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BY EMAIL

May 10, 2005

Mr. Kelly Parkhill
Director for Industry Support and Analysis
Import Administration
Room 3713
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, DC 20230

Re: Substantive Comments of Trinity Industries, Inc. on Steel Import Monitoring and Analysis System Interim Final Rule

Dear Mr. Parkhill:

On behalf of Trinity Industries, Inc. (Trinity), and pursuant to the Department's notice,¹ we hereby submit these substantive comments on the interim final rule to implement a Steel Import Monitoring and Analysis System (SIMA-II). The *Interim Final Rule* provided Trinity's first notice of the Department's decision to eliminate a single category of steel products covered by the current steel import licensing and surge monitoring system (SIMA-I) – carbon and alloy flanges and pipe fittings – when it implements SIMA-II, while otherwise expanding the product coverage of the system. For the reasons set out in the following comments, Trinity urges the Department to (1) rescind the scheduled June 9, 2005 termination of licensing for carbon and alloy steel butt-weld pipe fittings identified in Annex III of the *Interim Final Rule*, and (2) ensure that the final rule specifies that carbon and alloy steel butt-weld pipe fittings remain within the scope of SIMA-II.

- I. Trinity is a Member of the Steel Industry that the President Intended to Benefit from the Current Steel Import Licensing and Monitoring System

Trinity, through its wholly-owned and controlled subsidiary, Trinity Fittings Group, Inc., is a U.S. manufacturer of carbon and alloy steel butt-weld pipe fittings (BWPF). Trinity competes in the U.S. market with imported BWPF, which are classified in tariff items

¹ *Steel Import Monitoring and Analysis System*, 70 Fed. Reg. 12133 (March 11, 2005) (*Interim Final Rule*).

7307.93.3000, 7307.93.6000, 7307.93.9030, and 7307.93.9060 of the Harmonized Tariff Schedule of the United States (HTSUS). These products are covered under SIMA-I,² and as a result, Trinity and other members of the U.S. BWPF industry benefit from that system's "real-time information and detailed statistics on steel imports and import trends" on the products with which they compete. Consequently, Trinity was disappointed to learn through the publication of the *Interim Final Rule* of the Department's intent to terminate these benefits.

Trinity and other members of the domestic BWPF industry were active participants in the U.S. International Trade Commission's (ITC) 2001 investigation under 19 U.S.C. §2252 regarding certain steel products.³ In that investigation, Trinity argued, and the ITC ultimately determined, that carbon and alloy steel "fittings," a product category that included BWPF classified in 7307.93.3000, 7307.93.6000, 7307.93.9030, and 7307.93.9060, HTSUS, were "being imported into the United States in such increased quantities as to be a substantial cause of serious injury or the threat of serious injury to the domestic industry producing articles like or directly competitive with the imported articles"⁴ On March 5, 2002, pursuant to this determination, President Bush implemented safeguard measures with respect to imports of steel products including BWPF.⁵

In connection with these safeguard measures, the President instructed the Department of Commerce and the Department of the Treasury to establish a system of import licensing and monitoring regarding the steel products covered by the safeguard measures.⁶ Regulations implementing that system (SIMA-I) were published on December 31, 2002.⁷ Effective December 5, 2003, the President terminated the safeguard measures.⁸ However, in taking this action, the President specified that SIMA-I was to remain in effect – without any changes to its

² *Id.* at 12138 (Annex I).

³ *See, e.g., Steel (Investigation No. TA-201-73)*, USITC Pub. 3479 (December 2001) (*Steel*), Vol. III at B-64 (identifying the President of Trinity Fitting Group, Inc. as a witness at the ITC's October 1, 2001 hearing on injury) and B-103 (identifying the President of Trinity Fitting Group, Inc. as a witness at the ITC's November 8, 2001 hearing on remedy). *See also Steel: Monitoring Developments in the Domestic Industry (Investigation No. TA-204-9)*, USITC Pub. 3632 (September 2003) at B-6 (identifying the President of Trinity Fitting Group, Inc. as a witness at the ITC's July 17, 2003 hearing regarding developments in the 10 industries producing steel products corresponding to those subject to the safeguard measures since the imposition of import relief).

⁴ *Steel* at 1, n.1. 14, 26.

⁵ *Proclamation 7529 of March 5, 2002; To Facilitate Positive Adjustment to Competition From Imports of Certain Steel Products*, 67 Fed. Reg. 10553 (March 7, 2002).

