



May 18, 2010

Supreme Court Denies Review Of Federal Circuit Decision Upholding Byrd Amendment

On May 17, 2010, the U.S. Supreme Court denied review of a Federal Circuit decision upholding the requirement in the now repealed Continued Dumping and Subsidy Offset Act of 2000 (sometimes referred to as the “Byrd Amendment”) that parties choosing not to petition for redress or to support a meritorious antidumping or countervailing duty petition are ineligible to receive any share of the duties collected. In its unsuccessful petition to the Supreme Court, a ball bearing manufacturer affiliated with foreign producers found to have engaged in injurious dumping, SKF USA Inc., argued that the statute violated the Constitution’s free speech guarantees.

In 2009, the Federal Circuit rejected the notion that the Byrd Amendment violates constitutional requirements, holding that Congress appropriately directed that duties be distributed only to parties who had sought redress either by filing or supporting a meritorious antidumping or countervailing duty petition. On October 15, 2009, the full Federal Circuit denied *en banc* review and, on December 28, 2009, SKF filed its petition with the Supreme Court. The Supreme Court’s recent order denying review puts an end to the litigation and represents a major victory for domestic industries that have been harmed by injurious dumping. According to SKF’s petition, as much as \$1 billion in distributions in over 40 pending cases involving dozens of different products are affected by this case.

Representing the American Furniture Manufacturers Committee for Legal Trade, lawyers from King & Spalding’s international trade and appellate practice groups worked together to develop the arguments that were ultimately adopted by the Federal Circuit. King & Spalding lawyers also worked closely with counsel for Timken US Corporation to help prepare a brief opposing SKF’s petition and convincing the Supreme Court that no further review was warranted.

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