Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2012-025

Regal Ideas Inc.

v.

President of the Canada Border Services Agency

Decision and reasons issued
Monday, May 27, 2013

Canada

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IN THE MATTER OF an appeal heard on April 23, 2013, pursuant to subsection 61(1) of the *Special Import Measures Act*, R.S.C. 1985, c. S-15;

AND IN THE MATTER OF two decisions of the President of the Canada Border Services Agency, dated July 6, 2012, with respect to requests for re-determination pursuant to section 59 of the *Special Import Measures Act*.

BETWEEN

REGAL IDEAS INC. **Appellant**

AND

THE PRESIDENT OF THE CANADA BORDER SERVICES AGENCY **Respondent**

DECISION

The appeal is allowed.

Stephen A. Leach
Stephen A. Leach
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Jason W. Downey
Jason W. Downey
Member

Dominique Laporte
Dominique Laporte
Secretary

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	April 23, 2013
Tribunal Members:	Stephen A. Leach, Presiding Member Serge Fréchette, Member Jason W. Downey, Member
Counsel for the Tribunal:	Eric Wildhaber Anja Grabundzija
Manager, Registrar Programs and Services:	Michel Parent
Registrar Officer:	Ekaterina Pavlova

PARTICIPANTS:

Appellant	**Counsel/Representative**
Regal Ideas Inc.	Gordon LaFortune
Respondent	**Counsel/Representatives**
President of the Canada Border Services Agency	Alex Kaufman Leah Garvin

WITNESSES:

Gary Kuo
Chairman
Xinwei Aluminum Products Co., Ltd.
Midas Aluminum Products Co., Ltd.

Norm Liefke
President
Regal Ideas Inc.

Hal Hagedorn
Technical Service Representative
PPG Canada Inc.

C. Roy Henning
Corporate Counsel
Regal Ideas Inc.

Robert Wright
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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal by Regal Ideas Inc. (Regal) filed with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 61(1) of the *Special Import Measures Act*[1] from two decisions of the President of the Canada Border Services Agency (CBSA) dated July 6, 2012.

2. Subsection 61(3) of *SIMA* allows the Tribunal to ". . . make such order or finding as the nature of the matter may require and . . . declare what duty is payable or that no duty is payable on the goods with respect to which the appeal was taken . . . ."

3. In this appeal, the Tribunal must determine whether the imported aluminum extrusions (the goods in issue) are *excluded* from the Tribunal's finding in *Aluminum Extrusions*.[2] In that finding, the Tribunal concluded that the dumping and subsidizing of certain aluminum extrusions originating in or exported from the People's Republic of China (China) had caused injury to the domestic industry.

4. The CBSA determined that the goods in issue did not meet the requirements of the following exclusion (the Exclusion):

> Aluminum extrusions produced from either a 6063 or a 6005 alloy type with a T6 temper designation, in various lengths, with a powder coat finish on both the interior and the exterior surfaces of the extrusion, which finish is certified to meet the American Architectural Manufacturers Association AAMA 2603 standard, "Voluntary Specification, Performance Requirements and Test Procedures for Pigmented Organic Coatings on Aluminum Extrusions and Panels", for use in exterior railing systems.[3]

5. Regal opposed this determination, which led to this appeal.

6. The disagreement between the parties pertains to whether the goods in issue have a "powder coat finish on both the interior and the exterior surfaces of the extrusion, which finish is certified to meet the American Architectural Manufacturers Association AAMA 2603 standard, 'Voluntary Specification, Performance Requirements and Test Procedures for Pigmented Organic Coatings on Aluminum Extrusions and Panels'" (the Standard).

7. This requires determining two sub-issues: (1) the meaning of "which finish is certified to meet the AAMA 2603 standard" and (2) whether the goods in issue, in fact, met the Standard at the time of importation.

PROCEDURAL HISTORY

8. The goods in issue were manufactured in China and imported into Canada on January 29, 2011.

9. On June 14, 2011, pursuant to section 55 of *SIMA*, the CBSA determined that the goods in issue did not meet the requirements of the Exclusion and were therefore subject to *SIMA* duties. Following a request by Regal pursuant to section 58, on July 6, 2012, the CBSA issued two detailed adjustment statements pursuant to section 59, confirming its previous determinations. Regal filed this appeal on August 22, 2012.

