Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal Nos. AP-2013-008 and AP-2013-009

Ideal Roofing Company Limited and Havelock Metal Products Inc.

v.

President of the Canada Border Services Agency

Decision and reasons issued Thursday, July 10, 2014

Canada

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IN THE MATTER OF appeals heard on March 25, 2014, pursuant to section 61 of the *Special Import Measures Act*, R.S.C., 1985, c. S-15;

AND IN THE MATTER OF decisions of the President of the Canada Border Services Agency, dated February 5, 2013, with respect to requests for re-determinations pursuant to section 59 of the *Special Import Measures Act*.

BETWEEN

IDEAL ROOFING COMPANY LIMITED AND HAVELOCK METAL PRODUCTS INC. **Appellants**

AND

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

DECISION

The appeals are dismissed.

Ann Penner
Ann Penner
Presiding Member

Stephen A. Leach
Stephen A. Leach
Member

Daniel Petit
Daniel Petit
Member

Randolph W. Heggart
Randolph W. Heggart
Acting Secretary

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	March 25, 2014
Tribunal Members:	Ann Penner, Presiding Member Stephen A. Leach, Member Daniel Petit, Member
Counsel for the Tribunal:	Elysia Van Zeyl
Registrar Officer:	Ekaterina Pavlova

PARTICIPANTS:

Appellants	**Counsel/Representative**
Ideal Roofing Company Limited Havelock Metal Products Inc.	Cyndee Todgham Cherniak

Respondent	**Counsel/Representative**
President of the Canada Border Services Agency	Max Binnie

WITNESSES:

A. Bruce Crouch President and Chief Operating Officer Hargis Industries LP d.b.a. Sealtite Building Fasteners	Guy Samson Corporate Director of Purchasing Ideal Roofing Company Limited
David K. Quehl Marketing Manager Hargis Industries LP d.b.a. Sealtite Building Fasteners	Todd Lawson President Havelock Metal Products Inc.

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STATEMENT OF REASONS

BACKGROUND

1. These are appeals filed with the Canadian International Trade Tribunal (the Tribunal) by two companies, Ideal Roofing Company Limited (Ideal) and Havelock Metal Products Inc. (Havelock), pursuant to section 61 of the *Special Import Measures Act*[1] from decisions of the President of the Canada Border Services Agency (CBSA) with respect to requests for re-determinations under section 59.

2. The issue in these appeals is whether certain goods imported into Canada by Ideal and Havelock (the goods in issue) are of the same description as the goods subject to the Tribunal's findings in *Certain Fasteners*[2] (the subject goods) made under subsection 43(1) of *SIMA* and therefore subject to the imposition of anti-dumping duties.

3. The goods in issue are described as consumer-ready/installer-ready packaged, galvanized and painted or galvanized Kwik-Seal® II Woodbinder® fastener systems, manufactured by Hargis Industries LP d.b.a. Sealtite Building Fasteners (Sealtite) using both U.S. and imported components. The goods in issue are used to attach sheet metal to wood posts, particularly in roofing applications.

4. The CBSA determined that the goods in issue were of the same description as the subject goods (i.e. carbon steel and stainless steel fasteners) and that anti-dumping duties were payable.

5. Ideal and Havelock argued that the goods in issue are not fasteners *per se*, but rather fastener systems because they have two components: (1) a blank (sometimes referred to as a "dud") that is imported from Chinese Taipei and modified in Tyler, Texas; and (2) a bonded sealing washer (consisting of a high-tensile galvanized G90 washer and an ethylene-propylene-diene monomer (EPDM) rubber "M" class component fused together) that is manufactured wholly in the United States.

6. 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 the present circumstances, the Tribunal must determine whether the goods in issue are of the same description as the subject goods.

TRIBUNAL'S FINDINGS

7. The Tribunal's findings in *Certain Fasteners* describe the subject goods as follows:

> . . . 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 . . . originating in or exported from . . . Chinese Taipei.

