U.S. Customs and Border Protection

Slip Op. 14–92

FORMER EMPLOYEES OF THE BOEING COMPANY, BOEING DEFENSE AND SPACE DIVISION, WICHITA, KS, Plaintiffs, v. U.S. SEC'Y OF LABOR, Defendant.

Before: Gregory W. Carman, Judge
Court No. 13–00281

[Defendant's Remand Results are sustained; Plaintiffs' motion for remand is denied.]

Dated: August 11, 2014

Steven D. Schwinn of Chicago, IL, for plaintiffs.

Antonia R. Soares, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, for defendant. With her on the brief were *Stuart F. Delery*, Assistant Attorney General, *Jeanne E. Davidson*, Director, and *Claudia Burke*, Assistant Director. Of Counsel on the brief was *Jonathan Hammer*, Office of the Solicitor, U.S. Department of Labor, of Washington, DC.

OPINION & ORDER

CARMAN, JUDGE:

Before the Court is Defendant U.S. Secretary of Labor's ("Labor" or "Defendant") Notice of Negative Determination On Remand ("Remand Results"), ECF No. 9–1, regarding the Certification of Group Eligibility for Worker Adjustment Assistance for Former Employees of the Boeing Company, Boeing Defense and Space Division, Wichita, Kansas ("Boeing Wichita" or "Plaintiffs"). For the reasons set forth below, the Court sustains Defendant's Remand Results and denies Plaintiffs' motion for remand.

BACKGROUND

In 2005, the Boeing Company sold the Boeing Commercial Aircraft ("BCA") Division and the corresponding support parts in its Wichita, Kansas facility, resulting in the Boeing Defense and Space ("BDS")

Division as the only remaining entity at that facility. A.R.[1] at 24, ECF No. 10.[2] The Boeing Wichita facility worked on programs owned by the U.S. and foreign military. *Id*. Labor discovered that the Boeing Wichita facility did not engage in new production of commercial or military aircraft but rather modified existing military aircraft. *Id*. at 25. The stream of modification work at the Boeing Wichita facility was inconsistent, but "[m]anagement at the Wichita facility continue[d] to proactively seek modification work for the [Boeing Wichita facility]. For example, mod work on seven aircraft was moved from a foreign company *to*" the Boeing Wichita facility, which increased work output from 2006 to 2008. *Id*. (emphasis in original). Despite management's effort, the Boeing Wichita facility continued to struggle financially and this "became a complex issue that resulted in either laying employees off and then attempting to recall them or loaning them for long lengths of time to Seattle where the work was usually more constant." *Id*. at 24. The record shows that the lack of work coupled with the U.S. Department of Defense's budget cuts led to Boeing's decision to close its Wichita facility this summer. *Id*.

On May 14, 2013, a union official from the International Association of Machinists & Aerospace Workers ("IAM"), District Lodge # 70, filed a petition on behalf of the former employees of the Boeing Company, BDS Division, in Wichita, Kansas for group certification for Trade Adjustment Assistance ("TAA"). A.R. at 1–3. During its review of Petitioners' application for certification eligibility, Labor learned that the Boeing Wichita's facility did not produce commercial aircraft during the period of investigation and had not produced military aircraft for several years even predating the period of investigation from March 8, 2012 to May 8, 2013. Def.'s Resp. to Pls.' Comments on the Dep't of Labor's Remand Results and Mot. for Second Remand ("Def.'s Resp.") at 18 (citing A.R. at 49–50, 458, 461–62), ECF No. 23. Rather, Labor discovered that Plaintiffs were engaged in employment related to the maintenance and modification of military aircraft covered by the International Traffic in Arms Regulations ("ITAR"). Such work "cannot be completed outside of the United States" and thus does not meet the TAA eligibility requirements according to Labor. Remand Results at 4.

Plaintiffs argued that they stand in the same position as the certified former employees of the Boeing facility in Seattle. Pls.' Com-

[1] A.R. stands for the public administrative record.