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1. R.S.C. 1985, c. S-15 [*SIMA*].
2. (17 March 2009), NQ-2008-003 (CITT).
3. See the Appendix to the findings in *Aluminum Extrusions* at iii.

10. The Tribunal held a public hearing on April 23, 2013. Regal called three witnesses: Mr. Gary Kuo, Chairman, Xinwei Aluminum Products Co., Ltd. and Midas Aluminum Products Co., Ltd.; Mr. C. Roy Henning, Corporate Counsel, Regal Ideas Inc.; and Mr. Norm Liefke, President, Regal Ideas Inc. The CBSA called two witnesses: Mr. Robert Wright, Senior Program Officer, CBSA; and Mr. Hal Hagedorn, Technical Service Representative, PPG Canada Inc. None of the witnesses was qualified as an expert for the purposes of these proceedings.

PRELIMINARY MATTERS

Motion for Summary Judgment

11. On August 22, 2012, Regal filed a Motion for Summary Judgment,[4] requesting that the Tribunal allow the appeal on the basis that the only justiciable issue was the interpretation of "certified to meet the AAMA 2603 standard". Regal submitted that this issue had already been determined by the Tribunal in *Levolor Home Fashions Canada*[5] in a manner that rejected the position that the CBSA is advancing in this appeal.

12. The CBSA opposed the motion, arguing that the question of whether the goods in issue in fact are powder-coated on their interior and exterior surfaces was a genuine issue for trial. The CBSA also submitted that the present appeal should be held in abeyance pending the decision of the Federal Court of Appeal regarding the Tribunal's decision in *Levolor*.

13. On September 28, 2012, the Tribunal denied the motion because, contrary to Regal's submission, "certified to meet the AAMA 2603 standard" was not the only justiciable issue in this appeal. In addition to arguments regarding the interpretation of this phrase, the CBSA also submitted that there were material facts in dispute constituting a genuine issue in this appeal, specifically, evidence that the goods in issue did not, in fact, meet the Standard at the time of importation because they were not powder-coated on their interior and exterior surfaces.

14. However, if the only justiciable issue in this appeal had been the interpretation of "certified to meet the AAMA 2603 standard", the Tribunal may have granted the motion.[6] As argued by Regal, the CBSA should not force parties to re-litigate an issue previously decided by the Tribunal. Tribunal decisions made pursuant to subsection 61(3) of *SIMA* on the scope of its findings, such as the interpretation of the terms "certified to meet the AAMA 2603 standard", take precedence over interpretations made by the CBSA and must be adopted and applied by the CBSA unless and until the Tribunal's findings are overturned by a higher court, or there are distinct evidentiary issues that genuinely need to be addressed, such as in this appeal.

15. On September 28, 2012, the Tribunal also denied the request to hold the appeal in abeyance, because the facts in each appeal were not necessarily the same. In any event, the Federal Court of Appeal disposed of *Levolor* on January 10, 2013, upholding the Tribunal's decision.[7]

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4. Tribunal Exhibit AP-2012-025-02.
5. (22 May 2012), AP-2011-015 (CITT) [*Levolor*].
6. The Tribunal has stated in past decisions that it has the jurisdiction, in the appropriate case, to decide an appeal on a preliminary motion. See, for example, *GFT Mode Canada Inc. v. DMNR* (18 May 2000), AP-96-046 and AP-96-074; *HBC Imports c/o Zellers Inc. v. President of the Canada Border Services Agency* (19 November 2010), AP-2010-005 at paras. 9-10.
7. *Canada (Border Services Agency) v. Levolor Home Fashions Canada*, 2013 FCA 3 (CanLII).

