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PUBLIC DOCUMENT

January 15, 2002

FILED ELECTRONICALLY

Ms. Gloria Blue
Executive Secretary, Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Certain Steel – Response to Comments on TPSC Evaluation of Options for Action Under Section 203 With Respect to Carbon Steel Butt-Weld Pipe Fittings

Dear Ms. Blue:

On behalf of Mills Iron Works, Inc., Trinity Fitting Group, Inc., and Tube Forgings of America, Inc., U.S. producers of carbon steel butt-weld pipe fittings, and pursuant to the Trade Policy Staff Committee's notice requesting comments,[1] and November 29, 2001 and December 28, 2001 notices amending its filing requirements and deadlines,[2] enclosed please find these firms' response to the written comments of certain other parties on the actions the President should take under section 203 of the Trade Act

[1] *Trade Policy Staff Committee; Public Comments on Potential Action Under Section 203 of the Trade Act of 1974 With Regard to Imports of Certain Steel*, 66 Fed. Reg. 54321 (October 26, 2001). One of the steel products covered by the Trade Policy Staff Committee's *Federal Register* notice is carbon and alloy flanges, fittings, and tool joints (steel product 6), which encompasses carbon steel butt-weld pipe fittings.

[2] *Trade Policy Staff Committee: Extension of Deadline for the Submission of Responses to Requests for the Exclusion of Specific Products From Any Action Under Section 203 of the Trade Act of 1974 With Regard to Imports of Certain Steel and Modifications to the Earlier Instructions for the Submission of Written Comments*, 66 Fed. Reg. 59599 (November 29, 2001) and *Trade Policy Staff Committee: Extension of Deadline for the Submission of Written Comments on What Action, If Any, the President Should Take Under Section 203 of the Trade Act of 1974 With Regard to Imports of Certain Steel and Responses to Such Comments,* 66 Fed Reg. 67349 (December 28, 2001).

in response to the U.S. International Trade Commission's affirmative determination of serious injury to the domestic industry producing carbon steel butt-weld pipe fittings.[3]

Please feel free to contact the undersigned should you have any questions.

Respectfully submitted,

/s/ Cheryl Ellsworth

Cheryl Ellsworth
John B. Totaro, Jr.

Counsel for Mills Iron Works, Inc.,
Trinity Fitting Group, Inc., and
Tube Forgings of America, Inc.

[3] Carbon steel butt-weld pipe fittings (classified within HTSUS subheadings 7307.93.3000 and 7307.93.9030) were included within the Commission's Product Group 22, carbon steel fittings, flanges, and tool joints.

BEFORE THE
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
TRADE POLICY STAFF COMMITTEE

PUBLIC DOCUMENT

RESPONSE TO COMMENTS ON TPSC EVALUATION OF OPTIONS FOR ACTION UNDER SECTION 203 WITH RESPECT TO CARBON STEEL BUTT-WELD PIPE FITTINGS

FILED ON BEHALF OF
MILLS IRON WORKS, INC.,
TRINITY FITTING GROUP, INC., AND
TUBE FORGINGS OF AMERICA, INC.

STEEL PRODUCT 6:
CARBON AND ALLOY STEEL
FLANGES, FITTINGS, AND TOOL JOINTS

January 15, 2002

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EXECUTIVE SUMMARY

In their January 4, 2002 remedy comments to the TPSC, Mills Iron Works, Inc., Trinity Fitting Group, Inc., and Tube Forgings of America, Inc., integrated producers of carbon steel butt-weld pipe fittings ("BWPF"), argued that the President should implement a product-specific remedy that combines a quota to address the surge in BWPF import volumes, and a tariff increase to address the severe underselling by imported BWPF, and that applies equally to imports from Mexico and Canada. Certain other parties filed written comments on remedy that challenge various elements of the BWPF producers' remedy proposal. The TPSC should disregard these other parties' comments based on the following information, discussed in detail herein:

- imports of BWPF from Mexico should be included in any remedy imposed because the International Trade Commission ("Commission") determined that they account for a "substantial share" of total imports and "contribute importantly" to the serious injury to the domestic industry producing these articles;

- the antidumping duty orders on BWPF are limited in scope and did not prevent serious injury to the domestic industry;

- the Commission found that average unit value ("AUV") data for the heterogeneous fittings product grouping are unreliable – a fact not accounted for by the Commission's economists – and, therefore, the TPSC should not rely on economic modeling based on these AUV data to evaluate remedy options. Fortunately, the record also contains product-specific pricing data for BWPF; the Commission relied on these data, which demonstrate margins of underselling by imports of up to 36.5 percent, in making its serious injury determination on fittings; and

- it would be impossible to administer an exclusion for unfinished BWPF ("fitting forgings") in a manner that would not create substantial opportunities for circumvention of a remedy on BWPF.

I. Introductory Statement

On October 22, 2001, the International Trade Commission ("Commission") made a unanimous affirmative determination that imports of carbon steel fittings, flanges, and tool joints ("fittings") are a substantial cause of serious injury to the domestic industry producing those articles.[1] On October 26, 2001, the USTR's Trade Policy Staff Committee ("TPSC") published a notice requesting comments on issues related to the recommendation that the interagency group makes as to what action the President should take under 19 U.S.C. §2253(a) to facilitate efforts by the domestic industries producing certain steel products to make a positive adjustment to import competition and provide greater economic benefits than costs.[2] One of the steel products identified in the TPSC's *Federal Register* notice was carbon and alloy flanges, fittings, and tool joints, identified as steel product 6.

