

U.S. Customs and Border Protection

Slip Op. 10–17

DIAMOND SAWBLADES MANUFACTURERS’ COALITION, Plaintiff, v. UNITED STATES, Defendant, and SAINT-GOBAIN ABRASIVES, INC., HEBEI JIKAI INDUSTRIAL GROUP Co., D., HUSQVARNA CONSTRUCTION PRODUCTS NORTH AMERICA, INC., EHWA DIAMOND INDUSTRIAL Co., LTD., and BOSUN TOOLS GROUP Co., LTD., Defendant-Intervenors.

Before: R. Kenton Musgrave, Senior Judge
Court No. 09–00110

[Motion and cross-motion for sanctions denied.]

Dated: February 12, 2010

Wiley Rein, LLP, (Daniel B. Pickard), for the plaintiff.

Akin, Gump, Strauss, Hauer & Feld, LLP (J. David Park, Jarrod M. Goldfeder), for the defendant-intervenor Ehwa Diamond Industrial Co., Ltd.

Fischer Fox Global, PLLP, (Lynn M. Fischer Fox), for the defendant-intervenor Saint-Gobain Abrasives, Inc.

Alston & Bird, LLP, (Kenneth G. Weigel, Elizabeth M. Hein) for the defendant-intervenors Hebei Jikai Industrial Group Co., Ltd., and Husqvarna Construction Products North America, Inc.

DeKeiffer& Horgan (Gregory S. Menegaz), for the defendant-intervenor Bosun Tools Group Co., Ltd.

Defendant United States Department of Commerce played no part in this matter.

OPINION AND ORDER

Musgrave, Senior Judge:

Introduction

Plaintiff Diamond Sawblades Manufacturers’ Coalition (“DSMC”) now moves pursuant to United States Court of International Trade (“USCIT”) Rule 11 for the imposition of sanctions on counsel for Defendant-Intervenors Saint-Gobain Abrasives, Inc., Hebei Jikai Industrial Group Co., Ltd., Husqvarna Construction Products North America, Inc., Ehwa Diamond Industrial Co., Ltd., and Bosun Tools Group Co., Ltd., (“Intervenors”), together with an award of attorney fees, due to alleged violations presented by Intervenors’ October 8, 2009 Joint Motion for Stay Pending Appeal. Pl’s. Mot. at 1. Intervenors oppose the motion as meritless and contend that the motion itself violates Rule 11. Intervenors therefore request that the court

rather assess attorney fees against DSMC's counsel for having filed a frivolous motion. Def.-Int's Opp'n at 13. For the purpose of permitting DSMC's response thereto, Intervenor's response will be construed as a cross-motion for sanctions, *see* USCIT Rule 4, but for the reasons set forth below the motions will be denied.

Background

This case has a fairly extensive procedural history. Only salient facts need be here related: On September 30, 2009, the court granted DSMC's request for relief in the nature of a writ of mandamus and ordered that the Department of Commerce, "forthwith, issue and publish antidumping duty orders and order the collection of cash deposits on subject merchandise." *Judgment, Diamond Sawblades Mfrs.' Coalition v. United States*, 33 CIT __, 650 F. Supp 1331 (2009) (*appeal docketed*, Oct. 15, 2009). On October 7, 2009, pursuant to USCIT Rule 62, Intervenor's filed a motion to stay enforcement of that Judgment pending Intervenor's appeal of the decision in the United States Court of Appeals for the Federal Circuit ("Federal Circuit"). *See* Def.-Int's Mot. for Stay Pending Appeal. The court denied this motion on November 4, 2009. *See Diamond Sawblades v. United States*, Slip Op. 09-128.