POSITIONS OF PARTIES

Regal

16. Regal argued that the goods in issue meet all the requirements of the Exclusion.

17. Regal argued that the meaning of "certified to meet the AAMA 2603 standard" has been addressed by the Tribunal in *Levolor* and that that interpretation fully applies in this appeal. According to Regal, the requirements of the Exclusion can therefore be met by adducing evidence, whether in the form of an AAMA certificate or by self-certification, whether at importation or thereafter, demonstrating that the powder coat finish applied to the aluminium extrusions meets the Standard.

18. Accordingly, Regal argued that the evidence demonstrates that the goods in issue comply with the requirements of the Exclusion. Regal relied on (1) a statement provided by the supplier and included with the shipments, certifying that the goods in issue meet the Standard;[8] (2) the fact that shortly after the importation of the goods in issue, the AAMA included Regal's powder coat applicator on its Verified Components List (VCL);[9] and (3) testing conducted by various laboratories on samples of goods produced both before and after the importation of the goods in issue, each concluding that the tested samples comply with the Standard.

19. Regal further submitted that the test reports submitted by the CBSA could not be relied on because there was no evidence as to the samples and procedures used, and because they do not actually indicate that the samples failed the tests required by the Standard when properly interpreted.

CBSA

20. The CBSA's primary position was that the goods in issue do not benefit from the Exclusion because the powder coating applicator was not included on the VCL at the time the goods in issue were imported. In the alternative, the CBSA argued that the interior surfaces of the goods in issue and some of their exterior surfaces are not, in fact, powder-coated to meet the Standard.

21. Taking the position that *Levolor* is not binding on the Tribunal, the CBSA argued that the Exclusion is ambiguous and needs to be interpreted in light of the statement of reasons and the evidence from the original inquiry. The CBSA submitted that these elements clarify that the Exclusion requires certification by the AAMA—or inclusion on the VCL—which certification must be valid at the time of importation.

22. Finally, the CBSA argued that, in any case, the goods in issue do not have a powder coat finish meeting the Standard on all their interior and exterior surfaces, as demonstrated by the various lab reports that it filed, and thus fail to meet the requirements of the Exclusion.

TRIBUNAL'S ANALYSIS

The Meaning of "which finish is certified to meet the AAMA 2603 standard"

23. The meaning of the phrase "which finish is certified to meet the AAMA 2603 standard" is exactly the same issue that was before the Tribunal in *Levolor*. The CBSA appealed that decision. As indicated above, the Federal Court of Appeal dismissed the appeal.

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8. Tribunal Exhibit AP-2012-025-03A (protected), tab 7.
9. *Ibid.*, tab 9.

The Tribunal's Decision in *Levolor*

24. In *Levolor*, the majority of the Tribunal found the Exclusion to be unambiguous and that it does not require an importer to present a certificate from the AAMA. Accordingly, the majority of the Tribunal found that the Exclusion simply requires that the goods meet the Standard, without specifying the evidence necessary to prove it or when such evidence should be provided to the CBSA.[10]

Should the Tribunal Ascribe a Different Meaning to the Exclusion Than It Did in *Levolor*?

25. As argued by the CBSA, administrative tribunals are not bound by the rule of *stare decisis*,[11] so the Tribunal is not bound by its decision in *Levolor* and can reconsider whether the wording of the Exclusion is ambiguous and, if so, ascribe a different meaning to the Exclusion than it did in *Levolor*.

26. Equally important, however, is the ". . . fundamental interest of litigants in the consistency of administrative decision-making and the predictability of outcomes which such consistency provides . . . ."[12] As such, the Tribunal must balance the ability to make a different decision than it did previously with the need for consistency in its findings. The Tribunal will consider the parties' arguments in light of these principles.

27. In this appeal, as in *Levolor*, the CBSA argued that the meaning of the phrase "which finish is certified to meet the AAMA 2603 Standard" is ambiguous and that the Tribunal should ascertain its intended meaning by referring to the statement of reasons in *Aluminum Extrusions* and any relevant evidence from the original inquiry.

How the Tribunal Assesses an Alleged Ambiguity in a Finding

28. In assessing an alleged ambiguity in a finding, the Tribunal starts by ascribing meaning to the plain wording of the finding.