These comments are filed on behalf of Mills Iron Works, Inc. ("Mills"), Trinity Fitting Group, Inc. ("Trinity"), and Tube Forgings of America, Inc. ("TFA"), integrated producers of carbon steel butt-weld pipe fittings ("BWPF"), an article within the carbon and alloy flanges, fittings, and tool joints product grouping.[3] Mills, Trinity, and TFA

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[1] The Commission defined this product grouping, *i.e.*, Product Group 22, as follows: "{c}arbon and alloy fittings and flanges ("fittings") are generally used for connecting the bores of two or more pipes or tubes together, or for connecting a pipe or tube to some other apparatus, or for closing the tube aperture. This category also includes tool joints for welding onto lengths of unfinished drill pipe to produce finished drill pipe." *See Steel*, USITC Pub. 3479 (December 2001), Volume II: Information Obtained in the Investigation (Carbon and Alloy Steel Flat, Long, and Tubular Products) ("Steel Determination Vol. II") at TUBULAR-2.

[2] *Trade Policy Staff Committee; Public Comments on Potential Action Under Section 203 of the Trade Act of 1974 With Regard to Imports of Certain Steel*, 66 Fed. Reg. 54321 (October 26, 2001) ("TPSC Comments Notice").

[3] BWPF includes finished and unfinished carbon steel BWPF, both those having an inside diameter not exceeding 360 millimeters classified in HTSUS subheading 7307.93.3000 ("small diameter"), and those with an inside diameter larger than 360 millimeters classified in HTSUS subheading 7307.93.9030 ("large

welcome this opportunity to respond to the comments filed by certain other parties on January 4, 2002 regarding the actions the President should take under 19 U.S.C. §2253(a).

These BWPF producers have submitted comments to the TPSC on adjustment actions they intend to take if effective remedies are implemented (November 5, 2001), in objection to the exclusion request of Weldbend Corporation on "fitting forgings" (November 27, 2001 and December 5, 2001), and on the actions the President should take under 19 U.S.C. §2253(a) (January 4, 2002). In these latter comments, Mills, Trinity, and TFA argued that, based on the injury data for the fittings product category, and the data on BWPF imports in particular, the TPSC should recommend that the President implement a product-specific remedy that combines a quota to address soaring BWPF import volumes (beginning at an average of 1993-1995 volumes) and a tariff increase to address the documented levels of underselling by imported BWPF (beginning at 37 percent), and that applies equally to imports from Mexico and Canada. In the instant comments, Mills, Trinity, and TFA address certain comments by other parties to this investigation that challenge our remedy proposal. As demonstrated herein, these challenges are without merit.

II. Imports of Butt-Weld Pipe Fittings from Mexico Account for a "Substantial Share" of Total Imports and "Contribute Importantly" to the Serious Injury to the Domestic Industry Producing these Articles

The Commission made affirmative determinations pursuant to section 311(a) of the North American Free Trade Agreement ("NAFTA") Implementation Act, 19 U.S.C. §3371(a), that imports of carbon and alloy steel fittings from both Mexico and Canada,

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diameter"). Products classified under subheadings 7307.93.3000 and 7307.93.9030 were included within the Commission's determination of serious injury *See* Vol II at TUBULAR-2.

considered individually, account for a substantial share of total imports, and contribute importantly to the serious injury caused by imports.[4] In determining whether to implement a remedy with respect to imports from a NAFTA country, the President is required to make an independent determination of whether those imports (1) account for a substantial share of total imports, and (2) contribute importantly to the serious injury found by the Commission.[5]

Two Mexican producers of articles within the fittings product grouping argued unsuccessfully before the Commission that Mexican fittings did not account for a "substantial share" of total imports, and did not "contribute importantly" to the serious injury suffered by domestic fittings producers. These producers, Empresas Riga, S.A. de C.V. ("Riga") and Niples del Norte, S.A. de C.V. ("NDN") (collectively, "Mexican Producers") have now presented their arguments to the TPSC, in hopes that the President will exclude the injurious imports of Mexican fittings from his remedy actions.[6] The facts with respect to the fittings product grouping as a whole, and with respect to the small-diameter BWPF for which Mills, Trinity, and TFA have proposed remedy measures, establish a solid basis for an affirmative determination by the President.

Section 311(b) of the NAFTA Implementation Act provides guidance for <u>the Commission</u> to make its determination of whether imports from a NAFTA country account for a "substantial share" of total imports, and were an "important cause" of the

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[4] Steel Determination at C-1.

[5] 19 U.S.C. §3372(a).

[6] *Written Comments of Empresas Riga, S.A. de C.V. ("Riga") and Niples del Norte, S.A. de C.V. ("NDN") Regarding Carbon and Alloy Flanges & Fittings; Potential Action Under Section 312 of the NAFTA Implementation Act and Section 203 of the Trade Act of 1974 with Respect to Imports of Certain Steel* (January 4, 2002) ("Mexican Fittings Remedy Comments").

serious injury suffered by the U.S. industry.[7] The statute's direction that the Commission consider "such factors as" those specified, and its description of what factors will "normally" lead to a finding that imports "contributed importantly" to injury, provide the Commission with the discretion to consider all relevant information in this context.[8] Contrary to the Mexican Producers' assertion,[9] this section does not define factors that the President is to consider in making his determination under 19 U.S.C. §3372(a). The statute does not provide similar guidelines for the President's analysis of imports from Mexico and Canada. While the 19 U.S.C. §3371(b) factors provide a useful framework, the President has even greater discretion than the Commission to consider other factors in making his determination regarding the impact of these imports.