[2] The public administrative record is broken up into six parts on ECF. In their briefs, parties cite to pages in the record as a whole, not in parts. The Court does the same.

ments on Def.'s Remand Results and Mot. for Second Remand ("Pls.' Comments") at 12, ECF No. 21. However, Labor distinguished Plaintiffs' situation:

> [D]ue to the nature of the services supplied by the subject worker group and the laws and regulations governing the services provided by the subject firm worker group, the work is not considered to be interchangeable with the work performed by other certified Boeing facilities.

Remand Results at 5. On June 12, 2013, Labor issued a negative determination for Plaintiffs' application for TAA group certification. *Notice of Determination Regarding Eligibility to Apply for Worker Adjustment Assistance*, 78 Fed. Reg. 39,776 (Dep't of Labor July 2, 2013) ("*Negative Determination*").

On August 6, 2013, Plaintiffs appealed Labor's *Negative Determination* to this court. The Clerk of the Court deemed Plaintiffs' letter to be a complaint and summons. *See generally* Summons, ECF. No. 1, Compl., ECF No. 2. In response, Labor moved for a voluntary remand "to conduct a further investigation and to make a redetermination as to whether the subject worker group was eligible for certification for TAA benefits," and the Court granted this consent motion. Def.'s Consent Mot. for Voluntary Remand, ECF No. 7, and Order of Oct. 22, 2013, ECF No. 8. On December 20, 2013, "based on a careful review of previously submitted information and new information obtained during the remand investigation," Labor affirmed that "the petitioning workers have not met the eligibility criteria" for TAA benefits. Remand Results at 6. Plaintiffs challenge Labor's Remand Results and request a second remand.[3]

DISCUSSION

I. Jurisdiction & Standard of Review

The Court has jurisdiction pursuant to 28 U.S.C. § 1581(d)(1) (2006).[4] The Court will uphold Labor's findings of fact if "supported by substantial evidence" but may remand for further evidence to be considered "for good cause shown." 19 U.S.C. § 2395(b). Substantial evidence is "such relevant evidence as a reasonable mind might ac-

[3] Plaintiffs filed a motion for a second remand. *See generally* Pls.' Comments. While it is unusual to make a motion for a second remand rather than embody the request in the comments on remand, the Court appreciates that TAA cases may involve parties and counsel not familiar with this procedure and thus accepts all parties' requests in this particular case.

[4] All citations to the United States Code will refer to the 2006 edition unless otherwise stated.

cept as adequate to support a conclusion." *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951) (internal quotation omitted). "[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Former Employees of Western Digital Techs., Inc. v. U.S. Sec'y of Labor*, 36 CIT __, __, 893 F. Supp. 2d 1288, 1292 (2012) (quoting *Am. Textile Mfrs. Inst., Inc. v. Donovan*, 452 U.S. 490, 52 (1981)).

II. TAA & ITAR

A. Trade Adjustment Assistance ("TAA")

A group of displaced domestic workers may file a petition to be certified as eligible to apply for TAA by the Employment and Training Administration of Labor. The eligibility criteria for certification are met if "a significant number or proportion of the workers" have become or are threatened to become "totally or partially separated" as a result of either increased imports or a shift abroad of production or services. 19 U.S.C. § 2272;[5] *see also Former Employees of Western*

[5] 19 U.S.C. § 2272 provides, in pertinent part:

(a) **In general**

A group of workers shall be certified by the Secretary as eligible to apply for adjustment assistance under this part pursuant to a petition filed under section 2271 of this title if the Secretary determines that—

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated; and

(2)

(A)

(i) the sales or production, or both, of such firm have decreased absolutely;

(ii)

(I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(II) imports of articles like or directly competitive with articles—

(aa) into which one or more component parts produced by such firm are directly incorporated, or

(bb) which are produced directly using services supplied by such firm, have increased; or

(III) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased; and

(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

(B)

(i)

(I) there has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; or

Digital Techs., Inc., 893 F. Supp. 2d at 1290. While the TAA's assistance provisions "are to be construed liberally," the "parameters of the statute cannot be ignored" and the "benefits of [TAA] are not universal." *Former Employees of Hewlett-Packard Co. v. United States*, 17 CIT 980, 986 (1993). Accordingly, some hardship may result. *Id*. Case law has "consistently held that the TAA statute does not apply when a company closes because economic factors make continued operations impractical rather than due to direct import competition." *Id*.