On December 1, 2009 Plaintiffs filed the motion for sanctions that is currently before the Court. In its motion, DSMC asserts that Intervenor's motion for a stay was "filed for an improper purpose" and "contained allegations and claims for relief that were not warranted by the law or by the facts." Pl's. Mot. at 1-2. DSMC requests that this court issue sanctions against Intervenor's counsel and order them to reimburse DSMC for attorney fees and costs incurred as a result of motion for stay. *Id.* In response, Intervenor's contend that DSMC's motion is so procedurally defective and substantively meritless that it should be deemed frivolous. Def.-Int's Opp'n at 13-14. Intervenor's assert that the motion should be denied and request that the court order DSMC's counsel to reimburse them for attorney fees pursuant to the fee-shifting provision set forth in Rule 11. *Id.* at 14.

Discussion

Rule 11 Sanctions

Rule 11 provides, in pertinent part:

* * *

(b) Representations to the Court.

By presenting to the court a pleading, written motion, or other paper — whether by signing, filing, submitting, or later advocating

it — an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after any inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) Sanctions.

(1) In General. If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) Motion for Sanctions. A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) On the Court's Initiative. On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) Nature of a Sanction. A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The

sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

* * *

USCIT Rule 11(b), (c).¹

As indicated above, Rule 11 is violated when a pleading or paper is presented to the court (1) for any improper purpose, such as harassment or unnecessary delay; (2) contains "claims, defenses, or other legal contentions" not warranted by existing law or by a nonfrivolous argument for extension or reversal of existing law; (3) contains allegations or factual contentions that lack evidentiary support; or (4) contains denials of factual contentions that are not warranted on the evidence. USCIT Rule 11(b).

In 1993, FRCP Rule 11 was amended to include, among other things, the so-called "safe-harbor" provision set forth in subdivision 11(c)(2).² The safe-harbor provision requires a movant to serve the offending party with a copy of the motion at least 21 days prior to filing it; if the recipient does not withdraw the offending papers 21 days after receipt, the movant may then present the motion to the court. According to the 1993 Advisory Committee Notes, the purpose of the safe harbor provision is to reduce the volume of Rule 11 filings by affording the offending party the opportunity to withdraw or correct the alleged violation without penalty. *See* 28 U.S.C. Appx. at 112. In keeping with that purpose, the vast majority of Courts have held that a Rule 11 motion is untimely if it is filed after the conclusion of the case (or judicial rejection of the offending papers), because otherwise there is no offending paper or claim that may be withdrawn. *1-2 Sanc. Fed. Law of Lit. Abuse*, § 17(A)(2). A motion may not be considered untimely, however, if it was served on the offending party at least 21 days prior to the conclusion of the case, because the party is deemed to have received the full opportunity to retract the offensive pleading. *Id.*

It is well settled that failure to comply with the safe-harbor provision compels denial of the motion. *See Ridder v. City of Springfield*, 109 F.3d 288, 296 (6th Cir. 1997) (describing compliance with the

¹ The Court's Rule is essentially identical to Federal Rule of Civil Procedure ("FRCP") Rule 11; accordingly, it is appropriate to look to decisions under FRCP Rule 11 as guidance for the interpretation and application of the Court's Rule. *Precision Specialty Metals, Inc., v. United States*, 315 F.3d 1346, 1353 (Fed. Cir. 2003).

² The 1993 amendments refer to FRCP Rule 11; the Court made these same amendments to USCIT Rule 11 in 1994, with the changes becoming effective on January 1, 1995.

safe-harbor provision as an “absolute requirement”); *Hedges v. Yonkers Racing Corp.*, 48 F.3d 1320, 1328 (2d Cir. 2001) (reversing sanctions where movant failed to honor safe harbor period). Notably, cross-motions for Rule 11 sanctions need not comply with the safe-harbor provision because the movant is considered to be on notice that the court may award fees to either party. See Advisory Committee Note, 28 U.S.C. Appx. at 112 (stating that “service of a cross motion under Rule 11 should rarely be needed” because fees may be awarded to the party that prevails, regardless of whether they were the movant or the respondent) (emphasis added).

