

Let Cooler Heads Prevail:

A Survey of Rule 11 Practice in the U.S. Court of International Trade *

by Maureen Thorson, Esq., Wiley Rein LLP

I. Introduction and Summary

The U.S. Court of International Trade (“CIT”) has long encouraged a culture of collegiality among its small and relatively cohesive bar. The court’s practice with respect to Rule 11 sanctions reflects this desire for harmonious interaction. A survey of opinions invoking the rule reveals that the court uses it primarily not to sanction its practitioners, but to provide them with fair warning of the point where zealous advocacy shades into sharp practice. The Court has only granted a litigant’s motion for Rule 11 sanctions once, and in the few cases in which the court has imposed sanctions – either via motion or *sua sponte* – the sanctions themselves are modest.

Section II below describes the CIT and its specialized jurisdiction over certain matters involving imports. Section III describes the CIT’s Rule 11, which is based on the corresponding Federal Rule of Civil Procedure. Section IV undertakes a survey of CIT opinions in which Rule 11 plays a role, and argues that the court’s invocation of the rule has been in service of the twin goals of collegiality and fairness. The court’s practice in this respect suggests that litigants moving for sanctions against other parties could increase the chance of a favorable ruling by framing their motions to further these goals.

II. The U.S. Court of International Trade

The CIT is an Article III court with specialized jurisdiction over, *inter alia*, certain matters arising under the U.S. Customs laws and the U.S. antidumping and countervailing duty laws.¹ The court is only the latest in a line of specialized tribunals dealing with these kinds of matters. The first such tribunal, the Board of General Appraisers, was established by Congress in 1890.² This was replaced in 1926 by an Article I Court, the U.S. Customs Court.³ The Customs Court’s status was altered to that of an Article III Court in 1956,⁴ and the present-day CIT came into being with the Customs Courts Act of 1980.⁵

The CIT’s jurisdiction extends to some – but not all – disputes that arise under the U.S. Customs laws.⁶ These include challenges to denied protests of U.S. Customs and Border Protection

¹ See Customs Courts Act of 1980 (Pub. L. No. 96-417, 94 Stat. 1727 (1980)); 28 U.S.C. § 1581 (2000).

² Customs Administration Act of 1890, ch. 407, 26 Stat. 131 (1890).

³ Act of May 28, 1926, ch. 411, 44 Stat. 669 (1926).

⁴ Act of July 14, 1956, ch. 589, 70 Stat. 532 (1956); 28 U.S.C. § 251(a) (2000) (codifying same).

⁵ Customs Courts Act of 1980 (Pub. L. No. 96-417, 94 Stat. 1727). The CIT’s reviewing court, the U.S. Court of Appeals for the Federal Circuit (“CAFC”), was created in 1982 through the merger of the former U.S. Court of Claims and the U.S. Court of Customs and Patent Appeals. See Federal Courts Improvement Act of 1982, Pub. L. No 97-164, 96 Stat. 25 (1982).

⁶ 28 U.S.C. §§ 1581 & 1582.

(“Customs”) decisions,⁷ challenges to Customs’ denial of petitions regarding advance rulings on the classification of merchandise,⁸ Customs’ own actions to collect fines for negligent or fraudulent actions in importing,⁹ and challenges regarding the issuance, suspension, and revocation of customs brokers’ licenses and private laboratory accreditations.¹⁰ Suits to challenge Customs seizures, however, do not lie in the CIT.¹¹ The CIT’s standard of review in most Customs actions is *de novo*.¹² While there is no dispute as to the material facts in many Customs-related actions at the CIT,¹³ this is not always the case.¹⁴ While Rule 11 does not apply to certain papers filed in conjunction with discovery,¹⁵ acrimonious discovery may spill over into sharp practice with respect to non-discovery-related filings, increasing the chances for Rule 11 issues to arise.

The CIT also has jurisdiction over disputes arising from the decisions of the U.S. Department of Commerce and the U.S. International Trade Commission in conducting antidumping and countervailing duty investigations and reviewing antidumping and countervailing duty orders.¹⁶ The majority of these cases are decided “on the [agency] record,”¹⁷ and the CIT’s standard of review is fairly deferential – that of determining whether the agency decision is supported by substantial evidence and otherwise in accordance with law.¹⁸ The record-based nature of these

⁷ 28 U.S.C. § 1581(a) ; 19 U.S.C. §1515.

⁸ 28 U.S.C. § 1581(a) ; 19 U.S.C. §1516.

⁹ 28 U.S.C. § 1582.

¹⁰ 28 U.S.C. § 1581(g).

¹¹ 28 U.S.C. § 1356. While jurisdiction over an importer’s suit to challenge a seizure does not lie in the CIT, the CIT has jurisdiction to consider such seizures in the context of a Government suit to recover duties and penalties under 28 U.S.C. § 1582. *Compare* 28 U.S.C. § 1356 *with* 28 U.S.C. § 1582.

¹² 28 U.S.C. § 2640(a)(1), (2), & (5); 19 U.S.C. § 1592(e)(1); *see also Universal Elecs. v. United States*, 112 F.3d 488, 492-93 (Fed. Cir. 1997); *United States v. Active Frontier Int’l, Inc.*, CIT Slip Opinion 12-112 (Aug. 30, 2012) at 5. Challenges under 28 U.S.C. § 1581(g) are subject to a substantial evidence standard. 19 U.S.C. § 1641(e)(3).

¹³ This allows the parties to truncate discovery or, in some cases, avoid it altogether. *See, e.g., Wilton Indus. v. United States*, CIT Slip Opinion 2012-125 (Sep. 27, 2012) at 2; *Nat’l Presto Indus. v. United States*, 783 F. Supp. 2d 1287, 1289 (Ct. Int’l Trade 2011); *Shell Oil Co. v. United States*, 781 F. Supp. 2d 1313, 1324 (Ct. Int’l Trade 2011); *Honda of Am. Mfg., Inc. v. United States*, 625 F. Supp. 2d 1324 (Ct. Int’l Trade 2009); *E. I. du Pont de Nemours & Co. v. United States*, 32 C.I.T. 476, 484, 486 (2008); *Maxcell Bioscience, Inc. v. United States*, 533 F. Supp. 2d 1261, 1264 (Ct. Int’l Trade 2007).

