(Slip Op. 03–98)

FUYAO GLASS INDUSTRY GROUP CO., LTD., GREENVILLE GLASS INDUSTRIES, INC., SHENZHEN BENXUN AUTOMOTIVE GLASS CO., LTD., TCG INTERNATIONAL, INC., CHANGCHUN PILKINGTON SAFETY GLASS CO., LTD., GUILIN PILKINGTON SAFETY GLASS CO., LTD., WUHAN YAOHUA PILKINGTON SAFETY GLASS CO., LTD., AND XINYI AUTOMOTIVE GLASS (SHENZHEN) CO., LTD., PLAINTIFFS, *v.* UNITED STATES, DEFENDANT, AND PPG INDUSTRIES, INC., SAFELITE GLASS CORPORATION, AND VIRACON/CURVLITE, A SUBSIDIARY OF APOGEE ENTERPRISES, INC., DEFENDANTS-INTERVENORS

Consol. Court No. 02–00282

[Fuyao Glass Industry Group Co., Ltd. and Greenville Glass Industries, Inc.'s motion for preliminary injunction denied.]

(Decided: July 31, 2003)

Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt, LLP (Bruce M. Mitchell and *Jeffrey S. Grimson),* for plaintiffs Fuyao Glass Industry Group Co., Ltd., and Greenville Glass Industries, Inc.

Garvey, Schubert & Barer (William E. Perry and *John C. Kalitka),* for plaintiffs Shenzhen Benxun Automotive Glass Co., Ltd., and TCG International, Inc.

Pepper Hamilton, LLP (Gregory C. Dorris), for plaintiffs Changchun Pilkington Safety Glass Co., Ltd., Guilin Pilkington Safety Glass Co., Ltd., and Wuhan Yaohua Pilkington Safety Glass Co., Ltd.

White & Case (William J. Clinton and Adams C. Lee), for plaintiff Xinyi Automotive Glass (Shenzen) Co., Ltd.

Peter D. Keisler, Assistant Attorney General, Civil Division, United States Department of Justice; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice (*A. David Lafer*), for defendant United States.

Stewart & Stewart (Terence P. Stewart, Alan M. Dunn, and *Eric P. Salonen),* for defendant-intervenors PPG Industries, Inc., Safelite Glass Corporation, and Viracon/Curvlite, a subsidiary of Apogee Enterprises, Inc.

OPINION

EATON, *Judge:* This motion shares some of the issues and facts with the motion for a preliminary injunction made by Xinyi Automo-

tive Glass (Shenzen) Co., Ltd., which motion was denied in an opinion of this court dated July 31, 2003. *See Xinyi Automotive Glass, (Shenzen) Co. v. United States*, 27 C.I.T. ___ , Slip Op. 03–99 (July 31, 2003). As such, much of each opinion repeats the other. The factual situations are sufficiently different, however, that for purposes of clarity the court is issuing two separate opinions.

Fuyao Glass Industry Group Co., Ltd. and Greenville Glass Industries, Inc. ("Applicants"), move for a preliminary injunction to enjoin liquidation of certain entries of automotive replacement glass windshields (the "Subject Merchandise") pending a final decision on the merits in the underlying action. PPG Industries, Inc., Safelite Glass Corp., and Viracon/Curvlite, a subsidiary of Apogee Enterprises, Inc. ("Defendant-Intervenors"), object to the issuance of a preliminary injunction. The court has the authority to grant the requested relief. *See* 28 U.S.C. § 1585 (2000); 28 U.S.C. § 2643(c)(1) (2000); *see also* The All Writs Act, 28 U.S.C. § 1651(a) (2000). For the reasons set forth below, the court denies Applicants' motion.[1]