29. If it is not possible to ascribe meaning to the plain wording of the finding, for example, because it admits of more than one meaning, the Tribunal will review the statement of reasons for the finding to ascertain its meaning.

30. The statement of reasons will normally suffice to clarify the intended meaning of an ambiguous finding and it will be unnecessary for the Tribunal to look further. If, however, a particular aspect of a Tribunal finding is not settled by reference to the statement of reasons, the Tribunal will review the administrative record in the inquiry or review for evidence that bears directly on the ambiguity.[13]

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10. See *Levolor* at paras. 20-24.
11. *Jam Industries Ltd. v. Canada (Border Services Agency)*, 2007 FCA 210 (CanLII) [*Jam Industries*] at paras. 20-21; *Domtar Inc. v. Quebec (Commission d'appel en matière de lésions professionnelles)*, [1993] 2 SCR 756 at para. 94.
12. *Jam Industries* at para. 21.
13. See, for example, *Powers Industries Limited v. President of the Canada Border Services Agency* (22 April 2013), AP-2012-010 at paras. 23-25. This approach is consistent with the decisions of the Federal Court of Appeal in *Deputy M.N.R. (Customs and Excise) v. Trane Company of Canada*, [1982] 2 FC 194 (FCA) and *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, 2001 FCA 67, [2001] 4 FC 455.

31. The CBSA argued that the Exclusion is ambiguous because it does not specify who must certify that the goods meet the Standard. It submitted that the idea of certification cannot be divorced from the question of who provides it and that the lack of clarity in this respect results in the ambiguity.[14]

32. The Tribunal disagrees. The fact that the Exclusion does not specify who must certify that the goods meet the Standard does not mean that it is ambiguous. Had the Tribunal intended to specify who provides the certification for the purposes of the Exclusion, it could have done so.[15] Indeed, nothing in the Exclusion implies that the Tribunal's intention was to specify who provides the certification.

33. Therefore, the Tribunal reaches the same conclusion as in *Levolor*, that the plain meaning of the Exclusion is clear: the goods are required to meet the Standard at the time of importation regardless of how or when compliance is demonstrated.

34. In this case, at the time of importation, the manufacturer provided certificates stating that the goods in issue met the Standard. Of course, as it did in this case, the CBSA can challenge the validity or accuracy of the certificates. However, such a challenge is a matter of evidence rather than interpretation of the Exclusion.

35. Given that the Exclusion is clear on its face, it is unnecessary to review the statement of reasons or evidence from the original record that may relate to the alleged ambiguity.

36. However, in the event the Tribunal is wrong and the Exclusion is ambiguous, the Tribunal will assess the CBSA's argument that the alleged ambiguity can be resolved by referring to the statement of reasons and the evidence submitted in the original inquiry with regard to product exclusions.

Can the Alleged Ambiguity of the Exclusion Be Resolved by Reference to Paragraph 363 of the Tribunal's Statement of Reasons?

37. The CBSA relied on the following paragraphs of the statement of reasons in *Aluminum Extrusions*:

> 363. The Tribunal grants the request for product exclusion filed by VAP Global Industries Inc. (VAP), which concerns aluminum extrusions with a powder coat finish for use in window frames. *VAP submitted that these products have a powder coat finish in custom colours that must be certified to meet the American Architectural Manufacturers Association AAMA 2603 and 2605 coating standards. In this respect, it provided as evidence a list of AAMA-approved paint applicators, which included the name of its Chinese supplier (only for the AAMA 2603 coating standard) but not those of any Canadian companies.* It also provided evidence that indicated that domestic producers advised against having extrusions that are over 20 ft. in length and powder coated by third parties due to potential damage that can occur. *Although the parties opposing the request claimed to be able to produce identical or substitutable products with a powder coat finish which meet the above-noted*

14. *Transcript of Public Hearing*, 23 April 2013, at 177; Tribunal Exhibit AP-2012-025-16 at paras. 29-34.
15. As mentioned in *Levolor* at paras. 21-22, where the Tribunal intended to require a specific type of certification, it said so explicitly, as it did, for example, in its finding in *Refined Sugar* (3 November 2000), RR-99-006 (CITT), with respect to "[o]rganic sugar meeting the requirements of the Canadian General Standards Board standard No. CAN/CGSB-32.310-99 (Organic Agriculture), the U.S. *Federal Organic Foods Production Act of 1990* or any rules adopted under that act, or the European Union EN2092/94 (Organic Regulation), where it is accompanied by a transaction certificate affirming compliance with the standard signed by an ISO Guide 65 accredited certifying authority."

