

UNITED STATES COURT OF INTERNATIONAL TRADE

Before: Nicholas Tsoucalas, Senior Judge

TIANJIN MAGNESIUM INTERNATIONAL :
CO., LTD., :
 :
Plaintiff, :
 :
v. : Consol. Court No.: 11-00006
 :
UNITED STATES, :
 :
Defendant, :
 :
and :
 :
US MAGNESIUM, LLC, :
 :
Defendant-Intervenor. :
_____ :
 :

MEMORANDUM ORDER

Held: Remand results accepted in their entirety, with costs to be taxed against plaintiff.

Dated: November 21, 2012

Riggle & Craven, (David A. Riggle) for Tianjin Magnesium International Co., Ltd., Plaintiff.

Stuart F. Delery, Acting Assistant Attorney General; Jeanne E. Davidson, Director, Claudia Burke, Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice (Renee Gerber); Office of Chief Counsel for Import Administration, United States Department of Commerce, Thomas M. Beline, Of Counsel, for the United States, Defendant.

King & Spalding, LLP, (Stephen A. Jones and Jeffrey B. Denning) for US Magnesium, LLC, Defendant-Intervenor.

TSOUCALAS, Senior Judge: This court, having considered the remand determination and the response briefs, finds that the Department of Commerce ("Commerce") substantially complied with

this court's order in Tianjin Magnesium International Co. v. United States, 36 CIT , Slip. Op. 12-63 (May 16, 2012), and accordingly accepts the remand results in their entirety.

In multiple proceedings before Commerce, including those leading to the present action, Tianjin Magnesium International Co. ("TMI") engaged in intentionally fraudulent conduct in an attempt to obtain lower dumping margins. Tianjin Magnesium, 36 CIT at , Slip. Op. 12-63 at 3-7. Although the court is not aware of any identical misconduct during this appeal, the court finds it troubling that TMI employed other tactics designed to mislead the court and the other parties to this action. Specifically, TMI did not submit its rebuttal brief objecting to the chosen financial surrogate on time in the proceedings below – rendering the argument procedurally deficient on appeal for TMI's failure to exhaust – but nevertheless chose to repeat its objection before this court without adequately disclosing or explaining its failure below. See Pl.'s Mem. Supp. Mot. J. Agency R. at 13-24. TMI continued to argue the point in its reply brief despite exhaustive and accurate refutations from both Commerce and defendant-intervenors. See id. at 2-10; Def.'s Mem. Opp'n Pl.'s Mot. J. Agency R. & Def.-Intervenor's Mot. J. Agency R. at 17-19; Def.-Intervenor's Mem. Opp'n Pl.'s Mot. J. Agency R. at 5-11.

"Although its discretionary power to award costs has been infrequently exercised," Former Employees of Bass Enterprises

Production Co. v. United States, 13 CIT 372, 374 (1983) (not reported in the Federal Supplement), the Court of International Trade unquestionably retains the authority to do so. USCIT R. 54(d); see 28 U.S.C. §§ 1920, 1923, 1924 (2006). TMI's actions constitute a frivolous drain of the court's resources, potentially within the scope of the court's authority to impose sanctions under Local Rule 11(c). See USCIT R. 11(b)(2), (c). Given TMI's conduct, this court finds awarding costs to be an appropriate exercise of its discretion. See USCIT LR 54(d)(1); 28 U.S.C. §§ 1920, 1923, 1924. TMI's actions will not be tolerated in future proceedings before this court.

In accordance with the foregoing, it is hereby

ORDERED that the remand results are accepted in their entirety; and it is further

ORDERED that costs will be taxed after defendant and defendant-intervenor submit their affidavits of itemized costs pursuant to USCIT R. 54(d) and after plaintiff has had an opportunity to respond thereto; and it is further

ORDERED that this action is dismissed.

/s/ NICHOLAS TSOUCALAS

Nicholas Tsoucalas
Senior Judge

Dated: November 21, 2012
New York, New York

ERRATA

Please make the following changes to Tianjin Magnesium International Co., Ltd. v. United States, No. 11-00006, Slip Op. 12-143:

- page 2, header: change "Court No. 11-000806" to "Court No. **11-00006**"
- page 3, header: change "Court No. 11-000806" to "Court No. **11-00006**"

November 27, 2012.