B. International Traffic in Arms Regulations ("ITAR")

The U.S. Secretary of State promulgated ITAR, 22 C.F.R. §§ 120–130, implementing the Arms Export Control Act ("AECA"), codified at 22 U.S.C. § 2778. The ACEA authorizes the President, who delegated his authority to the Secretary of State, to regulate the export and import of defense articles and military products and services. *See* 22 U.S.C. § 2778(a); *see also Executive Order No. 11,958*, 42 Fed. Reg. 4,311 (Jan. 18, 1977). Because products and services covered by ITAR must be domestically produced and serviced, this work cannot shift abroad. *Id*. Military aircraft and associated equipment are included. *See* 22 C.F.R. § 121.1 (Cat. VIII). Therefore, products or services covered by ITAR do not meet the criteria for TAA eligibility.

II. Boeing Wichita's TAA Application

At issue is Labor's negative determination of the former employees of the Boeing Wichita facility's TAA certification eligibility due to a shift abroad of production or services. *Negative Determination*, 78 Fed. Reg. at 39,776. Labor determined that the Boeing Wichita facility's certification eligibility is negated (1) by ITAR coverage and (2) by the closure of the firm due to economic hardship. *See generally* Remand Results.

During the course of its investigation, Labor discovered that the Boeing Wichita facility's maintenance and modification services were covered under ITAR and thus the work could not shift abroad. Def.'s Resp. at 11 (citing A.R. at 462, 470). "Such maintenance and modification work could only be carried out in the United States" because of ITAR coverage. *Id*. at 13 (citing A.R. at 146). The Court has previously affirmed that workers of firms whose production or services are covered by ITAR are not eligible for TAA certification. *See Former Employees of Honeywell Int'l, Inc. v. U.S. Dep't of Labor*, 33 CIT 558

(II) such workers' firm has acquired from a foreign country articles or services that are like or directly competitive with articles which are produced or services which are supplied by such firm; and

(ii) the shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

(2009) (sustaining Labor's negative determination because of ITAR coverage). Boeing informed Labor that its Wichita facility was covered under ITAR and "the work that has continued to be performed here at the Wichita site has consisted only of programs owned by the U.S. and foreign military." A.R. at 24. Plaintiffs claim a mere representation by a Boeing official was insufficient investigation by Labor. Pls.' Comments at 7–11. However, a representation of ITAR coverage by a firm official on the record has been found to be sufficient to determine ITAR coverage in terms of certification eligibility. *See, .e.g., Former Employees of Honeywell Int'l,* 33 CIT at 559. Thus, Labor's determination that ITAR coverage negates TAA certification eligibility is supported by the record.

A secondary reason that Labor denied certification is because of economic hardship. Not only was there an inconsistent stream of work at the Boeing Wichita facility but also the remaining work was transferred to other domestic Boeing facilities. Def.'s Resp. at 11. Labor states that "the record establishes that the shifting of the services carried out at Boeing's Wichita facility was driven by a business decision unrelated to a shift in services to a foreign country." *Id*. (citing A.R. at 48–49). As noted *supra*, it is established that TAA does not apply "when a company closes because economic factors make continued operations impractical rather than due to direct import competition." *Former Employees of Hewlett-Packard*, 17 CIT at 986. Thus, Labor's determination that financial hardship negates TAA certification eligibility is also supported by the record. As stated in *Former Employees of Hewlett-Packard*, the Court "sympathizes with the difficult circumstances plaintiffs' job loss may have imposed on them, but the court is bound to apply the statute as intended by Congress." *Id*.

Because it is supported by the record, the Court must uphold Labor's negative determination. Accordingly, the Court sustains Labor's Remand Results.

CONCLUSION

For the foregoing reasons, it is hereby

ORDERED that Defendant's Remand Results are sustained. Judgment to enter accordingly.

