



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2012-010

Powers Industries Limited

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Monday, April 22, 2013*

TABLE OF CONTENTS

DECISION..... i

STATEMENT OF REASONS 1

 BACKGROUND 1

 PROCEDURAL HISTORY 1

 PRELIMINARY MATTERS 2

 Disposition of Matters in Advance of Hearing 2

 Qualification of Expert Witness 2

 TRIBUNAL’S ANALYSIS..... 3

 Findings..... 3

 Goods in Issue 6

 Positions of the Parties..... 6

 Legal Framework 7

 Analysis..... 8

DECISION 21

IN THE MATTER OF an appeal heard on January 15 and 16, 2013, pursuant to subsection 61(1) of the *Special Import Measures Act*, R.S.C. 1985, c. S-15;

AND IN THE MATTER OF 12 decisions of the President of the Canada Border Services Agency, dated March 14, 2012, with respect to requests for re-determination pursuant to section 59 of the *Special Import Measures Act*.

BETWEEN

POWERS INDUSTRIES LIMITED

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Jason W. Downey
Jason W. Downey
Member

Dominique Laporte
Dominique Laporte
Secretary

Place of Hearing: Ottawa, Ontario
Dates of Hearing: January 15 and 16, 2013

Tribunal Members: Pasquale Michael Saroli, Presiding Member
Serge Fréchette, Member
Jason W. Downey, Member

Counsel for the Tribunal: Nick Covelli
Anja Grabundzija

Manager, Registrar Programs and Services: Michel Parent

Registrar Officer: Haley Raynor

PARTICIPANTS:**Appellant**

Powers Industries Limited

Counsel/Representative

Cyndee Todgham Cherniak

Respondent

President of the Canada Border Services Agency

Counsel/Representative

Andrew Gibbs

WITNESSES:

Mark Russell
Managing Director
Powers Fasteners

Sean Agresta
Field Engineering
Powers Fasteners

Mark Ziegler
Vice-President of Technical Services
Powers Fasteners

Jeffrey R. Powers
Former CEO
Powers Fasteners

T. J. Bland
Vice-President, Research & Development
Powers Fasteners

Réjean Blouin
President
Outil Pac Inc.

Charles J. Wilson
Consultant

Please address all communications to:

The Secretary
Canadian International Trade Tribunal
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7

Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: secretary@citt-tcce.gc.ca

STATEMENT OF REASONS

BACKGROUND

1. Powers Industries Limited (Powers) filed this appeal with the Canadian International Trade Tribunal (the Tribunal) pursuant to section 61 of the *Special Import Measures Act*¹ from 12 decisions of the President of the Canada Border Services Agency (CBSA) dated March 14, 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 . . .” In this appeal, the Tribunal must determine whether seven types of fasteners imported by Powers (the goods in issue) are of the same description as the screws described in the Tribunal findings in *Certain Fasteners*² (the subject goods) and therefore subject to anti-dumping duties.
3. The CBSA determined that the goods in issue were of the same description as the subject goods and that, accordingly, anti-dumping duties were payable.
4. Powers argued that the goods in issue are mechanical anchors and hangers and, therefore, not screws, or, alternatively, that the goods in issue have non-standard features which distinguish them from the subject goods. Powers further argued that, if considered screws, certain of the goods in issue are of the same description as goods excluded from the Tribunal’s findings.

PROCEDURAL HISTORY

5. The goods in issue were manufactured in Chinese Taipei and imported from the United States in 12 transactions between April and July 2010.
6. In August 2011, pursuant to section 57 of *SIMA*, the CBSA determined that the goods in issue were of the same description as the subject goods. Following a request by Powers pursuant to section 58, the CBSA, on March 14, 2012, issued 12 detailed adjustment statements pursuant to section 59, confirming the previous determinations that the goods in issue were subject to the Tribunal’s findings. Powers filed its appeal on June 7, 2012.
7. The Tribunal held a public hearing in Ottawa, Ontario, on January 15 and 16, 2013. Powers called six lay witnesses: Mr. Jeffrey R. Powers, former CEO of Powers Fasteners; Mr. Mark Russell, Managing Director, Powers Fasteners; Mr. T. J. Bland, Vice-President, Research & Development, Powers Fasteners; Mr. Mark Ziegler, Vice-President of Technical Services, Powers Fasteners; Mr. Sean Agresta, Field Engineering, Powers Fasteners; and Mr. Réjean Blouin, President, Outil Pac Inc., a user/purchaser of the goods in issue. The CBSA called one witness, Mr. Charles J. Wilson, a consultant who was qualified as an expert in mechanical fasteners.

1. R.S.C. 1985, c. S-15 [*SIMA*].

2. (7 January 2005), NQ-2004-005 (CITT), as amended on January 6, 2010, in Expiry Review No. RR-2009-001. For clarity, it should be noted that references to “*Certain Fasteners*” throughout these reasons are references to the Tribunal’s findings and statement of reasons in Inquiry No. NQ-2004-005. When a reference is intended to the Tribunal’s order or reasons in Expiry Review No. RR-2009-001, it is indicated as such.

PRELIMINARY MATTERS

Disposition of Matters in Advance of Hearing

8. The Tribunal was able to dispose of a number of preliminary issues raised by the parties, in advance of the hearing.

9. By letter dated December 14, 2012, the Tribunal advised the CBSA that it could file public documents from the Internet, provided the CBSA proceeded in accordance with paragraph 35(3)(a) of the *Canadian International Trade Tribunal Rules*.³

10. By letter dated January 9, 2013, the Tribunal advised the parties that it had accepted Powers' request to amend its witness list in order to replace Mr. Patrick Buckley with Mr. Mark Ziegler. In this regard, and with expert reports not having been filed for any of the individuals on the witness list as required by rule 22 of the *Rules*, the Tribunal noted that these witnesses could not be presented as expert witnesses at the hearing. The Tribunal rejected a request by the CBSA that the PowerPoint presentation at tab 1 of Powers' reply submissions,⁴ intended for use as an aid in the testimony of Powers' witnesses, be struck from the record because it purportedly included content in the nature of opinions, which would be inappropriate for non-expert witnesses to provide, and conclusions, which were for the Tribunal to draw. The Tribunal indicated that it would accord to each aspect of the presentation the weight that it deserved, having regard to specific content and the fact that the witnesses had not been presented or qualified as experts.

Qualification of Expert Witness

11. Powers submitted that Mr. Wilson should not be recognized as an expert in "mechanical fasteners" because he seemed to lack expertise with respect to "concrete anchors", "mechanical anchors" and "pipe hangers".⁵

12. Powers also objected to Mr. Wilson's expert report,⁶ submitting that it did not provide sufficient detail concerning his biography or a detailed outline of his testimony.⁷

13. The Tribunal decided to qualify Mr. Wilson as an expert in the area of "mechanical fasteners". Although it appeared during the qualification process that Mr. Wilson's experience did not focus on concrete anchors, there was no doubt that Mr. Wilson had extensive expertise in the area of mechanical fasteners. In this regard, the Tribunal was of the view that Mr. Wilson possessed relevant special knowledge that could assist it as trier of fact, having regard, *inter alia*, to his membership in, and chairmanship of, various fastener-related technical bodies over the last 50 years. Since the question of whether concrete anchors constituted a product category separate from mechanical fasteners or, instead, reflected a particular functional application of mechanical fasteners was a live issue before the Tribunal, the Tribunal did not further circumscribe Mr. Wilson's recognized area of expertise.