Based on the following information, the President should make an affirmative determination under 19 U.S.C.§3372(a) that imports from Mexico of fittings generally, and BWPF specifically, account for a substantial share of total imports from Mexico and contributed importantly to the serious injury to the domestic fittings industry determined by the Commission:

A. Record Evidence Demonstrates that Mexican Imports of Both Fittings and BWPF Account for a Substantial Share of Total Imports

- Mexico was the largest supplier of imported fittings in 1998 and 2000, and the second largest in 1999 and interim (January-June) 2001. Imports from Mexico

[7] *See* 19 U.S.C. 3371(b).

[8] *Id.*

[9] Mexican Fittings Remedy Comments at 3.

accounted for between 14 and 24 percent of total imports in each of the last three years.[10]

- Mexico was the largest supplier of imported small diameter BWPF in 1998 and interim 2001, and the second largest supplier in 1999 and 2000; Mexican imports of small diameter BWPF accounted for between 17 and 34 percent of total imports in each of the past three years.[11]

B. Record Evidence Demonstrates that Mexican Imports of Both Fittings and BWPF Contributed Importantly to the Serious Injury Experienced by Domestic Producers

- Mexican fittings imports compete directly with U.S. products in all markets. For example, Riga, to the best of our knowledge the sole Mexican exporter of BWPF, was added recently to certain BWPF end-users' "approved manufacturer" lists. In addition, for many years Riga has successfully competed with U.S. producers for BWPF sales to end-users that do not maintain "approved manufacturer" lists.
- From 1997 to 1998, Mexican producers demonstrated their ability to increase their already substantial shipments to the United States by 50 percent from one year to the next.[12] This dramatic and repeatable increase is evidence of the serious injury and imminent threat of further injury posed by Mexican imports.
- In recent years, Mexican imports of small diameter BWPF have increased at a faster rate than imports from all countries: total imports increased by 28 percent

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[10] Steel Determination Vol. II at TUBULAR-10, Table TUBULAR-8.

[11] *Comments on TPSC Evaluation of Options for Action Under Section 203 with Respect to Carbon Steel Butt-Weld Pipe Fittings Filed on Behalf of Mills Iron Works Inc., Trinity Fitting Group, Inc., and Tube Forgings of America, Inc.* (January 4, 2002) ("BWPF Remedy Comments") at Exhibit 1.

[12] Steel Determination Vol. II at TUBULAR-10, Table TUBULAR-8.

from 1999 to 2000, while Mexican imports increased by 63 percent; total imports increased by 80 percent from January-June 2000 to the same period of 2001, Mexican imports increased by 134 percent comparing the same periods.[13]

- In the months of 2001 following the period analyzed by the Commission, the surge in small diameter BWPF has continued: imports from all sources were 59 percent higher in January-September 2001 than in the same period of 2000, while imports of small diameter BWPF from Mexico increased by 105 percent over the same period.[14]
- The share of total imports of small diameter BWPF accounted for by Mexican imports is increasing as well: Mexican imports represented 17 percent of total imports in 1999, and 22 percent in 2000; Mexican imports rose from 20 to 26 percent of total imports comparing interim 2000 and interim 2001, and rose from 22 to 29 percent comparing the first three quarters of 2000 and the same period of 2001.[15]
- Total imports of small diameter BWPF increased by 7.9 million kilograms between June and September 2001; imports from Mexico increased by 2.8 million kilograms in this quarter, accounting for 35 percent of the total increase.[16]
- Mexican imports of small diameter BWPF in the first nine months of 2001 reached a volume (6.6 million kilograms) 14 percent higher than the highest full

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13 BWPF Remedy Comments at Exhibit 1.

14 *Id.*

15 *Id.*

16 *Id.*

year volume of imports for Mexico examined by the Commission (5.7 million kilograms in 1998).[17]

- Imports from Mexico of a representative small diameter BWPF product undersold the domestically-produced product in 100 percent of the quarterly price comparisons recorded by the Commission by "substantial and increasing margins" that reached as high as 36.5 percent;[18] the Commission observed that "[t]he weighted average prices of Mexican fittings collapsed in 2000 and interim 2001" and that during this period "margins of underselling more than doubled."[19]

Based on the recent and continuing surge of BWPF imported from Mexico, and the devastating underselling by these imports, we urge the President to disregard the Mexican Producers' arguments and implement an effective remedy for domestic BWPF producers. Because of the substantial contribution that Mexican imports have made to the serious injury suffered by these producers, an effective remedy action must apply equally to BWPF imports from Mexico.

III. Antidumping Duty Orders on BWPF Are Limited In Scope and Did Not Prevent Serious Injury to the Domestic Industry

The comments on remedy filed by Awaji Sangyo (Thailand) Co., Ltd. ("AST"), a Thai producer of carbon and alloy steel BWPF, contain numerous inaccurate and misleading statements regarding the antidumping duty ("AD") orders in effect with

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[17] *Id.*

[18] Steel Determination at 180 and Steel Determination Vol. II at TUBULAR-75, Table TUBULAR-67.

[19] Steel Determination at 180.

respect to certain BWPF.[20] AST's central argument appears to be that because there are AD orders currently in place with respect to BWPF, and because domestic producers nonetheless suffered injury from imported BWPF, a duty increase with respect to all imports of BWPF would be an ineffective remedy in the instant investigation. A brief review of the facts concerning these orders follows, and demonstrates the absurdity of AST's argument.

A. The Antidumping Duty Orders Are Limited In Scope and Do Not Affect Most Current Major Exporters

As an initial matter, there are five AD orders currently in place with respect to BWPF. These orders apply to imports from Brazil, China, Japan, Taiwan, and certain imports from Thailand. Notably, AST is not subject to the AD order on small diameter BWPF from Thailand.[21] Moreover, only small diameter BWPF is within the scope of these orders.

