

Slip-Op 05-58
United States Court of International Trade

NORSK HYDRO CANADA INC.,

Plaintiff,

v.

UNITED STATES,

Defendant,

and

U.S. MAGNESIUM, LLC,

Defendant-Intervenor.

Before: Pogue, Judge

Court No. 03-00828

ORDER

On October 24, 2004, this Court denied Defendant's motion to dismiss Plaintiff's action. Norsk Hydro Canada, Inc. v. United States, 350 F. Supp. 2d 1172 (2004). In that opinion, the Court held that it had subject matter jurisdiction over this matter. The Court further held that "[the Department of] Commerce has the authority under [19 U.S.C.] § 1671(a) to ensure that the amount of the countervailing duty imposed is equal to the amount of the net countervailable subsidy." Norsk Hydro, 350 F. Supp. 2d at 1186. Moreover, 19 U.S.C. §1675a(a)(1)(A) requires that, in an administrative review, the Department of Commerce is to "review and determine the amount of any net countervailable subsidy."

Following the Court's opinion, Plaintiff filed a Motion for Judgment on the Agency Record pursuant to USCIT R. 56.2. Plaintiff's motion, and the responses thereto, are now before the Court. However, neither the motion nor the responses thereto have raised any new legal claims other than those resolved by the Court's prior opinion.

The Department of Commerce, in the proceedings below, determined that it could not offset future duties by the amount Plaintiff overpaid in the past. Therefore, Commerce did not make an evidentiary finding regarding the merits of Plaintiff's case to "determine the amount of any net countervailable subsidy." Consequently, this Court has no evidence on the record to review.

Accordingly, the Court having resolved the meaning of the relevant statutory provisions in Norsk Hydro Canada, Inc. v. United States, 350 F. Supp. 2d 1172 (2004), it is hereby

ORDERED that the Department of Commerce's final results in the administrative review of Pure Magnesium and Alloy Magnesium from Canada, 68 Fed. Reg. 53962 (Dep't Commerce Sept. 15, 2003) (final results of countervailing duty administrative review) are remanded to the Department of Commerce;

IT IS FURTHER ORDERED that, upon remand, and consistent with this Court's opinion and order, the Department of Commerce shall "review and determine the amount of any net countervailable subsidy," and specifically shall "ensure that the amount of the countervailing duty imposed is equal to the amount of the net countervailable subsidy;"

IT IS FURTHER ORDERED that the Department of Commerce shall determine the amount of any duty remaining to be assessed;

The Department of Commerce shall have until June 17, 2005 to submit its remand determination. The parties shall have until July 1, 2005 to submit comments on the remand determination. Rebuttal comments shall be submitted by July 15, 2005.

/s/
Donald C. Pogue, Judge

Dated: May 17, 2005
New York, New York