly, Standard failed to allege facts to show the application of the CDSOA to Standard was overly broad.

Furthermore, the court in Standard properly relied on SKF in determining that CDSOA did not violate equal protection under the due process clause of the Fifth Amendment. Because the SKF court determined the government had a substantial interest in preventing dumping, it determined the CDSOA did not violate equal protection under the rational basis standard. The rational basis standard is met “when the legislative means are rationally related to a legitimate government purpose.” In its First Amendment analysis, the SKF court determined the CDSOA was valid because it furthered the government’s substantial interest in preventing dumping and was not overly broad. In its case, Standard failed to allege any facts indicating that rewarding domestic producers who supported the petition was not rationally related to the government’s interest in preventing dumping. The Federal Circuit has continued to rely on its analysis in SKF, and recently did so in Ashley Furniture Industries, Inc. v. U.S. In Ashley, the Federal Circuit upheld the Court of International Trade’s dismissal of the case based on SKF’s holding that the CDSOA was constitutional. The court distinguished another case, Chez Sidney, L.L.C., v. U.S. International Trade Commission, where the domestic producer supported the petition but “took no

64 Id.
65 Id.
66 Id.
67 Id.
69 SKF USA, Inc., 557 F.3d at 1360.
70 Ashley, 734 F.3d 1306.
71 Id.
position” on the questionnaire,\textsuperscript{72} and cases where the domestic producer indicates its opposition to a petition and expresses its opposition to the petition in its questionnaire, like in \textit{SKF}.\textsuperscript{73}

It is well known that to survive a motion to dismiss a complaint must contain sufficient facts to state a claim to relief “that is plausible on its face.”\textsuperscript{74} Because the Federal Circuit has continuously upheld the constitutionality of the CDSOA in its examination of similar factual circumstances, the \textit{Standard} court properly relied on its own First Amendment and equal protection analysis in dismissing Standard’s case. As explained above, the \textit{SKF} court conducted a proper constitutional analysis of the CDSOA. Because the factual circumstances in this case were not substantially different from \textit{SKF}, I believe the court properly granted the motion to dismiss. Without any allegations of fact to differentiate this case from existing precedent upholding the CDSOA to indicate the statute was unconstitutional as applied, Standard has no claim for entitlement.

The Federal Circuit has continued to uphold the constitutionality of the CDSOA. However, it is worth noting that many of those cases are factually similar. Therefore, it is difficult for these cases to survive a motion to dismiss because, like in \textit{Standard}, there is no way to differentiate these cases from those in which the Federal Circuit has consistently determined there was no claim for entitlement. Accordingly, to successfully challenge the constitutionality of the CDSOA, it appears that a case will have to arise with factual circumstances different enough from \textit{SKF} and \textit{Standard} so that it could survive a motion to dismiss.

\section*{IV. Conclusion}

Although duties are met with criticism, both within the U.S. and abroad, U.S. courts have upheld the constitutionality of distributing those duties to affected domestic producers, even when doing so violates international trade agreements. In \textit{Standard}, the Court of International Trade again found that no claim for relief existed when distribution of duties was denied to a domestic producer who opposed the petition for an antidumping order. It seems in order to show the

\textsuperscript{72} \textit{Chez Sidney}, 684 F.3d at 1379.

\textsuperscript{73} \textit{Ashley}, 734 F.3d 1306.

\textsuperscript{74} Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).
CDSOA is unconstitutional as applied, a case must arise with facts different enough from SKF to allow the court to revisit the issue.