¹⁴ *See, e.g., BP Oil Supply Co. v. United States*, 33 Int’l Trade Rep. (BNA) 2016 (Ct. Int’l Trade Sept. 16, 2011) (determining that, even after discovery, genuine issues of material fact remained, requiring trial); *Roche Vitamins, Inc. v. United States*, 750 F. Supp. 2d 1367, 1378 (Ct. Int’l Trade 2010) (denying summary judgment motions because of outstanding genuine issues of material fact; offering parties additional discovery and noting court’s intention to schedule trial in the absence of discovery); *Int’l Custom Prods. v. United States*, 31 Int’l Trade Rep. (BNA) 1136 (Ct. Int’l Trade Jan. 29, 2009)(denying summary judgment and noting need for trial to address unresolved issues of material fact).

¹⁵ USCIT R. 11(d). Sanctions for behavior arising out of discovery is more particularly provided for in USCIT R. 37.

¹⁶ 28 U.S.C. § 1581(c); 19 U.S.C. § 1516a.

¹⁷ 28 U.S.C. § 2640(b); 19 U.S.C. § 1516a(b)(1)(B).

¹⁸ *Id.* In those cases that do not provide for record review, the CIT is instructed to determine whether agency action is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 19 U.S.C. § 1516a(b)(1)(A). Thus, the standard of review remains deferential.

cases precludes disputes as to the relevant facts,¹⁹ and results in a fairly limited and predictable briefing schedule.²⁰

Beyond this, the CIT also has jurisdiction over appeals from agency decisions as to whether petitioning workers qualify for Trade Adjustment Assistance (“TAA”) benefits under the Trade Act of 1974.²¹ Although these actions are reviewed on the basis of the agency record,²² the relevant agencies’ investigatory procedures have been called into question by the CIT.²³ As a result, Rule 11 has been mentioned several times in proceedings involving appeals of the denial of worker assistance, mostly as the CIT warns government counsel of the potential for sanctions inherent in defending agency action that the court finds woefully inadequate.²⁴

Finally, the CIT’s jurisdiction extends to actions that are not squarely embraced within its other grants of jurisdiction, but which pertain to the “administration and enforcement” of the matters referred to in those other grants.²⁵ The same residual grant of jurisdiction provides the CIT with authority over actions “aris[ing] out of” laws providing for revenue from imports; tariffs, duties, fees, and taxes imposed on imports for reasons other than revenue; and certain embargoes or quantitative restrictions on imports.²⁶ The CIT exercises its jurisdiction under this residual grant

¹⁹ 28 U.S.C. § 1581(c); 19 U.S.C. § 1516a.

²⁰ USCIT Rule 56.2-1 (providing for scheduling order and pleadings in cases brought under 28 U.S.C. § 1581(c)).

²¹ 28 U.S.C. § 1581(d). Several agencies are involved in making benefit determinations which the Court has jurisdiction to review. The Department of Labor makes determinations pursuant to Section 223 of the Trade Act of 1974 (19 U.S.C. § 2273); the Department of Agriculture makes determinations pursuant to Sections 293 and 296 of the same Act (19 U.S.C. § 2401(b)); and the Department of Commerce makes determinations pursuant to Section 251 of that Act (19 U.S.C. § 2341). Formerly, the Department of Commerce also made determinations pursuant to Section 273 of the Act (19 U.S.C. 2371a-f); this section terminated by operation of law on September 30, 1982. Public Law No. 93-618, 1974 U.S.C.C.A.N. 2290, 2364.

²² 28 U.S.C. § 2640(b); 19 U.S.C. § 2395; compare *id.* with 19 U.S.C. § 1516a(b). The Court has previously determined that while 19 U.S.C. § 2395 provides the standard for reviewing factual determinations in suits under Section 1581(d), no statute specifically provides for the Court’s review of legal determinations in such cases. The Court has therefore adopted the Administrative Procedure Act’s default standard of reviewing legal determinations to decide whether they are “in accordance with law.” See *Former Emples. of Tesco Techs., LLC v. United States Sec’y of Labor*, 30 C.I.T. 1754, 1756 (2006), citing *Former Emples. of Elec. Data Sys. Corp. v. United States Sec’y of Labor*, 350 F. Supp. 2d 1282, 1286 (Ct. Int’l Trade 2004) (“EDS I”); see also *Alaska Dep’t of Env’tl. Conservation v. EPA*, 540 U.S. 461, 496-97 (2004). The Court also considers whether legal determinations in Section 1581(d) cases are based on a showing of “reasoned analysis” by the agency. *Former Emples. of Tesco Techs.*, 30 C.I.T. at 1756, citing *Former Emples. of Ericsson, Inc. v. United States Sec’y of Labor*, 28 C.I.T. 1835, 1838 (2004).

²³ *Former Emples. of BMC Software, Inc. v. United States Sec’y of Labor*, 30 C.I.T. 1315, 1321 n.10 (2006) (collecting cases in which the CIT has criticized agency conduct in TAA determinations).

²⁴ *Former Emples. of BMC Software, Inc. v. United States Sec’y. of Labor*, 31 C.I.T. 1600, 1684 n. 108 (2007); *Former Emples. of IBM v. United States Sec’y of Labor*, 31 C.I.T. 463, 522 (2007); *Anderson v. United States Sec’y of Agric.*, 469 F. Supp. 2d 1300, 1301 (Ct. Int’l Trade 2006).

²⁵ 28 U.S.C. § 1581(i).

²⁶ *Id.* The Court also has jurisdiction over actions regarding the release of confidential information by the U.S. International Trade Commission and the U.S. Department of Commerce, 28 U.S.C. § 1581(f), and actions challenging Customs’ rulings regarding country of origin for government procurement purposes. 28 U.S.C. § 1581(e). These two grants of jurisdiction are seldom used. Only one action to date has come before the Court under Section 1581(e). See *Xerox Corp. v. United States*, 753 F. Supp. 2d 1355 (Ct. Int’l Trade 2011). Section 1581(f)

only where jurisdiction is not available, and could not have been obtained, under any of its other grants of jurisdiction.²⁷

III. USCIT Rule 11

USCIT Rule 11 is modeled on Rule 11 of the Federal Rules of Civil Procedure (“FRCP”).²⁸ The rule requires that all pleadings and papers presented to the CIT be signed by an attorney, or, where a party appears *pro se*, by the party itself.²⁹ The rule provides that, in presenting pleadings, motions, and other papers to the court, the attorney or other presenting party certifies that the paper:

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.³⁰

If, after the presenter of a paper is given notice and a reasonable opportunity to respond, the CIT determines that the rule has been violated, the CIT “may” order an appropriate sanction.³¹ As

formed the basis for the Court’s jurisdiction over a handful of cases in the late 1980s and early 1990s, but has not been used since. *GE v. United States*, 16 C.I.T. 864 (1992); *Daido Corp. v. United States*, 16 C.I.T. 987 (1992); *Allied Tube & Conduit Corp. v. United States*, 13 C.I.T. 698 (1989); *Bethlehem Steel Corp. v. United States*, 13 C.I.T. 617 (1989); *D & L Supply Co. v. United States*, 12 C.I.T. 732 (1988); *Timken Co. v. United States*, 11 C.I.T. 267 (1987).