8. The statement of reasons (SOR) for *Certain Fasteners* indicates as follows:

> 19. 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

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 incorporate the Tribunal's findings and statement of reasons in Inquiry No. NQ-2004-005. When the Tribunal's order and reasons in Expiry Review No. RR-2009-001 are cited, they are indicated as such.

> thread or to form its own thread, and to be tightened or released by torqueing 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.

PROCEDURAL HISTORY

9. The goods in issue were imported into Canada by Ideal and Havelock in three separate shipments, between November 2010 and July 2011.

10. In November 2011, the CBSA issued Detailed Adjustment Statements for each of the three transactions, determining, pursuant to section 57 of *SIMA*, that the goods imported into Canada were of the same description as the subject goods.

11. On February 2, 2012, pursuant to section 58 of *SIMA*, Ideal and Havelock appealed the CBSA's decisions made under section 57.

12. On February 5, 2013, the CBSA determined that the goods in issue consisted of carbon steel sheet metal/self-tapping screws originating in Chinese Taipei, and anti-dumping duties were assessed accordingly.

13. On April 12, 2013, Ideal and Havelock filed appeals with the Tribunal from the CBSA's decisions with respect to the requests for re-determinations under section 59 of *SIMA* and requested that their appeals be joined.

14. The Tribunal received a request, dated April 22, 2013, from Sealtite to intervene in these appeals. Sealtite is a U.S. company that puts the goods in issue through certain processes (or modifications) after they have been imported into the United States from Chinese Taipei. After reviewing the submissions of the parties, however, the Tribunal found that the grounds for intervention, as set out in section 40.1 of the *Canadian International Trade Tribunal Rules*,[3] were not met and, thus, denied the request. In particular, the Tribunal was of the view that Sealtite failed to demonstrate the precise nature of its interest and to convince the Tribunal that its intervention in the proceeding was necessary.

15. The Tribunal held a hearing on March 25, 2014. Four witnesses testified at the hearing, including the following: Mr. Todd Lawson, President of Havelock; Mr. Guy Samson, Corporate Director of Purchasing for Ideal; Mr. Bruce Crouch, President and Chief Operating Officer of Sealtite; and Mr. David Quehl, Marketing Manager for Sealtite. While all witnesses testified in the public session, Mr. Crouch and Mr. Quehl also testified *in camera*.

PHYSICAL EXHIBITS

16. Ideal and Havelock filed the following physical exhibits:

Exhibit Number	Description
A-01	A representation of the stages of production from the raw dud to the boxed Kwik-Seal® II Woodbinder® fastener system
A-02	Raw duds and galvanized duds that have been subjected to salt spray testing
A-03	Sealtite Powderful Paint Catalogue
A-04	Two U.S.-manufactured bonded sealing washers
A-05	One package used to ship U.S.-manufactured bonded sealing washers

3. S.O.R./91-499.

STATUTORY FRAMEWORK

17. Section 61 of *SIMA* provides as follows:

61.(1) Subject to section 77.012 or 77.12, a person who deems himself aggrieved by a re-determination of the President made pursuant to section 59 with respect to any goods may appeal therefrom to the Tribunal by filing a notice of appeal in writing with the President and the Secretary of the Tribunal within ninety days after the day on which the re-determination was made.	61.(1) Sous réserve des articles 77.012 et 77.12, quiconque s'estime lésé par un réexamen effectué en application de l'article 59 peut en appeler au Tribunal en déposant, auprès du président et du secrétaire du Tribunal, dans les quatre-vingt-dix jours suivant la date du réexamen, un avis d'appel.
. . .	[...]
(3) On any appeal under subsection (1), the Tribunal may make such order or finding as the nature of the matter may require and, without limiting the generality of the foregoing, may declare what duty is payable or that no duty is payable on the goods with respect to which the appeal was taken, and an order, finding or declaration of the Tribunal is final and conclusive subject to further appeal as provided in section 62.	(3) Le Tribunal, saisi d'un appel en vertu du paragraphe (1), peut rendre les ordonnances ou conclusions indiquées en l'espèce et, notamment, déclarer soit quels droits sont payables, soit qu'aucun droit n'est payable sur les marchandises visées par l'appel. Les ordonnances, conclusions et déclarations du Tribunal sont définitives, sauf recours prévu à l'article 62.