14. The Tribunal found that Mr. Wilson's expert report, although concise, provided sufficient detail about his testimony, as well as a *prima facie* basis for concluding that he had expertise in the area of

3. S.O.R. 91/499 [*Rules*].

4. Tribunal Exhibit AP-2012-010-24A, tab 1.

5. See *Transcript of Public Hearing*, 15 January 2013, at 152-53; Tribunal Exhibit AP-2012-010-31.

6. Tribunal Exhibit AP-2012-010-21A.

7. *Transcript of Public Hearing*, 15 January 2013, at 159-60.

mechanical fasteners. This constituted sufficient basis, pursuant to subrule 22(1) of the *Rules*, for moving to the formal qualification process which would allow the Tribunal to establish the exact parameters of Mr. Wilson's expertise. Both parties were afforded the opportunity to question Mr. Wilson and to make representations to the Tribunal as to his qualifications, before he was ultimately recognized by the Tribunal as an expert in the area of "mechanical fasteners".

TRIBUNAL'S ANALYSIS

Findings

15. The Tribunal's findings in *Certain Fasteners* read as follows:

Pursuant to subsection 43(1) of [SIMA], the Canadian International Trade Tribunal hereby finds that:

- the *dumping* in Canada of the aforementioned carbon steel screws originating in or exported from the *People's Republic of China* and *Chinese Taipei* and the *subsidizing* of such products originating in or exported from the *People's Republic of China*, *excluding the products described in Appendix A* to these findings, *have caused injury* to the domestic industry;

...

[Emphasis added]

16. Appendix A to the findings, which excludes from the scope of the findings all carbon steel screws described in List A1, as well as those that are not within the parameters described in List A2,⁸ reads as follows:

APPENDIX A

PRODUCTS EXCLUDED FROM THE FINDING FOR CARBON STEEL SCREWS

All carbon steel screws that are listed under List A1 are *specifically excluded*.

LIST A1

- Acoustic lag screws (*Tire-fond anti-acoustiques*)
- Aster screws (*Vis Aster*)
- Chicago screws (*Vis « Chicago » [pour reliures]*)
- Collated screws (*Vis sur bande*)
- Connector screws (kd) (*Vis de connexion [démontables]*)
- Decor screws (*Vis de décoration*)
- Drawer handle screws (*Vis de poignée de tiroir*)
- Drive spikes RR (*Crampons torsadés CF*)
- Euro screws (*Eurovis*)
- Hex socket cap screws (*Vis creuses à tête hexagonale*)
- Instrument screws (*Vis d'instrument*)
- Knurled head screws (*Vis à tête moletée*)

8. The Tribunal's decision with respect to these exclusions was based on the evidence in the record, with one of the factors being the consent of Leland Industries Inc. (a domestic producer) to these requests, except for collated screws. See *Certain Fasteners*, note 1.

- Machine screws with wings (*Vis mécaniques à oreilles*)
- Optical screws (*Vis d'optométrie*)
- Screw spikes RR (*Tire-fond CF*)
- Security screws (*Vis de fixation*)
- Self-clinching studs (*Goujons autoriveurs*)
- Socket cap screws (*Vis filetées sous tête, à tête creuse*)
- Socket set screws (*Vis de réglage à tête creuse*)
- Square-head set screws (*Vis de réglage à tête carrée*)
- Thumb screws (*Vis de serrage*)
- U-drive screws (*Vis de type U*)
- Wing screws (*Vis à oreilles*)
- Screws imported under tariff item Nos. 9952.00.00, 9964.00.00, 9969.00.00 and 9972.00.00 for use in the manufacture of snowmobiles, all-terrain vehicles and personal watercraft (*Vis importées dans les numéros tarifaires 9952.00.00, 9964.00.00, 9969.00.00 et 9972.00.00 devant servir dans la fabrication de motoneiges, de véhicules tout-terrain et de motomarines*)

All carbon steel screws that are not within the parameters of List A2 are also excluded.

LIST A2

	Imperial		Metric	
	Diameter	Length	Diameter	Length
Wood Screws (<i>Vis à bois</i>)	#4 - #24	3/8 - 8 in.	M3 - M10	10 mm - 200 mm
Square and Hex Lag Screws (<i>Tire-fond à tête carrée et à tête hexagonale</i>)	#14 - #24	3/4 - 4 in.	M6 - M10	20 mm - 100 mm
Sheet Metal/Tapping Screws (<i>Vis à tôle/ autotaraudeuses</i>)	#4 - #24	3/8 - 8 in.	M3 - M10	10 mm - 200 mm
Thread Forming Screws (<i>Vis formant le filet</i>)	#4 - #24	3/8 - 3 in.	M3 - M10	10 mm - 75 mm
Thread Cutting Screws (<i>Vis taillant le filet</i>)	#4 - #24	3/8 - 3 in.	M3 - M10	10 mm - 75 mm
Thread Rolling Screws (<i>Vis roulant le filet</i>)	#4 - #24	3/8 - 3 in.	M3 - M10	10 mm - 75 mm

	Imperial		Metric	
	Diameter	Length	Diameter	Length
Self-drilling Tapping Screws (<i>Vis pour le filetage par roulage</i>)	#4 - #24	3/8 - 3 in.	M3 - M10	10 mm - 75 mm
Machine Screws (<i>Vis mécaniques</i>)	#4 - 3/8 in.	3/8 - 8 in.	M3 - M10	10 mm - 200 mm
Flange Screws (<i>Vis d'accouplement</i>)	1/4 - 5/8 in.	3/8 - 4 in.	M6 - M16	10 mm - 100 mm

[Footnote omitted]

17. In addition, in Expiry Review No. RR-2009-001, upon review of the findings, the Tribunal granted the following product exclusions relevant to this appeal:

- R4TM screws marketed by GRK Canada Limited which have the features and characteristics described in Canadian patent numbers 2 267 572 and 2 198 832 and a ClimatekTM coating which is certified to meet the ICC Evaluation Service, Inc. (ICC-ES) “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257); or equivalent (*Vis R4^{MC} commercialisées par GRK Canada Limited, ayant les caractéristiques et éléments énoncés aux numéros de brevet canadiens 2 267 572 et 2 198 832 et un enduit Climatek^{MC}, celui-ci respectant les exigences de la norme “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257) du ICC Evaluation Service, Inc. (ICC-ES); ou l'équivalent*)
- RSSTM rugged structural screws marketed by GRK Canada Limited which have the features and characteristics described in Canadian patent numbers 2 267 572 and 2 140 472 and a ClimatekTM coating which is certified to meet the ICC-ES “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257); or equivalent (*Vis de construction durables RSS^{MC} commercialisées par GRK Canada Limited, ayant les caractéristiques et éléments énoncés aux numéros de brevet canadiens 2 267 572 et 2 140 472 et un enduit Climatek^{MC}, celui-ci respectant les exigences de la norme “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257) du ICC Evaluation Service, Inc. (ICC-ES); ou l'équivalent*)
- ...
- CaliburnTM concrete screws marketed by GRK Canada Limited which have the features and characteristics described in Canadian patent number 2 267 572 and a ClimatekTM coating which is certified to meet ICC-ES “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257); or equivalent (*Vis pour béton Caliburn^{MC} commercialisées par GRK Canada Limited, ayant les caractéristiques et éléments énoncés au numéro de brevet canadien 2 267 572 et un enduit Climatek^{MC}, celui-ci respectant les exigences de la norme “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257) du ICC Evaluation Service, Inc. (ICC-ES); ou l'équivalent*)

Goods in Issue

18. At issue in this appeal are seven types of fasteners, which the CBSA determined to be goods of the same description as those that are covered by the findings. Powers refers to them as follows:

- Wedge-Bolt[®]+—a mechanical (bolt-like) anchor that was excluded from the original inquiry (exhibit A-01);
- Vertigo[®] concrete hanger—a mechanical anchor fastening system (bolt design with nut coupler [for concrete]) (exhibit A-02);
- Vertigo[®] wood hanger— a mechanical anchor fastening system (screw point with nut coupler [for wood studs]) (exhibit A-03);
- Vertigo[®] steel hanger—a mechanical anchor fastening system (screw point with nut coupler [for steel]) (exhibit A-04);
- Tapper+—mechanical anchor (bulk) (exhibit A-05);
- Tapper+—mechanical anchor (kit) (exhibit A-06); and
- Wall-Dog[™]—anchor (kit with bit) (exhibit A-07).⁹

