



1700 N. Moore Street, Suite 2250, Arlington, VA 22209  
Phone: (703) 841-2300 Fax: (703) 841-1184  
Email: [info@rila.org](mailto:info@rila.org) Web: [www.rila.org](http://www.rila.org)

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November 2, 2009

The Honorable Gary Locke  
Secretary of Commerce  
Import Administration  
APO/Dockets Unit, Room 1870  
U.S. Department of Commerce  
14<sup>th</sup> Street & Constitution Avenue, NW  
Washington, DC 20230

Re: Certain Steel Fasteners from the People's Republic of China and Taiwan:  
Comments on the Scope of the Investigations

Dear Secretary Locke:

The Retail Industry Leaders Association (RILA) submits these scope comments in response to the Commerce Department's notices initiating the antidumping and countervailing duty investigations on Certain Standard Steel Fasteners from the People's Republic of China and Taiwan. See *Certain Standard Steel Fasteners From the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations*, 74 Fed. Reg. 54537 (Oct. 22, 2009); *Certain Standard Steel Fasteners From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 74 Fed. Reg. 54537 (Oct. 22, 2009) ("Notices of Initiation").

RILA members include the largest and fastest growing companies in the retail industry – retailers, product manufacturers, and service suppliers – which together account for more than \$1.5 trillion in annual sales. RILA members provide millions of jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad. RILA’s mission is to promote consumer choice and economic freedom through public policy and industry operational excellence. We provide the following comments on the proposed scope language in the Notices of Initiation.

## **COMMENTS**

The proposed scope of these investigations is described as follows:

The merchandise covered by the investigations consists of certain standard nuts, standard bolts, and standard cap screws, of steel other than stainless steel. Standard nuts, standard bolts, and standard cap screws covered by the investigations may have a variety of finishes, including but not limited to coating in paint, phosphates, and zinc. Standard bolts and standard cap screws covered by the investigations have a shank or thread with an actual and/or nominal diameter between 6 millimeters and 32 millimeter (inclusive). Standard bolts and standard cap screws covered by the investigations also possess a circular or hexagonal head, the surface of which may be flat or rounded (also known as “dome-shaped” or “button-headed”). Standard bolts covered by the investigations may have an attached washer face or the equivalent (e.g., a flanged head or chamfered corners on the underside of a fastener with a hexagonal shaped head). Standard cap screws covered by the investigations have a permanently attached washer face. Standard nuts are covered by the investigations if they are suitable for attachment to bolts and/or cap screws covered by the investigations.<sup>1</sup>

The description of the class or kind of subject merchandise therefore appears to include types of standard fasteners that are used in a wide range of products, including many consumer goods. The proposed scope language goes on to state:

Standard bolts, standard cap screws, and standard nuts *are covered* by the investigations *whether* imported alone, *attached to* other subject and/or *non-*

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<sup>1</sup> See Notices of Initiation, 74 Fed. Reg. at 54554-43 and 54546-47.

*subject merchandise* (e.g., tension control assemblies), *or unattached and in combination with* other subject merchandise and/ or *non-subject merchandise*?<sup>2</sup>

RILA requests that Commerce delete or amend this proposed scope language to ensure that, consistent with the law and Commerce’s longstanding practice, the language does not describe products that are outside the class or kind of merchandise subject to the investigation.<sup>3</sup>

For example, RILA members import many different types of products, such as “do it yourself” (“DIY”) kits, furniture, sporting equipment, toys (*e.g.*, bicycles) and electronics that require the retail customer to do some final assembly in the home or office. These products are imported with the necessary hardware included. The assembly hardware may include steel fasteners that are “unattached” or “attached to” a subassembly.<sup>4</sup>

When an imported item of non-subject merchandise contains subject merchandise, Commerce determines whether the product falls within the covered class or kind of merchandise based on an analysis of the *Diversified Products*<sup>5</sup> criteria, consistent with 19 C.F.R. §351.225(k)(2).<sup>6</sup> Applying the *Diversified Products* analysis, when the imported product is a unique item composed of different component pieces and the subject merchandise is a minor component, Commerce has found that the entire imported product (including the component) is

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<sup>2</sup> See Notices of Initiation, 74 Fed. Reg. at 54543 and 54546 (emphasis added).