In addition, AST states that "three of the 10 largest exporting countries are already covered by substantial tariffs [*i.e.*, the AD orders]." This statement is both incorrect and misleading. First, only two of the 10 largest exporting countries for small diameter BWPF in 2000 were affected by AD orders: Thailand and Taiwan.[22] Moreover, as stated above, the only Thai producer/exporter not subject to the BWPF AD order is AST. The Commission noted in its December 1999 sunset review determination on this

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[20] *See* letter to Gloria Blue from Georgetown Economic Services, LLC (January 4, 2002) ("AST Remedy Comments").

[21] *See Final Results of Expedited Sunset Reviews: Certain Carbon Steel Butt-Weld Pipe Fittings From Brazil, Taiwan, Japan, Thailand, and The People's Republic of China*, 64 Fed. Reg. 67847, 67848 and n.7.

[22] BWPF Remedy Comments at Exhibit 1. Japan, the third country cited by AST in this context, was the 14th largest exporting country in 2000, accounting for less that 0.5 percent of total imports of small diameter BWPF in that year. *Id.*

order that imports from Thai producers other than AST were "minimal," and that [t]he great majority of imports from Thailand are believed to be manufactured and/or exported by non-subject AST."[23] Thus, it is unlikely than any significant volume of small diameter BWPF imported from Thailand is subject to antidumping duties.[24]

As for imports from Taiwan, the "average" antidumping duty of 49.46 percent calculated by AST has never applied to the only two Taiwanese producer/exports that participated in the antidumping investigations, C.M. and Rigid. In fact, the antidumping duties applicable to these companies has never exceeded 8.57 percent, and thus we may estimate conservatively that these producers account for a substantial proportion of small diameter BWPF exports to the United States from Taiwan.[25]

Apart from Thailand and Taiwan, whose U.S. exports of BWPF are affected to a limited degree by the orders, eight of the 10 largest exporting countries in 2000, and thus the imports that made a substantial contribution to the serious injury suffered by domestic BWPF producers, are not subject to the orders. For example, imports from Mexico accounted for the second largest quantity of imports in 2000, 22 percent of total imports, and undersold domestic BWPF by substantial and increasing margins of up to 36.5 percent.[26] In addition, based on the huge increase in and volume of imports from

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[23] *Carbon Steel Butt-Weld Pipe Fittings from Brazil, China, Japan, Taiwan, and Thailand*, USITC Pub. 3263 (December 1999) ("BWPF Sunset Review") at 15 and I-18 (Table I-3, n.3).

[24] Consequently, and given the huge volumes of Thai BWPF that have flooded the U.S. market in recent years (Thai imports represented 26 percent of total imports of small diameter BWPF between 1999 and June 2001, as well as 22 percent of total imports of large diameter BWPF during the same period), it is understandable that AST has launched an 11th hour attempt to shield itself from remedy actions imposed as a result of this investigation. It is less clear why AST elected not to participate actively in the Commission's investigation.

[25] BWPF Sunset Review at I-5, n.11.

[26] Steel Determination at 180, and Steel Determination Vol. II at TUBULAR-61 Table TUBULAR-67.

Malaysia between 1999 and June 2001, we recommended that the President incorporate a country-specific volume cap for Malaysia into his remedy actions with respect to small diameter BWPF.[27] The surge of imports from Malaysia continued in the third quarter of 2001, increasing by 1.2 million kilograms, or 60 percent, comparing the January-June 2001 and January-September 2001 volumes.[28]

Thus, it is not surprising that the Commission viewed the AD orders on BWPF as having had a negligible impact on the import volumes and domestic industry indicators it examined in this investigation. The Commission determined that "[w]hile these orders were intended to offset dumping margins on sales of these imports, they did not preclude the increase in imports that caused serious injury.[29]

B. The Shifting Pattern of Imports in the Wake of the Antidumping Duty Orders on BWPF Highlights the Positive Effect that Global Remedy Actions Will Have on the Domestic BWPF Industry

AST points to the number of antidumping cases filed by U.S. producers of small-diameter BWPF over the last 15 years as evidence that antidumping duties, and therefore tariff increases, are an ineffective remedy for domestic BWPF producers. On the contrary, the fact that these producers have been forced to continue to file AD petitions to keep up with shifts in BWPF import sources underscores the need for remedies with a global scope to provide an opportunity for this industry to adjust to import competition.

In its 1999 Sunset Review of small diameter BWPF, the Commission discussed the positive effects experienced by domestic producers immediately after the imposition

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27 *See* BWPF Remedy Comments at Exhibits 1 and 2.

28 *Id.* at Exhibit 1.

29 Steel Determination at 389.

of antidumping duty orders. The Commission noted that the domestic industry's net operating loss in 1985 had improved to an operating profit in 1989 "after issuance of the orders on Brazil, Japan and Taiwan but before the huge increases in capacity in China and Thailand that preceded the Commission's determinations concerning those countries [in June 1992]."[30] However, the Commission also observed that after the initial positive impact of the 1992 orders on China and Thailand, the domestic industry experienced downward trends in key performance indicators that rendered it vulnerable to material injury.[31] These included declines in production and domestic shipments, and a contraction in the number of domestic producers from twelve in 1986 to five in 1999.[32] Thus, any initial benefit of the imposition of AD orders to the general health of the BWPF industry was temporary, lasting only until other foreign producers stepped in to reclaim and expand the market share ceded by subject imports.

The Commission determined in December 1999 "that the industry is in a 'weakened state,' as contemplated by the vulnerability criterion of the statute."[33] As a result, it concluded that "if the antidumping duty orders were revoked, subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time."[34] Thus, the Commission determined that while the orders

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[30] *Id*. at 17-18 (citations omitted, emphasis added). *See also id.* at I-26 n.57 ("Weldbend states that a number of its representatives visited butt-weld pipe fitting production facilities in Taiwan and Thailand during late 1998 and found that some of the Taiwan and Thai producers appear to have 'increased their productive capacities in recent years.'"