²⁷ *International Customs Prods., Inc. v. United States*, 467 F.3d 1324, 1327 (Fed. Cir. 2006); see also *Jinan Farmlady Trading Co. v. United States*, 836 F. Supp. 2d 1406 (Ct. Int’l Trade 2012); *Epoch Design LLC v. United States*, 810 F. Supp. 2d 1366 (Ct. Int’l Trade 2012).

²⁸ See *Wire Rope Importers’ Ass’n v. United States*, 18 C.I.T. 478, 481 (1994) (noting similarity between CIT’s rule and FRCP 11).

²⁹ USCIT R. 11(a).

³⁰ USCIT R. 11(b).

discussed below, the CIT has rarely imposed sanctions on the attorneys practicing before it, even where the court itself has raised the question of Rule 11's applicability to attorney conduct.

The rule provides that counsel/parties appearing before the court may move for sanctions against other counsel/parties, provided that the movant does not file the motion with the court until the movant has complied with a 21-day "safe harbor" rule.³² The Court may also, on its own initiative, order an attorney or party to show cause as to why they should not be sanctioned under the rule.³³ Finally, USCIT Rule 11 limits sanctions to those measures which "suffice[] to deter repetition of the conduct or comparable conduct by others similarly situated."³⁴ Sanctions may be monetary or non-monetary in nature,³⁵ although the rule provides for certain limitations on monetary sanctions.³⁶ Finally, as noted above, the rule expressly does not apply to certain papers presented in conjunction with the discovery process.³⁷

IV. Survey of Rule 11 Practice at the CIT

A review of CIT rulings reveals four principle situations in which Rule 11 plays a part. The most common by far consists of cases in which the court invokes the rule *sua sponte*, not to impose sanctions, but to warn the attorneys before it that the rule exists, that it governs their conduct, and that they would be wise to take that into account when filing papers.³⁸ Second, Rule 11 plays a

³¹ USCIT R. 11(c). The CIT's reviewing court, the CAFC, has stated that, "once a violation has been found," sanctions are "mandatory."³¹ *Refac Int'l Ltd. V. Hitachi, Ltd.*, 921 F.2d 1247, 1257 (Fed. Cir. 1990). However, in that case, the CAFC was not interpreting the current USCIT R. 11(c), but the former FRCP R. 11(b). *Compare Refac Int'l*, 921 F.2d at 1257, with FRCP R. 11(b) (1983). FRCP R. 11 was amended in 1993 to clarify that sanctions were within the discretion of the court, rather than mandatory. FRCP R. 11 (1993). The version of USCIT R. 11 now in effect reflects this amended language. *Compare* USCIT R. 11 with FRCP R. 11. However, as shown below, even in those cases that predate the 1993 amendments, the CIT's attitude toward Rule 11 sanctions has been characterized by leniency.

³² USCIT R. 11(c)(2).

³³ USCIT R. 11(c)(3).

³⁴ USCIT R. 11(c)(4).

³⁵ *Id.*

³⁶ USCIT R. 11(c)(5).

³⁷ USCIT R. 11(d); *see also* note 15, *supra*.

³⁸ *United States v. Country Flavor Corp.*, 844 F. Supp. 2d 1348, 1351 n.4 (Ct. Int'l Trade 2011); *BenQ Am. Corp. v. United States*, 683 F. Supp. 2d 1335, 1347 n.21 (Ct. Int'l Trade 2010); *Diamond Sawblades Mfgs.' Coalition v. United States*, 2010 Ct. Intl. Trade LEXIS 15, 2010 WL 517477 * 5 (2010); *United States v. Tip Top Pants, Inc.*, 32 Int'l Trade Rep. (BNA) 1106 (Ct. Int'l Trade Jan. 13, 2010); *United States v. T.J. Manalo, Inc.*, 659 F. Supp. 2d 1297, 1300 n.8 (Ct. Int'l Trade 2009); *Former Empl. of BMC Software, Inc. v. United States Sec'y. of Labor*, 31 C.I.T. 1600 (2007); *Former Empl. of IBM v. United States Sec'y of Labor*, 31 C.I.T. 463 (2007); *United States v. First Coast Meat & Seafood*, 30 C.I.T. 282 (2006); *Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States*, 30 C.I.T. 1173, 1179 n.6 (2006); *Volkswagen of Am. v. United States*, 22 C.I.T. 280, 283 (1998); *Fuyao Glass Indus. Group Co. v. United States*, 27 C.I.T. 1160, 1163 n.2 (2003); *Ammex, Inc. v. United States*, 86 F. Supp. 2d 1278, (Ct. Int'l Trade 1999); *British Steel PLC v. United States*, 20 C.I.T. 955, 970 n.14 (1996); *Earth Island Inst. v. Christopher*, 20 C.I.T. 1221 (1996); *Earth Island Inst. v. Christopher*, 20 C.I.T. 460, 471-472 (1996); *Zoltek Corp. v. United States*, 13 C.I.T. 1098 (1989); *E. Gluck Corp. v. United States*, 13 C.I.T. 922 (1989); *Ad Hoc Granite Trade Group v. United States*, 13 C.I.T. 337, 340 (1989); *Bomont Industries v. United States*, 10 C.I.T. 431 (1986).

part in those cases in which one party moves for sanctions against another, and the court dismisses the motion.³⁹ Third, there are a handful of cases in which the court has ordered a party to show cause why it should not be sanctioned, or where the court has actually imposed sanctions.⁴⁰ In the fourth situation, involving motions for attorney's fees under the Equal Access to Justice Act ("EAJA"), the court discusses the interplay between Rule 11 and the EAJA.⁴¹

A. Rule 11 as a Warning

Most commonly, Rule 11 is invoked in CIT cases as a means of warning the litigants to remember their obligation to conduct a reasonable inquiry into the basis for their claims or defenses, and to present the court only with facts and argument that a reasonable inquiry reveals to be nonfrivolous and to have evidentiary support.⁴² In some cases, the court expressly warns counsel that the continuation or repetition of certain behavior will result in an order to show cause or the imposition of sanctions.⁴³ In others, Rule 11 is mentioned in passing, though pointedly, as though to remind counsel of its existence.⁴⁴ The most common kind of behavior