Positions of the Parties

19. Powers' primary position was that all the goods in issue are mechanical anchors or hangers,¹⁰ a specialized category of goods that is not of the same description as the subject goods. Powers also submitted that the goods in issue are bolts or custom-formed parts and, therefore, not of the same description as the subject goods. Alternatively, Powers argued that, should the Tribunal find that the goods in issue are screws, they were excluded either because they fell outside the parameters set out in List A2 or were described by an exclusion in List A1. Finally, Powers submitted that, if the goods in issue were not thus excluded, they were outside the scope of the findings because they were imported as kits or connected to non-subject goods.¹¹

20. The CBSA countered that all the goods in issue were of the same description as the subject goods. In this regard, the CBSA claimed that the goods in issue met all the criteria of the definition of screws set out in the statement of reasons for the findings¹² and that they fell within the parameters of List A2 as "Sheet Metal/Tapping Screws" or "Wood Screws".¹³ The CBSA further contended that there was no evidence that any of the goods in issue were "equivalent" to any of the exclusions to the findings.¹⁴ The CBSA also disagreed with Powers' submission that some of the goods in issue were bolts or custom-formed parts and with the submission that the fact that they are sold with a drill bit insulated them from being of the same description as the subject goods.¹⁵

9. See Tribunal Exhibit AP-2012-010-05A at para. 2. Powers submitted the following public physical exhibits: A-01—Wedge-Bolt[®]+, part No. 7204SD, box of 100; A-02—Vertigo[®] concrete hanger, part No. 07173, box of 100; A-03—Vertigo[®] wood hanger, part No. 07162, box of 100; A-04—Vertigo[®] steel hanger, part No. 07157, box of 100; A-05—Tapper+, part 2728SD, box of 100; A-06—Tapper+, part No. 02700, box of 100 plus one drill bit; A-07—Wall-Dog[™], part No. 02332, box of 50 plus 3/16" masonry bit.

10. Tribunal Exhibit AP-2012-010-05A at para. 10.

11. *Transcript of Public Hearing*, 16 January 2013, at 250-51.

12. Tribunal Exhibit AP-2012-010-07A at paras. 12-14.

13. *Ibid.* at para. 29.

14. *Ibid.* at paras. 32-45.

15. *Ibid.* at paras. 46-60.

Legal Framework

21. It is well established that a determination of whether goods are of the same description as the goods to which a finding applies must be based on an examination of the characteristics of the goods, including physical description, end-use applications, interchangeability, competition in the marketplace, price and marketing.¹⁶ In certain cases, not all these factors are relevant. For instance, in some cases, goods may be described on the more limited basis of technical specifications or industry standards.¹⁷

22. The relevant point of reference is the state of the goods at the moment of importation.¹⁸

23. It is also well established that, where a finding is unclear, recourse can be had to the statement of reasons for the finding. The Federal Court of Appeal, in *Deputy M.N.R. (Customs and Excise) v. Trane Company of Canada*,¹⁹ stated the following:

... there is not in my opinion a clearly established principle that the reasons for decision may not be referred to in order to clarify the terms of a formal decision the precise application of which is not, as a matter of fact, clear on its face. . . . In these circumstances it is permissible to refer to the reasons of the Tribunal to determine, if possible, the application that was intended by the Tribunal.²⁰

24. The statement of reasons will normally suffice to clarify the intended meaning of an ambiguous finding.²¹ If, however, a particular aspect of a Tribunal finding is not settled by reference to the statement of reasons, it may be helpful to refer to parts of the administrative record, when the Tribunal made the finding, which speak directly to the ambiguity.²²

16. See, for example, *Nikka Industries Ltd. v. Deputy M.N.R.C.E.* (20 August 1991), AP-90-018 (CITT); *Macsteel International (Canada) Limited v. Commissioner of the Canada Customs and Revenue Agency* (16 January 2003), AP-2001-012 (CITT); *Zellers Inc. v. Deputy M.N.R.* (25 January 1996), AP-94-351 (CITT); *Cobra Anchors Co. Ltd. v. President of the Canada Border Services Agency* (8 May 2009), AP-2008-006 (CITT) [*Cobra Anchors*]; *Aluminart Products Limited v. President of the Canada Border Services Agency* (19 April 2012), AP-2011-027 (CITT).

17. *Toyota Tsusho America, Inc. v. President of the Canada Border Services Agency* (18 November 2011), AP-2010-063 (CITT).

18. See *Deputy M.N.R.C.E. v. MacMillan & Bloedel (Alberni) Ltd.*, [1965] S.C.R. 366. See, also, *Tiffany Woodworth v. President of the Canada Border Services Agency* (11 September 2007), AP-2006-035 (CITT) at para. 21.

19. [1982] 2 F.C. 194 (F.C.A.) [*Trane*].

20. *Trane* at 206. See, also, *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, 2001 FCA 67, [2001] 4 FC 455 [FCA] [*Indian Band*] at para. 38.

21. *BMI Canada Inc. and BMI West Inc. v. President of the Canada Border Services Agency* (2 August 2011), AP-2010-039 (CITT) [*BMI*] at paras. 105, 107.

22. *Indian Band*. Albeit rendered in a different context, this decision of the Federal Court of Appeal supports the Tribunal's view that, insofar as the statement of reasons is insufficient to ascertain the meaning of an ambiguous finding, documents other than the statement of reasons that were part of the administrative record, when the Tribunal made the finding, and that are directly relevant to the ambiguity at issue may be consulted to interpret the finding. By way of aside, and as a point of interest, the Tribunal's approach is consistent with the U.S. approach in proceedings equivalent to appeals under *SIMA*. When the U.S. Department of Commerce is asked to determine whether products are subject to an anti-dumping or countervailing duty order, it starts by examining the language of the order and the description of the goods in the scope request, in light of the complaint, the record from the initial investigation, and the determinations of the U.S. Department of Commerce and of the United States International Trade Commission. See 19 CFR 351.225 (d) and (k); *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

25. The same principles apply in determining whether goods are of the same description as the goods to which an exclusion applies.²³

Analysis

26. The first step is determining whether the goods in issue are screws within the meaning of the findings.

27. The fact that the manufacturer describes the goods in issue as anchors, hangers or bolts²⁴ does not, in and of itself, have the effect of removing them from the scope of the findings, which cover certain screws.²⁵ Rather, the Tribunal must determine whether each of the seven types of fasteners in issue meets the definition of “screw” within the intended meaning of that term in the findings.

28. As noted by the CBSA, the findings contain a simple reference to screws without further clarification.²⁶ In this regard, the Tribunal is inclined to agree with the CBSA’s view that the lack of clarification renders the reference to screws in the findings ambiguous.²⁷ In particular, in failing to specify the definition of “screw” and the procedure for determining whether a headed and threaded fastener is properly identified as a screw, as distinguished from similar devices (e.g. bolts), the findings are not entirely clear. That being the case, it is appropriate to refer to the statement of reasons in an effort to discern the intended meaning of the word “screw”.

29. In the statement of reasons, it is clear that the issue of whether goods are *fasteners* is based on their physical characteristics rather than on their specific end-use applications. The Tribunal stated as follows:

*There are many types of fasteners, each one being defined by its specific physical and technical characteristics and the type and grade of material from which it is made. Fasteners are used in a wide range of final applications and, depending on the usage, they may be unhardened or heat-treated, either bare or plated, with or without extra corrosion protection, shipped and distributed in bulk or custom packaged and labelled.*²⁸

[Emphasis added]

30. Further, *screws* fall explicitly within the broad category of goods known as *fasteners*, as indicated in the following:

For purposes of this inquiry, the subject goods are defined as carbon steel and stainless steel *fasteners, i.e. screws*, nuts and bolts of carbon steel or stainless steel that are used to mechanically join two or more elements, excluding fasteners specifically designed for application in the automotive or aerospace industry, originating in or exported from China and Chinese Taipei.²⁹

[Emphasis added]

23. See, for example, *Levolor Home Fashions Canada v. President of the Canada Border Services Agency* (22 May 2012), AP-2011-015 (CITT) at para. 17.