> *AAMA standards, they provided no evidence to support this assertion*. Therefore, the Tribunal grants an exclusion for aluminum extrusions produced from a 6063 alloy type with either a T5 or a T6 temper designation, having a length of between 20 and 33 ft. (between 6.10 and 10.06 m), with a powder coat finish, which finish is certified to meet the AAMA 2603 standard, "Voluntary Specification, Performance Requirements and Test Procedures for Pigmented Organic Coatings on Aluminum Extrusions and Panels", for use in window frames.
>
> 364. The Tribunal also grants the request for product exclusion filed by Home-Rail Ltd. (Home-Rail), which concerns aluminum extrusions with a powder coat finish for use in exterior railing systems. Home-Rail submitted that, in order to offer a 20-year warranty on its aluminum railings, the powder coat must meet the AAMA 2603 coating standard and must be applied on both the interior and the exterior surfaces of the extrusion. *For the same reason as it granted the preceding exclusion, the Tribunal grants an exclusion in this case* for aluminum extrusions produced from either a 6063 or a 6005 alloy type with a T6 temper designation, in various lengths, with a powder coat finish on both the interior and the exterior surfaces of the extrusion, which finish is *certified to meet the AAMA 2603 standard*, "Voluntary Specification, Performance Requirements and Test Procedures for Pigmented Organic Coatings on Aluminum Extrusions and Panels", for use in exterior railing systems.
>
> [Emphasis added]

38. The CBSA interprets paragraph 363 to mean that the decisive factor in the Tribunal's decision to grant an exclusion to VAP was the absence of domestic extruders on the VCL of AAMA-approved paint applicators. It further argued that because paragraph 364 indicates that the Exclusion, as requested by Home-Rail, was granted "for the same reason" as the one granted to VAP, it follows that the Exclusion must only apply to products from suppliers certified by the AAMA that are listed on the VCL.[16]

39. The Tribunal notes that paragraph 363 indicates that VAP presented the VCL as proof that its products were certified to meet the Standard and that the domestic extruders opposing the request "provided no evidence" to show that they are "able to produce" products that meet the Standard. However, nowhere did the Tribunal specify that the *only* evidence that could have supported the claim of the domestic extruders as to their ability to produce such compliant products was a listing on the VCL. There is simply no discussion as to the manner or timing for demonstrating compliance with the Standard.

40. Therefore, the Tribunal cannot conclude on the basis of the statement of reasons that the Panel in *Aluminum Extrusions* intended the Exclusion to mean something different than what is apparent from its plain meaning: the Exclusion applies to goods meeting the Standard at the time of importation, regardless of how or when compliance is demonstrated.

Can the Alleged Ambiguity of the Exclusion Be Resolved by Reference to the Evidence Submitted in the Original Inquiry With Regard to the Exclusion Process?

41. The CBSA focused on the product exclusion request by VAP. It argued that VAP specifically requested a product exclusion based on the following:

> Custom Finish to meet AAMA specifications: Powder Coat supplier must be approved by AAMA[17]

and that VAP further explained that:

16. Tribunal Exhibit AP-2012-025-16 at paras. 15-16.
17. *Ibid.*, tab 3 at 22.

> [i]f a supplier[']s product is not on the [VCL], the product(s) may not be used in a window or patio door labeled AAMA Certified. My customer[s] [require] AAMA Approval as they are competing in the United States and require AAMA certified Powder Paint.[18]

42. The CBSA indicated that the domestic extruders had stated, in their reply opposing VAP's exclusion request, that they could produce aluminum extrusions that are powder-coated to the Standard. On that basis, the CBSA argued that paragraph 363 of the Tribunal's reasons in *Aluminum Extrusions* would have rejected any possibility of self-certification by the domestic extruders and that the exclusion in issue in that paragraph therefore only applies to products from suppliers listed on the VCL.