DISCUSSION

Injunctive relief is an "extraordinary remedy" that is to be granted sparingly. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (citing *R.R. Comm'n of Tx. v. Pullman Co.*, 312 U.S. 496, 500 (1941)); *FMC Corp. v. United States*, 3 F.3d 424, 427 (Fed. Cir. 1993); *PPG Indus., Inc. v. United States*, 11 C.I.T. 5, 6 (1987) (citing *Am. Air Parcel Forwarding Co. v. United States*, 1 C.I.T. 293, 298, 515 F. Supp. 47, 52 (1981)). Applicants bear the burden of establishing that: (1) absent the requested relief, they will suffer immediate irreparable harm; (2) there exists in their favor a likelihood of success on the merits; (3) the public interest would be better served by the requested relief; and (4) the balance of the hardships on all parties tips in their favor. *Zenith Radio Corp. v. United States*, 710 F.2d 806, 809 (Fed. Cir. 1983) (citing *S.J. Stile Assocs. v. Snyder*, 646 F.2d 522, 525 (C.C.P.A. 1981); *Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958)); *Corus Group PLC v. Bush*, 26 C.I.T. ___ , ___ , 217 F. Supp. 2d 1347, 1353 (2002) (citing *Zenith*, 710 F.2d at 809). The court in its analysis of these factors employs a "sliding scale" and, consequently, need not assign to each factor equal weight. *Corus*, 26 C.I.T. at ___ , 217 F. Supp. 2d at 1353–54 (citing *Chilean Nitrate Corp. v. United States*, 11 C.I.T. 538, 539 (1987)); *id.*, 26 C.I.T. at ___ , 217 F. Supp. 2d at 1354 (quoting *FMC Corp.*, 3 F.3d at 427) ("If a preliminary injunction is granted by the trial court, the weakness of the showing regarding one factor may be

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[1] In the action underlying this motion Applicants, along with Shenzhen Benxun Automotive Glass Co., Ltd., TCG International, Inc., Changchun Pilkington Safety Glass Co., Ltd., Guilin Pilkington Safety Glass Co., Ltd., Wuhan Yaohua Pilkington Safety Glass Co., Ltd., and Xinyi Automotive Glass (Shenzen) Co., Ltd., challenge certain aspects of the United States Department of Commerce's ("Commerce" or "Department") antidumping order covering automotive replacement glass windshields. *See* Auto. Replacement Glass Windshields from the P.R.C., 67 Fed. Reg. 16,087 (ITA Apr. 4, 2002) (antidumping duty order).

overborne by the strength of the others * * * * [Conversely], the absence of an adequate showing with regard to any one factor may be sufficient, given the weight or lack of it assigned to other factors, to justify [its] denial."). Notwithstanding, the crucial element is that of irreparable injury. *Id.*, 26 C.I.T. at ____ , 217 F. Supp. 2d at 1354 (citing *Elkem Metals Co. v. United States*, 25 C.I.T. ____ , ____ , 135 F. Supp. 2d 1324, 1329 (2001); *Nat'l Hand Tool Corp. v. United States*, 14 C.I.T. 61, 65 (1990)); *see also Beacon Theatres, Inc, v. Westover*, 359 U.S. 500, 506–07 (1959) ("The basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies."); *Bomont Indus. v. United States*, 10 C.I.T. 431, 437, 638 F. Supp. 1334, 1340 (1986) (citing *Nat'l Corn Growers Ass'n. v. Baker*, 9 C.I.T. 571, 585, 623 F. Supp. 1262, 1275 (1985); *Am. Air Parcel Forwarding Co. v. United States*, 6 C.I.T. 146, 152, 573 F. Supp. 117, 122 (1983)) ("Failure of an applicant to bear its burden of persuasion on irreparable harm is ground to deny a preliminary injunction, and the court need not conclusively determine the other criteria."). The court, having considered the requisite factors, concludes that Applicants have not established a clear showing that they are entitled to the requested relief.

A. *Irreparable harm*

Applicants advance a sole ground for a finding of irreparable harm which, set forth in its entirety, reads:

> Plaintiffs contest certain factual findings and legal conclusions in the final determination of the antidumping duty investigation of automotive replacement glass windshields from the People's Republic of China (Case No. A–570–867). Unless this Court grants an injunction to prevent liquidation, some or all of the subject entries could be liquidated with substantial antidumping duties assessed *in the event that no administrative review is requested of FYG's exports and entries during the first "anniversary month" of the Antidumping Order (April 2003).*[2] Such liquidations prior to this Court's final decision would constitute "irreparable injury" to plaintiffs.

Pls.' Mem. Supp. Mot. Prelim. Inj. ¶1 ("Pls.' Mem.") (emphasis added) (citing *Zenith*, 710 F.2d at 811). Thus, Applicants' entire motion is based on the notion that "in the event that no administrative review is requested of FYG's exports and entries," then "some or all of the subject entries could be liquidated with substantial antidumping duties assessed* * * * * " *Id.* Here, it is not necessary for the court to determine what validity this claim might have, based on the eventuality that no administrative review were requested, because Applicants themselves requested such a review. On April 7, 2003, Com-

[2] 19 U.S.C. § 1675(a) (2000) provides for periodic review of the amount of an antidumping duty, upon request.