24. Tribunal Exhibit AP-2012-010-07A at para. 15.

25. As noted by the Tribunal in *BMI* at para. 99, “. . . the product descriptions of various manufacturers will not always be identical in terms of language to the product descriptions listed in . . . findings. In this regard, the Tribunal agrees that variations in descriptors should not have the effect of removing these goods from the findings if they are of the same description as the subject goods.”

26. Tribunal Exhibit AP-2012-010-07A at para. 10.

27. As has been noted, for instance, in *Inch Fastener Standards*, 7th ed., the reference text of the International Fasteners Institute [IFI], “[o]ne of the questions most frequently asked about fasteners during the past decades has been: ‘What’s the difference between a screw and a bolt?’” Tribunal Exhibit AP-2012-010-26A, tab 7.

28. *Certain Fasteners* at para. 23.

29. *Ibid.* at para. 18.

31. The term *screw* is, in turn, defined in the statement of reasons as follows:

A screw is a *headed* and *externally threaded* mechanical device that possesses capabilities which permit it to be *inserted into holes in assembled parts*, to be *mated with a pre-formed internal thread* or to *form its own thread*, and to be *tightened or released by torquing its head*. Screws include machine screws, wood screws, self-drilling, self-tapping, thread forming, and sheet metal screws. *Screws may have a variety of head shapes* (round, flat, hexagonal, etc.), *drives* (slot, socket, square, phillips, etc.), *shank lengths* and *diameters*. *The shank may be totally or partially threaded.*³⁰

[Emphasis added]

32. Powers' case turns, in large part, on the claim that the goods in issue are distinct from *fasteners*³¹ on the basis of their intended use as concrete *anchors* or *hangers*.³²

33. However, the definition of "screw" adopted by the Tribunal expressly eliminates end-use applications as a defining factor. The definition of "screw" in the statement of reasons is based on the physical characteristics of the goods in issue, with no reference to end-use-based criteria or exceptions. Indeed, the findings only indicate that the function of fasteners, including screws, is to ". . . mechanically join two or more elements . . ." and the statement of reasons further states that "[f]asteners are used in a wide range of final applications . . ."³³

34. While not critical to the disposition of the current appeal, as the statement of reasons speaks directly to the matter, it is also noteworthy that the expert witness, Mr. Wilson, in concluding that the goods in issue were all screw-type fasteners, indicated that the anchoring and hanger functions did not speak to the nature of the goods themselves, but rather to their specific *applications*. Mr. Wilson stated as follows with regard to the term "anchor":

. . . [it] seems to relate mostly to service. It doesn't really relate to a product. It says what the product service is, but it isn't, in my mind, other than it's a mechanical fastener, which has a term "anchor" hung on it, which in my mind relates to service.³⁴

35. In sum, the goods in issue will be found to be screws within the meaning of the findings if they present the physical characteristics ascribed to screws in the Tribunal's findings and statement of reasons in *Certain Fasteners*.

30. *Ibid.* at para. 19.

31. Counsel for Powers stated at the hearing that ". . . one of the fundamental issues is: Are these mechanical anchors? If they are mechanical anchors, they're outside . . . the scope [of the findings] . . ." See *Transcript of Public Hearing*, 15 January 2013, at 188.

32. Powers argued that mechanical concrete anchors are specialized goods, distinguishable from fasteners, on the basis of the following characteristics: they are used in concrete and masonry applications; they are used in life safety and structural applications; they are designed from the end use or application, unlike screws, which are designed according to a book of dimensions (the IFI handbook); they are sold in a specialized market to professional engineers and builders; they are sold at higher prices than commodity screw products; they are subject to ICC standards; they are subject to labelling and head marking requirements; and they are referred to in the industry as "concrete mechanical anchors". Powers added that the facts that the Concrete Anchor Manufacturers' Association is distinct from the IFI and that Mr. Wilson's expertise does not overlap with that body indicates the separate nature of these goods. See *Transcript of Public Hearing*, 16 January 2013, at 251-55.

33. *Certain Fasteners* at para. 23.

34. *Transcript of Public Hearing*, 15 January 2013, at 219-20.

36. If the Tribunal finds that the goods in issue are screws within the meaning of the findings, the Tribunal will need to proceed to the second step of the analysis and consider whether any exclusions apply. Goods will be excluded from the findings if they are *not* within the parameters of List A2 of Appendix A to the findings, or if they are found to be of the same description as either one of the goods in List A1 of Appendix A to the findings or one of the GRK Canada Limited (GRK) products described in the appendix to the orders in Expiry Review No. RR-2009-001.

37. While the statement of reasons indicates that the issue of whether a good is a screw depends exclusively on its physical characteristics; the statement of reasons does not circumscribe in the same way the scope of the goods described in List A1, List A2 or the appendix to the orders in Expiry Review No. RR-2009-001. Therefore, other characteristics, such as end-use applications, interchangeability, competition in the marketplace, price and marketing are relevant in differentiating between *types* of screws and determining whether the goods in issue are of the same description as any of the types of screws excluded from the findings.

38. In short, therefore, if a good at issue

- possesses the physical characteristics described in the definition of “screw” provided in the statement of reasons in *Certain Fasteners*,
- falls within the parameters set out in List A2 and
- is not excluded under List A1 or in the appendix to the orders in Expiry Review No. RR-2009-001,

it is a good of the same description as the subject goods.

Whether the Goods in Issue Possess the Physical Characteristics of Screws Subject to the Findings

39. The Tribunal will turn to an examination of each of the goods in issue against the physical characteristics ascribed to screws in the findings and the statement of reasons. As the point of departure in its analysis, it is uncontested, and the Tribunal finds, that each of these goods is made of carbon steel.

– Exhibit A-01: Wedge-Bolt^{®+}

40. Upon physical inspection of the Wedge-Bolt^{®+}, the Tribunal immediately noted that it

- possesses a hexagonal washer head that allows for tightening or releasing the fastener by torquing,³⁵
- is externally threaded, with the thread running the full length of the shank and
- is designed for insertion into pre-drilled holes to form its own thread.³⁶

41. These features suggest that the Wedge-Bolt^{®+} is, in fact, properly described as a subject screw. Indeed, Powers’ Web site explicitly describes it as a screw anchor.³⁷

35. By contrast, in *Certain Fasteners*, the Tribunal noted, at para. 21, that “[a] bolt . . . is normally intended to be tightened by turning [the] nut.”

36. As noted by Powers, “[a] hole is pre-drilled using the special tolerance bit prior to the installation of the [Wedge-Bolt^{®+}].” See Tribunal Exhibit AP-2012-010-05A at para. 33. See, also, the testimony of Mr. Bland, *Transcript of Public Hearing*, 15 January 2013, at 69. By contrast, in *Certain Fasteners*, the Tribunal noted, at para. 21, that “[a] bolt is . . . designed . . . to mate with a nut”

37. http://www.powers.com/product_7204SD.php

42. With respect to Powers' assertion that the fact that the Wedge-Bolt[®]+ is manufactured on bolt-making equipment is indicative of it not being a screw,³⁸ the manner in which these fasteners are fabricated is neither dispositive nor particularly significant, as the issue is primarily one of physical and technical design rather than manufacturing process.³⁹

43. Powers' claim that "[t]he [Wedge-Bolt[®]+] has a patented design that includes features of a bolt",⁴⁰ which makes it a custom formed part not included in the definition of the subject goods,⁴¹ must also fail. It is well established in jurisprudence that an imported product is not excluded from the definition of goods subject to a finding solely by virtue of the fact that it possesses certain distinctive patented physical characteristics, if it otherwise meets the descriptive criteria contained in the definition of the goods subject to a finding.⁴² This treatment of patented fasteners is inconsistent with Powers' submission that the fasteners in issue are "custom formed parts" by the sole fact of being patented products. In any event, the Tribunal is satisfied that the majority of the physical characteristics of the Wedge-Bolt[®]+ are consistent with those of a screw, as set out in the statement of reasons.