⁶ *Memorandum of March 5, 2002; Action Under Section 203 of the Trade Act of 1974 Concerning Certain Steel Products*, 67 Fed. Reg. 10593, 10596 (March 7, 2002).

⁷ *Steel Import Licensing and Surge Monitoring*, 67 Fed. Reg. 79845 (December 31, 2002). These regulations (19 C.F.R. Part 360), and thus the SIMA-I system, became effective as of February 1, 2003. The regulations specified that the system was to include "products from excluded countries and those products subject to product-specific exclusions." *Id.* at 79848.

⁸ *Proclamation 7741 of December 4, 2003; To Provide for the Termination of Action Taken With Regard to Imports of Certain Steel Products*, 68 Fed. Reg. 68483 (December 8, 2003).

product coverage – “until the earlier of March 21, 2005, or such time as the Secretary of Commerce establishes a replacement program.”⁹

While Trinity viewed the President’s termination of the safeguard measures as premature, it was encouraged by President’s decision to continue the SIMA-I system. Particularly encouraging was the President’s explanation that his intention in retaining SIMA-I was to “keep the positive momentum going ... so that my Administration can quickly respond to future import surges that could unfairly damage the industry.”¹⁰

II. The Department Must Consider the Comments of Trinity, a Beneficiary of the Current System, Before it Terminates these Benefits

On August 25, 2004, the Department published an “advanced notice of proposed rulemaking” to “solicit[] comment from the public on the need to continue the current system beyond its current expiration date of March 21, 2005, if the Secretary of Commerce does not establish a replacement program prior to that date.”¹¹ The Department requested comments on certain specific items, including “whether it should modify the scope of the current system to either cover additional products or remove certain products from licensing and monitoring.”¹² That notice, however, did not identify any specific modifications that the Department intended to make to the system. As discussed further *infra*, none of the comments filed with the Department (filed in September through December 2004) requested termination of the program for products currently covered by SIMA-I. Consequently, Trinity had no notice that such a modification was forthcoming.

On March 11, 2005, the Department published an interim final rule that revises the regulations that established the SIMA-I system in several important respects, and thereby launched the SIMA-II system. The most significant of these changes are: (1) to implement the system for an additional four years beyond its current expiration date; (2) to expand the coverage of the system “to include all basic steel mill products”; (3) to release more detailed statistics based on licensing data; and (4) to terminate licensing for, and thus eliminate the collection of import data for, “certain downstream steel products now covered, specifically, carbon and alloy flanges and pipe fittings.”¹³

The Department explained that it has found good cause under 5 U.S.C. §552(b)(B) to waive the requirement for prior notice and an opportunity for public comment on its modification

⁹ *Id.* at 68484. The Department subsequently confirmed that “[t]he duration of the licensing program is not affected by the early termination of” the safeguard measures. *Notice of Continuation of Steel Import Licensing and Surge Monitoring program*, 68 Fed. Reg. 68594 (December 9, 2003).

¹⁰ <http://www.whitehouse.gov/news/releases/2003/12/20031204-5.html> (last accessed March 18, 2005).

¹¹ *Advanced Notice of Proposed Rulemaking*, 69 Fed. Reg. 52211 (August 25, 2004).

¹² *Id.*

¹³ *Interim Final Rule* at 12133-34.

of the regulations, in part because the “[d]ifferences between the current system and [SIMA-II] would not be implemented until 90 days after the effective date of this rule, after a 60 day public comment period.”¹⁴ One of the referenced “differences” is the termination of the portion of the Department’s current import licensing and monitoring activities that has permitted Trinity to monitor import trends in carbon steel flanges and fittings. The more detailed statistics that will be provided under the SIMA-II system would increase the program’s utility to Trinity, because it would permit Trinity to isolate imports of BWPF. Because the *Interim Final Rule* was Trinity’s first notice that a continuation of the import licensing and monitoring system would eliminate the currently covered product grouping that is of direct interest to Trinity, it is essential that the Department consider Trinity’s comments before modifying the SIMA-II system as proposed.

III. The Department Improperly Eliminated a Single Currently Covered Product Grouping from the Scope of the SIMA-II System

The annexes to the *Interim Final Rule* confirm that the only steel products that are covered under SIMA-I that will not be covered by SIMA-II are carbon and alloy flanges and pipe fittings.¹⁵ The Department explained that it was removing these “currently covered downstream steel products” products “because they are not basic steel mill products.”¹⁶ As an additional rationale, the Department claimed that the elimination of these flanges and fittings from the system will “help reduce the burden on importers given the large volume of licenses associated with these products.”¹⁷ These remarks constitute the extent of the Department’s justification for depriving Trinity and other domestic producers of BWPF of the benefits of the SIMA system.¹⁸ and as such are insufficient.