merce published a notice of opportunity to request administrative review of the antidumping duty order covering the Subject Merchandise. *See* Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation, 68 Fed. Reg. 16,761, 16,761 (ITA Apr. 7, 2003) (opportunity to request admin. rev.) ("In accordance with section 351.213(b) of the regulations, an interested party * * * may request in writing that the Secretary conduct an administrative review."). By letter dated April 30, addressed to Donald L. Evans, Secretary of Commerce, International Trade Administration, counsel for Applicants advised that

> [o]n behalf of Fuyao Glass Industry Group Company, Ltd. ("FYG"), we hereby request, in accordance with the Department's notice published in the *Federal Register*, that the Department conduct an administrative review of sales and entries of subject merchandise exported by FYG covered by the antidumping duty order on Automotive Replacement Glass Windshields from the People's Republic of China. For FYG, the period of review should be September 19, 2001 through March 31, 2003[.]

See Opp'n of Def.-Intervenors to Pl. FYG's Mot. Prelim. Inj. Ex. 1 at 1 (citation omitted).[3] On May 21, a notice of initiation was published in the Federal Register which reads, in relevant part:

> The Department has received timely requests, in accordance with 19 CFR 351.213(b) (2002), for administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates* * * *
>
> *Initiation of Reviews*
>
> In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings* * * *
>
> The People's Republic of China: Automotive Replacement Glass Windshields A–570–867 * * *, Fuyao Glass Industry Group Company, Ltd.* * * *

Initiation of Antidumping and Countervailing Duty Admin. Revs. and Request for Revocation in Part, 68 Fed. Reg. 27,781, 27,781 (ITA May 21, 2003) (notice) (footnote omitted).

By statute, "[t]he determination [resulting from the review] shall be the basis for the assessment of countervailing or antidumping du-

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[3] Applicants themselves did not alert the court to the existence of this letter. Indeed, as Applicants' motion was filed with this court after their letter was sent to Commerce it would appear that the "allegations and other factual contentions" contained the motion do not have the requisite "evidentiary support" required by the rules of this Court. *See* USCIT R. 11(b)(3).

ties on entries of merchandise covered by the determination* * * * " 19 U.S.C. § 1675(a)(2)(C). As stated in Commerce's regulations:

> Unlike the systems of some other countries, the United States uses a "retrospective" assessment system under which final liability for antidumping and countervailing duties is determined after merchandise is imported. Generally, the amount of duties to be assessed is determined in a review of the order covering a discrete period of time. If a review is not requested, duties are assessed at the rate established in the completed review covering the most recent prior period or, if no review has been completed, the cash deposit rate applicable at the time merchandise was entered.

See 19 C.F.R. § 351.212(a) (2003). Thus, because Applicants' sole claim with respect to "immediate irreparable harm" has been mooted by Applicants' own action in requesting an administrative review, they have not sustained their burden of proof as to this factor. *Zenith*, 710 F.2d at 809.

B. *Likelihood of success on the merits*

"The failure * * * to establish irreparable harm significantly raises the burden imposed on [p]laintiff to prove a likelihood of success on the merits." *Shandong Huarong Gen. Group Corp. v. United States*, 24 C.I.T. 1286, 1292, 122 F. Supp. 2d 143, 148 (2000) (citing *FMC Corp.*, 3 F.3d at 427). Put differently, a movant that fails to establish the danger of immediate irreparable harm cannot satisfy its showing as to a likelihood of success on the merits by merely "rais[ing] questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberate investigation." *Am. Air Parcel*, 1 C.I.T. at 298, 515 F. Supp. at 52 (quoting *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 844 (D.C. Cir. 1977)); *see also Ugine-Savoie Imphy v. United States*, 24 C.I.T. 1246, 1251, 121 F. Supp. 2d 684, 690 (2000) (citing *PPG Indus.*, 11 C.I.T. at 8; *Floral Trade Council v. United States*, 17 C.I.T. 1022, 1023 (1993)) ("Where it is clear that the moving party will suffer substantially greater harm by the denial of the preliminary injunction than the non-moving party would by its grant, it will ordinarily be sufficient that the movant has raised 'serious, substantial, difficult and doubtful questions* * * * ' "). Applicants' complaint does, in fact, raise serious issues, including questions regarding Commerce's Final Determination in its antidumping duty investigation with respect to its "reason to believe or suspect" finding, as well as an allegation that Commerce engaged in inappropriate *ex parte* communications. *See* Compl. ¶¶11, 13, 15, 18. Nonetheless, other than directing the court's attention to two recent cases remanded by this Court, *see* Pls.' Mem. at 3 (citing *China Nat'l Mach. Imp. & Exp. Corp. v. United States*, 27 C.I.T. ___ , Slip Op. 03–16 (Feb. 13, 2003); *Luoyang Bear-*