The court may impose sanctions on its own initiative as well, subject to the restrictions and procedures set forth in Rule 11(c)(3). Although court-initiated sanctions are not subject to the safe harbor provision, section (c)(3) (as well as due process) requires that the court must, prior to imposing sanctions, issue to the offending party a show-cause order as to why its conduct, specifically described in the order, should not be sanctioned. USCIT Rule 11(c)(3). The 1993 amendments also limited the type of penalty that may be imposed pursuant to *sua sponte* sanctions by excluding awards of attorney fees from the available penalties. See Rule 11(c)(4) (attorney fees only available “if imposed on [a properly filed] motion and warranted for effective deterrence”).

I. DSMC’s Motion

In light of the foregoing, DSMC’s Rule 11 motion must be denied. The motion was filed nearly one month after the court denied the stay, and, apparently, Intervenor’s were never served with a copy of the motion prior to the date it was filed with the court. Accordingly, DSMC’s motion for sanctions under Rule 11 was essentially doomed *ab initio*. In its response to Intervenor’s cross-motion, DSMC attempts to resuscitate its request by noting that the court may alternatively consider imposing sanctions and attorney’s fees via Rule 11(c)(4) (*sua sponte* sanctions) or pursuant to 28 U.S.C. § 1927. Pl’s Opp’n to Def-Ints’ Cross Mot. at 5 & n.1 However, even if the court were to conclude that DSMC was within its rights to raise these issues in a response, DSMC’s requests cannot be granted.

As noted above, attorney fees are not available pursuant to court-initiated Rule 11 sanctions, particularly where, as here, the allowance of such an award would essentially nullify the safe harbor provision. *Radcliffe v. Rainbow Constr. Co.*, 254 F.3d 772, 789 (9th Cir. 2001) (noting that “[i]t would render [Rule 11(c)(1)(2)’s] ‘safe harbor’ provision meaningless to permit a party’s noncompliant motion to be converted automatically [on appeal] into a court-initiated motion,

thereby escaping the service requirement”). Further, although a motion for sanctions under section 1927 is not predicated on compliance with a safe harbor period, sanctions under that provision are a poor fit for the conduct alleged in this case. The fee-shifting provision provided by section 1927 is considered an appropriate remedy “in instances of a serious and studied disregard for the orderly processes of justice,” *Braley v. Garland*, 832 F.2d 1504, 1512 (10th Cir. 1987), and only targets cases where opposing counsel “unreasonably and vexatiously” “multiplies the proceedings . . .” 28 U.S.C. § 1927. In the current matter, DSMC presents little more than an inference that Intervenor’s motion was filed unreasonably or vexatiously. As a matter of procedure, Intervenor was essentially *required* to file the motion for a stay in this court if they wished to maintain their right to seek a stay from the Federal Circuit. *See* Federal Rule of Appellate Procedure Rule 8. Furthermore, as Intervenor correctly point out, the purpose of a stay, indeed, is to delay. Without more, the court cannot find that Intervenor’s motion was filed “unreasonably and vexatiously,” or, for that matter, that it was filed for an improper purpose under Rule 11.

That said, the court notes, with more than a modicum of disapprobation, that DSMC’s allegations are not entirely without merit. Counsel for Intervenor have, during the course of this litigation, and particularly in the Joint Motion for Stay, presented arguments that stretch the bounds of zealous advocacy. Although a Rule 62(c)³ motion, by its very nature, is likely to present arguments that the court does not agree with, it is quite another thing to present arguments based upon phantoms in the record. *See, e.g.,* Def.-Int’s Mot for Stay at 9–10 (alleging violation of due process because the court “did not permit oral argument” when, in fact, neither party requested oral argument, *see* Docket sheet, Court No.’s 09–00110 and 06–00247; *see also* USCIT Rule 7 (parties wishing to present oral argument must file a motion so requesting)).