18. Anti-dumping duties are payable when goods imported into Canada are of the same description as the goods in respect of which the Tribunal has made an order or finding under section 43 of *SIMA*. Subsection 3(1) provides as follows:

3.(1) Subject to section 7.1, there shall be levied, collected and paid on all dumped and subsidized goods imported into Canada in respect of which the Tribunal has made an order or finding, before the release of the goods, that the dumping or subsidizing of goods of the same description has caused injury or retardation, is threatening to cause injury or would have caused injury or retardation except for the fact that provisional duty was applied in respect of the goods, a duty as follows:	3.(1) Sous réserve de l'article 7.1, les marchandises sous-évaluées ou subventionnées importées au Canada alors que le Tribunal a établi avant leur dédouanement, par ordonnance ou dans ses conclusions, que le dumping ou le subventionnement de marchandises de même description a causé un dommage ou un retard, menace de causer un dommage ou aurait causé un dommage ou un retard sans l'application de droits provisoires à l'égard des marchandises, sont assujetties aux droits suivants :
(*a*) in the case of dumped goods, an anti-dumping duty in an amount equal to the margin of dumping of the imported goods; and	*a*) dans le cas de marchandises sous-évaluées, des droits antidumping d'un montant égal à la marge de dumping des marchandises;
. . .	[...]

POSITIONS OF PARTIES

19. Ideal and Havelock argued that the goods in issue were not of the same description as the subject goods at the time of importation into Canada because they were fastener systems and, therefore, more than merely carbon steel screws. As a corollary to this argument, Ideal and Havelock claimed that, even if the goods in issue could be considered to be of the same description as the subject goods, they should not have

been subjected to anti-dumping duties because they did not originate in Chinese Taipei. Rather, Ideal and Havelock claimed that the goods in issue originated in the United States because the modifications fundamentally transformed the goods in issue before they entered Canada.

20. In contrast, the CBSA argued that, notwithstanding the modifications undertaken in the United States (i.e. painting, galvanizing and the addition of a washer), the goods in issue maintained the same key physical characteristics that they had as blanks/duds originating in Chinese Taipei, thus remaining within the scope of the findings.

ANALYSIS

21. The Tribunal's role in an appeal under section 61 of *SIMA* is to determine whether goods are of the same description as goods described in a finding. In this case, the Tribunal must determine whether the goods in issue fall within the product description of *Certain Fasteners*.

22. When determining whether goods are of the same description as the goods to which a finding applies, the Tribunal may refer to its SOR in order to shed light on the scope of its finding, to provide guidance when interpreting a description of the goods and to determine whether the finding applies to the goods in issue. The Federal Court of Appeal, in *Deputy M.N.R. (Customs and Excise) v. Trane Company of Canada*, 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.[4]

23. Given that Ideal and Havelock have argued that the goods in issue are "more than mere carbon screws", the Tribunal finds it helpful in this case to refer to the SORs in *Certain Fasteners* and in Expiry Review No. RR-2009-001 when making its determination.

24. Furthermore, in order to make its determination in the context of the specific arguments put forward by the parties, the Tribunal will consider the following questions:

- Should the Tribunal consider the SOR in Expiry Review No. RR-2009-001?
- Are the goods in issue of the same description as the subject goods based on their physical and technical characteristics?
- To what extent did the modifications to the goods in issue in the United States impact whether they are of the same description as the subject goods?
- Are the goods in issue no longer of the same description as the subject goods because they have been assembled with washers?
- Did the goods in issue originate in Chinese Taipei?

Should the Tribunal Consider the SOR in Expiry Review No. RR-2009-001?