<sup>3</sup> Under the statute, Commerce’s antidumping and countervailing duty investigations are limited to a single “class or kind of merchandise” that is sold in the United States. See 19 U.S.C. §§ 1671 and 1673.

<sup>4</sup> In addition, it is often necessary to import small quantities of replacement assembly hardware packs with shipments of non-subject merchandise to replace previously imported assembly hardware that was faulty or misplaced.

<sup>5</sup> *Diversified Products Corp. v. United States*, 6 CIT 155, 572 F. Supp. 883 (1983).

<sup>6</sup> See, *e.g.*, *Memorandum from Wendy Frankel, Final Scope Ruling – Antidumping Duty Order on Certain Lined Paper Products from the People’s Republic of China, Requested by Avenues in Leather*; May 8, 2007.

outside the class or kind of merchandise.<sup>7</sup> Petitioner appears to ignore these legal limitations on what constitutes a “class or kind” of merchandise by proposing language so broad that it could be read to include every imported product containing subject fasteners, regardless of whether the fasteners are a minor component of a unique item of non-subject merchandise.

The class or kind of merchandise at issue in these investigations is certain standard steel fasteners, not DIY kits, furniture, sports equipment, toys, electronics or other products that might include steel fasteners for assembly. The latter are unique products with distinctly different physical characteristics uses, customer expectations, channels of distribution and marketing. Sales of these products, regardless of whether they are imported fully or partially assembled (with or without fasteners); therefore do not compete with petitioner’s sales of steel fasteners. Accordingly, consistent with the statute and past cases, such unique items of non-subject merchandise that contain steel fasteners as a minor component should fall outside the class or kind of merchandise subject to the investigation. We therefore ask Commerce to amend the scope language accordingly. Commerce could, for example, simply delete the language in the second quote above.<sup>8</sup> We would, however, also urge Commerce to consider including some discussion of the applicability of its standard analysis

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<sup>7</sup> See, e.g., *Memorandum from Demetri Kalogeropoulos, Certain Lined Paper Products from the People’s Republic of China – Davis Group of Companies Corp. Scope Ruling*, February 21, 2008; See, e.g., *Memorandum from Wendy Frankel, Final Scope Ruling – Antidumping Duty Order on Certain Lined Paper Products from the People’s Republic of China, Request by Avenues in Leather*, May 8, 2007; *Memorandum from Wendy Frankel, Final Scope Ruling - Antidumping Duty Order on Certain Cased Pencils from the People’s Republic of China - Request by Fiskar Brands, Inc.*(June3, 2005); *Memorandum from Holly Kuga, Final Scope Ruling – Antidumping Duty Order on Certain Cased Pencils from the People’s Republic of China – Request by Creative Designs International Ltd.*, September 29, 2004.

<sup>8</sup> Commerce allowed twenty days from date the notice of initiation was signed (October 13, 2009) for scope comments. The notices of initiation were not published in the Federal Register, however, until nine days later (October 22, 2009), at which point almost half the comment period had elapsed. Thus, while it may be possible to amend rather than delete this proposed scope language, we have not had sufficient time to consult with RILA members regarding possible amendments.

regarding products including both subject and non-subject merchandise to provide further guidance.

Although the legal issues outlined above are sufficient to warrant amending the proposed scope language, we also note that an amendment is necessary to avoid untenable administrative burdens on Commerce, CBP and importers. As discussed above, steel fasteners produced in China or Taiwan may be included as a minor component in many products imported into the United States from many different countries, not just China or Taiwan. There is no reasonable means for CBP to apply an order on steel fasteners from China or Taiwan to a broad array of other products, either from the subject countries or third countries. It would also create an unreasonable and unnecessary burden on importers to obtain detailed parts lists (with country of origin) for literally thousands of products to determine whether the products contained (attached or unattached) steel fasteners from China or Taiwan. There is no basis to justify such an unreasonable burden on trade.

We appreciate the opportunity to provide these comments and are willing to consult further with Commerce on an appropriate amendment to the scope language. We ask that Commerce move expeditiously to resolve this issue prior to completing respondent selection to ensure that the agency is in a position to develop a record that is appropriately focused on the subject merchandise.

Respectfully submitted,

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Stephanie Lester  
Vice President, International