44. Powers further claims that even if, *arguendo*, the Wedge-Bolt[®]+ were a screw, it would not be of the same description as the subject goods when presented in packages of 100 or 50 anchors with a specially designed bit for use in the installation of these fasteners. It is however the Tribunal's view that, unlike in *Cobra Anchors*, where the packaged steel lag bolt and zinc shield were both found to be integral and essential to the overall ability of the anchoring system to fulfill its functional purpose, the drill bit, in the present case, is a separate good that is extraneous to the functionality of the fastener itself. The evidence in this case shows that, while it may be prudent to use the included Wedge-Bit[™] in installing the Wedge-Bolt[®]+, to ensure optimal performance or compliance with various building codes, the failure to do so does not render the Wedge-Bolt[®]+ incapable of carrying out the action of "anchoring".⁴³

45. Therefore, the Tribunal finds that the Wedge-Bolt[®]+ presents the physical characteristics of the screws subject to the findings.

38. Tribunal Exhibit AP-2012-010-05A at paras. 32, 128.

39. In this regard, in defining "like goods" in inquiries under *SIMA*, the Tribunal has stated that the focus is on the products and not on the manufacturing process. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 53; *Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at para. 66.

40. Tribunal Exhibit AP-2012-010-05A at para. 32.

41. The Tribunal specified in *Certain Fasteners*, at para. 22, that "... custom formed parts are not included in the definition of the subject goods."

42. The Tribunal has recognized, in dealing with exclusion requests, that "[e]ven though an imported patented product may have certain features or physical attributes that make it distinct under patent law, a domestically manufactured product may have the same end uses, fulfil most of the same customer needs and compete in the marketplace with the patented product", *Certain Fasteners* (26 September 2006), NQ-2004-005R (CITT) at para. 17. See, also, *Fasteners* (24 October 2008), RD-2008-001 (CITT) at para. 25.

43. In this respect, Mr. Powers testified that the Wedge-Bolt[®]+ must be used with the specially designed Wedge-Bit[™] in order to meet the building code criteria for Canada and the United States, and Powers submitted a number of ICC evaluation reports for the Wedge-Bolt[®]+, which verify that the product meets the requirements of various building codes, stating, as a condition of use of the Wedge-Bolt[®]+, that it be installed with a Wedge-Bit[™] of the appropriate size. See *Transcript of Public Hearing*, 15 January 2013, at 119; Tribunal Exhibit AP-2012-010-05C, tabs 23-27. However, Mr. Blouin testified that, while he usually sells the bits and the fasteners as a system, he may sell spare bits, separately from Powers fasteners, as required for installation. Further, Mr. Blouin stated, in cross-examination, that it was "possible" to match the tolerance of the Powers bit with a standard ANSI bit, although this was done at the installer's risk. See *Transcript of Public Hearing*, 15 January 2013, at 138-40, 147.

– Exhibit A-02: Vertigo[®] Concrete Hanger

46. Upon physical inspection of the Vertigo[®] concrete hanger, the Tribunal immediately noted that it
- possesses a socket head with a threaded hollow core and wrench flats to allow for the application of torsion in the tightening or releasing of the fastener,⁴⁴
 - is externally threaded, with the thread running the full length of its shank and
 - is designed to be mated with a pre-drilled hole forming its own thread.⁴⁵

47. Therefore, the Tribunal finds that the Vertigo[®] concrete hanger presents the physical characteristics of screws subject to the findings.

– Exhibit A-03: Vertigo[®] Wood Hanger; Exhibit A-04: Vertigo[®] Steel Hanger

48. Upon physical inspection of the Vertigo[®] wood hanger and the Vertigo[®] steel hanger, the Tribunal immediately noted that each
- possesses a socket head with a threaded hollow core to allow for the application of torsion in the tightening or releasing of the fastener,
 - is externally threaded, with the spiral thread running virtually the full length of its shank *and*
 - has a pointed tip that allows it to penetrate the base material and form its own thread as the fastener is inserted.⁴⁶

49. Powers' evidence showed that the Vertigo[®] wood hanger and Vertigo[®] steel hanger can be used with a nut in some circumstances.⁴⁷ However, the fact that a nut *may* be used for “added” holding capacity does not obscure the dispositive characteristics of the products, which are those of a screw.

50. The Tribunal therefore finds that the Vertigo[®] wood hanger and Vertigo[®] steel hanger present the physical characteristics of screws subject to the findings.

– Exhibit A-05: Tapper+

51. Upon physical inspection, the Tribunal immediately noted that the Tapper+
- possesses a slotted hexagonal socket head, which allows for the application of torsion in the tightening and releasing of the fastener,⁴⁸
 - possesses a self-tapping external thread running up part of its shank⁴⁹ and
 - has a sharp pointed tip that allows it to penetrate some base materials without pre-drilling, forming its own thread as the fastener is inserted.

44. In this regard, Powers' Web site indicates that “[Vertigo[®] concrete hangers] should be installed with . . . adjustable torque, battery powered screw gun or hammer drill.” See <http://www.powers.com/pdfs/mechanical/07173.pdf>

45. See the testimony of Mr. Bland, *Transcript of Public Hearing*, 15 January 2013, at 69.

46. In this regard, the label affixed to the side of the box for each of the goods in issue indicates that the fastener is “self-drilling” and indicates the “point size” of the tip.

47. *Transcript of Public Hearing*, 15 January 2013, at 111-14.

48. The label affixed to the side of the box explicitly describes the Tapper+ as having a “slotted hex head”.

49. The expert report of Mr. Wilson indicates that the Tapper+ is self-drilling and has self-tapping high and low threads and a gimlet point.

52. These features suggest that the Tapper+ is in fact properly described as a subject screw. Indeed, the Tribunal notes that the box in which the Tapper+ is packaged explicitly refers to it as a screw anchor.

53. Therefore, the Tribunal finds that the Tapper+ presents the physical characteristics of screws subject to the findings.

– Exhibit A-06: Tapper+ with Drill Bit

54. Upon physical inspection of the Tapper+ with a drill bit, the Tribunal immediately noted that it

- possesses a slotted socket head, which allows for the application of torsion in the tightening and releasing of the fastener,
- possesses an external thread running the full length of the shank and
- has a sharp pointed tip that allows it to penetrate some base materials without pre-drilling, forming its own thread as the fastener is inserted.

55. These features suggest that the Tapper+ with a drill bit is in fact described in the findings. Indeed, the label affixed to the box in which the Tapper+ with a drill bit is packaged explicitly refers to it as concrete screws.

56. The manufacturer has included a drill bit in each box of 100 fasteners. Powers submitted that these constitute “kits” and are not therefore subject goods. The Tribunal would begin by noting that, in the case of kits, the dispositive characteristic is end use. In *Cobra Anchors*, the Tribunal found that a packaged steel lag bolt and zinc shield operated together and, as such, were both integral to the overall ability of the anchoring system to fulfill its functional purpose.⁵⁰ By contrast, in the present case, while it may be prudent for a number of reasons⁵¹ to use the drill bit provided, the fact remains that the drill bit is a separate good that is not essential to the end-use application of the Tapper+. As has been noted by the Federal Court of Appeal “... a kit... is something different than the elements it contains”.⁵² This however is not the case with a package containing fasteners and a drill bit, where the separate elements, albeit packaged together, remain identifiable as such on the basis of their separate and distinct functional applications. Accordingly, the Tribunal does not consider that the drill bit and fasteners constitute a kit.⁵³ Indeed, to suggest otherwise would invite the circumvention of Tribunal orders/findings in other cases through the inclusion of other items in the package that are not essential to the functioning of the goods otherwise subject to an order or a finding.