25. At the outset, the Tribunal wishes to briefly comment on Ideal and Havelock's contention that the Tribunal should disregard the product definition and SOR in Expiry Review No. RR-2009-001 because, in

4. *Deputy M.N.R. (Customs and Excise) v. Trane Company of Canada*, [1982] 2 F.C. 194 (F.C.A.) at 206.

their view, the Tribunal "improperly" expanded the scope of the subject goods in *Certain Fasteners* by including fasteners that have been assembled with washers.[5]

26. In particular, Ideal and Havelock highlighted a subtle distinction between how the subject goods were described in *Certain Fasteners* as compared to how they were described in Expiry Review No. RR-2009-001. Although the SOR in *Certain Fasteners* indicated that such "[f]urther steps, such as hardening (heat treating), plating and painting can be performed in order to enhance certain qualities, such as corrosion resistance",[6] Ideal and Havelock noted that the SOR in Expiry Review No. RR-2009-001 contained additional language to describe the scope of the subject goods. Specifically, the SOR in Expiry Review No. RR-2009-001 stated the following: "Further steps, such as hardening (heat treating), plating, painting and, *to a lesser degree, assembling (i.e. adding washers)* can be performed in order to enhance certain qualities, such as product strength and corrosion resistance"[7] [emphasis added].

27. In addition, Ideal and Havelock relied on a passage from *Certain Fasteners* in which the Tribunal stated that, "[a]ccording to the CBSA, washers, rivets, pins, studs and custom formed parts are not included in the definition of the subject goods."[8] Ideal and Havelock suggested that the SOR in Expiry Review No. RR-2009-001 captured goods that were not intended to be of the same description as the subject goods based on the initial findings.

28. Previous Tribunal decisions, including the SOR in Expiry Review No. RR-2009-001, have acknowledged that the scope of an injury finding cannot be expanded in an expiry review.[9]

29. In this case, however, both SORs contemplate that further steps might be performed on ". . . the many types of fasteners . . ." that are imported into Canada.[10] As indicated by the phrase "such as", the list in the SOR in *Certain Fasteners* contains examples of processes that a fastener might undergo. The list of further steps is neither intended to be exhaustive nor to account for all possible types of processing that a fastener could undergo and still be considered a fastener. There is nothing in *Certain Fasteners* to suggest that the listed processes (e.g. hardening, plating and painting) are the *only* types of enhancements that could be made to a fastener. Likewise, in the SOR in Expiry Review No. RR-2009-001, the Tribunal noted that "adding washers" could also be considered a "[f]urther [step] . . . to enhance certain qualities . . . ." This additional language does not expand the application of the findings; rather, it is merely a clarification that adding a washer could, in some instances, constitute a type of enhancement that fasteners could undergo.

30. Moreover, in regard to Ideal and Havelock's reliance on the statement in *Certain Fasteners* that washers are not included in the definition of the subject goods, the Tribunal notes that the goods in issue are not simply washers, as will be discussed in further detail below.

31. Accordingly, the Tribunal disagrees with Ideal and Havelock's proposition that Expiry Review No. RR-2009-001 had the effect of expanding or purporting to expand the scope of the subject goods in

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5. *Transcript of Public Hearing*, 25 March 2014, at 197-203.
6. At para. 27.
7. At para. 19.
8. At para. 22.
9. At para. 53. See, also, *Certain Carbon Steel Plate and Alloy Steel Plate* (12 December 1997), RR-97-006 (CITT) at 9, in which the Tribunal stated the following: "The Tribunal is of the view that, in a review, it has the power to rescind or continue an order or finding against some or all of the goods subject to the order or finding, but it does not have the power to increase or expand the scope of its review beyond the goods covered by the order or finding being reviewed."
10. *Certain Fasteners* at para. 23.

Certain Fasteners. It will therefore consider the SOR in Expiry Review No. RR-2009-001 in its deliberations.

Are the Goods in Issue of the Same Description as the Subject Goods Based on their Physical and Technical Characteristics?

32. It is clear from *Certain Fasteners* that the issue of whether a good is a fastener depends on its physical and technical characteristics.[11] In particular, the Tribunal described fasteners as follows:

> 23. 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.
>
> [Emphasis added]

33. Accordingly, while end use, interchangeability, competition in the marketplace, price and marketing are factors that the Tribunal may consider in appeals concerning whether goods are of the same description as other goods,[12] the description of a fastener in this case indicates that the physical and technical characteristics are determinative.[13] Thus, in order to assess whether the goods in issue are subject to the findings, the Tribunal must make its determination on the basis of their physical and technical characteristics at the time of importation into Canada.

