

UNITED STATES COURT OF INTERNATIONAL TRADE

FISCHER S.A. COMERCIO, INDUSTRIA
AND AGRICULTURA, and CITROSUCO
NORTH AMERICA, INC,

Plaintiffs,

v.

UNITED STATES,

Defendant,

and

FLORIDA CITRUS MUTUAL, *et al.*,

Defendant Intervenors.

Before: Gregory W. Carman, Judge

Court No. 08 00277

MEMORANDUM ORDER

Carman, Judge: The Court has reviewed Plaintiffs' motion for an indicative ruling pursuant to USCIT Rule 62.1, and Defendant's and Defendant Intervenors' responses in opposition thereto. USCIT Rule 62.1 states that

[i]f a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

- (1) defer considering the motion;
- (2) deny the motion; or
- (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.

USCIT R. 62.1(a). Plaintiffs ask the Court to select option (3) and state that the Court

would grant a motion for leave to amend the complaint or that such a motion by Plaintiffs raises a substantial issue. (Pls.' Mot., ECF No. 96.)

According to USCIT Rule 62.1, the Court is only authorized to make an indicative ruling “[i]f a **timely motion is made for relief** that the court lacks authority to grant because of an appeal that has been docketed and is pending.” USCIT R. 62.1(a) (emphasis added). Plaintiffs have not filed a motion to amend their complaint, and even if they did, such a motion would not be timely, as final judgment was entered in this case long ago. Consequently, the Court concludes that Plaintiffs have failed to satisfy the prerequisite for obtaining an indicative ruling under USCIT Rule 62.1.

Moreover, even if Plaintiffs had filed a timely motion (such as a motion for relief from final judgment under USCIT Rule 60(b)) that this court lacked authority to grant because of the appeal that has been docketed and is pending, the Court would deny the motion out of respect for the jurisdiction of the Court of Appeals and in the interest of finality of judgment. See USCIT R. 62.1(a)(2). For the foregoing reasons, then, it is hereby

ORDERED that Plaintiffs’ motion for an indicative ruling pursuant to USCIT Rule 62.1 is denied.

/s/ Gregory W. Carman

Gregory W. Carman, Judge

Dated: March 7, 2012
New York, New York