³ In arguing that their motion for stay was not filed for the purpose of improper delay, Intervenor’s state that the motion to stay was filed pursuant to Rule 62(d) (“Stay with Bond on Appeal”). *See* Def-Int’s Opp’n at 13. This cannot be the case: Rule 62(d) applies only to money judgments and essentially provides for a stay “as of right” by posting a bond. It has no relevance in this matter. Rather, a motion to stay the enforcement of a writ of mandamus may only be obtained under Rule 62(c), “Injunction Pending an Appeal.” *See* Def-Int’s Mot for Stay at 5 n.2 (discussing criteria for issuance of an injunction pending appeal). While the erroneous reference to Rule 62(d) may be simply typographical in nature, the court notes that the correct reference (to Rule 62(c)) would have revealed the fallacy of Intervenor’s assertion that the writ of mandamus was subject to the “automatic” 30-day stay in Rule 62(a), to wit: the second sentence of Rule 62(a) clearly states that “unless the court orders otherwise, an interlocutory or *final judgment in an action for an injunction is not stayed* after being entered even if an appeal has been taken.” USCIT Rule 62(a) (emphasis added). Unfortunately, Intervenor’s counsel quoted only the first sentence of Rule 62(a).

II. *Intervenor's Motion*

Intervenors' request for attorney fees against DSMC will also be denied. The court is inclined to view such an award as inconsistent with the equities presented by the current situation and is not inclined to issue sanctions for what might be merely negligent mistakes of research or advice. See *Precision Specialty Metals, Inc., v. United States*, 315 F.3d 1346, 1357 (Fed. Cir. 2003). Be that as it may, the court is also compelled to observe that the presentation of arguments based on a Rule that was changed fifteen years ago should be regarded by DSMC's counsel as more than a mere "procedural deficiency" in the motion.

In light of the foregoing, it is perhaps worth serving to all the reminder that "[a]n attorney acts not only as a client's representative, but also as an officer of the court, and has a duty to serve both masters." *Business Guides, Inc., v. Chromatic Communications Enterprises, Inc.*, 498 U.S. 533, 564 (1991). Attorneys must keep in mind that their signature on court papers certifies, among other things, that each of "the claims, defenses, and other legal contentions" contained therein "are warranted by existing law" and that "the factual contentions have evidentiary support." USCIT Rule 11(b). Inherent in that certification is the assertion that the existing law, as well as the facts of record, have been stated "accurately and correctly." *Precision Specialty Metals*, 315 F.3d at 1356. Rule 11 violations are judged under a standard of objective reasonableness, and the law makes no exception for situations involving joint pleadings that contain the work product of several different attorneys and law firms. Sanctions are a serious matter, and it would be tragic for otherwise respected attorney(s) to suffer the consequences of ill-advised arguments presented by other counsel.

Conclusion

In applying the standards for sanctions outlined above to the facts of this case, the court concludes that it is appropriate to deny both DSMC's Motion for Sanctions and Intervenors' construed Cross-Motion for Sanctions.

SO ORDERED.

Dated: February 12, 2010

New York, New York

/s/ R. Kenton Musgrave

R. KENTON MUSGRAVE, SENIOR JUDGE

Slip Op. 10–18

AMERICAN FURNITURE MANUFACTURERS COMMITTEE FOR LEGAL TRADE AND VAUGHN-BASSETT FURNITURE COMPANY, INC. Plaintiffs, v. UNITED STATES et al. Defendants,

Before: WALLACH, Judge
Court No.: 10–00031

[Plaintiffs' Motion for Preliminary Injunction is DENIED.]
King & Spalding, LLP (J. Michael Taylor) for Plaintiffs American Furniture Manufacturers Committee for Legal Trade and Vaughn-Bassett Furniture Company, Inc.
Tony West, Assistant Attorney General; *Jeanne E. Davidson*, Director, *Patricia M. McCarthy*, Assistant Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*Stephen C. Tosini*), for Defendant United States.