34. As indicated by the product definition in *Certain Fasteners*, and as amended and further discussed in Expiry Review No. RR-2009-001, the subject goods possess a number of defining physical and technical characteristics of screws. In particular, they:

- are made of carbon steel or stainless steel;
- are headed;
- are externally threaded;
- are mechanical devices that possess capabilities that allow them to be inserted into holes in assembled parts, to be mated with a pre-formed internal thread or to form their own thread;
- can be tightened or released by torqueing their heads; and
- can be used to mechanically join two or more elements.[14]

35. The evidence in this case indicates that the physical and technical characteristics of the goods in issue correspond to the product definition of screws in the findings. Mr. Crouch agreed that the blanks/duds which were exported from Chinese Taipei are comprised of carbon steel, headed and externally threaded.[15] He noted that the blanks/duds are able to form their own thread and can be tightened and released by

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11. *Powers Industries Limited v. President of the Canada Border Services Agency* (22 April 2013), AP-2012-010 (CITT) [*Powers Industries*] at paras. 33, 35, 37.
12. *Powers Industries* at para. 10. See, also, *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); *Cobra Anchors Co. Ltd. v. President of the Canada Border Services Agency* (8 May 2009), AP-2008-006 (CITT) [*Cobra Anchors*].
13. *Powers Industries* at para. 35.
14. *Certain Fasteners* at paras. 18-19.
15. *Transcript of Public Hearing*, 25 March 2014, at 25-26, 28, 61-62.

torqueing their heads.[16] Mr. Crouch also indicated, upon cross-examination, that the goods in issue continued to possess these same physical characteristics even after they had been modified in the United States.[17]

36. Mr. Samson and Mr. Lawson testified that the goods in issue are used to ". . . fasten the panels to the building"[18] and "[hold] the steel panels to the wall or to the roof."[19] In response to questions posed by the CBSA, Mr. Lawson also specifically agreed that the goods in issue mechanically join two or more elements, namely, steel and either metal or wood.[20] The testimony in this regard is consistent with the marketing materials which explain that the function of the goods in issue is to ". . . attach steel roofing & siding used in post-frame & residential metal roofing applications."[21]

37. On the basis of the above testimony and other evidence in Ideal and Havelock's submissions,[22] the Tribunal finds that the goods in issue do indeed have the physical and technical characteristics referred to in the findings.

To What Extent did the Modifications to the Goods in Issue in the United States Impact Whether They are of the Same Description as the Subject Goods?

38. Even though they acknowledged that the goods in issue possessed the physical and technical characteristics of the subject goods when imported into Canada, Ideal and Havelock argued that the goods in issue are not of the same description as the subject goods because, while in the United States, the imported blanks/duds underwent several modifications that essentially transformed them from simple blanks/duds into assembled fastener systems.[23] Specifically, Mr. Crouch referred to four types of modifications made to the blanks/duds in the United States. The goods in issue were made corrosion-resistant, painted, sealed with washers and rendered capable of offering environmental protection.[24]

39. In Ideal and Havelock's view, these modifications transformed the blanks/duds from the "generic sheet metal screws",[25] as provided for in the findings, into fastener systems that were more expensive than typical commodity screws.[26] It was also argued that these modifications provided the goods in issue with additional functionality that the blanks/duds did not have when imported into the United States from Chinese Taipei.[27]

40. The Tribunal notes however that these four differences are found in the product definitions of the findings. The Tribunal's SOR in *Certain Fasteners* provides that "[f]urther steps, such as hardening (heat treating), plating and painting, can be performed in order to enhance certain qualities, such as corrosion resistance."[28] Moreover, the Tribunal's SOR in Expiry Review No. RR-2009-001 indicates that "[f]urther