Dated: August 11, 2014
New York, NY

/*s*/ *Gregory W. Carman*
GREGORY W. CARMAN, JUDGE

Slip Op. 14–93

CHANGZHOU HAWD FLOORING CO., LTD., et al., Plaintiffs, v. UNITED STATES Defendant.

Before: Donald C. Pogue,
Senior Judge
Court No. 12–00020

[motion to file comments as amicus curiae denied]

Dated: August 11, 2014

Gregory S. Menegaz and *J. Kevin Horgan*, deKieffer & Horgan, PLLC, of Washington, DC, for Plaintiffs.

Kristin H. Mowry, *Jeffrey S. Grimson*, *Jill A. Cramer*, *Sarah M. Wyss*, and *Daniel R. Wilson*, Mowry & Grimson, PLLC, of Washington, DC, for Plaintiff-Intervenor Fine Furniture (Shanghai) Ltd.

Harold Deen Kaplan, *Craig A. Lewis*, and *Mark S. McConnell*, Hogan Lovells US LLP, of Washington, DC, for Plaintiff-Intervenor Armstrong Wood Products (Kunshan) Co., Ltd.

Mark R. Ludwikowski, *Arthur K. Purcell*, *Michelle L. Mejia*, and *Kristen S. Smith*, Sandler, Travis & Rosenberg, PA, of Washington, DC, for Plaintiff-Intervenors Lumber Liquidators Services, LLC, and Home Legend, LLC.

Ronald M. Wisla and *Lizbeth R. Levinson*, Kutal Rock LLP, of Washington DC, for Movants Alliance for Free Choice and Jobs in Flooring.

Alexander V. Sverdlov, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, of Washington, DC, for Defendant. Appearing with him were *Stuart F. Delery*, Assistant Attorney General, *Jeanne E. Davidson*, Director, and *Claudia Burke*, Assistant Director. Of counsel was *Shana Hofstetter*, Attorney, International Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington, DC.

Jeffrey S. Levin, Levin Trade Law, P.C., of Bethesda, MD, for the Defendant-Intervenor Coalition for American Hardwood Parity.

OPINION AND ORDER

Pogue, Senior Judge:

This is an action challenging an antidumping duty rate established by the Department of Commerce ("Commerce" or "the Defendant"). Currently before the court is a motion from the primary members[1] of the Alliance for Free Choice and Jobs in Flooring ("AFCJF" or "Mo-

[1] *See* Mot. to Appear as *Amicus Curiae*, ECF No. 77 ("Mot. to Appear") at 1–2 ("The current primary members of the [Alliance for Free Choice and Jobs in Flooring] who directly import the subject merchandise from China include: Swiff Train Co., Metropolitan Hardwood Floors, Inc., Real Wood Floors, LLC, Galleher Corp., Cresent Harwood Supply, Custom Wholesale Floors, Inc., Urban Global LLC, Pinnacle Interior Elements, Ltd., Timeless Design Import LLC, CDC Distributors, Inc., CLBY Inc. (dba D&M Flooring), Johnson's Premium Hardwood Flooring, Inc., The Master's Craft Corp., BR Custom Surface, Doma Source LLC, V.A.L. Floors, Inc., and Struxtur, Inc.").

vants")[2] seeking *amicus curiae* status in this action and submitting a proposed *amicus* brief. Mot. to Appear, ECF No. 77 at 1. The court has jurisdiction in the underlying action pursuant to § 516A(a)(2)(B)(i) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1516a(a)(2)(B)(i) (2012) and 28 U.S.C. § 1581(c) (2012).[3] Because AFCJ is an interested party that is seeking, in effect, intervenor not *amicus* status, and because AFCJF's brief is not useful to the court, the motion is DENIED.