A. The Department’s Justifications for Terminating SIMA for Carbon Steel Flanges and Fittings Are Disingenuous, and Are Contrary to the Purpose of the SIMA System

The flimsiness of the Department’s claim that removing the licensing requirement for imports of carbon steel flanges and pipe fittings will “help reduce the burden on importers” is exposed in light of the interim final rule’s expansion of the SIMA system from 14 to 36 categories of steel. Indeed, the Department acknowledged that this expansion “will result in an increase in the number of licenses,” but at the same time speculated that

¹⁴ *Id.* at 12135.

¹⁵ Annex III, entitled “Harmonized Tariff Codes that will be Removed from the SIMA System,” lists the same 14 tariff items as those listed under the heading “Carbon & Alloy Steel Fittings & Flanges” in Annex I, “List of Harmonized Codes Covered Under Current SIMA System.” *Interim Final Rule* at 12138 and 12140.

¹⁶ *Id.* at 12134.

¹⁷ *Id.*

¹⁸ “The current steel import licensing and monitoring system, which will expire on March 21, 2005, provides the steel industry with real-time information and detailed statistics on steel imports and import trends.” *Id.* at 12135.

the additional burden this imposes on importers will be limited by the importers' familiarity with the current system, the system's automatic nature and the fact that the Department would continue its policy of imposing no fee for obtaining the license.¹⁹

Incongruously, the Department implies that these same factors do not also limit the burden of the system on importers of carbon and alloy flanges and pipe fittings. But the Department has provided neither information nor argument indicating that U.S. importers are more burdened by the requirement to obtain licenses for imports of carbon and alloy flanges and pipe fittings than for any of the 36 categories of steel products that the *Interim Final Rule* includes in the SIMA-II system. Trinity doubts that such support could be found.²⁰

Moreover, the Department implies that only imports of carbon and alloy fittings and flanges – in contrast to the 13 other currently covered product groups and the 13 product groups added to the system by the *Interim Final Rule* – require a “large volume of import licenses.” Even if this statement were accurate, Trinity submits that a large volume of licenses is evidence of a large volume of imports – precisely the circumstances that the SIMA system was designed to monitor. Indeed, the data collected by the SIMA system demonstrate that the volume of licensed imports of carbon and alloy flanges and pipe fittings has been large and has increased steadily since the President terminated the Section 201 duties on these products in December 2003. For example, these data demonstrate that imports of carbon and alloy flanges and pipe fittings increased from 115.4 thousand metric tons in 2003 (average monthly volume 9.6 thousand metric tons) to 137.0 thousand metric tons in 2004 (average monthly volume 11.4 thousand metric tons),²¹ an increase of 18.8 percent.

Terminating licensing and monitoring for this product grouping in the face of the increasing volume of imports is directly contrary to the President's intent that the SIMA system monitor “future import surges” in products including carbon and alloy flanges and pipe fittings “that could unfairly damage the industry.”²² Domestic BWPF producers like Trinity will be

¹⁹ *Id.* at 12134.

²⁰ Indeed, several parties that submitted comments in response to the Department's advanced notice of proposed rulemaking explained that SIMA-I did not impose a burden on importers. *See* comments received in response to the Department's August 25, 2004 advanced notice of proposed rulemaking (http://www.ia.ita.doc.gov/steel/license/comments_0904/comments_0904-index.html), *e.g.*, comments on behalf of the Cold Finished Steel Bar Institute (September 23, 2004) at 2 (“The SIMA system does not impose any significant burden on importers, and it does not restrict or limit imports. ... Further, the burden upon the importer has been lessened by the automatic nature of the SIMA system and the relatively small amount of easily accessible data being requested. The Department has noted that it takes no longer than ten minutes using the SIMA system to complete the license application and receive a license number. Moreover, in most cases it is brokerage companies that apply for the steel licenses on behalf of importers. These brokers are already involved in filing required documentation for importing goods into the United States, and are very familiar and experienced with automated systems, including SIMA.”) *See also* Comments of IPSCO Enterprises Inc. (undated, received as of September 27, 2004) at 1 (“In our experience the US program has imposed no barrier to trade, its obvious and only purpose is to increase transparency in the trading system, and it has been helpful in that regard.”)

²¹ <http://web.ita.doc.gov/License/Surge.ns5/GraphSearch?OpenForm> (last accessed March 31, 2005).