OPINION

Wallach, Judge:

I
INTRODUCTION

Plaintiffs American Furniture Manufacturers Committee for Legal Trade and Vaughn-Bassett Furniture Company, Inc. (collectively, “Plaintiff”) seek preliminary equitable relief to establish their position that, for purposes of 19 U.S.C. § 1504(d), the six-month period for deemed liquidation restarted upon publication of *Wooden Bedroom Furniture from the People’s Republic of China: Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 74 Fed. Reg. 55,810 (October 29, 2009) (“*Amended Results*”). Complaint at 9–10, 13. Because Plaintiff does not satisfy the standard for a preliminary injunction, its requested relief is denied. In losing its battle, however, Plaintiff in fact wins its war. The position of Defendants United States; U.S. Customs and Border Protection; Commissioner, U.S. Customs and Border Protection, U.S. Department of Commerce; and Secretary, U.S. Department of Commerce (collectively, “Defendant”) that the six-month period for deemed liquidation commenced upon publication of the *Amended Results* is both legally correct and establishes exactly the legal posture sought by Plaintiff.

II
BACKGROUND

In August 2009, the U.S. Department of Commerce (“Commerce”) rendered its determination in the antidumping duty order review of wooden bedroom furniture from the People’s Republic of China, covering the period of review between January 1, 2007 and December 31,

2007 (“POR”). *Wooden Bedroom Furniture from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 74 Fed. Reg. 41,374, 41,375 (August 17, 2009) (“*Final Results*”). Commerce assigned an antidumping margin of 29.98 percent for specified exporters of the entries subject to the instant antidumping duty administrative review (“subject entries”). *Id.* at 41,380. This antidumping margin was significantly higher than the cash deposit rate applicable during the POR for the exporters of the subject entries, which rate was based upon prior administrative reviews. *See* Complaint at 2–3 (citing *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order/Pursuant to Court Decision: Wooden Bedroom Furniture From the People’s Republic of China*, 71 Fed. Reg. 67,099 (November 20, 2006), *Wooden Bedroom Furniture from the People’s Republic of China: Final Results of the 2004–2005 Semi-Annual New Shipper Reviews*, 71 Fed. Reg. 70,739 (December 6, 2006)).

On October 29, 2009, Commerce published the *Amended Results*, changing the antidumping margin for the subject entries from 29.98 percent to 29.89 percent. *Amended Results*, 74 Fed. Reg. at 55,811. Plaintiff thereafter requested that Defendant take actions necessary to liquidate the subject entries pursuant to the *Amended Results*. Declaration of J. Michael Taylor (“Taylor Decl.”) ¶¶ 8, 10–14. Specifically, Plaintiff expressed concern that if Defendant did not liquidate the subject entries by February 17, 2010—six months after publication of the *Final Results*—the entries would be deemed liquidated at the significantly lower cash deposit rate by operation of 19 U.S.C. § 1504(d). *Id.* ¶¶ 10, 13. Pursuant to this statute, entries not liquidated by U.S. Customs and Border Protection (“Customs”) within six months of notice from Commerce “shall be treated as having been liquidated at the rate” initially asserted by the importer. 19 U.S.C. § 1504(d). Defendant informed Plaintiff that the subject entries would remain unliquidated as of February 17, 2010.¹ Taylor Decl. ¶ 15.

Plaintiff filed this case on February 4, 2010, asserting jurisdiction under 28 U.S.C. § 1581(i). Complaint at 5, 13. Plaintiff seeks, *inter alia*, “an emergency injunction ordering Customs to liquidate” the subject entries pursuant to the *Amended Results* “before February 17, 2010.” *Id.* at 13. Concurrently with the filing of its Complaint, Plaintiff filed two motions requesting preliminary injunctive relief. Plaintiffs’ Motion for Expedited Declaratory Judgment or, in the Alternative, Emergency Injunctive Relief; Plaintiffs’ Motion for Temporary Restraining Order and Preliminary [sic] Injunction. In opposing these

¹ Accordingly, agency action is sufficiently final to require court intervention. *See* 5 U.S.C. § 706.

motions, Defendant filed a motion to dismiss. Defendants' Motion to Dismiss and Response in Opposition to Plaintiffs' Motion for Declaratory and Emergency Injunctive Relief ("Defendant's Motion to Dismiss"). In its motion, Defendant emphasizes the agreement between Plaintiff and Defendant "that deemed liquidation pursuant to 19 U.S.C. 1504(d) will occur six months after issuance of the [Amended Results], on April 29, 2010." *Id.* at 6 (emphasis added) (citation omitted).