[31] *Id.* at 18.

[32] *Id.*

[33] *Id.* (citations omitted, emphasis added).

[34] Id. (footnote omitted).

do shield the domestic BWPF industry from the "significant adverse impact" that would result from increased subject imports, they did not prevent the deterioration of the industry's financial performance during the period they were in place.

In light of the Commission's assessment of the effect of the orders, it is interesting to return to AST's comments on remedy, in which AST argues that

> [i]f tariffs were necessary in order to provide a stable and predictable market for the U.S. industry while it implements its adjustment plans, as parties representing the domestic industry contend, then the domestic industry would have witnessed increased profitability an sales in the past 15 years given the substantial antidumping margins in place on imports from most major importing countries. Instead, parties representing the domestic industry have seen declining sales and profits, despite the protection from high tariffs, demonstrating that tariff remedies are ineffective.[35]

As demonstrated in the previous section of these comments, substantial antidumping duties were <u>not</u> in effect on imports from most major importing countries. However, by ignoring the limited scope of the orders, AST unintentionally highlights the damaging effect that non-subject imports have had on the domestic BWPF industry. If the President were to implement substantial tariffs that actually <u>did</u> apply to imports from the major exporting countries, domestic producers would be able to implement their adjustment plans, and the industry would be able to begin to regain the market share and profit levels lost due to imports.

C. <u>Subject BWPF Production Has Migrated to Non-Subject Countries</u>

In addition to ignoring the effect on the domestic industry of increased BWPF imports from non-subject countries, Awaji's arguments ignore the ability and

[35] AST Remedy Comments at 5-6.

demonstrated capacity of foreign BWPF manufacturers that are subject to the AD orders to shift production to non-subject countries.

AST conveniently refrained from mentioning its own contribution to such a production shift. We refer to the Department of Commerce's determination that AST had circumvented the AD order on BWPF from China by purchasing unfinished BWPF produced in China, finishing them in Thailand, and then exporting the finished BWPF to the United States as products of Thailand.[36] As stated *supra*, AST is not covered by the order on BWPF from Thailand. As a result of this determination, Commerce instituted a practice of considering imports of BWPF from Thailand to be within the AD order on BWPF from China, unless those imports are accompanied by a certificate stating that such fittings have not been produced from unfinished Chinese BWPF.

The AD orders on BWPF have also been undermined by subject producers establishing new BWPF production facilities in non-subject countries. According to industry sources, Benkan, whose exports from Japan (Nippon Benkan) and Thailand (Thai Benkan) remain subject to antidumping duty orders imposed in 1987 and 1992, respectively, has opened a plant in Malaysia that manufactures carbon steel BWPF. This migration of production in reaction to the dumping margins imposed on Benkan's manufacturing plants in Japan and, subsequently, Thailand has had a damaging effect on the domestic BWPF producers' ability to compete in the U.S. market. Indeed, as discussed above, imports to the United States of carbon steel BWPF from Malaysia are substantial and have been rising rapidly over the past several years, particularly in 2001.

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[36] *See Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China; Affirmative Final Determination of Circumvention of Antidumping Duty Order*, (March 31, 1994) and *Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China; Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order*, 59 Fed. Reg. 62 (January 3, 1994).

Also, as Don Graham, the President of Trinity, testified at the Commission's injury hearing on October 1, 2001, C.M. Pipe Fittings moved its BWPF production equipment from Taiwan, where it is subject to a dumping order, to Vietnam, where it is not. As the TPSC is aware, imports from Vietnam are, as of late 2001, subject to normal trade relations. Thus, without effective import relief, these imports will soon add to the growing tide of imported BWPF that are driving U.S. producers out of the market.

D. The Tariff Remedies Proposed By the Domestic BWPF Producers Are Distinguishable in Several Respect From the Antidumping Duties in Effect for Some Imported BWPF

AST states that after the Department of Commerce imposed antidumping duties "in the 100 percent range" on imports of small diameter BWPF from China in 1992, Chinese imports declined dramatically, and have not recovered. AST concludes from this fact that

> [t]he tariff remedy proposed by domestic parties, thus, is excessive and would only serve to unneccessarily keep fairly priced imports out of the U.S. market, thus exacerbating a short supply situation.[37]

First, the domestic producers have not proposed that the President implement tariff increases "in the 100 percent range," nor would the President be permitted to implement tariffs at that level. In fact, the 37 percent tariff increase proposed by Mills, Trinity, and TFA is well below the maximum tariff increase of 50 percent established in 19 U.S.C. §2253(e)(2). Moreover, the Department's antidumping duties were calculated from sales and production cost data to remedy the effect of unfairly priced imports without regard to the effect of these duties on the volume of imports. On the other hand, the tariff increase we propose is derived from data on margins of underselling, but it is

[37] AST Remedy Comments at 5.

specifically targeted to provide temporary relief from increased volumes of BWPF imports. A 37 percent duty, in combination with a quota imposed at a representative pre-surge, pre-injury level, will still permit substantial volumes of imports to enter the U.S. and compete with U.S. BWPF. The competition in this industry, where interchangeability between imports and domestic products is high, price is a key determinant for purchasers, and underselling by imports has been ubiquitous, substantial, and increasing, will simply be on a more level playing field.[38] While it will not eliminate import competition, a 37 percent duty will facilitate the domestic producers' implementation of their adjustment plans.