16. *Ibid.* at 60-61.
17. *Ibid.* at 61.
18. *Ibid.* at 82.
19. *Ibid.* at 101.
20. *Ibid.* at 106.
21. Exhibit AP-2013-008-11D, tab 4, Vol. 1D.
22. *Ibid.* at paras. 26-28, 41, tabs 4, 6.
23. Exhibit AP-2013-008-11A at para. 8, Vol. 1.
24. *Transcript of Public Hearing*, 25 March 2014, at 64-65.
25. *Ibid.* at 34, 83-85.
26. Exhibit AP-2013-008-11A at paras. 31, 40, Vol. 1*; Transcript of Public Hearing*, 25 March 2014, at 85.
27. *Transcript of Public Hearing*, 25 March 2014, at 64-65; Exhibit AP-2013-008-11A at paras. 31, 40, Vol. 1.
28. At para. 27.

steps, such as hardening (heat treating), plating, painting and, to a lesser extent, assembling (i.e. adding washers) can be performed in order to enhance certain qualities, such as product strength and corrosion resistance."[29] When questioned about whether these characteristics align with the qualities of the goods in issue, Mr. Crouch agreed that they did.[30]

41. The Tribunal accepts that the modifications to the goods in issue enhanced the physical and technical characteristics of the blanks/duds. Likewise, there is no dispute that the goods in issue are sold at higher prices than commodity screws.

42. The issue, for the Tribunal, therefore becomes whether the modifications undertaken in the United States changed the blanks/duds to such an extent that the goods in issue are no longer of the same description as the subject goods. Put another way, the Tribunal must consider whether the modifications to the goods in issue changed their nature to such an extent that they no longer fall within the scope of the subject goods in *Certain Fasteners*.

43. Although not in the context of an appeal under *SIMA*, the Tribunal's decision in *Aluminum Extrusions*[31] contemplates that a certain amount of processing could, in a sense, remove the goods from being subject to a finding. In particular, the Tribunal stated as follows:

> 95. In light of this definition and additional information, the Tribunal is of the view that the subject goods and, therefore, the like goods include aluminum extrusion products that have been further processed, but only to a certain extent. For example, the wording of the definition and the contextual guidance provided by the additional product information make it clear that aluminum extrusion products that have been anodized, painted or otherwise coated, and worked (e.g. precision cut, machined, punched and drilled) are included in the scope of the like goods.
>
> 96. *However, the Tribunal considers that the definition of the subject goods cannot be reasonably interpreted to include finished aluminum goods that are processed or manufactured to such an extent that they no longer possess the nature and physical characteristics of an aluminum extrusion as such but have become a different product*. . . .
>
> [Emphasis added]

44. In this case, the Tribunal does not believe that the blanks/duds from Chinese Taipei were modified to such an extent that the goods in issue are no longer of the same description as the subject goods. While the modifications to the blanks/duds may have made the goods in issue *better* and more expensive specialty products, the modifications did not make them *different* products.

45. The Tribunal, therefore, agrees with the CBSA that the goods in issue are of the same description as the subject goods, notwithstanding the modifications that the blanks/duds underwent in the United States.[32] The blank/duds had certain physical and technical characteristics when they were exported from Chinese Taipei, corresponding with those of the subject goods in *Certain Fasteners*. They maintained those same physical and technical characteristics after undergoing further steps in the United States and ultimately upon importation into Canada. At all stages as they moved from Chinese Taipei to the United States and then to Canada, the goods in issue maintained the physical and technical characteristics of fasteners (and thus their nature) as contemplated in the findings.

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29. At para. 19.
30. *Transcript of Public Hearing*, 25 March 2014, at 68-70.
31. (17 March 2009), NQ-2008-003 (CITT).
32. *Transcript of Public Hearing*, 25 March 2014, at 187-88.

46. Accordingly, the Tribunal finds that the modifications in the United States (e.g. galvanizing, painting and, as discussed further below, the addition of washers) can be considered "further steps that enhanced certain properties" of the goods in issue. However, these processes did not change the nature of the goods to such an extent that they would fall outside of the Tribunal's findings. Therefore, the Tribunal finds that the goods in issue are of the same description as the subject goods insofar as their physical and technical characteristics are concerned.