III STANDARD OF REVIEW

Courts examine the following four factors in determining whether to grant preliminary equitable injunctive relief:

- (1) a reasonable likelihood of success on the merits;
- (2) irreparable harm if an injunction is not granted;
- (3) a balance of hardships tipping in [the movant's] favor; and
- (4) the injunction's favorable impact on the public interest.

Altana Pharma AG v. Teva Pharms. USA, Inc., 566 F.3d 999, 1005 (Fed. Cir. 2009) (citations omitted).

IV DISCUSSION

Plaintiff is not entitled to a preliminary injunction because none of the four factors weigh in its favor.

A Plaintiff Is Not Likely To Succeed On The Merits

Plaintiff is unlikely to succeed on the merits because the applicable case law demonstrates that the six-month period for deemed liquidation of the subject entries commenced upon publication of the *Amended Results*. This court and the Federal Circuit recognize that the period for deemed liquidation commences upon publication of the results of an antidumping duty order administrative review. *Int'l Trading Co. v. United States*, 24 CIT 596, 601, 110 F. Supp. 2d 977 (2000) ("*Int'l Trading I*"), *aff'd Int'l Trading Co. v. United States*, 281 F.3d 1268 (Fed. Cir. 2002) ("*Int'l Trading II*"). This outcome is based upon legislative history of 19 U.S.C. § 1504(d) revealing the statutory purpose to "increase certainty in the customs process for importers, surety companies, and other third parties with a potential liability relating to a customs transaction." *Int'l Trading I*, 24 CIT at 604 (citation omitted); *Int'l Trading II*, 281 F.3d at 1272 (citation omitted).

Where the final results of an administrative review are substantively amended, as here with respect to the subject entries, the

deemed liquidation period commences upon publication of the amended results. This interpretation comports with the rationale underlying the deemed liquidation statute because ignoring such substantive changes will engender confusion, rather than “increase certainty in the customs process.” *Int’l Trading I*, 24 CIT at 604 (citation omitted); *Int’l Trading II*, 281 F.3d at 1272 (citation omitted). Although this court in October 2009 found the deemed liquidation period to have commenced upon publication of the final results as opposed to subsequent amended results, that case is expressly limited to where the challenged antidumping margin “did not change” between results. See *Mazak Corp. v. United States*, 2009 Ct. Intl. Trade LEXIS 132, at *23 (October 29, 2009). As this court noted in *Mazak*, “Defendant’s argument that the *Amended Results* impacted Mazak’s antidumping rate is *thus* ill-conceived, as the all-others rate remained unaltered.” *Id.* at *25 (emphasis added).

Mazak is readily distinguishable from the challenge Plaintiff fears will be initiated by importers of the subject entries, because the margins assigned to the pertinent exporters did change between the *Final Results* and *Amended Results*. See Complaint at 2, *Mazak*, 2009 Ct. Intl. Trade LEXIS 132, at *22–25. Therefore, with respect to the exporters assigned different antidumping margins in the *Final Results* and *Amended Results*, the six-month period for deemed liquidation commences upon publication of the *Amended Results* and runs on April 29, 2010. It could not be otherwise, because under the statutory scheme enacted by Congress, the United States must have up to six months (though no more than that) to fulfill its mandate. Given this correct interpretation of 19 U.S.C. § 1504(d), Plaintiff is not at all likely to succeed on the merits.