The temporary nature of our proposed remedy is apparently lost on AST as well. Not only will imposition of a 37 percent duty permit continued competition between domestic and imported BWPF in the first year the remedy is implemented, but that duty would be phased down in the second, third and fourth year, after which it would be eliminated. This phase-down was an explicit component of the remedy proposed by Mills, Trinity, and TFA, and it is a requirement for a remedy implemented by the President.[39]

Furthermore, contrary to AST's assertion, the antidumping duties in effect with respect to certain imports of small diameter BWPF have not created a short supply situation in the U.S. market; similarly, the remedy proposed by Mills, Trinity, and TFA will not create a short-supply situation. The data collected by the Commission demonstrates that the U.S. market is now burdened with an <u>oversupply</u> of fittings.

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[38] *See* Steel Determination at 176 and n.1091.

[39] *See* 19 U.S.C. §2253(e)(5).

As discussed earlier in these comments and in our January 4, 2002 comments on remedy to the TPSC, the volume of fittings imports has increased tremendously over the past several years, as has import market share, with particularly acute increases in BWPF volume continuing through 2001. Imports of fittings increased by 31 percent between 1996 and 2000, and by 32 percent comparing January-June 2000 and January-June 2001; imports of small-diameter BWPF increased by 59 percent comparing January-September 2000 and January-September 2001.[40] The increase in imports has far outpaced the increase in domestic demand for fittings, which rose by only 10 percent from 1996 to 2000, and by 10 percent from interim 2000 to interim 2001.[41]

Another reflection of the current oversupply situation is that the volume of U.S. importers' inventories of fittings increased by 32 percent from 1996 to 2000, and by a further 20 percent from January-June 2000 to January-June 2001.[42] In addition, the ratio of these importers' inventories to their U.S. shipments of imported fittings was 38.5 percent in 2000.[43] This figure is significant on it own, and also is evidence of the unique conditions of oversupply for fittings not present with respect to other tubular products: the ratio of importers' inventories to U.S. shipments for the other four tubular products categories examined by the Commission ranged from 1.4 and 5.1 percent in the same

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[40] *See* Steel Determination Vol. II at TUBULAR-10, Table TUBULAR-8, TUBULAR-38, Table TUBULAR-45 and BWPF Remedy Comments at 7-11 and Exhibit 1.

[41] Steel Determination Vol. II at TUBULAR-38, Table TUBULAR-45.

[42] *Id.* at TUBULAR-35, Table TUBULAR-39.

[43] *Id.*

year.[44] The volumes of inventoried fittings imports are high and increasing despite the concurrent increases in U.S. consumption of these articles.[45]

U.S. producers' inventories are heavy as well. The Commission observed that U.S. fittings producers' end-of-period inventories as a percentage of total shipments was 30.9 percent in 2000, a much higher ratio than for producers of other tubular products, which ranged between 11.7 percent and 16.7 percent.[46] In addition to reflecting the current oversupply situation in the U.S. market, the domestic fittings producers' substantial inventory levels, combined with their low capacity utilization percentage, contribute to these producers' high level of responsiveness to a reduction in import volumes that may result from the imposition of remedy measures on imported BWPF.[47]

E. AST's Proposal of an Eight Percent Tariff Increase is a Wholly Inadequate Remedy for BWPF Producers

As we discussed at length in our remedy comments, the tariff increase beginning at 13 percent recommended by certain Commissioners would be wholly inadequate to remedy the serious injury experienced by domestic producers of BWPF due to imports.[48] AST argues that if a tariff remedy is imposed with respect to BWPF, the tariff increase should not exceed 8 percent.[49] In reaching this recommendation, AST makes several inaccurate arguments regarding the tariff increase proposed by Mills, Trinity, and TFA.

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44 *Id.*

45 *Id.* at TUBULAR-38, Table TUBULAR-45.

46 *Id.* at TUBULAR-40, Table TUBULAR-46.

47 *See id.* at TUBULAR-39-TUBULAR-40 and Table TUBULAR-46.

48 *See* BWPF Remedy Comments at 17-24.

49 AST Remedy Comments at 7-8.

Specifically, AST argues that "the underselling margins derived from data for product 22 are not a representative basis for determining tariffs, in this widely heterogeneous product group."[50] However, Mills, Trinity, and TFA used the margins of underselling as the basis for their proposed tariff increase precisely because the BWPF product for which the Commission collected pricing data was representative of all BWPF. The Commission's analysis is consistent with this conclusion.

With respect to the larger Tubular Products product category, the Commission stated that some of the products for which it collected pricing data represented low volumes compared to the entire product grouping, but concluded that "low volumes do not mean that the products in question are not representative of the larger category as a whole."[51] However, with respect to the product it had selected from Product Group 22, a 6-inch (small diameter) BWPF, the Commission stated that "[p]ricing product 22 is a <u>high-volume</u> butt-weld pipe fitting."[52] Beyond the mere fact that the Commission selected this BWPF over all other "flanges, fittings, and tool joints," the Commission's statement regarding relative volume provides further evidence that this product is representative of the larger "fittings" product grouping. Moreover, in the context of its affirmative injury finding on the entire fittings grouping, the Commission found "the product specific [*i.e.*, small diameter BWPF] evidence of underselling to be significant."[53]

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[50] *Id.* at n.9.

[51] Steel Determination Vol. II at TUBULAR-54.

[52] *Id.* (emphasis added).

[53] Steel Determination at 176.

Mills, Trinity, and TFA, however, can only speak to their own experience in the market for BWPF. These producers have argued and testified throughout this investigation that the margins of underselling by imports recorded by the Commission with respect to this one BWPF product is representative of the degree of underselling that is occurring in the U.S. market with respect to all BWPF.