BACKGROUND

In this action, Plaintiffs, all separate rate respondents in the underlying administrative proceedings, challenge Commerce's determination of their antidumping duty deposit rate in *Multilayered Wood Flooring from the People's Republic of China*, 76 Fed. Reg. 64,318 (Dep't Commerce Oct. 18, 2011) (final determination of sales at less than fair value). Compl., ECF No. 9. The ensuing litigation[4] has produced two remands[5] and two corresponding redeterminations.[6] The AFCJF now moves to participate as *amicus curiae* pursuant to USCIT Rule 76. Mot. to Appear, ECF No. 77 at 1.

DISCUSSION

Pursuant to USCIT Rule 76, a nonparty may file a brief as an *amicus curiae* on motion to the court or by request of the court.

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[2] The AFCJF is "an organization of over 100 American companies. . . involved in the manufacture, importation, and distribution of engineered wood flooring from China. The AFCJF membership includes downstream companies who distribute, retail, and even install engineered wood flooring . . . ." Mot. to Appear, ECF No. 77 at 1.

[3] All further citations to the Tariff Act of 1930, as amended, are to Title 19 of the U.S. Code, 2012 edition, unless otherwise noted.

[4] This action was consolidated with Court Numbers 11–00452, 1200007, and 12–00013, under Consolidated Court Number 12–00007. Order May 31, 2012, Consol. Ct. No. 12–00007, ECF No. 37. Court Number 11–00452 was ultimately severed and dismissed. Am. Order Nov. 27, 2012, Consol. Ct. No. 12–00007, ECF No. 75; Judgment, Ct. No. 11–00452, ECF No. 68; *see Baroque Timber Indus. (Zhongshan) Co., Ltd. v. United States*, __ CIT __, 853 F. Supp.2d 1290 (2012); *Baroque Timber Indus. (Zhongshan) Co., Ltd. v. United States*, __ CIT __, 865 F. Supp. 2d 1300 (2012).

[5] *Baroque Timber Indus. (Zhongshan) Co., Ltd. v. United States*, ___ CIT ___, 925 F. Supp. 2d 1332 (2013) ("*Baroque III*") and *Baroque Timber Indus. (Zhongshan) Co., Ltd. v. United States*, __ CIT __, 971 F. Supp. 2d 1333 (2014) ("*Baroque IV*")

[6] Final Results of Redetermination Pursuant to Court Order, Consol. Ct. No. 12–00007, ECF No. 132, and Final Results of Redetermination Pursuant to Court Order, ECF No. 52 ("*Redetermination II*"). Following the first remand determination, Court Numbers 12–00007 and 12–00013 were severed and final judgment entered. Order Granting Mot. to Sever, Consol. Ct. No. 12–00007, ECF No. 162; Judgment, Ct. No. 1200007, ECF No. 163; Judgment, Ct. No. 12–00013, ECF No. 32. These have since been appealed by Defendant-Intervenor Coalition for American Hardwood Parity. Appeal of Judgment, Ct. No. 1200007, ECF No. 166; Appeal of Judgment, Ct. No. 12–00013, ECF No. 33.

USCIT Rule 76. A motion to appear as an *amicus curiae* "must identify the interest of the applicant and state the reasons why an *amicus curiae* is desirable." *Id.* The grant or denial of such a motion is "discretionary with the court." *In re Opprecht*, 868 F.2d 1264, 1266 (Fed. Cir. 1989) (internal citation omitted).[7]

I. The Interests of the Applicant

An *amicus curiae* is meant to be, as the name indicates,[8] a friend of the court.[9] While an *amicus* need not be totally disinterested,[10] there are limits to the availability of *amicus* status,[11] with a "bright line distinction between *amicus curiae* and named parties/real parties in interest." *Siam Food Products Pub. Co., Ltd. v. United States*, 22 CIT 826, 830, 24 F. Supp. 2d 276, 280 (1998) (quoting *United States v. Michigan*, 940 F.2d at 165).