²² <http://www.whitehouse.gov/news/releases/2003/12/20031204-5.html> (last accessed March 18, 2005).

more vulnerable to import surges unless the Department reverses the termination of licensing for these products that it proposed in the *Interim Final Rule*.

Carbon and alloy flanges and pipe fittings are not distinguishable from the other categories of steel products covered by either SIMA-I or the expanded SIMA-II system in the ways the Department has claimed or implied, and the Department has presented no reasonable justification for isolating these products for exclusion through the *Interim Final Rule*. In addition, the data that the Department has collected through SIMA-I on imports of these products demonstrate increased import volumes of flanges and pipe fittings – precisely the type of data that the system was intended to provide to Trinity and other domestic producers, as well as to the Administration. Consequently, as a matter of fairness, and in recognition of the importance to domestic BWPF producers of the data collected from import licenses, the Department should rescind its determination to terminate the SIMA licensing requirement for BWPF.

B. None of the Comments Received by the Department Recommended Excluding Products Currently Covered by SIMA-I

The Department's exclusion of a single currently covered product grouping from the extended system appears particularly arbitrary and unjustified in light of the comments the Department received in response to its advance notice of proposed rulemaking. The vast majority of parties filing comments recommended the extension of the SIMA system, and also recommended that SIMA-II continue to cover all of the steel products subject covered by the current SIMA-I system, while expanding its scope to include other steel products not currently covered by SIMA-I.²³ So, too, legislation introduced in the 109th Congress proposed a similar continued licensing and monitoring program that would have included all products covered by the SIMA-I system, and more.²⁴

On the other hand, out of the 73 submissions received, not one recommended excluding carbon and alloy steel fittings and flanges from the system. Even among parties that opposed the extension of the SIMA system or objected to specific elements of the system, not one party identified carbon and alloy steel fittings and flanges as a product grouping that the Department should exclude, and not one referenced a “large volume of licenses associated with” imports of fittings and flanges.²⁵ Nevertheless, the Department stated in the preamble to the *Interim Final*

²³ See, e.g., comments on behalf of the U.S. members of the American Iron and Steel Institute, the Cold Finished Steel Bar Institute, the Committee on Pipe and Tube Imports, the Specialty Steel Industry of North America, the Steel Manufacturers Association, the Steel Tube Institute of North America and the United Steelworkers of America (September 24, 2004) at 1-2 (“Product coverage must be expanded to cover all basic steel products, not just those that had been subject to the Section 201 remedy.” (Emphasis added.) In fact, these comments specifically recommend that the extended SIMA system include all pipe fittings and flanges classified in heading 7307, HTSUS, whereas the current system covers only portions of this heading.) See also, e.g., comments on behalf of International Steel Group, Inc. (September 23, 2004) at 2, United States Steel Group, Inc. (September 24, 2004) at 5-6, and Gerdau Ameristeel Corporation (September 24, 2004) at 1.

²⁴ See S. 358, 109th Cong. § 1(b) (2005), and H.R. 1068, 109th Cong. § 1(b) (2005).

²⁵ See, e.g., comments on behalf of the American Institute for International Steel (September 24, 2004) at 4 (this group recommended that the Department discontinue the SIMA program, but also stated that if the Department were to extend the SIMA system, “product coverage should not be expanded”), and Comments of the Government

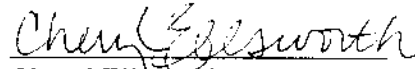
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Rule that the “changes to the current system [were] made in response to comments previously received.”²⁶ Clearly, the change to the current system to eliminate the fittings and flanges product grouping was not made in response to comments received.

IV. Conclusion

Members of the domestic industry producing BWPF, including Trinity, receive valuable information through the current SIMA-I, a system that the President implemented in recognition of these producers’ vulnerability to future surges in import volumes. To ensure that it is not deprived of this valuable source of advance import data, Trinity urges the Department to (1) rescind the scheduled June 9, 2005 termination of the SIMA-I licensing requirements for BWPF identified in Annex III of the *Interim Final Rule* (7307.93.3000, 7307.93.6000, 7307.93.9030, and 7307.93.9060, HTSUS), and (2) ensure that the final rule specifies that the BWPF identified in Annex III of the *Interim Final Rule* remain within the scope of SIMA-II.

Respectfully submitted,



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of Japan (September 24, 2004) at 1 (“[T]he Government of Japan requests the U.S. Government not to expand the product coverage of the SIMA”)

²⁶ *Interim Final Rule* at 12135.