³⁹ *Diamond Sawblades Manufacturers' Coalition v. United States*, 32 Int'l Trade Rep. (BNA) 1206 (Ct. Int'l Trade Feb. 12, 2010); *Warner-Lambert Co. v. United States*, 32 C.I.T. 263 (2008); *Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 29 C.I.T. 1204 (2005); *United States v. Pan Pac. Textile Group, Inc.*, 27 C.I.T. 925 (2003); *Inner Secrets/Secretly Yours v. United States*, 18 C.I.T. 1028, 1037 (1994); *United States v. Koo Chow*, 18 C.I.T. 272 (1994); *United States v. Jac Natori Co.*, 17 C.I.T. 348 (1993); *Associacao Dos Industriais de Cordoaria e Redes v. United States*, 17 C.I.T. 754 (1993); *TIE Communications v. United States*, 17 C.I.T. 125 (1993); *TIE Communications, Inc. v. United States*, 17 C.I.T. 124 (1993); *Sachs Automotive Prods. Co. v. United States*, 17 C.I.T. 290, 295 (1993); *United States v. Thorson Chem. Corp.*, 14 C.I.T. 550 (1990); *A. Hirsh v. United States*, 14 C.I.T. 498 (1990); *United States v. Continental Seafoods, Inc.*, 11 C.I.T. 768 (1987); *Daewoo Elecs. Co. v. United States*, 11 C.I.T. 125 (1987); *United States v. Priscilla Modes, Inc.*, 9 C.I.T. 598, 600 (1985); *Beker Industries Corp. v. United States*, 7 C.I.T. 199, 203 (1984).

⁴⁰ *Anderson v. United States Sec'y of Agric.*, 469 F. Supp. 2d 1300 (Ct. Int'l Trade 2006); *Retamal v. United States Customs & Border Prot.*, 29 C.I.T. 132 (2005); *United States v. Almany*, 22 C.I.T. 402 (1998); *Ann's Trading Co. v. United States*, 8 F. Supp. 2d 867 (Ct. Int'l Trade 1998); *Ornatube Enter. Co. v. United States*, 19 C.I.T. 1419, 1419-1420 (1995); *Wire Rope Importers' Ass'n v. United States*, 18 C.I.T. 478, 485 (1994).

⁴¹ *Former Empls. of Invista, S.A.R.L. v. U.S. Sec'y of Labor*, 714 F. Supp. 2d 1320 (Ct. Int'l Trade 2010); *Yancheng Baolong Biochemical Prods. Co. v. United States*, 28 C.I.T. 578 (2004); *Earth Island Inst. v. Christopher*, 20 C.I.T. 1221 (1996); *United States v. Koo Chow*, 18 C.I.T. 272 (1994).

⁴² See note 38, *supra* (collecting cases).

⁴³ See, e.g., *United States v. T.J. Manalo, Inc.*, 659 F. Supp. 2d 1297, 1300 n.8 (Ct. Int'l Trade 2009) (warning counsel that failure to review facts presented to the court for evidentiary support "may result in the imposition of sanctions on parties and/or their counsel."); *Volkswagen of Am. v. United States*, 22 C.I.T. 280, 283 (1998) (noting that counsel has "come perilously close" to a show-cause hearing, and stating that "[s]hould counsel for VWOA continue to press baseless arguments that only serve to delay proceedings, the Court may well revisit the issue of Rule 11 sanctions."); *Earth Island Inst. v. Christopher*, 20 C.I.T. 460, 471-472 (1996) (stating that, "but for the desirability of curtailing further litigation, this court would order the defendants to show cause why sanctions should not be imposed pursuant to CIT Rule 11(c).")

⁴⁴ See, e.g., *United States v. Tip Top Pants, Inc.*, 32 Int'l Trade Rep. (BNA) 1106 *23 (Ct. Int'l Trade Jan. 13, 2010) (noting that, under Rule 11, it would be "improper for any action to be maintained against a defendant where no valid basis for such an action could be shown."); *Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States*, 30 C.I.T. 1173, 1179 n.6 (2006) (referring to Rule 11 in dismissing argument that court found to have no apparent evidentiary foundation); *Fuyao Glass Indus. Group Co. v. United States*, 27 C.I.T. 1160, 1163 n.2 (2003) (chiding plaintiff for failing to present facts that showed that plaintiff's motion for an injunction against liquidation lacked requisite evidentiary support).

that leads to such warnings is the failure to adequately investigate the factual and legal basis for claims presented to the court.⁴⁵ Other behaviors that have previously lead to warnings include: (1) disregarding court orders and opinions⁴⁶; (2) filings that tend to delay proceedings or otherwise defeat the purpose of the court's rules and processes⁴⁷; (3) failure to present or describe relevant facts or citations⁴⁸; and (4) unjustified attempts to enlarge the administrative record.⁴⁹

While one might suppose that private litigants are most at risk of crossing the line from zealous advocacy into questionable conduct, many of the court's "shot across the bow" invocations of Rule 11 are aimed at attorneys for the Government.⁵⁰ The Government is also the predominate target of parties' motions for sanctions.⁵¹ But it must be remembered that cases at the CIT nearly always take the form of challenges to government action, or Government suits against private parties.⁵² With the Government so fundamental a party in CIT actions, it is little wonder that the Government would be the target of warnings and motions for sanctions.

Further, attorneys for the Government in cases before the CIT may be in a fundamentally different situation with respect to their client than are private parties. The Court's jurisdiction over suits against the Government primarily involves a fairly deferential standard of review,⁵³ thus limiting the scope of possible arguments that a private party can raise, as well as the facts that the private party can present. Even in Customs litigation under 28 U.S.C. § 1581(a), where

⁴⁵ *United States v. Country Flavor Corp.*, 844 F. Supp. 2d 1348, 1351 n.4 (Ct. Int'l Trade 2011); *BenQ Am. Corp. v. United States*, 683 F. Supp. 2d 1335, 1347 n.21 (Ct. Int'l Trade 2010); *United States v. T.J. Manalo, Inc.*, 659 F. Supp. 2d 1297, 1300 n.8 (Ct. Int'l Trade 2009); *Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States*, 30 C.I.T. 1173, 1179 n.6 (2006); *Ad Hoc Granite Trade Group v. United States*, 13 C.I.T. 337, 340 (1989).

⁴⁶ *Former Empl. of IBM v. United States Sec'y of Labor*, 31 C.I.T. 463 (2007); *British Steel PLC v. United States*, 20 C.I.T. 955, 970 n.14 (1996).