B

Plaintiff Will Not Be Irreparably Harmed Without The Injunction

The interpretation of 19 U.S.C. § 1504(d) rendering Plaintiff unlikely to succeed on the merits similarly negates the requisite irreparable harm. In alleging irreparable harm if an injunction does not issue by February 17, 2010, Plaintiff argues that importers of the subject entries might file suit under 28 U.S.C. § 1581(a) to establish that deemed liquidation occurred within six months of the *Final Results*, in which case Plaintiff would not be able to intervene pursuant to 28 U.S.C. § 2631(j)(1)(A).² Plaintiffs’ Response in Opposition

² In such a circumstance, Plaintiff could, however, seek to participate as *amicus curiae*. See USCIT R. 76.

to Defendants' Motion to Dismiss at 6. However, the applicable case law and legislative history demonstrate that the deemed liquidation period for the subject entries commences upon publication of the *Amended Results*. See *supra* Part IV.A. Since the importers of the subject entries would not succeed on the merits in the challenge envisioned by Plaintiff, there will not be any "irreparable harm if an injunction is not granted." *Altana Pharma*, 566 F.3d at 1005.

C

The Balance Of Hardships And Public Interest Factors Favor Defendant

Plaintiff seeks emergency injunctive relief to compel liquidation of the subject entries pursuant to the *Amended Results* prior to February 17, 2010. Complaint at 13. Defendant correctly interprets 19 U.S.C. § 1504(d) when it concludes that the subject entries will be deemed liquidated on April 29, 2010. See Defendant's Motion to Dismiss at 6; *supra* Part IV.A. Plaintiff is here asking this court to prematurely interpret 19 U.S.C. § 1504(d) and prematurely compel Defendant to act. This relief imposes a substantially greater hardship on Defendant because it interferes with a systematic approach to liquidation. Moreover, Plaintiff is asking this court to turn on its head the ordinary approach for reviewing agency action. Courts are to assess agency action to determine whether it is consistent with statutory language and otherwise reasonable. See *Chevron U.S.A. Inc. v. Natural Res. Defense Council, Inc.*, 467 U.S. 837, 842, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984). Rather than compel Defendant to act prior to the deemed liquidation occurring, the public interest is best served here by allowing Defendant to liquidate the subject entries pursuant to its correct legal interpretation and without preemptive judicial interference.

V

CONCLUSION

For the above stated reasons, it is hereby ORDERED that Plaintiffs' Motion for Preliminary Injunction is DENIED.

Dated: February 16, 2010

New York, New York

___/s/ Evan J. Wallach___

EVAN J. WALLACH, JUDGE

Slip Op. 10–19

AMERICAN FURNITURE MANUFACTURERS COMMITTEE FOR LEGAL TRADE AND
VAUGHN-BASSETT FURNITURE COMPANY, INC. v. Plaintiffs, UNITED
STATES et al. Defendants,

Before: WALLACH, Judge
Court No.: 10–00031

ORDER

Upon consideration of Plaintiffs' Motion for Temporary Restraining Order and Preliminary [sic] Injunction, Plaintiffs' Motion for Expedited Declaratory Judgment or, in the Alternative, Emergency Injunctive Relief, and Defendants' Motion to Dismiss; the court having reviewed all papers and pleadings on file herein, having heard oral argument by each party, and, after due deliberation, having reached a decision set forth in Slip Op. 10–18; now, in conformity with said decision, it is hereby

ORDERED that Plaintiffs' Motion for Temporary Restraining Order and Preliminary [sic] Injunction is DENIED, and it is further

ORDERED that Plaintiffs' Motion for Expedited Declaratory Judgment or, in the Alternative, Emergency Injunctive Relief is DENIED; and it is further

ORDERED, ADJUDGED, AND DECREED that pursuant to the analysis set forth in the court's decision in Slip Op. 10–18, Plaintiffs' Complaint fails, pursuant to USCIT R. 12(b)(5) to state a claim upon which relief can be granted, and that accordingly, Defendants' Motion to Dismiss be, and hereby is, GRANTED; and it is further

ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Complaint be, and hereby is, DISMISSED.

Dated: February 17, 2010

New York, New York

—/s/ *Evan J. Wallach*—

EVAN J. WALLACH, JUDGE