F. The Commission Found That Average Unit Value Data For the Heterogeneous Fittings Product Grouping Are Unreliable – A Fact Overlooked by AST and Not Accounted For By the Commission's Economists

1. The Commission Evaluated Both AUV Data and Product-Specific Pricing Data and Found That the AUV Data Were Unreliable and That the Product-Specific Data Were A Significant Factor in Its Injury Determination

AST contends in its comments on remedy that "[i]f recommending a tariff on carbon fittings, the USTR should examine average unit value ("AUV") data covering all products of carbon fittings, rather than the small percentage of the market covered by data for the Commission's pricing descriptor 22."[54] However, AST's proposal ignores the Commission's determination that AUV data on fittings are unreliable. In reaching its injury determination on the fittings product grouping, the Commission examined both AUV data for the product grouping and pricing data collected for a representative BWPF product. With respect to the product-specific pricing data, the Commission found that:

- imports from non-NAFTA sources and Mexico "undersold the domestic product in each quarter for which data were provided",
- non-NAFTA imports of this BWPF "have been priced at more than 20 percent below the domestic product since the fourth quarter",

[54] AST Remedy Comments at 8 (emphasis in original).

- imports of this product "from Mexico undersold by domestic fittings by substantial and increasing margins", and
- during 2000 and interim 2001, Mexican prices "collapsed" and margins of underselling more than doubled.[55]

In contrast, the Commission found that AUVs based on import data for the entire product grouping were generally higher than AUVs based on domestic shipments of all fittings products.[56] But the Commission also expressed its skepticism of the reliability of these AUV data due to the heterogeneous nature of the fittings product grouping: "[w]e are cautious of placing undue weight on AUV information, as it may be influenced by issues of product mix."[57] Furthermore, the Commission stated that

> [p]urchasers of tubular products indicated that price was a key factor in their purchasing decisions behind only quality. Moreover, nearly all purchasers indicated that imported and domestic fittings and flanges made to the same grade and specification may be used in the same applications. We find that such broad interchangeability indicates that price plays an important role in the market. In light of these facts, we find the product-specific evidence of underselling to be significant.[58]

Thus, the Commission determined that price is a key demand factor with respect to the fittings product grouping as a whole, and that the proper basis for examining the price element of the injury analysis for this product grouping is the product-specific pricing data on a representative BWPF product, not AUV data for the entire grouping.

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[55] Steel Determination at 176 and 180. There were no imports of this BWPF product from Canada reported to the Commission. *Id.* at 176.

[56] Steel Determination at 176.

[57] Steel Determination at n.1087.

[58] *Id.* at 176 (footnotes omitted) (emphasis added).

Given this background, the TPSC should disregard AST's suggestion to evaluate remedy proposals in light of AUV data. More importantly, the TPSC should keep in mind the Commission's conclusion that AUV data are unreliable when evaluating the economic analysis of remedy proposals provided by the Commission staff.

2. The Commission's Economic Staff Used AUV Data, Not Product-Specific Pricing Data, to Evaluate Proposed Remedy Actions for Fittings

The Commission's economic staff produced a memorandum during the remedy phase of the investigation, EC-Y-046, which included an economic analysis of certain remedy options.[59] The Commission provided this same memorandum to the TPSC in response to the TPSC's request for additional information regarding the effects of "each remedy proposal proposed by an interested party".[60] With respect to the fittings product grouping, the staff listed the various remedy proposals of interested parties, including the proposal of Mills, Trinity, and TFA for a remedy on BWPF imports consisting of a tariff increase beginning at 37 percent and a quota beginning at an average of 1993-1995 volumes.[61] It then provided an economic analysis of the effect "on the fittings and flanges industries" of tariff increases between 10 and 55 percent, in 5 percent increments.[62]

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[59] *See Investigation No. TA-201-73: STEEL—Remedy Memorandum*, EC-Y-046 (November 21, 2001) (Public Version) ("EC-Y-046")

[60] *See* Letter to the Honorable Robert B. Zoellick from Stephen Koplan (January 9, 2002) and Letter to the Honorable Stephen Koplan from Robert B. Zoellick (January 3, 2002) (request 2(f)).

[61] EC-Y-046 at TUBULAR-16-TUBULAR-17.

[62] *Id.* at TUBULAR-23, Table TUBULAR-10. This memorandum does not contain an analysis of the remedy proposal of Mills, Trinity, and TFA; none of the staff's models evaluate the effect on domestic producers of a remedy imposed on BWPF, rather than the fittings group as a whole, nor do they evaluate the effect of a combination of tariff increases and quantitative restrictions.

With respect to BWPF and the fittings grouping generally, the TPSC should view the results of this analysis – the projected effects on domestic and import prices, quantity, and market shares – with some skepticism. That is because the economic staff used domestic and import AUV data as the pricing inputs in its economic model.[63] Consistent with the Commission's evaluation of AUV data, the data presented in the economic memorandum indicate that imported fittings were priced higher than domestic fittings, with the exception of Mexico, which undersold domestic fittings by a mere 3 percent. Knowing that AUV data that the Commission found to be unreliable formed the basis of these economic models, the results of the analysis must be similarly discounted. For example, the AUV data indicates that non-NAFTA fittings imports oversold domestic fittings by a margin of 3 percent; the Commission determined that imports of a representative BWPF product undersold domestic fittings by an average margin of 23.3 percent.[64] Clearly the effect of the various tariff increases would be vastly different given these two different price inputs. More specifically, because this model is based on inputs indicating a situation of overselling, when the Commission found deep margins of underselling, the model's projection of significant increases in domestic sales volumes and prices, and dramatic decreases in import market share, resulting from relatively small tariff increases are at best overstated, if not wholly unreliable.