⁴⁷ *Volkswagen of Am. v. United States*, 22 C.I.T. 280, 283 (1998); *Earth Island Inst. v. Christopher*, 20 C.I.T. 460, 471-472 (1996); *Zoltek Corp. v. United States*, 13 C.I.T. 1098 (Ct. Int'l Trade 1989).

⁴⁸ *Fuyao Glass Indus. Group Co. v. United States*, 27 C.I.T. 1160, 1163 n.2 (2003); *Bomont Industries v. United States*, 10 C.I.T. 431 (1986).

⁴⁹ *Ammex, Inc. v. United States*, 86 F. Supp. 2d 1278, 1278-79 (Ct. Int'l Trade 1999); *Sachs Automotive Prods. Co. v. United States*, 17 C.I.T. 740, 741 (1993).

⁵⁰ *United States v. Country Flavor Corp.*, 844 F. Supp. 2d 1348, 1351 n.4 (Ct. Int'l Trade 2011); *United States v. Tip Top Pants, Inc.*, 32 Int'l Trade Rep. (BNA) 1106 (Ct. Int'l Trade Jan. 13, 2010); *United States v. T.J. Manalo, Inc.*, 659 F. Supp. 2d 1297, 1300 n.8 (Ct. Int'l Trade 2009); *Former Empl. of BMC Software, Inc. v. United States Sec'y. of Labor*, 31 C.I.T. 1600 (2007); *Former Empl. of IBM v. United States Sec'y of Labor*, 31 C.I.T. 463 (2007); *British Steel PLC v. United States*, 20 C.I.T. 955, 970 n.14 (1996); *Earth Island Inst. v. Christopher*, 20 C.I.T. 1221 (1996); *Earth Island Inst. v. Christopher*, 20 C.I.T. 460, 471-472 (1996); *Bomont Industries v. United States*, 10 C.I.T. 431 (1986).

⁵¹ See notes 58 & 63, *infra*. Of course, the Government's primacy as the target of motions for sanctions may say less about the Government's behavior than about private litigants' willingness to move for sanctions.

⁵² 28 U.S.C. § 1581.

⁵³ 28 U.S.C. § 2640(b); 19 U.S.C. § 1516a(b)(1)(B). See also note 22, *supra* (discussing standard of review in cases challenging TAA benefits decisions). Cases brought under the court's residual grant of jurisdiction, 28 U.S.C. 1581(i), are generally handled as raising claims under the Administrative Procedure Act, which provides for a deferential standard in reviewing agency action. See *id.*; see also *Canadian Wheat Bd. v. United States*, 580 F. Supp. 2d 1350, 1356-57 (Ct. Int'l Trade 2008).

significant deference is not ordinarily accorded to agency action or decision-making,⁵⁴ an attorney representing a private party may be limited in the arguments he can raise by what his client will agree to pay for.⁵⁵ An attorney for the Government, however, may feel justified in raising any “colorable” claim or defense on behalf of the taxpayer. In some cases, this may involve arguments that a private party would not choose to advance.

Regardless of the reasons for the Government’s prominence in cases involving Rule 11, the fact that the court so often invokes the rule without either ordering a show-cause hearing or imposing sanctions is a testament to the collegial nature of the interactions that the court encourages between itself and its bar. Often, the behavior of which the court complains in such cases is arguably sanctionable,⁵⁶ but the court’s practice has been substitute warnings for actual sanctions in all but the most egregious cases. This leniency appears entirely in keeping with the court’s perception of itself and its bar. With its highly limited jurisdiction, the court’s bar is relatively small, and its practitioners are generally well-known to both the court and each other. The court accordingly encourages its bar to be collegial, and its practice with respect to Rule 11 shows that adheres to the same civility, even as it takes steps to maintain the integrity of its proceedings.

B. Rule 11 Dismissed

The second most common situation involving Rule 11 at the CIT consists of cases in which one or more of the parties moves for sanctions against another, but the court dismisses the motion.⁵⁷ In most of these cases, the court gives the motion only cursory treatment.⁵⁸ Often, the court simply states that the motion is denied.⁵⁹

⁵⁴ See, e.g., *Dell Prods. LP v. United States*, 714 F. Supp. 2d 1252, 1256 (Ct. Int’l Trade 2010).

⁵⁵ More to the point, many importers may not feel that it is worth challenging a Customs decision in court. Given the costs and uncertainties inherent in litigation, and the business necessity of maintaining a cordial relationship with Customs, importers may favor adapting to Customs decisions where possible, even if the importer disagrees with the factual or legal basis for the decisions.

⁵⁶ For example, a failure to cite relevant precedent or facts may result in a party having presented a paper that lacks legal or factual support.

⁵⁷ See note 39, *supra* (collecting cases).

⁵⁸ *Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 29 C.I.T. 1204 (2005); *United States v. Pan Pac. Textile Group, Inc.*, 27 C.I.T. 925 (2003); *Inner Secrets/Secretly Yours v. United States*, 18 C.I.T. 1028, 1037 (1994); *United States v. Jac Natori Co.*, 17 C.I.T. 348, 348 n.1 (1993); *Sachs Automotive Prods. Co. v. United States*, 17 C.I.T. 290, 295 (1993); *United States v. Thorson Chem. Corp.*, 14 C.I.T. 550, 551, 553 (1990); *A. Hirsh v. United States*, 14 C.I.T. 498 (1990); *United States v. Priscilla Modes, Inc.*, 9 C.I.T. 598, 600 (1985).

⁵⁹ For example, consider *Inner Secrets/Secretly Yours v. United States*, in which the Government moved for sanctions in the form of attorneys’ fees where plaintiff failed to establish that the court had subject matter jurisdiction over its claim. The Court discussed the jurisdictional issue at some length, concluding that jurisdiction did not lie under the court’s residual grant of jurisdiction, because plaintiff could have timely protested the Customs decision at issue, thus allowing for jurisdiction under 28 U.S.C. § 1581(a). The court’s discussion of the Government’s sanctions motion is tacked on at the end of the merits discussion. In its entirety, it states:

Defendants have requested attorneys fees pursuant to 28 U.S.C. § 1927 (1988) and Federal Rules of Civil Procedure, Rule 11. In light of the above, the Court finds that the allowance of attorneys fees in this matter is not warranted and accordingly denies defendants' request.