ing Factory v. United States, 27 C.I.T. ___ , Slip Op. 03–41 (Apr. 14, 2003)), Applicants make no showing tending to demonstrate that this factor should favor them. Indeed, Applicants make no effort, either by argument, or by establishing facts by affidavit or otherwise, demonstrating their entitlement to relief based on this factor. Thus, "[t]his is not a case where a decision in plaintiff[s'] favor on the merits can be predicted." *Chilean Nitrate*, 11 C.I.T. at 540. Given the absence of a showing of irreparable injury it would be particularly "inappropriate to resolve [these questions] * * * according to a likelihood of success on the merits standard." *Techsnabexport, Ltd. v. United States*, 16 C.I.T. 420, 429, 795 F. Supp. 428, 437 (1992); *see also Bomont*, 10 C.I.T. at 434, 638 F. Supp. at 1340 ("[T]he court is not persuaded now that the plaintiff is so likely to succeed on the merits as to make the showing of irreparable harm a conceptual formality."). Thus, this factor does not favor Applicants.

C. *The public interest*

Applicants claim that the public interest favors their motion since "the injunction will preserve the serious questions raised by plaintiffs with respect to the appropriate liquidation of plaintiffs' entries." Pls.' Mem. at 4. Here too Applicants' own actions have tended to defeat their claim as they have requested the review that will halt liquidation. Unlike the Applicant in *Xinyi*, *see Xinyi*, 27 C.I.T. at ___ , Slip Op. 03–99 at 4–5, Applicants make no argument with respect to injury that might result were its request for the administrative review withdrawn. Here, Applicants' prayer for relief relies solely on the injury that might occur should no request for an administrative review be made. This request having been made, any arguments Applicants might have made with respect to the public policy factor have been rendered moot together with their arguments with respect to irreparable harm.

D. *Balance of the hardships*

With respect to the relative hardships on the parties, Applicants reiterate their claims made with respect to irreparable injury. Pls.' Mem. at 2–3. However, just as the prospect of such injury has been mooted by Applicants' own actions, so too has the possibility of Applicants' hardship. Therefore, Applicants have failed to demonstrate that this factor should be weighed in their favor. *See Techsnabexport*, 16 C.I.T. at 429, 795 F. Supp. at 437 ("As plaintiffs have the burden on this issue, the hardships are presumed to balance.").

CONCLUSION

For the foregoing reasons, the court finds that Applicants have failed to meet their burden with respect to each of the four prongs of the test for preliminary injunctive relief. Accordingly, Applicants' motion for preliminary injunction is denied.

(Slip Op. 03–99)

FUYAO GLASS INDUSTRY GROUP CO., LTD., GREENVILLE GLASS INDUSTRIES, INC., SHENZHEN BENXUN AUTOMOTIVE GLASS CO., LTD., TCG INTERNATIONAL, INC., CHANGCHUN PILKINGTON SAFETY GLASS CO., LTD., GUILIN PILKINGTON SAFETY GLASS CO., LTD., WUHAN YAOHUA PILKINGTON SAFETY GLASS CO., LTD., AND XINYI AUTOMOTIVE GLASS (SHENZHEN) CO., LTD., PLAINTIFFS, *v.* UNITED STATES, DEFENDANT, AND PPG INDUSTRIES, INC., SAFELITE GLASS CORPORATION, AND VIRACON/CURVLITE, A SUBSIDIARY OF APOGEE ENTERPRISES, INC., DEF.-INTERVENORS

Consol. Court No. 02–00282

[Xinyi Automotive Glass (Shenzen) Co., Ltd.'s motion for preliminary injunction denied.]

(Decided: July 31, 2003)

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OPINION

EATON, *Judge:* This motion shares some of the issues and facts with the motion for a preliminary injunction made by Fuyao Glass Industry Group Co., Ltd., and Greenville Glass Industries, Inc., which motion was denied in an opinion of this court dated July 31, 2003. *See Fuyao Glass Indus. Group Co. v. United States*, 27 C.I.T. ___ , Slip Op. 03–98 (July 31, 2003). As such, much of each opinion repeats the other. The factual situations are sufficiently different, however, that for purposes of clarity the court is issuing two separate opinions.