Are the Goods in Issue no Longer of the Same Description as the Subject Goods Because They Have Been Assembled With Washers?

47. As explained by Mr. Crouch at the hearing, following galvanization, the blanks/duds undergo an automated process in Tyler, Texas, during which they are assembled with a U.S.-made bonded sealing EPDM washer and held in place by a neoprene underside.[33] By virtue of their design, the washers stay assembled to the blanks/duds and perform a leak prevention function.[34] The presence of this washer also ensures that moisture and vapour are not able to penetrate the building onto which the siding or roofing is installed by virtue of the fastener.[35]

48. Ideal and Havelock argued that the addition of a U.S.-made washer to the blanks/duds changed the nature of the goods to such an extent that they were no longer of the same description as the subject goods in *Certain Fasteners.* In other words, the addition of a washer essentially transformed the blanks/duds into assembled "fastener systems". Ideal and Havelock argued that the washers are "integral components" of the goods in issue and that the Tribunal has not made an order or finding in respect of fastener systems that include washers as integral components.[36]

49. The CBSA acknowledged that the goods that were exported from Chinese Taipei were not identical to the goods that were ultimately imported into Canada. Nevertheless, it argued that the goods in issue, with the addition of washers in the United States, were nevertheless of the same description as the subject goods because the physical and technical characteristics of the goods in issue remained unchanged from those of the duds/blanks as listed in *Certain Fasteners.*[37]

50. The Tribunal notes that it must consider the goods in issue as a whole and the manner in which they are presented at the time of importation into Canada.[38] The Tribunal is of the view that the goods in issue, when imported into Canada, were not simply washers. They were, in the words of Ideal and Havelock, fastener systems of which the washers were only one part. They were, and still are, intended to be used as single, complete units and imported as such.[39] The washers were not packaged, sold or intended to be used separately from the blanks/duds and are not generally removed after importation into Canada or prior to the installation process.[40] While the evidence is clear that the goods in issue incorporate washers, the Tribunal is of the view that it would be disingenuous to characterize the goods in issue as washers and argue that they are not of the same description as the subject goods on that basis.

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33. *Ibid.* at 17; Exhibit AP-2013-008-11A at paras. 121-22, 128-34, Vol. 1.
34. *Transcript of Public Hearing*, 25 March 2014, at 32-33.
35. *Ibid.* at 17, 22, 28.
36. Exhibit AP-2013-008-11A at para. 126, Vol. 1.
37. *Transcript of Public Hearing*, 25 March 2014, at 172.
38. *Deputy M.N.R. (Customs & Excise) v. McMillan Bloedel (Alberni) Ltd.*, [1965] S.C.R. 266; see, also, *Cobra Anchors*.
39. Exhibit AP-2013-008-11A at para. 129, Vol. 1.
40. *Transcript of Public Hearing*, 25 March 2014, at 32; Exhibit AP-2013-008-11A at para. 129, Vol. 1.

51. Moreover, while the washers are components of the goods in issue, the Tribunal agrees with the CBSA that the presence of the washers does not alter the fundamental physical and technical characteristics of the duds/blanks. The duds/blanks fell within the scope of the subject goods in *Certain Fasteners*, based on their physical and technical characteristics, when they were exported to the United States from Chinese Taipei. Notwithstanding the additional processes that they underwent in the United States, including the addition of washers, when imported into Canada, the goods in issue retained those same characteristics that brought them within the scope of the subject goods. In other words, the addition of the washers may have enhanced certain qualities of the goods in issue, but it does not impact whether the goods in issue are of the same description as the subject goods because it does not alter any of the characteristics that make the goods in issue of the same description as the subject goods.

Did the Goods in Issue Originate in Chinese Taipei?

52. As noted above, Ideal and Havelock argued that, even if the Tribunal found that the goods in issue fell within the scope of the findings based on their physical and technical characteristics, the goods in issue should not be considered to be of the same description as the subject goods because they did not originate in a subject country, nor were they exported from a subject country. Instead, Ideal and Havelock argued that the goods in issue were manufactured in the United States and could not be said to have originated in Chinese Taipei.