57. Therefore, the Tribunal finds that the Tapper+ with a drill bit presents the physical characteristics of the screws subject to the findings.

50. *Cobra Anchors* at para. 30.

51. It appears from the evidence that, if the drill bit of the prescribed tolerance is not used, the *performance* of the fastener is *reduced*; using the drill bit packaged with the fasteners ensures that the appropriate bit is used. See the testimonies of Mr. Bland and Mr. Powers, *Transcript of Public Hearing*, 15 January 2013, at 32, 119. As such, the ICC evaluation reports concerning the Tapper+, which verify the compliance of the product with certain building codes, note that the use of the Tapper+ bit of the appropriate size is a condition of use of the product in concrete. See Tribunal Exhibit AP-2012-010-05C, tabs 45, 50, 51. The evidence also shows that, when the Tapper+ is used in wood, no drill bit is required. See, for example, the testimonies of Mr. Russell and Mr. Agresta, *Transcript of Public Hearing*, 15 January 2013, at 78-79; 79-81.

52. *Abbott Laboratories Ltd. v. Deputy M.N.R.C.E.*, [1986] F.C.J. No. 912 (FCA) [*Abbott Laboratories*].

53. A kit for tariff purposes is something different from the elements that it contains. The difference must be discernible at the time of importation. The time of importation is the relevant time for the purposes of classification and not the time of sale or purchase. See *Abbott Laboratories*.

- Exhibit A-07: Wall-Dog™ With Drill Bit
58. Upon physical inspection, the Tribunal immediately noted that the Wall-Dog™ with a drill bit
- possesses a slotted phillips head, which allows for the application of torsion in the tightening and releasing of the fastener,
 - possesses a high profile, corkscrew-like external thread that runs the full length of the shank and
 - has a sharp pointed tip and high profile corkscrew-like threads that allow it to tap into wallboard and wood without any pre-drilling being required; for applications in concrete, hollow or grout filled concrete masonry, the Wall-Dog™ is inserted into a pre-drilled hole, forming its own thread.⁵⁴
59. These features suggest that the Wall-Dog™ with a drill bit is properly described as a subject screw. Indeed, the label affixed to the container in which the Wall-Dog™ with a drill bit is packaged refers to the Wall-Dog™ with a drill bit as a “screw and anchor in one”, while Powers’ Web site refers to it as a “. . . one-piece screw anchor . . .”⁵⁵
60. As in the case of the Tapper+, the fact that the Wall-Dog™ is packaged with a drill bit⁵⁶ does not make it a non-subject good, as the drill bit is not essential to the functioning of the product.
61. Therefore, the Tribunal finds that the Wall-Dog™ with a drill bit presents the physical characteristics of screws subject to the findings.

Whether the Goods in Issue Fall Within the Parameters of List A2 of Appendix A to the Findings

62. Powers argued that, if the goods in issue were found to be screws, they were not screws within the parameters of List A2 and were therefore excluded from the Tribunal’s findings.⁵⁷
- Are the Wedge-Bolt®+, the Vertigo® Concrete Hanger, the Vertigo® Steel Hanger, the Tapper+ and the Wall-Dog™ “Sheet Metal/Tapping Screws” Within the Parameters of List A2?
63. Powers argued that the Wedge-Bolt®+, the Vertigo® concrete hanger, the Tapper+ and the Wall-Dog™ are not “Sheet Metal/Tapping Screws” within the parameters of List A2, as submitted by the CBSA.⁵⁸ Powers relied on Chapter H of the *Inch Fastener Standards*,⁵⁹ which covers tapping screws, and on the description of tapping screws in the ASME B18.12-2012 *Glossary of Terms for Mechanical Fasteners*.
64. The CBSA argued that the goods in issue are within the parameters of “Sheet Metal/Tapping Screws” of List A2. The CBSA relied on a table and appended list of generic and trade names prepared by the domestic industry to assist the Tribunal in the exclusion request process in *Certain Fasteners* and in which “concrete screw anchors” and “concrete screws” were identified as being in the category of “Sheet Metal/Tapping Screws”.⁶⁰

54. See the testimony of Mr. Bland, *Transcript of Public Hearing*, 15 January 2013, at 69.

55. See <http://www.powers.com/pdfs/plastic/2314.pdf>.

56. In this case, a 3/16” ANSI bit.

57. Tribunal Exhibit AP-2012-010-05A at para. 94.

58. *Transcript of Public Hearing*, 16 January 2013, at 270.

59. Tribunal Exhibit AP-2012-010-24A, tab 3.

60. Tribunal Exhibit AP-2012-010-07A at paras. 17-25. The CBSA also referred to the initial dumping and subsidizing complaint filed with the CBSA by the domestic industry. See Tribunal Exhibit AP-2012-010-07A at paras. 26-27. The documents referred to are found at Tribunal Exhibit AP-2012-010-07A, tabs 4, 5.

65. List A2 does not define the listed categories of included screws. The statement of reasons is also silent on this issue.

66. In interpreting List A2, it is useful to have regard to the *Inch Fastener Standards*. Not only was this publication referenced⁶¹ by the Tribunal in defining screws and bolts in *Certain Fasteners*, but it reflects industry consensus with respect to the nomenclature and design of mechanical fasteners; as such, it is useful to the interpretation of the technical terms in the Tribunal's findings. Indeed, both parties in this appeal referred to the *Inch Fastener Standards*.⁶² It is also useful to refer to the full ASME B18.12-2012 *Glossary of Terms for Mechanical Fasteners*. This standard, an earlier version of which is abstracted in the *Inch Fastener Standards*, includes summaries of terminology for mechanical fasteners.⁶³

67. A tapping screw is defined as follows in the ASME B18.12-2012 *Glossary of Terms for Mechanical Fasteners*:

3.1.2.22

tapping screw: has a slotted, recessed, or wrenching head and is designed to form or cut a mating thread in one or more of the parts to be assembled. Tapping screws are generally available in various combinations of the following head and screw styles: fillister, flat, flat trim, hexagon, hexagon washer, oval, oval trim, pan, round and truss head styles with thread-forming screws, Types A, B, BA, BP, and C, or thread-cutting screws, Types D, F, G, T, BF, BG, and BT, as illustrated and described below.

68. The *Glossary of Terms for Mechanical Fasteners* goes on to describe the mentioned types of threads.

69. Further, in Chapter H of the *Inch Fastener Standards*, tapping screws are described as follows:

... fasteners with the unique ability to "tap" their own mating internal thread [by forming or cutting] when driven into preformed holes in metallic and nonmetallic materials.⁶⁴

70. Chapter H of the *Inch Fastener Standards* also specifies that the variety of styles and performance capacities of tapping screws is virtually unlimited:

There is an almost unlimited variety of combinations of sizes, thread types, head styles, drive mechanisms and performance capacities to [choose] from to satisfy the requirements of just about any engineering application in which the use of small size screws is a design option.⁶⁵

71. In addition, Chapter H of the *Inch Fastener Standards* expressly recognizes the existence of special, non-standard tapping screws that are not specifically described in the *Inch Fastener Standards*:

There are no national or industry standards for the other special type tapping screws nor are there any recognized standards for tapping screws manufactured of metallic materials other than carbon steel.⁶⁶

61. See *Certain Fasteners* at para. 71.

62. Tribunal Exhibit AP-2012-010-24A at 7; Tribunal Exhibit AP-2012-010-26A, tabs 2, 5.

63. The full version of ASME B18.12-2012 was filed by Powers as a single copy exhibit.

64. Tribunal Exhibit AP-2012-010-24A, tab 3.

65. *Ibid.*

66. *Ibid.*

72. The foregoing indicates that the defining characteristic of tapping screws is their “. . . unique ability to ‘tap’ their own mating internal thread when driven into preformed holes in metallic and nonmetallic materials.”⁶⁷ Furthermore, Chapter H of the *Inch Fastener Standards* notes the existence of a variety of physical characteristics and performance capacities of tapping screws that may not correspond to current national or industry standards.