Xinyi Automotive Glass (Shenzen) Co., Ltd. ("Applicant"), moves for a preliminary injunction to enjoin liquidation of certain entries of Applicant's automotive replacement glass windshields (the "Subject

Merchandise") pending a final decision on the merits in the underlying action. PPG Industries, Inc., Safelite Glass Corp., and Viracon/Curvlite, a subsidiary of Apogee Enterprises, Inc. ("Defendant-Intervenors"), object to the issuance of a preliminary injunction. The court has the authority to grant the requested relief. *See* 28 U.S.C. § 1585 (2000); 28 U.S.C. § 2643(c)(1) (2000); *see also* The All Writs Act, 28 U.S.C. § 1651(a) (2000). For the reasons set forth below, the court denies Applicant's motion.[1]

DISCUSSION

Injunctive relief is an "extraordinary remedy" that is to be granted sparingly. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (citing *R.R Comm'n of Tx. v. Pullman Co.*, 312 U.S. 496, 500 (1941)); *FMC Corp. v. United States*, 3 F.3d 424, 427 (Fed. Cir. 1993); *PPG Indus., Inc. v. United States*, 11 C.I.T. 5, 6 (1987) (citing *Am. Air Parcel Forwarding Co. v. United States*, 1 C.I.T. 293, 298, 515 F. Supp. 47, 52 (1981)). Applicant bears the burden of establishing that: (1) absent the requested relief, it will suffer immediate irreparable harm; (2) there exists in its favor a likelihood of success on the merits; (3) the public interest would be better served by the requested relief; and (4) the balance of the hardships on all parties tips in its favor. *Zenith Radio Corp. v. United States*, 710 F.2d 806, 809 (Fed. Cir. 1983) (citing *S.J. Stile Assocs. v. Snyder*, 646 F.2d 522, 525 (C.C.P.A. 1981); *Va. Petroleum Jobbers Ass'n v. Federal Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958)); *Corus Group PLC v. Bush*, 26 C.I.T. ___ , ___ , 217 F. Supp. 2d 1347, 1353 (2002) (citing *Zenith*, 710 F.2d at 809). The court in its analysis of these factors employs a "sliding scale" and, consequently, need not assign to each factor equal weight. *Corus*, 26 C.I.T. at ___ , 217 F. Supp. 2d at 1353–54 (citing *Chilean Nitrate Corp. v. United States*, 11 C.I.T. 538, 539 (1987)); *id.*, 26 C.I.T. at ___ , 217 F. Supp. 2d at 1354 (quoting *FMC Corp.*, 3 F.3d at 427) ("If a preliminary injunction is granted by the trial court, the weakness of the showing regarding one factor may be overborne by the strength of the others* * * * [Conversely], the absence of an adequate showing with regard to any one factor may be sufficient, given the weight or lack of it assigned to other factors, to justify [its] denial."). Notwithstanding, the crucial element is that of irreparable injury. *Id.*, 26 C.I.T. at ___ , 217 F. Supp. 2d at 1354 (citing *Elkem Metals Co. v. United States*, 25 C.I.T. ___ , ___ , 135 F. Supp. 2d 1324, 1329 (2001); *Nat'l Hand Tool Corp. v. United States*, 14 C.I.T. 61, 65 (1990)); *see also Beacon Theatres, Inc. v.*

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[1] In the action underlying this motion Applicant, along with Fuyao Glass Industry Group Co., Ltd., Greenville Glass Industries, Inc., Shenzhen Benxun Automotive Glass Co., Ltd., TCG International, Inc., Changchun Pilkington Safety Glass Co., Ltd., Guilin Pilkington Safety Glass Co., Ltd., Wuhan Yaohua Pilkington Safety Glass Co., Ltd., and Xinyi Automotive Glass (Shenzen) Co., Ltd., challenge certain aspects of the United States Department of Commerce's ("Commerce" or "Department") antidumping order covering automotive replacement glass windshields. *See* Auto. Replacement Glass Windshields from the P.R.C., 67 Fed. Reg. 16,087 (ITA Apr. 4, 2002) (antidumping duty order).

Westover, 359 U.S. 500, 506–07 (1959) ("The basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies."); *Bomont Indus. v. United States*, 10 C.I.T. 431, 437, 638 F. Supp. 1334, 1340 (1986) (citing *Nat'l Corn Growers Ass'n v. Baker*, 9 C.I.T. 571, 585, 623 F. Supp. 1262, 1275 (1985); *Am. Air Parcel Forwarding Co. v. United States*, 6 C.I.T. 146, 152, 573 F. Supp. 117, 122 (1983)) ("Failure of an applicant to bear its burden of persuasion on irreparable harm is ground to deny a preliminary injunction, and the court need not conclusively determine the other criteria."). The court, having considered the requisite factors, concludes that Applicant has not established a clear showing that it is entitled to the requested relief.