Here, Movants seek to blur the line between intervenor and *amicus*. Movants are importers and exports many of whom "participated in various facets of [Commerce's] original investigation," including as separate rate respondents. Mot. to Appear, ECF No. 77 at 2–3. They now seek an "appropriate remedy from this Court." Second Remand Comments of *Amicus Curiae* [AFCJF], ECF No. 77–3 ("*Amicus* Br.") at 10. Specifically, they want a zero rate for all separate rate respondents. *Id.*[12] While a pecuniary interest in the outcome of a case does

[7] *See also N. Sec. Co. v. United States*, 191 U.S. 555, 556 (1903)("[D]oubtless it is within our discretion to allow [the filing of *amicus* briefs] in any case when justified by the circumstances"); *Nat'l Org. for Women, Inc. v. Scheidler*, 223F.3d 615, 616 (7th Cir. 2000) ("Whether to permit a non party to submit a brief, as *amicus curiae*, is, with immaterial exceptions, a matter of judicial grace."); *United States v. Michigan*, 940 F.2d 143, 165 (6th Cir. 1991) ("Classical participation as an *amicus* to brief and argue as a friend of the court was, and continues to be, a privilege within the sound discretion of the courts . . . .") (internal quotation marks and citations omitted).

[8] In Latin, *amicus*, being the masculine singular nominative of *amicus*, means "friend" and curiae, being the feminine singular genitive of *curia*, means "of the court." *See Black's Law Dictionary* 102 (10th ed. 2014).

[9] *See also Clark v. Sandusky*, 205 F.2d 915, 917 (7th Cir. 1953) (an *amicus curiae* is "a friend of the court whose sole function is to advise, or make suggestions to, the court").

[10] *See Neonatology Associates, P.A. v. C.I.R.*, 293 F.3d 128, 131(3d Cir. 2002) ("[I]t is not easy to envisage an *amicus* who is 'disinterested' but still has an 'interest' in the case."); *Funbus Sys., Inc. v. State of Cal. Pub. Utilities Comm'n.*, 801F.2d 1120, 1125 (9th Cir. 1986) ("[T]here is no rule that amici must be totally disinterested.") (internal citation omitted).

[11] *See Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062,1063 (7th Cir. 1997) ("We are beyond the original meaning now; an adversary role of an *amicus curiae* has become accepted. But there are, or at least there should be, limits.") (internal citations omitted).

[12] They ask that the court "grant the zero margin not only to the separate rate respondents that are appellants in this proceeding, but to all separate rate respondents that participated in the original investigation." *Id.*

not preclude a nonparty from *amicus* standing,[13] "an *amicus curiae* is not a party to litigation" and is not entitled to seek relief. *Miller-Wohl Co. v. Comm'r of Labor & Indus. State of Mont.*, 694 F.2d 203, 204 (9th Cir. 1982) (citing *Clark*, 205 F.2d at 917).[14] A*micus* standing "should not become a substitute for intervention." *Stewart-Warner Corp. v. United States*, 4 CIT 141, 142 (1982) (not reported in F. Supp.).[15] Movants here seek not so much to be a friend of the court as to compensate for a failure to timely intervene. *See* Mot. to Intervene as Intervenor Pls. Pursuant to Rule 24(a)(3), ECF No. 78. Accordingly, granting them *amicus* standing is inappropriate.

II. The Desirability of an Amicus Curiae

Amicus briefs are "solely for the benefit of the [c]ourt." *Stewart–Warner*, 4 CIT at 142. A brief benefits the court when it "assist[s] the judge[] by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties' briefs." *Voices for Choices v. Illinois Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003). The court will deny a motion to file an *amicus* brief that "essentially duplicates" a litigant's brief." *Id.* at 544.

Here, the Movants' brief merely duplicates Plaintiffs' and Plaintiff-Intervenors' briefs.[16] This is neither desirable nor useful to the court.

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[13] *See Neonatology Associates*, 293 F.3d at 131–32 ("A quick look at Supreme Court opinions discloses that corporations, unions, trade and professional associations, and other parties with 'pecuniary' interests appear regularly as amici.") (citing *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 3 n. * (1991); *Container Corp. of America v. Franchise Tax Bd.*, 463 U.S. 159,161 n. * (1983)).