73. In addition, nothing in the Tribunal’s findings leads to the conclusion that the scope of the category of “Sheet Metal/Tapping Screws” is restricted to standard tapping screws. This interpretation is consistent with the administrative record. List A2 is based on a table of included goods, dated November 18, 2004, which was presented by the domestic industry in *Certain Fasteners* in order to facilitate the voluminous and cumbersome exclusion process in that case.⁶⁸ Before listing the general categories of included screws (i.e. wood screws, sheet metal/tapping screws, etc.), the document indicated that “[t]his List includes: - Standard, Modified Standards, Proprietary and Special Engineered or Designed Fasteners”. There is no indication on the record that the Tribunal, in drafting List A2, departed from this understanding and only intended to include standard screws.

74. On the basis of the foregoing, tapping screws of List A2 are therefore screws having the “. . . unique ability to ‘tap’ their own mating internal thread when driven into preformed holes in metallic and nonmetallic materials.”

75. Powers bore the burden of establishing that the goods in issue are excluded from the findings. In the Tribunal’s view, it has not discharged this burden.

76. Powers argued that the Wedge-Bolt[®]+, the Vertigo[®] concrete hanger, the Vertigo[®] steel hanger, the Tapper+ and the Wall-Dog[™] have “. . . non-standard thread profiles that do not meet any of the thread criteria . . .” in the description of “tapping screws” in item 3.1.2.22 of the ASME B18.12-2012 *Glossary of Terms for Mechanical Fasteners*.⁶⁹ Powers also argued that, since Chapter H of the *Inch Fastener Standards* contains no reference to concrete screws, the goods in issue are not tapping screws.⁷⁰ It further argued that, while tapping screws are described in Chapter H of the *Inch Fastener Standards* as being “generally reusable”, the goods in issue are not.⁷¹

77. The Tribunal accepts that the goods in issue are not standard tapping screws. Indeed, Mr. Wilson, the expert witness for the CBSA, testified that concrete screws in general, and the goods in issue in particular, are not specifically mentioned in Chapter H and that they are “. . . not standard”, being “. . . patented, proprietary products.”⁷²

78. However, as set out above, in the Tribunal’s view, the category “Sheet Metal/Tapping Screws” in List A2 includes non-standard tapping screws; therefore, the fact that the goods in issue are not standard is not dispositive of whether they pertain to that category.⁷³

67. *Ibid.*

68. See Tribunal Exhibit AP-2012-010-07A, tab 4.

69. See testimony of Mr. Bland, *Transcript of Public Hearing*, 15 January 2013, at 45, 95-97.

70. *Transcript of Public Hearing*, 16 January 2013, at 270.

71. *Ibid.* at 272.

72. *Transcript of Public Hearing*, 15 January 2013, at 229, 234.

73. It is interesting to note in addition that, as pointed out by the CBSA, the domestic industry indicated, in its table dated November 18, 2004, that screws going by the trade or generic designations of “Concrete Screw Anchors” or “Concrete Screws”, a category recognized by Mr. Wilson in this proceeding to be a non-standard category, would be considered as “Sheet Metal/Tapping Screws” of List A2. See Tribunal Exhibit AP-2012-010-07A, tab 4. Contrary to the CBSA’s argument, the Tribunal is not willing to rely *solely* on this indication, which was admittedly provided “for reference only” in *Certain Fasteners*, to conclude that the goods in issue are indeed “Sheet Metal/Tapping Screws” within the parameters of List A2.

79. Powers' own evidence indicates that the Wedge-Bolt[®]+, the Vertigo[®] concrete hanger, the Vertigo[®] steel hanger, the Tapper+ and the Wall-Dog[™] are capable of tapping their own thread when inserted into pre-drilled holes.⁷⁴ It is therefore the Tribunal's view that they are within the parameters of "Sheet Metal/Tapping Screws" of List A2.⁷⁵

– Is the Vertigo[®] Wood Hanger a "Wood Screw" Within the Parameters of List A2?

80. With respect to the Vertigo[®] wood hanger, Powers argued that it is not a "Wood Screw", because it does not conform to the definition of "wood screw" in the ASME B18.12-2012 *Glossary of Terms for Mechanical Fasteners*.⁷⁶ The CBSA argued that the Vertigo[®] wood hanger is a "Wood Screw". There was no suggestion that the Vertigo[®] wood hanger could fit within the parameters of another type of screw in List A2.

81. The ASME B18.12-2012 *Glossary of Terms for Mechanical Fasteners* describes wood screws as follows:

... a thread-forming screw having a slotted recessed head, gimlet point and a sharp crested coarse pitch thread and generally available with flat, oval and round head styles. It is designed to produce a mating thread when assembled into wood or other resilient materials.

82. Powers argues that the Vertigo[®] wood hanger is not a wood screw because it has a "coupling nut head", and not a "slotted or recessed head" as described at 3.1.2.30 of the ASME B18.12-2012 *Glossary of Terms for Mechanical Fasteners*.⁷⁷

83. However, the ASME B18.12-2012 *Glossary of Terms for Mechanical Fasteners* describes wood screws as being "*generally* available" [emphasis added] in the listed head styles. Therefore, the mere fact that the Vertigo[®] wood hanger is available in a different head style does not mean that it is not a wood screw. Powers did not dispute that the Vertigo[®] wood hanger is a thread-forming screw with a gimlet point and a sharp-crested coarse-pitch thread and that it is designed to produce a mating thread when assembled into wood.

84. On the evidence in this case, the Tribunal finds that the Vertigo[®] wood hanger is a "Wood Screw" within the parameters of List A2.

85. Therefore, the Tribunal finds that the goods in issue are all properly within the parameters of List A2.

Whether the Goods in Issue are Excluded Under List A1 or the Appendix to the Orders in Expiry Review No. RR-2009-001

86. Excluded from the Tribunal's findings are all carbon steel screws described in List A1 of Appendix A to the findings and in the Appendix to Expiry Review No. RR-2009-001. Among the excluded screws are "Decor screws (*Vis de décoration*)", "Connector screws (kd) (*Vis de connexion [démontables]*) and certain GRK products.

74. See testimony of Mr. Bland, in cross-examination, confirming that all the fasteners in issue are capable of being inserted into pre-drilled holes and forming their own threads. *Transcript of Public Hearing*, 15 January 2013, at 69.

75. There was no suggestion that any of the goods in issue would not meet the size parameters of List A2.

76. *Transcript of Public Hearing*, 16 January 2013, at 269.

77. *Transcript of Public Hearing*, 15 January 2013, at 44.

– Decor Screws

87. By way of alternative argument, Powers submits that the Wall-Dog™ can be considered a decor screw, which is excluded from the scope of the findings.

88. As noted by Powers,⁷⁸ the findings do not provide any definitional guidance on the meaning of the word “decor”, as a modifier of the term “screw”. The Tribunal considers however that, in the context of its usage in relation to the subjectivity of goods, the adjective “decor” must be taken as qualifying not only the intended usage of the screw with items of decor but also the physical characteristics of the screw itself.

89. As such, a decor screw must have an ornamental disposition or aesthetic quality that contributes to the overall effect, style or appeal of the items of decor to which they pertain. This view is consistent with dictionary definitions of the term “decor”. For example, the definition of the term “decor” in the *Canadian Oxford Dictionary* includes the following: “1. *the overall effect, style, etc. of the decorations . . . of a room, building, etc.*”⁷⁹ [emphasis added], while *Webster’s Third New International Dictionary* refers to the “ornamental disposition of accessories in interior decoration”.⁸⁰

90. Powers notes that the Wall-Dog™ screw can be used to fasten a variety of lightweight decorative fixtures to drywall⁸¹ (e.g. picture frames, mirrors and plaques). The fact, however, that this versatile screw is also used in the fastening of more functional fixtures (e.g. fire alarms, signs, and electrical, telephone and cable accessories)⁸² indicates that, both in terms of physical design and application, the Wall-Dog™ is essentially of a utilitarian, rather than decorative, character.⁸³

91. On the basis of the foregoing, the Tribunal finds that the Wall-Dog™ is not a decor screw that would be excluded, as such, from the scope of the findings.