In these types of cases, the lack of substantive discussion makes it difficult to know how the court found the motion deficient. However, something may be gleaned from the fact that the court has in several cases delayed ruling on parties' Rule 11 motions until the court issues its opinion on the separate, dispositive motions in the litigation.⁶⁰ Rule 11 itself presupposes that parties' motions for sanctions will relate to particular papers, first by requiring attorneys'/parties' signatures on all papers presented, and then stating that such a signature acts to certify that the paper itself is presented for a proper purpose, and that the arguments therein are justifiable both with respect to the law and the facts.⁶¹ If a particular paper violates Rule 11, it would make sense for a court that receives a motion for sanctions to act expeditiously upon it, to ensure that the case before it is not unduly affected by frivolous, improper, or unjustified filings.

By delaying disposition of Rule 11 motions until issuing a decision on the merits, the court is likely signaling its desire to let cooler heads prevail. Moreover, by disposing of sanctions motions in an abbreviated manner,⁶² the court signals to movants that even if opposing parties' filings are perturbing, it would prefer not to allow acrimony to disturb its proceedings. The court furthers the goal of collegiality by calling out neither movants nor their targets, but simply dropping the matter as expeditiously as possible.

The court does not forego discussion in all cases, however. In certain cases involving a litigant's motion for Rule 11 sanctions,⁶³ the court has taken the opportunity of the motion to make larger points about the rule and the type of behavior that it permits,⁶⁴ or to specifically warn counsel treading close to sanctionable territory.⁶⁵ These cases again point to the court's twin desires for fair and collegial litigation. By providing warnings in place of sanctions, the court ensures

Inner Secrets/Secretly Yours v. United States, 18 C.I.T. 1028, 1037 (1994); see also *United States v. Jac Natori Co.*, 17 C.I.T. 348, 348 n.1 (1993) (denying in full defendant's motion to strike or dismiss parts of Customs' complaint, noting in passing that defendant's motion also asked for Rule 11 sanctions); *Sachs Automotive Prods. Co. v. United States*, 17 C.I.T. 290, 295 (1993) (simply noting that "Plaintiff's motion for attorneys fees under Rule 37(a) and defendant's motion for Rule 11 sanctions are both denied.")

⁶⁰ *Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 29 C.I.T. 1204 (2005); *United States v. Pan Pac. Textile Group, Inc.*, 27 C.I.T. 925 (2003); *Inner Secrets/Secretly Yours v. United States*, 18 C.I.T. 1028, 1037 (1994); *United States v. Thorson Chem. Corp.*, 14 C.I.T. 550, 551, 553 (1990);

⁶¹ USCIT R. 11(b).

⁶² See note 58, *supra* (collecting cases).

⁶³ *Diamond Sawblades Manufacturers' Coalition v. United States*, 32 Int'l Trade Rep. (BNA) 1206 (Ct. Int'l Trade Feb. 12, 2010); *Warner-Lambert Co. v. United States*, 32 C.I.T. 263 (2008); *United States v. Koo Chow*, 18 C.I.T. 272 (1994); *Associacao Dos Industriais de Cordoaria e Redes v. United States*, 17 C.I.T. 754 (1993); *TIE Communications v. United States*, 17 C.I.T. 125 (1993); *TIE Communications, Inc. v. United States*, 17 C.I.T. 124 (1993); *United States v. Continental Seafoods, Inc.*, 11 C.I.T. 768 (1987); *Daewoo Elecs. Co. v. United States*, 11 C.I.T. 125 (1987); *Beker Industries Corp. v. United States*, 7 C.I.T. 199, 203 (1984).

⁶⁴ *Diamond Sawblades Manufacturers' Coalition v. United States*, 32 Int'l Trade Rep. (BNA) 1206 (Ct. Int'l Trade Feb. 12, 2010); *Warner-Lambert Co. v. United States*, 32 C.I.T. 263 (2008); *United States v. Koo Chow*, 18 C.I.T. 272 (1994); *Associacao Dos Industriais de Cordoaria e Redes v. United States*, 17 C.I.T. 754 (1993); *United States v. Continental Seafoods, Inc.*, 11 C.I.T. 768 (1987); *Daewoo Elecs. Co. v. United States*, 11 C.I.T. 125 (1987); *Beker Industries Corp. v. United States*, 7 C.I.T. 199, 203 (1984).

⁶⁵ *Diamond Sawblades Manufacturers' Coalition v. United States*, 32 Int'l Trade Rep. (BNA) 1206 (Ct. Int'l Trade Feb. 12, 2010); *TIE Communications v. United States*, 17 C.I.T. 125 (1993); *TIE Communications, Inc. v. United States*, 17 C.I.T. 124 (1993).

litigants' understanding of the bounds of propriety, without dampening the zealotry of representation. It also takes care to maintain the collegiality of its proceedings, by providing notice of when parties are in danger of breaching their ethical obligations, while also signaling that the standard for a successful sanctions motion is high.

C. Orders to Show Cause and Imposition of Sanctions

In a very few cases, the court has ordered parties to show cause as to why they should not be sanctioned under Rule 11.⁶⁶ As one might surmise from the preceding discussion, a party's behavior must be fairly egregious before the court will make such an order.

For example, in a case in which a plaintiff repeatedly accused the court (as well as the Department of Commerce and agency counsel) of constituting a criminal enterprise, the court issued a Rule 11 order for plaintiff to show cause as to why its action should not be dismissed.⁶⁷ In its show-cause order, the court described the plaintiff's filings in the case as "non-responsive," "insolent," "unfounded," "scandalous," and "inflammatory."⁶⁸ Although counsel "blatantly violate[d] the rules and orders" of the court, the court's sanction was to dismiss the case without prejudice, an action which may have been less punitive than inevitable.⁶⁹

In a Customs action to recover fines and penalties against an importer doing business in his own right, the court similarly found the importer's counsel's "motions to be spurious and the accusations contained therein to be scandalous."⁷⁰ The court took the step of ordering both the attorney and the *importer himself* to appear and show cause as to why they should not be held in contempt of court – a step that shows the depth of the court's concern over the conduct of the defendant's case.⁷¹ The importer avoided the hearing by firing his counsel and obtaining other, presumably less incendiary representation.⁷²

⁶⁶ *Anderson v. United States Sec'y of Agric.*, 469 F. Supp. 2d 1300 (Ct. Int'l Trade 2006); *Retamal v. United States Customs & Border Prot.*, 29 C.I.T. 132 (2005); *United States v. Albany*, 22 C.I.T. 402 (1998); *Ann's Trading Co. v. United States*, 8 F. Supp. 2d 867 (Ct. Int'l Trade 1998); *Ornatube Enter. Co. v. United States*, 19 C.I.T. 1419, 1419-1420 (1995).