A. *Irreparable harm*

As in *Fuyao*, Applicant advances a sole ground for a finding of irreparable injury:

> On April 30, 2003, Xinyi requested administrative review of the antidumping order of Xinyi's entries. No other party requested an administrative review of Xinyi's entries. The Department published notice of the initiation of the administrative review on May 21, 2003. Although Xinyi requested an administrative review, Xinyi is re-evaluating its decision to request the administrative review, pursuant to 19 C.F.R. § 351.213(d)(1). If Xinyi withdraws its request for review, Xinyi's entries would suffer irreparable harm without the existence of a preliminary injunction because Xinyi's entries that are subject to the first administrative review would be immediately liquidated at the original dumping duty deposit rates without regard to this Court's final decision once the Department publishes the notice of rescission of the administrative review for Xinyi's entries.[2]

Pl.'s Mem. of Points and Auths. in Supp. of its Partial Consent Mot. for a Prelim. Inj. (Pl.'s Mem.) at 3; *see* Initiation of Antidumping and Countervailing Duty Admin. Revs. and Request for Revocation in Part, 68 Fed. Reg. 27,781, 27,781 (ITA May 21, 2003) (notice) ("The Department has received timely requests * * * for administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates* * * * [W]e are initiating administrative reviews of the following antidumping and countervailing duty orders and findings* * * * The P.R.C.: Automotive Replacement Glass Windshields A–570–867 * * * Xinyi Automotive Glass (Shenzhen) Co., Ltd.* * * * "). Thus, Applicant insists that it has satisfied its burden with respect to irreparable harm by claiming that,

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[2] This unusual state of affairs seems to have been the result of Applicant's delay in filing its preliminary injunction motion. Pursuant to USCIT R. 56.2(a) "[a]ny motion for a preliminary injunction to enjoin liquidation of entries that are the subject of the action shall be filed by a party to the action within 30 days after the date of service of the complaint, or at such later time, for good cause shown." Applicant filed its complaint on June 6, 2002, and filed the instant motion on June 27, 2003.

in the event it should abandon its request for an administrative review, entries subject to that review would be available for immediate liquidation. *Id.* at 3. ("[Applicant] is re-evaluating its decision to request the administrative review* * * * If [Applicant] withdraws its request for review, [Applicant]'s entries would suffer irreparable harm without the existence of a preliminary injunction.").[3] By statute, "[t]he determination [resulting from the review] shall be the basis for the assessment of countervailing or antidumping duties on entries of merchandise covered by the determination* * * * *" 19 U.S.C. § 1675(a)(2)(C). As stated in Commerce's regulations:

> Unlike the systems of some other countries, the United States uses a "retrospective" assessment system under which final liability for antidumping and countervailing duties is determined after merchandise is imported. Generally, the amount of duties to be assessed is determined in a review of the order covering a discrete period of time. If a review is not requested, duties are assessed at the rate established in the completed review covering the most recent prior period or, if no review has been completed, the cash deposit rate applicable at the time merchandise was entered.

19 C.F.R. § 351.212(a). Thus, the Subject Merchandise covered by the administrative review is not subject to liquidation until the review is complete, i.e., liquidation is suspended during an administrative review pending the review's final determination. As a result, so long as the administrative review of the Subject Merchandise stays its course the irreparable harm with which Applicant claims to be faced remains in check. Furthermore, since no other party requested administrative review of the Subject Merchandise, the decision as to whether or not the review continues is entirely in Applicant's hands. *See* 19 C.F.R. § 351.213(d)(1) ("The Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review."). In other words, the possibility of "irreparable harm" to Applicant rests solely on Applicant's own action or inaction. As such, the ir-

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[3] Pursuant to statute:

> (1) Liquidation in accordance with determination. Unless such liquidation is enjoined by the court under paragraph (2) of this subsection, entries of merchandise of the character covered by a determination of [Commerce] * * * contested under [19 U.S.C. § 1516a(a)] shall be liquidated in accordance with the determination of [Commerce] * * * if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by [Commerce] * * * of a notice of a decision of the United States Court of International Trade, or of the United States Court of Appeals for the Federal Circuit, not in harmony with that determination. Such notice of a decision shall be published within ten days from the date of the issuance of the court decision.
>
> (2) Injunctive relief. In the case of a determination described in [19 U.S.C. § 1516a(a)(2)] by [Commerce] * * * the United States Court of International Trade may enjoin the liquidation of some or all entries of merchandise covered by a determination of [Commerce] * * * upon a request by an interested party for such relief and a proper showing that the requested relief should be granted under the circumstances.