[14] *See also Doran v. Salem Inn, Inc*., 422 U.S. 922, 931 (1975) (finding that "neither declaratory nor injunctive relief can directly interfere with enforcement of contested statutes or ordinances except with respect to the particular federal plaintiffs"); *Corning Gilbert Inc. v. United States*, __ CIT __,837 F. Supp. 2d 1303, 1306 (2012) (USCIT Rule 76 "certainly does not contemplate general participation at the trial level, with everything that entails (*e.g.,* procedural motions, discovery motions, or settlement discussions).").

[15] Movants explain that "in this unique situation," the separate rate companies "participated fully and properly in the initial investigation, but did not participate in this appeal [as Plaintiffs or Plaintiff-Intervenors] because at the time of the final determination there was no cause to appeal the separate company rate as calculated by [Commerce]. Only after remand where all mandatory respondents were found to have zero margins was it apparent that it was possible" that they could receive a zero rate and be excluded from the order. *Amicus* Br., ECF No.77–3 at 10.

[16] While Movants claim that the "AFCJF brings a unique and informative perspective to the [c]ourt," Mot. to Appear, ECF No. 77 at 3, their proposed *amicus* brief merely repeats or incorporates by reference arguments already made before the court by Plaintiffs and Plaintiff-Intervenors. For a discussion of the inapplicability of the non-cooperative companies' rate to the separate rate respondents, compare *Amicus* Br., ECF No. 77–3 at 9 (incorporating by reference the arguments of Plaintiff-Intervenors Fine Furniture (Shanghai), Ltd. and Lumber Liquidators Services, Ltd.) with Comments of Certain Separate Rate Appellants to Second Remand Redetermination, ECF No. 69 ("Pls. Comments") at 13–17, Comments of Fine Furniture (Shanghai) Ltd. on Dep't of Commerce May 30, 2014 Final

See USCIT R. 76 ("The motion for leave must . . . state the reasons why an *amicus curiae* is desirable."); *Ass'n of Am. Sch. Paper Suppliers v. United States*, __ CIT __, 683 F. Supp. 2d 1326, 1328 (2010) (the most important criterion for deciding whether granting *amicus* status is appropriate, is "the usefulness of information and argument presented by the potential *amicus curiae* to the court").[17] Accordingly, Movants' brief is not of benefit to the court and leave to file it is denied.

CONCLUSION

For the aforementioned reasons, it is hereby ORDERED that the AFCJF's motion to participate as *amicus curiae* is DENIED.

IT IS SO ORDERED.

Dated: August 11, 2014
New York, NY

/*s*/ *Donald C. Pogue*
DONALD C. POGUE, SENIOR JUDGE

Result of Redetermination Pursuant to Ct. Order, ECF No. 74 ("Fine Furniture Comments") at 5–7, Comments in Opp'n to Dep't of Commerce May 29, 2014 Final Results of Redetermination Pursuant to Ct. Remand, ECF No. 75 ("Armstrong Comments") at 11–12, Response of Lumber Liquidators Services, LLC in Opp'n to United States 2nd Remand Redetermination, ECF No. 76 ("Lumber Liquidators Comments") at 7–8. For a discussion of how the only reasonable method to calculate the separate rate is to average the mandatory respondents margins, resulting in a *de minimis* separate rate, compare *Amicus* Br., ECF No. 77–3 at 11–13, with Pls. Comments, ECF No. 69 at 19–31; Fine Furniture Comments, ECFNo. 74, at 25–27; Armstrong Comments, ECF No. 75 at 4–10; Lumber Liquidators Comments, ECF No. 76 at 7–13.

[17] *See Ryan*, 125 F.3d at 1064 ("In an era of heavy judicial case loads and public impatience with the delays and expense of litigation, we judges should be assiduous to bar the gates to *amicus curiae* briefs that fail to present convincing reasons why the parties' briefs do not give us all the help we need for deciding the appeal."); *Am. Satellite Co. v. United States*, 22 Cl. Ct. 547, 549 (1991) ("Perhaps the most important [consideration] is whether the court is persuaded that participation by the *amicus* will be useful to it, as contrasted with simply strengthening the assertions of one party.") (internal citations omitted).