– Connector Screws

92. By way of alternative argument, Powers submitted that the Vertigo® screws can be considered connector screws that are excluded from the scope of the findings in List A1. Powers argued that the reference to “connector screws” must be understood in its ordinary sense. It argued that the Vertigo® screws are connector screws because they “connect” pipe.⁸⁴

93. The CBSA argued that “connector screws” are used for assembling “knock-down” furniture,⁸⁵ which is not what the Vertigo® screws do.

94. If Powers’ interpretive argument that a screw is a “connector screw” of List A1 were to be accepted, all screws would come within this category; by definition, a screw is used to “join two or more elements.”

78. *Ibid.* at 275.

79. Second ed., s.v. “decor”.

80. S.v. “decor”.

81. Tribunal Exhibit AP-2012-010-05A at para. 146.

82. *Ibid.* at para. 57. See, also, the testimony of Mr. Bland, that the “[p]rimary applications [of the Wall-Dog™] . . . are electrical boxes attaching alarm systems”, *Transcript of Public Hearing*, 15 January 2013, at 33.

83. Mr. Bland testified that the Wall-Dog™ is available in a number of head shapes—oval, pan and hex versions. See *Transcript of Public Hearing*, 15 January 2013, at 70-71. However, the availability of different head styles is not, in the Tribunal’s view, sufficient to alter the essential character of the Wall-Dog™ as a multi-purpose screw.

84. *Transcript of Public Hearing*, 16 January 2013, at 274, 333.

85. Tribunal Exhibit AP-2012-010-07A at paras. 33-35.

95. In any case, the evidence in this case clearly indicates that the main function of the Vertigo[®] screws is hanging pipe and threaded rod.⁸⁶ Therefore, Powers did not discharge its burden to convince the Tribunal that the Vertigo[®] screws are “connector screws” of List A1.

– GRK Exclusions

96. In Expiry Review No. RR-2009-001, the Tribunal excluded certain GRK brand carbon steel screws from its findings, as outlined above.

97. By way of alternative argument, Powers contended that, if the Tribunal finds the Tapper+ to be a tapping screw, it is excluded from the findings as “equivalent” to GRK’s RSS, R4 or Caliburn[™] screws.⁸⁷ In particular, Powers submitted that the Tapper+ meets both the AC257 coating standard requirement and the requirement for features and characteristics equivalent to those specified in the GRK patents.

98. With respect to the first requirement, Powers pointed to evidence on the record indicating that the Tapper+ is certified as meeting ICC-ES standard AC257.⁸⁸

99. With respect to the second requirement, Powers noted that the Tapper+ has a V cut, similar to the V cuts on the GRK R4 and RSS screws, has a non-standard tip, just as the GRK R4 and RSS screws have non-standard tips, and has a thread similar to the GRK R4 and RSS screws.⁸⁹

100. Powers further claimed that the Tribunal’s observations that the GRK products perform at a higher level than standard screws, are sold at significantly higher prices and are aimed at a different market than domestically produced screws are also applicable to the Tapper+.⁹⁰

101. The CBSA countered that there was insufficient evidence to determine whether or not the Tapper+ is akin to the excluded GRK products.⁹¹ In addition, it noted that, while both the Tapper+ and the GRK screws were more expensive than conventional screws, the latter were significantly more so.⁹² The CBSA also pointed out that Powers’ own promotional literature compares the Tapper+ to the Tapcon screw, not to the GRK screws.⁹³

102. The Tribunal determined, in respect of the GRK screws, that their importation was unlikely to be injurious to the domestic industry. In this regard, the Tribunal noted in *Certain Stainless Steel Wire* that “[t]he fundamental principle is that the Tribunal will grant product exclusions only when it is of the view that such exclusions will not cause injury to the domestic industry.”⁹⁴

103. Powers bears the onus of demonstrating that the Tapper+ is sufficiently comparable to the excluded GRK screws in order to fall within the scope of the exclusion as “equivalent” goods.

86. See testimony of Mr. Powers, *Transcript of Public Hearing*, 15 January 2013, at 85.

87. Tribunal Exhibit AP-2012-010-05A at para. 11(l). See, also, *Transcript of Public Hearing*, 16 January 2013, at 275.

88. *Transcript of Public Hearing*, 16 January 2013, at 276.

89. *Ibid.* at 277.

90. *Ibid.* at 278.

91. *Ibid.* at 318-19.

92. *Ibid.* at 319.

93. *Ibid.* at 319.

94. (30 July 2004), NQ-2004-001 (CIIT) at para. 96.

104. One can logically assume that goods which are equivalent in all essential physical respects would compete directly with each other in the marketplace, as meeting the particular applications to which those physical characteristics respond. While Powers has demonstrated that the Tapper+ and the excluded GRK screws share certain features, there is no evidence that they compete directly with each other in the marketplace, which, of course, is a key indicator of true equivalency. Indeed, as argued by the CBSA, Powers' own promotional literature compares the Tapper+ to the Tapcon screw and not to the GRK screws. Further, there is little and only vague evidence of the comparability of prices or end-use applications of the Tapper+ and the GRK screws.⁹⁵ In this regard, Powers has failed to adduce sufficient evidence to establish a *prima facie* case of equivalency.

105. The Tribunal therefore finds that the Tapper+ is not excluded as a GRK-equivalent good.

Whether the Tribunal Should Recommend a Duty Remission Order for the Wedge-Bolt[®]+

106. Powers requested that, should the Tribunal determine that the Wedge-Bolt[®]+ is subject to the findings, it recommended a duty remission order,⁹⁶ on the basis that a prior compliance verification conducted by the CBSA concluded that the Wedge-Bolt[®]+ is not a screw, thus leading to an officially induced error.⁹⁷

107. In this regard, the Tribunal does not have jurisdiction to make such a recommendation. However, nothing prevents Powers from seeking such a duty remission order directly from the Minister of Finance. As explained in *BMI*:

117. . . . there is nothing in the *CITT Act* that provides the authority to make such . . . [a] formal recommendation.

118. Section 16 of the *CITT Act* provides the Tribunal with powers to “hear, determine and deal with” appeals and “all matters related thereto”. The Tribunal has interpreted the phrase “all matters related thereto” as being confined to matters directly arising from the exercise of its statutory jurisdiction. The Tribunal cannot use section 16 of the *CITT Act* to expand its jurisdiction, which is limited by statute.

119. Discretion in respect of duty remission orders was statutorily vested by Parliament in the ministers designated under section 115 of the *Customs Tariff*. *While it is not for the Tribunal to recommend how this discretion should be exercised, there is nothing precluding a party from making direct application for the remission of anti-dumping or countervailing duties to the Minister of Finance, as minister responsible for SIMA.*

[Emphasis added]

108. The same analysis applies in the present case.

95. See Tribunal Exhibit AP-2012-010-24A, tab 5 at 201. See, also, testimony of Mr. Bland, *Transcript of Public Hearing*, 15 January 2013, at 56-61.

96. Powers refers to ss. 23(2) of the *Financial Administration Act*, R.S.C. 1985, c. F-11, pursuant to which “[t]he Governor in Council may, on the recommendation of the appropriate Minister, remit any tax or penalty, including any interest paid or payable thereon, where the Governor in Council considers that the collection of the tax or the enforcement of the penalty is unreasonable or unjust or that it is otherwise in the public interest to remit the tax or penalty.”

97. Tribunal Exhibit AP-2012-010-05A at para. 147.

DECISION

109. The appeal is dismissed.

Pasquale Michael Saroli
Pasquale Michael Saroli
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Jason W. Downey
Jason W. Downey
Member