19 U.S.C. § 1516a(c).

reparable harm Applicant claims it must suffer absent an injunction is more in the way of a possibility than a present threat, and the eventuality of such harm is wholly within Applicant's power to prevent. This being the case, the court finds that it cannot grant the requested relief simply because the prospect of irreparable harm is too speculative. *See S.J. Stile*, 826 F.2d at 525, *quoted in Zenith*, 710 F.2d at 809 ("Only a viable threat of serious harm which cannot be undone authorizes exercise of a court's equitable power to enjoin before the merits are fully determined. A preliminary injunction will not issue simply to prevent a mere possibility of injury, even where prospective injury is great. A presently existing, actual threat must be shown." (internal citation omitted)).[4]

B. *Likelihood of success on the merits*

"The failure * * * to establish irreparable harm significantly raises the burden imposed on [p]laintiff to prove a likelihood of success on the merits." *Shandong Huarong Gen. Group Corp. v. United States*, 24 C.I.T. 1286, 1292, 122 F. Supp. 2d 143, 148 (2000) (citing *FMC Corp.*, 3 F.3d at 427). Put differently, a movant that fails to establish it is in danger of immediate irreparable harm, cannot satisfy its showing as to a likelihood of success on the merits merely by "rais-[ing] questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberate investigation." *Am. Air Parcel*, 1 C.I.T. at 298, 515 F. Supp. at 52 (quoting *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 844 (D.C. Cir. 1977)); *see also Ugine-Savoie Imphy v. United States*, 24 C.I.T. 1246, 1251, 121 F. Supp. 2d 684, 690 (2000) (citing *PPG Indus.*, 11 C.I.T. at 8; *Floral Trade Council v. United States*, 17 C.I.T. 1022, 1023 (1993)) ("Where it is clear that the moving party will suffer substantially greater harm by the denial of the preliminary injunction than the non-moving party would by its grant, it will ordinarily be sufficient that the movant has raised 'serious, substantial, difficult and doubtful questions* * * * ' "). Applicant's complaint does, in fact, raise serious issues, including questions regarding Commerce's determinations underlying the antidumping order with respect to its "reason to believe or suspect" finding, its selection of the proper surrogate values,

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[4] *See also Elkem*, 25 C.I.T. at _____ , 135 F. Supp. 2d at 1332 (citing *Techsnabexport, Ltd. v. United States*, 16 C.I.T. 420, 428, 795 F. Supp. 428, 437 (1992); *Nat'l Hand Tool*, 14 C.I.T. at 66)) ("While Petitioners arguably present a claim of past and even present financial losses, as to the future such statements are speculative and conclusory, and cannot provide the basis for a finding of irreparable injury."). This is not to say, however, that what is now based on speculation cannot become based in reality. Applicant may have reason to abandon its request for review due to considerations quite apart from those dealing with a suspension of liquidation. Should it take such action, it would be in a position more akin to those found in *Zenith* and its progeny, i.e., those in which relief by way of an injunction was justified. *See Zenith*, 710 F.2d at 809 (holding "that liquidation would indeed eliminate the only remedy available to Zenith for an incorrect review determination by depriving the trial court of the ability to assess dumping duties* * * * "); *Shinyei Corp. of Am. v. United States*, 27 C.I.T. _____ , _____ , 248 F. Supp. 2d 1350, 1355 (2003) (citing *Zenith*, 710 F.2d at 810); *Ugine-Savoie Imphy v. United States*, 24 C.I.T. 1246, 1251, 121 F. Supp. 2d 684, 688 (citing *Zenith*, 710 F.2d at 810); *NMB Singapore Ltd. v. United States*, 24 C.I.T. _____ , _____ , 120 F. Supp. 2d 1135, 1139 (2000) (citing *Zenith*, 710 F.2d at 810). At this juncture, however, the facts do not demonstrate that Applicant will, absent an injunction, suffer immediate irreparable harm, indicating the necessity of the court granting the "extraordinary remedy" Applicant seeks.