We ask that the TPSC follow the Commission's evaluation of pricing data with respect to the fittings product grouping, and disregard AUV data and any analysis of remedy options based on those data when determining the appropriate remedy for BWPF

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63 EC-Y-046 at TUBULAR-15 and Table TUBULAR-6.

64 *Id*. at Table TUBULAR-6 and Steel Determination Vol. II at Table TUBULAR-61.

or the fittings product grouping. We submit that the remedy measures proposed by Mills, Trinity, and TFA, which are based on volume and pricing data for BWPF, and would apply to imports of BWPF, are based on sound data and would provide an effective remedy for domestic BWPF producers.

IV. Because the President Is Required To Implement Remedies that Minimize Opportunities for Circumvention, Unfinished BWPF ("Fitting Forgings") Must be Included in Any Remedy on BWPF

The President is required to take into account several factors in determining what action to take to facilitate positive adjustment by a domestic industry found by the Commission to be seriously injured by imports.[65] One of these factors is the potential for circumvention of any remedy action that the President might implement. We ask that the TPSC consider this factor in particular when considering the request to exclude unfinished BWPF, or "fitting forgings," made by Weldbend Corporation ("Weldbend").

We demonstrated in our November 27, 2001 and December 5, 2001 comments to the TPSC that unfinished fittings are available from domestic producers, that excluding unfinished BWPF would be administratively untenable, and that excluding this product would undermine any relief imposed by the President to address the serious injury suffered by domestic BWPF producers. However, we feel that we must return to the latter two points in response to Weldbend's January 4, 2002 comments to the TPSC on remedy.[66]

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[65] *See* 19 U.S.C. §2253(a)(2).

[66] In its comments to the TPSC on remedy, Weldbend has revisted its incredible argument that while unfinished fittings are available from domestic sources in the quantities required by Weldbend, the TPSC should consider these domestic articles to be "not commercially available" because they are undersold by imported unfinished fittings. *See Comments of Boltex Manufacturing Co., L.P., National Flange and Fitting Co., Inc., and Weldbend Corporation on Actions the President Should Take Regarding Carbon Steel Flanges, Carbon Steel Butt-Weld Pipe Fittings, and Carbon Steel Butt-Weld Fitting Forgings* (January 4, 2001) ("Weldbend Remedy Comments") at 12 and *Request of Weldbend Corporation To Exclude From*

Specifically, Weldbend argues that its proposed exclusion should apply only to BWPF "not machined, not tooled, and not otherwise processed after forging," and not to unfinished BWPF that have been subjected to any additional processing.[67] Weldbend states that such an exclusion does not create the potential for circumvention, and would not be difficult to administer. In this regard, Weldbend acknowledges that carbon steel flanges that are "not machined, not tooled, and not otherwise processed after forging" are classified in HTSUS subheading 7307.91.1000, and that there is no comparable tariff breakout for unfinished BWPF. Nevertheless, Weldbend contends that the U.S. Customs Service

> must be able to determine when manufacturing is "advanced after forging" in order to classify flange forgings in their own tariff classification; that tariff classification (HTSUS 7307.91.1000) uses the very same descriptive terms that Weldbend is proposing for the fitting forging exclusion.[68]

Weldbend would thus have the TPSC believe that Customs routinely examines each entry of flanges to determine which are unfinished and which are not. That is simply not the case. Because there are separate tariff classifications for finished and unfinished flanges, there is an obligation on the importer to declare whether the flanges it is importing are properly classified as finished flanges or unfinished flanges. There is no similar obligation on importers of BWPF, for which finished BWPF, "fitting forgings," and all degrees of unfinished BWPF are classified within the same HTSUS subheadings.

Import Relief Carbon Steel Butt-Weld Pipe Fitting Forgings (Included in HTSUS 7307.93.3000, 7307.93.9030) (November 13, 2001) at 6-8. Weldbend thus underscores a key factor that contributed to the serious injury to the domestic BWPF industry: the severe underselling by imports of both finished BWPF and "fitting forgings."

[67] Weldbend Remedy Comments at 12.

[68] *Id.* at 13.

Because BWPF is classified in this manner, an attempt to exclude BWPF that has (or has not) been subjected to a particular degree of processing would be administratively impossible. First of all, as we explained *supra*, Customs would not be able to apply an exclusion on "fitting forgings" by simply excluding a particular tariff classification. Moreover, there would be nothing to stop foreign producers that now export finished BWPF from shipping BWPF to the United States that has been machined, tooled, and/or otherwise processed after forging, and claim that their BWPF qualifies for the "forgings" exclusion. As stated above, and contrary to Weldbend's implication, Customs does not currently inspect each shipment of imported flanges to determine whether they are unprocessed or partially processed. Even if every Customs inspector had this degree of expertise, given the massive volume of BWPF imported into the United States each year – more than 34,000 tons entered in the first nine months of 2001 – Customs would be unable to institute such a practice with respect to BWPF.

Consequently, Customs would be unable to properly administer a remedy exclusion intended to affect only BWPF that is "not machined, not tooled, and not otherwise processed after forging," and imported BWPF that should be subject to the remedy actions will circumvent the remedy. These imports would undermine any relief intended to address the serious injury suffered by domestic BWPF producers.

V. Conclusion

Based on the information and argument presented in these comments, we urge the TPSC to disregard the challenges to the January 4, 2002 remedy proposal by Mills, Trinity, and TFA, and recommend that the President implement the product-specific quantitative restriction and tariff increase proposed by these domestic BWPF producers.

These measures, if applied equally to BWPF from Mexico and Canada, would impose restrictions on imports of BWPF that are necessary to facilitate the domestic industry's positive adjustment to import competition.

Respectfully submitted,

/s/

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