⁶⁷ *Ornatube Enter. Co. v. United States*, 19 CIT 1419, 1419-1420 (1995).

⁶⁸ *Id.*

⁶⁹ The court's prior opinions in the litigation gave hints of the trouble to come. First, plaintiff's counsel was denied access to confidential information under Judicial Protective Order, on the basis of his past history of non-compliance with rules regarding confidential information. *Ornatube Enter. Co. v. United States*, 17 C.I.T. 134 (1993). Although the court expressed some sympathy for plaintiff's case, it noted plaintiff's counsel's failure to abide by court rules and procedures, *Ornatube Enter. Co. v. United States*, 18 C.I.T. 38, 40 (1994), and even warned the parties that "any further misapplication of the Court rules or other delay will be viewed with the utmost scrutiny." *Ornatube Enter. Co. v. United States*, 18 C.I.T. 467 (Ct. Int'l Trade 1994). At the same time, plaintiff's counsel does not appear to have been the only "bad actor" in the litigation. The court also called out the Government for its "self-serving" interpretation of a remand order, and blamed it for delaying the proceedings. *Ornatube Enter. Co. v. United States*, 18 C.I.T. 38, 39 (1994).

⁷⁰ *United States v. Albany*, 22 C.I.T. 402 (1998).

⁷¹ *United States v. Albany*, 22 C.I.T. 459 (1998); *United States v. Albany*, 22 C.I.T. 402 (1998).

⁷² *United States v. Albany*, 22 C.I.T. 459 (1998).

In another case resulting in a show-cause hearing, a plaintiff's failure to undertake a reasonable inquiry into the basis for its action resulted in the waste of judicial resources.⁷³ While the court has jurisdiction to hear challenges to Customs' decisions to exclude merchandise, it does not have jurisdiction to hear appeals of Customs' seizures of merchandise.⁷⁴ At a hearing on plaintiff's challenge to the exclusion of merchandise, plaintiff's counsel admitted that he had undertaken no investigation to ensure that an exclusion had occurred, rather than a seizure.⁷⁵ Worse, it was clear that plaintiff's counsel had evidence that Customs had in fact seized the relevant merchandise.⁷⁶

In another case, the court ordered the U.S. Department of Agriculture to show cause as to why it had not violated Rule 11 in refusing to abide by a court order.⁷⁷ In refusing to carry out the order, the agency relied on a CAFC decision that the agency viewed as binding.⁷⁸ The CIT, however, stated that the precedent was not applicable to the facts at issue.⁷⁹ More importantly, the court stated that, if its order was inconsistent with governing precedent, the agency should have moved for reconsideration of the court's order, rather than have simply refused to comply with it.⁸⁰ Other cases involving apparent failures to follow court orders have resulted only in warnings,⁸¹ but the court justified a show cause hearing in this case on the basis that "a plain reading of [the CAFC precedent] would have demonstrated its inapplicability."⁸²

Despite these few cases, prudence and forbearing are the watchwords of the court's handling of Rule 11 matters – wise ones, given that even the court itself has been taken to ask for acting too rashly in Rule 11 matters. In a case challenging the revocation of a customs broker's license, the court sanctioned an attorney who represented a client on a motion for reconsideration without having filed a substitution of counsel notice.⁸³ The sanction was later overturned by the CAFC, which noted that because the client had previously appeared *pro se*, there was no counsel to substitute.⁸⁴

⁷³ *Ann's Trading Co. v. United States*, 8 F. Supp. 2d 867 (Ct. Int'l Trade 1998).

⁷⁴ 28 U.S.C. § 1356; *see also PRP Trading Corp. v. United States*, 2012 Ct. Intl. Trade LEXIS 128 (Ct. Int'l Trade Oct. 2, 2012).

⁷⁵ *Ann's Trading Co. v. United States*, 8 F. Supp. 2d 867, 869 (Ct. Int'l Trade 1998).

⁷⁶ *Id.* at 873.

⁷⁷ *Anderson v. United States Sec'y of Agric.*, 469 F. Supp. 2d 1300 (Ct Int'l Trade 2006).

⁷⁸ *Id.* at 1300.

⁷⁹ *Id.* at 1300-01.

⁸⁰ *Id.* at 1301.

⁸¹ *Former Emples. of IBM v. United States Sec'y of Labor*, 31 C.I.T. 463 (2007); *British Steel PLC v. United States*, 20 C.I.T. 955, 970 n.14 (1996).

⁸² *Anderson*, 469 F. Supp. 2d at 1301. Interestingly, the CAFC later criticized the CIT for misconstruing the precedent at issue, and held that the agency had interpreted it correctly. *Hacker v. United States*, 613 F.3d 1380 (Fed. Cir. 2010). This does not, of course, mean that the agency was correct to defy a court order, rather than move for reconsideration.

⁸³ *Retamal v. United States Customs & Border Prot.*, 29 C.I.T. 132 (2005). The sanction took the form of an admonition under Rules 11 and 75.

⁸⁴ *Retamal v. United States Customs & Border Prot.*, 439 F.3d 1372 (Fed. Cir. 2006).

There is only one instance in which the court has granted a litigant's motion for sanctions under Rule 11.⁸⁵ The case involved a challenge mounted by a coalition of importers against the U.S. International Trade Commission's finding that imports of wire rope were injuring the U.S. industry, justifying an antidumping duty order.⁸⁶ The Government subsequently sought Rule 11 sanctions relating to (1) plaintiff's motions to intervene in two other parties' cases challenging the Commission's decision, and (2) plaintiff's untimely complaint and response to the Government's motion to dismiss for failure to timely file a complaint.⁸⁷ The court denied the motion for sanctions as it related to plaintiff's intervention motions, noting that the plaintiff had a statutory right of intervention.⁸⁸

However, the court granted the motion as to the plaintiff's untimely complaint and response to the motion to dismiss.⁸⁹ The statute governing challenges to Commission injury determinations requires the filing of a summons and a complaint within a certain amount of time.⁹⁰ These timing requirements were uniformly held to be jurisdictional at the time of the litigation.⁹¹ Accordingly, the court found that plaintiff's claim that a timely complaint was not jurisdictional was unreasonable and not justified by a good-faith argument for the modification of existing law.⁹² Interestingly, the court has recently noted the existence of Supreme Court precedent that suggests that the statutory timing requirements are *not* jurisdictional.⁹³ As such, the argument that resulted in sanctions in the 1980s might be seen as non-frivolous today.