43. In response to this argument, Regal argued that the exclusion granted to VAP is irrelevant, as the Exclusion is based on the request by Home-Rail, as discussed in paragraph 364 of the Tribunal's reasons in *Aluminum Extrusions*. It noted that the product exclusion request by Home-Rail, while referencing the AAMA 2603 standard, *did not* require that the powder coat supplier be approved by the AAMA or included on the VCL.

44. As such, Regal argued that if the Tribunal were to interpret the Exclusion as being limited to suppliers certified *by* the AAMA and that are listed on the VCL, it would lead to the absurd result of the Tribunal having granted an exclusion to Home-Rail from which Home-Rail would not have been able to benefit.[19]

45. Both parties make different and equally legitimate points. On the one hand, it is clear that VAP specifically requested that the AAMA approve the powder coat applicator. On the other hand, it is also clear that Home-Rail did not.[20] Indeed, its request was only supported by self-certification[21] and included no indication that its powder coat applicator was AAMA-approved.

46. As noted by Regal, the Tribunal is not in the habit of granting exclusions that are of no use to a requestor.

47. In addition, upon review of the administrative record in the original inquiry with respect to the product exclusion requests by VAP, Home-Rail and Levolor, it appears that the domestic extruders had simply adduced *no* evidence in support of their allegations that they could produce identical or substitutable aluminum extrusions with a powder coat finish meeting the Standard.[22]

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18. Tribunal Exhibit AP-2012-025-30A, tab 5.
19. *Transcript of Public Hearing*, 23 April 2013, at 245-47, referring to Tribunal Exhibit AP-2012-025-31C, tab 8.
20. The same applies to the product exclusion request by Levolor.
21. Tribunal Exhibit AP-2012-025-31C, tab 8.
22. See Reply by the Domestic Extruders to the Product Exclusion Request By Home-Rail and the confidential supporting documents, Administrative Record, NQ-2008-003-38.02, Vol. 1.4D, NQ-2008-003-39.02; Reply by the Domestic Extruders to the Product Exclusion Request By VAP Global and the confidential supporting documents, Administrative Record, NQ-2008-003-38.24, NQ-2008-003-39.24A; Reply by the Domestic Extruders to the Product Exclusion Request By Levolor and the confidential supporting documents, Administrative Record, NQ-2008-003-38.10, Vol. 1.4D, NQ-2008-003-38.10A, NQ-2008-003-39.10, NQ-2008-003-39.10A. The supporting documents for these product exclusion requests do not mention the AAMA 2603 standard.

48. Therefore, the evidence submitted in the original inquiry with regard to the exclusion process does not support the interpretation of the Exclusion advanced by the CBSA. If anything, it supports the plain meaning of the Exclusion which gives effect to all three of the related product exclusions granted by the Tribunal.

Did the Goods in Issue Meet the Standard at the Time of Importation?

49. The first pieces of evidence in support of the position that the goods in issue met the Standard at the time of importation are certificates by the manufacturer to this effect, which accompanied the goods to Canada.[23]

50. In addition, Mr. Kuo, the chairman of the plant that manufactured the goods in issue and of the laboratory that conducted testing during the manufacturing process, testified that the certificate is accurate because the goods in issue would have passed "daily checks" and "quarterly testing", both of which are designed to ensure that the goods are manufactured to meet the AAMA 2603 standard.[24]

51. The CBSA, relying on its primary argument that the Exclusion should be interpreted to require certification *by* the AAMA, argued, essentially, that Mr. Kuo's testimony is irrelevant because Mr. Kuo's lab is not accredited by the AAMA to verify compliance with its standards.[25]

52. The CBSA's only issue with Mr. Kuo's testimony came in argument, when it invited the Tribunal to give less weight to the witness's testimony because Mr. Kuo stated that all the tests were done in China, whereas the Standard requires that a particular weather exposure test take place in Florida.[26]

53. However, counsel for the CBSA acknowledged that a note accompanying that portion of the Standard indicates that film approval is not dependent on the weather exposure test[27] and, furthermore, that the question of whether the weather exposure test was conducted in China, or Florida, or not at all, should have been specifically put to Mr. Kuo in cross-examination, providing him a fair opportunity to answer.