53. The findings describe the subject goods as "... carbon steel and stainless steel fasteners ... originating in or exported from ... Chinese Taipei." Both parties acknowledge that the phrase "originating in" is not defined in *SIMA*.[41] Accordingly, they proposed different ways for the Tribunal to consider whether the goods in issue "originated in" a subject country. Ideal and Havelock urged the Tribunal to consider, among other things, the *NAFTA Rules of Origin Regulations*,[42] including tariff shifts and regional value content. The CBSA invited the Tribunal to interpret the term by considering dictionary definitions in order to ascertain the meaning of the term "originating".[43]

54. After considering the arguments of both parties, the Tribunal is of the view that it would be inappropriate to apply the *NAFTA Regulations* to this case, as Ideal and Havelock have urged. If Parliament had intended for the *NAFTA Regulations*, or any other rules of origin created by way of regulation under the *Customs Tariff*[44] for that matter,[45] to apply to determinations made under *SIMA* concerning whether goods are of the same description as other goods, it could have included a provision indicating such in *SIMA* or the *Special Import Measures Regulations*.[46] However, Parliament did not do so.

55. In the absence of a statutory regime for determining origin in the context of *SIMA*, the Tribunal finds that the CBSA's submission to rely on the dictionary definition of the term "originating" is most appropriate for the case at hand and most consistent with the past practice of the Tribunal in the context of

41. *Transcript of Public Hearing*, 25 March 2014, at 149, 188.
42. S.O.R./94-14 [*NAFTA Regulations*].
43. *Transcript of Public Hearing*, 25 March 2014, at 188-89.
44. S.C. 1997, c. 36.
45. For example, the *Determination of Country of Origin for the Purposes of Marking Goods (NAFTA Countries) Regulations*, S.O.R./94-23, as filed by Ideal and Havelock in Exhibit AP-2013-008-11B, tab 49, Vol. 1B; *Most-Favoured-Nation Tariff Rules of Origin Regulations*, S.O.R./98-33, Exhibit AP-2013-008-11B, tab 47, Vol. 1B; *General Preferential Tariff and Least Developed Country Tariff Rules of Origin Regulations*, S.O.R./98-34, Exhibit AP-2013-008-11B, tab 45, Vol. 1B.
46. S.O.R./84-927.

SIMA.[47] Specifically, the Tribunal will rely on the *Canadian Oxford Dictionary*[48] which defines the term "origin" as ". . . a beginning, cause, or ultimate source of something . . . that from which a thing is derived, a source or a starting point . . ."[49] and "originate" as ". . . begin, arise, be derived, takes its origin . . . ."[50]

56. There is no question that the blanks/duds originated in or were exported from Chinese Taipei. All parties agreed upon this fact. Therefore, Chinese Taipei is the source, starting point or the basis from which the goods in issue were derived because it is the place from where the blanks/duds came. As discussed above, the blanks/duds possessed all the physical and technical characteristics ascribed to "screws" in *Certain Fasteners*, as did the goods in issue at the time of importation into Canada. Accordingly, the Tribunal finds that the goods in issue originated in Chinese Taipei for the purposes of determining whether they are of the same description as the subject goods under *SIMA*.

CONCLUSION

57. The Tribunal finds that the goods in issue, at the time of importation into Canada, are of the same description as the subject goods in *Certain Fasteners*.

DECISION

58. The appeals are dismissed.

Ann Penner
Ann Penner
Presiding Member

Stephen A. Leach
Stephen A. Leach
Member

Daniel Petit
Daniel Petit
Member

47. *Wood Venetian Blinds and Slats* (18 June 2004), NQ-2003-003 (CITT). See, also, the CBSA's SOR for its final determination (1 June 2004) at para. 15, in which the CBSA specifically comments that "bare slats . . . that are stained, painted or film-coated in another country, before being imported into Canada, have acquired their essential characteristics in Mexico or China and are, therefore, subject to the investigation."
48. Second ed., Exhibit AP-2013-008-16, tab 11, Vol. 1D.
49. S.v. "origin".
50. S.v. "originate".