as well as its calculations based on the selected surrogate values. *See* Compl. ¶¶8, 13, 16, 22, 25, 28. In support of its contention that the success on the merits factor weighs in its favor, Applicant directs the court's attention to two cases now on remand from this court. *See* Pl.'s Mem. at 5 (citing *China Nat'l Mach. Imp. & Exp. Corp. v. United States*, 27 C.I.T. ___, Slip Op. 03–16 (Feb. 13, 2003); *Luoyang Bearing Factory v. United States*, 27 C.I.T. ___, Slip Op. 03–41 (Apr. 14, 2003)). An examination of these cases, however, does not demonstrate that they are necessarily dispositive in Applicant's case. Thus, "[t]his is not a case where a decision in plaintiff[s'] favor on the merits can be predicted." *Chilean Nitrate*, 11 C.I.T. at 540. Given the absence of a showing of irreparable injury it would be particularly "inappropriate to resolve [these questions] * * * according to a likelihood of success on the merits standard." *Techsnabexport*, 16 C.I.T. at 429, 795 F. Supp. at 437; *see also Bomont*, 10 C.I.T. at 434, 638 F. Supp. at 1340 ("[T]he court is not persuaded now that the plaintiff is so likely to succeed on the merits as to make the showing of irreparable harm a conceptual formality.").

C. *The public interest*

Applicant claims that the public interest favors its motion since "(i) preservation of this Court's authority [will] ensure that antidumping duties are assessed at the proper rate, and (ii) [it will ensure] uniform and fair application of the international trade statutes." Pl.'s Mem. at 6. It is in fact the case that the public interest in these matters lies in "the fair and efficient operation of the antidumping laws, and this factor is in lock step with the merits." *Chilean Nitrate*, 11 C.I.T. at 540; *see also Ugine-Savoie*, 24 C.I.T. at 1252 (quoting *PPG Indus.*, 11 C.I.T. at 9) ("[T]he public interest is served by 'ensuring that the ITA complies with the law, and interprets and applies [the] international trade statutes uniformly and fairly.' " (bracketing in original)). Were there no suspension of liquidation resulting from the request for administrative review, the public interest would undoubtedly favor the granting of an injunction and, thus, weigh heavily toward Applicant. *See Zenith*, 710 F.2d at 811 ("A second factor important to our discussion is the desire for the effective enforcement of the antidumping laws* * * * "); *id.* ("A conclusion that no irreparable harm is shown when that judicial review is rendered ineffective by depriving the interested party of the only meaningful correction for the alleged errors, would be inconsistent with the actions taken by Congress to correct deficiencies in prior enforcement activity under the antidumping laws."); *PPG Indus.*, 11 C.I.T. at 6 (citing *Zenith*, 710 F.2d at 811) ("Although the *Zenith* Court stated that one of the factors affecting its decision was the existence of actual injury, the Court made clear that at least one other factor was important to its decision. The second factor relied upon by the *Zenith* Court was the desire for effective enforcement of the antidumping laws."). So long as the suspension resulting from the request for ad-

ministrative review is in effect, however, the subject merchandise covered by the review will be liquidated in accordance with 19 U.S.C. § 1675(a)(2)(C) and Applicant will have an adequate remedy consistent with the effective enforcement of the antidumping laws. Thus, under these facts, the public interest factor does not favor Applicant.

D. *Balance of the hardships*

With respect to the relative hardships on the parties should the injunction be granted, Applicant insists that

> any hardship to Defendant caused by continued suspension of liquidation of entries subject to the contested determination is outweighed by the potential[5] harm to [Applicant] that would result if liquidation were to occur* * * * [I]n the event that injunctive relief is denied, [Applicant] loses its right to have any antidumping duties assessed.

Pl.'s Mem. at 4. However, just as the prospect of irreparable harm is only a possibility absent Applicant abandoning its request for an administrative review, so too is the prospect of Applicant's hardship. In the event Applicant were actually to abandon its request for administrative review this factor would likely be weighed in favor of Applicant. Under these facts, however, Applicant has failed to demonstrate that this factor should be weighed in its favor. *See Techsnabexport*, 16 C.I.T. at 429, 795 F. Supp. at 437 ("As plaintiffs have the burden on this issue, the hardships are presumed to balance.").

CONCLUSION

For the foregoing reasons, the court finds that Applicant has failed to meet its burden with respect to each of the four prongs of the test for preliminary injunctive relief. Accordingly, Applicant's motion for preliminary injunction is denied.

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[5] It is worth noting that at this point Applicant appears to recognize its harm to be potential.