54. Both parties submitted reports from labs accredited by the AAMA to verify compliance with its standards, and the CBSA also submitted a letter from Mr. Hagedorn, each of which purported to determine whether the goods in issue met the Standard at the time of importation.

55. However, both parties admit that there is no evidence that the respective labs or Mr. Hagedorn actually conducted tests on the goods in issue. This stems from the fact that neither party secured the goods in issue to ensure continuity of evidence. In addition, both parties question the validity of the respective lab tests for a variety of reasons, including who selected the samples for testing, and if the testing was conducted properly.

56. Accordingly, as there is no evidence that the goods tested by either lab or the goods tested by Mr. Hagedorn were, in fact, the goods in issue, the Tribunal cannot rely on the lab reports or the letter and testimony of Mr. Hagedorn.

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23. Tribunal Exhibit AP-2012-025-03A (protected), tab 7.
24. *Transcript of Public Hearing*, 23 April 2013, at 25-28. See also the "quarterly tests" dated November 29, 2010, through to April 5, 2013, Tribunal Exhibit AP-2012-025-44B (protected), tabs 12-20.
25. *Transcript of Public Hearing*, 23 April 2013, at 227.
26. *Ibid.* at 224-26.
27. *Ibid.* at 232-33.

57. Therefore, the best evidence of whether the goods in issue met the Standard at the time of importation is the lab tests conducted during the manufacturing process and the testimony of Mr. Kuo, both of which support the validity of the certificates provided by the manufacturer.

58. Furthermore, the uncontroverted evidence of Mr. Kuo is that the manufacturing process has not changed since the goods in issue were produced and, because the manufacturing process was verified by the AAMA shortly thereafter,[28] it seems improbable that the goods in issue failed to meet the Standard at the time of importation.

59. Finally, the CBSA raised another interpretive argument. It argued that the Exclusion requires powder coating of the entirety of the interior and exterior of the goods in issue,[29] and Regal's witnesses, in essence, admitted[30] that the entirety of the exterior of the goods in issue are not powder-coated because the Standard only requires powder coating of the surfaces that are exposed when the goods are installed.

60. The CBSA's argument in this regard has no merit.

61. The Exclusion references the Standard. Therefore, it is appropriate to read the Standard in order to determine the specific requirements. In this case, the uncontroverted testimony of Regal's witnesses is that the Standard only requires powder coating those surfaces that are exposed when the aluminum product is installed.[31]

62. Regal's evidence is also uncontroverted that the goods in issue were powder-coated on the interior and the exposed exterior surfaces. This is sufficient evidence that the goods in issue comply with the requirements of the Exclusion.

DECISION

63. The appeal is allowed.

Stephen A. Leach
Stephen A. Leach
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Jason W. Downey
Jason W. Downey
Member

28. The first AAMA verification was granted to Guangdong Xin Wei on February 18, 2011, for a period of 18 months. See the testimony of Mr. Henning, *Transcript of Public Hearing*, 23 April 2013, at 16-19, and the original AAMA certificate, Tribunal Exhibit AP-2012-025-03A (protected), tab 9. Guangdong Xin Wei was again included on the VCL in June 2012. Although an issue arose during these proceedings about this second certification being rescinded, the evidence establishes that this was a result of purely procedural issues within AAMA, and the certificate was quickly reinstated. See Tribunal Exhibit AP-2012-025-44A, tabs 1-11, and the testimony of Mr. Henning, *Transcript of Public Hearing*, 23 April 2013, at 19-24.
29. *Transcript of Public Hearing*, 23 April 2013, at 210-14.
30. See the testimony of Mr. Liefke stating that the unexposed exterior surfaces of Regal's aluminum extrusions are not powder-coated, *Transcript of Public Hearing*, 23 April 2013, at 40-43, 83-84.
31. *Ibid*. at 83.