D. Rule 11 and the EAJA

Several of the court's cases discussing Rule 11 do so in the context of motions for attorneys' fees under the EAJA.⁹⁴ These cases suggest that where one party desires to recover the fees incurred in responding to frivolous motions or arguments, the EAJA may be a more practical means to that end than Rule 11. If past precedent is anything to go by, Rule 11 motions are rarely granted,⁹⁵ whereas EAJA applications have been moderately successful at the court.⁹⁶

⁸⁵ *Wire Rope Importers' Ass'n v. United States*, 18 C.I.T. 478 (1994).

⁸⁶ *Id.* at 479.

⁸⁷ *Id.* at 480.

⁸⁸ *Id.* at 481.

⁸⁹ *Id.* at 485.

⁹⁰ 19 U.S.C. § 1516a(a)(2).

⁹¹ *Wire Rope Importers' Ass'n*, 18 C.I.T. at 482-84.

⁹² *Id.* at 482-85.

⁹³ *Baroque Timber Indus. (Zhongshan) Co. v. United States*, 2012 Ct. Intl. Trade LEXIS 121 (Ct. Int'l Trade Sept. 19, 2012)

⁹⁴ *See* note 41, *supra*.

⁹⁵ As discussed above, there is only one case in which the court has granted a party's motion for Rule 11 sanctions. *See Wire Rope Importers' Ass'n*, 18 C.I.T. at 478.

⁹⁶ *See, e.g., Diamond Sawblades Mfrs. Coalition v. United States*, 816 F. Supp. 2d 1342 (Ct. Int'l Trade 2012); *Lizarraga Customs Broker v. Bureau of Customs & Border Prot.*, 33 Int'l Trade Rep. (BNA) 2150 (Ct. Int'l Trade Oct. 17, 2011); *Former Empls. of Invista, S.A.R.L. v. U.S. Sec'y of Labor*, 714 F. Supp. 2d 1320 (Ct. Int'l Trade 2010); *Jazz Photo Corp. v. United States*, 32 C.I.T. 1293 (2008); *Former Empls. of BMC Software, Inc. v. United States Sec'y. of Labor*, 519 F. Supp. 2d 1291 (Ct. Int'l Trade 2007); *Allegheny Bradford Corp. v. United States*, 350 F. Supp. 2d 1332 (Ct. Int'l Trade 2004); *Former Empls. of Tyco Elecs., Fiber Optics Div. v. United*

As discussed above, Rule 11 motions are meant to prevent frivolous and unjustified pleadings.⁹⁷ Because a motion for sanctions can be made in response to any violative pleading, Rule 11 motions may be filed well before litigation concludes. A Rule 11 motion can also be filed by any party to a litigation, against any party in a litigation. The merits of a Rule 11 motion do not hinge, in whole or in part, on which party prevails in the litigation as a whole. It is enough that the party that is the target of the motion has filed a paper that violates the rule, either because it was made for an improper purpose, or because it presents arguments that are not justified under the facts or applicable law.

By contrast, there are significant limitations on the availability of fee awards under the EAJA. A private party may only apply for an award against the Government.⁹⁸ An application can only be made after litigation has ended,⁹⁹ and only then if the applicant is the “prevailing” party in the litigation as a whole.¹⁰⁰ The applicant’s net worth must be below a certain threshold.¹⁰¹ The EAJA, then, is of no help to a party that wishes to obtain sanctions against a non-governmental party, to a party that is not the prevailing party in the case as a whole, or that has a net worth that exceeds the statutory maximum.

However, from a practical perspective, the court appears far more likely to grant a monetary award in conjunction with an EAJA application than it is to grant any sanction at all in response to a Rule 11 motion.¹⁰² The differing treatment of the two types of motions may be traceable to the fact that Rule 11 is essentially punitive, while EAJA awards are restorative. Under Rule 11, a party that fails to abide by the rule is sanctioned – punished – to ensure future adherence to the rule. Under the EAJA, a small litigant that prevailed in litigation against the government may recoup the costs it undertook in challenging unjustified government action, or defending against unjustified action. Under the EAJA, the point is not so much that the Government is punished, as that the prevailing party is made whole.

The court’s preference for remedial, rather than punitive, action is reflected in the single case in which the court has granted a litigant’s motion for Rule 11 sanctions. There, the sanctions issued in conjunction with frivolous filings took the form of a monetary award meant to defray the costs the movant had incurred in responding to those filings.¹⁰³ The amount of the sanction was based on a bill of costs supplied by the movant, and was thus specifically tailored to restore the movant

States DOL, 350 F. Supp. 2d 1075 (Ct. Int’l Trade 2004); *Libas, Ltd. v. United States*, 283 F. Supp. 2d 1327 (Ct. Int’l Trade 2003); *Humane Soc’y of the United States v. Bush*, 159 F. Supp. 2d 707 (Ct. Int’l Trade 2001).

⁹⁷ USCIT R. 11(b); *see also Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393 (1990) (“The central purpose of Rule 11 is to deter baseless filings in district court and thus . . . streamline the administration and procedure of the federal courts.”) (citation omitted).

⁹⁸ 28 U.S.C. § 2412(d)(1)(A); *see also* 28 U.S.C. § 2412(d)(2)(B) & (H).

⁹⁹ 28 U.S.C. § 2412(d)(1)(A)-(B).

¹⁰⁰ 28 U.S.C. § 2412(d)(1)(A); 28 U.S.C. § 2412(d)(2)(H).

¹⁰¹ 28 U.S.C. § 2412(d)(2)(B).

¹⁰² *See* notes 95 & 96, *supra*.

¹⁰³ *Wire Rope Importers' Ass'n v. United States*, 18 C.I.T. 478, 485 (1994).

to the position it would have been in absent the frivolous papers.¹⁰⁴ The sanction was inherently remedial, rather than punitive.

Not only does this case tend to confirm the reason for the success of EAJA petitions, it provides guidance for future Rule 11 movants. To the extent that it is possible to frame a Rule 11 motion as focused not on punishing the target party, but remedying harms caused by the target party's filings, the court may be more inclined to listen.

V. Conclusion

A survey of CIT opinions invoking Rule 11 demonstrates that the court favors using the rule to guide, rather than to punish. The rule is most often invoked simply to inform and warn litigants of the boundaries of acceptable behavior, without any sanctions actually being imposed. Litigants' own motions for sanctions are often dismissed without substantive discussion, or otherwise turned again to the court's preferred end of guiding future conduct, rather than punishing what has already occurred. The court's practice with respect to both Rule 11 and awards under the EAJA suggests that framing a motion for sanctions as remedial rather than punitive may lead to more favorable outcomes than other, less collegially-minded approaches.

¹⁰⁴ *Id.*

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