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Sneaker Circus v. Carter: Import Relief - Jurisdiction of Federal District Courts in International Trade Disputes

James Haynes

IMPORT RELIEF — JURISDICTION OF FEDERAL DISTRICT COURTS — SUFFICIENCY OF JURISDICTION TO HEAR DISPUTES INVOLVING INTERNATIONAL TRADE REGULATIONS IF DISPUTE NOT LIKELY TO RIPEN SUFFICIENTLY FOR CUSTOMS COURT JURISDICTION

Sneaker Circus, Inc. v. Carter, 566 F.2d 396 (2d Cir. 1977).

Sneaker Circus, an importer of non-rubber footwear made in Taiwan and Korea, filed suit in the U.S. District Court for Eastern New York naming the President and various trade representatives as defendants. The action was brought to invalidate two orderly marketing agreements

limiting the quantity of footwear imported from the Republic of Korea and the Republic of China.[1] The Plaintiff alleged that certain public hearings required under the Trade Act of 1974 had not been held and argued that the alleged omission was sufficient to invalidate both agreements. Without ruling on the merits of either claim, the District Court granted the Government's motion to dismiss on the ground that jurisdiction over the subject matter of this action was vested exclusively with the Customs Court.[2]

Plaintiff appealed and the Court of Appeals for the Second Circuit reversed the dismissal and remanded the case to the district court.[3] This decision is important for two reasons: first, it clarifies and confirms an extension of district court jurisdiction; and second, it guarantees access to court for plaintiffs like Sneaker Circus which cannot invoke Customs Court jurisdiction in disputes arising under customs law.

The jurisdiction of the Customs Court has been defined by statute[4] and recognized in court decisions.[5] Its authority is exclusive in disputes arising under the Tariff Act of 1930 and its subsequent amendments.[6] In *J.C. Penney Co. v. Treasury Department,* the district court found a clear Congressional intent to exclude customs cases from the district courts.[7] Moreover, the Court indicated that even if the dispute was not ripe for Customs Court review, that did not mean that it was to be automatically placed under district court jurisdiction.[8] While exclusive, Customs Court jurisdiction is limited in that it may be invoked only by a plaintiff's protest of a formal determination by a U.S. Customs Official.[9] This requirement reflects the origin of the court as a forum for review of Customs Service decisions.[10] It presents a problem, however, for a

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1. The agreements and agreed minutes were published as notices in the Federal Register. 42 Fed. Reg. 32440 (1977), and 42 Fed. Reg. 42268 (1977).

2. Sneaker Circus, Inc. v. Carter, 566 F.2d 396 (2d Cir. 1977).

3. *Id.*

4. 28 U.S.C. § 1582(a), states in part: "The Customs Court shall have exclusive jurisdiction of civil actions instituted by any person whose protest pursuant to the Tariff Act of 1930, as amended, has been denied, in whole or in part, by the appropriate customs officer . . . . "

5. *See,* J.C. Penney Co., Inc. v. United States Treasury Department, 319 F. Supp. 1023 (1970), *aff'd,* 439 F.2d 63 (2d Cir. 1971), *cert. denied,* 404 U.S. 869 (1971) and Cottman Co. v. Dailey, 94 F.2d 85 (4th Cir. 1938).

6. Tariff Act of 1930, 19 U.S.C. §§ 1202-1654 (1976), as amended, and the Trade Act of 1974, 19 U.S.C. §§ 2101-2487 (1976).

7. 439 F.2d at 67.

8. *Id.* at 68.

9. 566 F.2d at 399.

10. For a brief discussion of the history of the U.S. Customs Court *see,* [1970] U.S. CODE CONG & AD. NEWS 3189.

plaintiff who is prevented by circumstances from making the jurisdiction-creating protest.

In the instant case, protest was impossible because of the enforcement procedures established under the two orderly marketing agreements. The provisions of these agreements provided that the governments of Taiwan and Korea would control their exports to the United States by issuing a limited number of export visas for non-rubber footwear. In both countries, heavy penalties were established to punish exporters who failed to obtain visas. The role of the U.S. Customs Service under the agreements is merely to count the pairs of footwear which are imported, and certify the validity of the foreign export visas. The plaintiff, Sneaker Circus, would have been able to invoke Customs Court jurisdiction had the Customs Service ever been forced to exclude a shipment of footwear for violating the agreements. The enforcement arrangements in the exporting nations were so strict, however, that it appeared as though the Customs Service would never have to take such action. On appeal the government argued that the Congressional grant of exclusive jurisdiction to the Customs Court precluded review of customs law cases by any other court. The appellate court rejected this contention, finding that the "Exclusive jurisdiction" of the Customs Court does not extend to cases which cannot be heard in that court. "The point is . . . that the case will never ripen sufficiently to meet the statutory requirements for [Customs Court] jurisdiction. When this situation occurs, jurisdiction over a customs matter which presumptively inheres in the Customs Court reverts to the District Court under 28 U.S.C. §§ 1331 and 1337."[11] This conslusion was supported by specific precedents involving exceptional customs cases which had been argued in district court.[12] The court also relied upon *Abbott Laboratories v. Gardner*[13] and subsequent cases which held that executive actions are reviewable in the courts unless there is a clear intent to the contrary expressed by Congress. No such intent was expressed concerning disputes under the customs laws.[14]

The second issue addressed in the instant case was whether a dispute concerning an orderly marketing agreement is justiciable. Executive agreements with foreign governments generally are not subject to judicial inquiry because they are deemed to involve "political questions." The appellate court stated that a challenge to the "substance" of the orderly

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11. 566 F.2d at 399-400.

12. *See*, Timken Co. v. Simon, 539 F.2d 221 (D.C. Cir. 1976) and Consumers Union v. Kissenger, 506 F.2d 136 (D.C. Cir.), *cert. denied*, 421 U.S. 1004 (1974). *See also* 3 INT'L TRADE L. J. 149 (1977).

13. 387 U.S. 136 (1967).

14. 566 F.2d at 401.

marketing agreements would not be justiciable because of the political question exception. However the court regarded the claim of Sneaker Circus as a challenge to the "procedure" by which the agreements were reached. The procedures in the instant case are mandated by statute, consequently, judicial review was held to be appropriate.[15]

Viewed in its entirety, this decision at first reflects a traditional Anglo-Saxon reluctance to leave a plaintiff without a remedy. It also shows a willingness on the part of the court to assert its power of review in the area of international trade.

The appellate court's "activist" response comes at the end of a decade which has seen tremendous U.S. concern over developing fair rules for international trade.[16] The increasing number and complexity of international agreements may result in U.S. business enterprises resorting more frequently to the District Courts for relief. The decision in the instant case should provide some encouragement for domestic concerns which perceive a need for judicial intervention in the future.[17]

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15. *Id.* at 402.

16. Perhaps the greatest single example of this concern is the Tokyo Round of the Multilateral Trade Negotiations which is currently being completed in Geneva, Switzerland.

17. Questions concerning the exclusivity of Customs Court jurisdiction remain uncertain despite this decision. In Consumers Union of the United States v. Committee for the Implementation of Textile Agreements, 561 F.2d 872 (D.C. Cir. 1977), the United States Court of Appeals for the District of Columbia found that Customs Court jurisdiction was exclusive in a dispute involving essentially the same issues as presented in the instant case. That court, however, did not reach the additional issue presented in *Sneaker Circus*, which involves a plaintiff's right to relief in instances of U.S.-sanctioned foreign import controls which preclude the jurisdiction-creating exclusionary decision by an United States Customs Official. For a discussion of *Consumers Union*, *see* 8 GA. J. INT'L & COMP. L. 482 (1978).