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The Honorable Philip M. Crane
Chairman, Subcommittee on Trade
Committee on Ways and Means
United States House of Representatives
1102 Longworth House Office Building
Washington, DC 20515-6348

Re: Comments in **Opposition to H.R. 4128**, Regarding the Country-of-Origin Marking of Steel Flanges and Pipe Fittings

Dear Chairman Crane:

These comments are submitted on behalf of Trinity Fitting Group, Inc. ("Trinity"), the largest domestic integrated producer of carbon steel butt-weld pipe fittings,[1] in response to the advisory requesting comments that the Subcommittee on Trade issued on May 3, 2002. Trinity opposes the inclusion of H.R. 4128, a bill identified in that advisory, in a miscellaneous trade package.

I. Introductory Statement

H.R. 4128, introduced on April 10, 2002, purports to "provide clarity and consistency in certain country-of-origin markings" with respect to certain steel pipe fittings

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[1] The corporate headquarters for Trinity Fitting Group, Inc. is 2525 Stemmons Freeway, Dallas, TX 75207.

and flanges. In fact, this bill would codify an interpretation of the marking law that would allow foreign-produced steel fittings and flanges to be sold in the United States with no indication as to their foreign origin. The result would be confusing to end-users, and would exacerbate the serious injury already suffered by U.S. integrated producers of fittings and flanges due to increasing volumes of low-priced imports over the past several years.[2] H.R. 4128 is not in the interest of either U.S. consumers or U.S. manufacturers.

The beneficiaries of the statutory amendment proposed by H.R. 4128 would be: (1) the U.S. finishers that purchase inexpensive foreign fittings and flanges in an unfinished form, perform relatively minor processing on the articles, and sell them to U.S. consumers at prices that undercut prices for fittings produced wholly in the United States by integrated producers; and (2) the foreign producers from which U.S. finishers purchase unfinished fittings and flanges. At present, based on a group of U.S. Customs Service ("Customs") rulings interpreting the marking statute, U.S. finishers need not mark the finished fittings and flanges they sell to indicate their foreign origin. This interpretation

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[2] Included within the context of the International Trade Commission's ("ITC") recent "Section 201" investigation on certain steel products, the ITC reached a unanimous determination of serious injury with respect to a group of steel products it designated as "fittings". *See Steel*, USITC Pub. 3479 (December 2001) at 174 ("ITC Report"). The ITC defined the "fittings" product grouping by reference to the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings within which imports of those products are classified. These subheadings included subheadings 7307.93.3000 and 7307.93.9030, HTSUS, under which both finished and unfinished carbon steel butt-weld pipe fittings are classified. Trinity is a manufacturer of carbon steel butt-weld pipe fittings.

With respect to the "fittings" product grouping, the ITC found that

> [i]n sum, the steady and large increase in imports, which captured an increasing share of the U.S. market, led to erosions in such industry indicators as production, capacity utilization, shipments, and employment indicators. Lower production and shipments meant fewer sales over which to spread fixed costs, contributing to increased unit costs. The increasing presence of imports, in at least some cases at substantial underselling margins, prevented the industry from recouping increased costs through higher prices; instead, prices fell somewhat over the period. Accordingly, we find that imports are a substantial cause of serious injury."

Id. at 176 (footnote omitted).

removes the ability of end-users to make an informed choice between U.S.-manufactured fittings and flanges, and articles finished in the United States from unfinished fittings and flanges imported from any one of numerous foreign countries. However, **Customs has announced its intention to revoke this group of rulings. Revocation of these rulings would then require U.S. finishers to mark the products they sell so as to convey to their customers the foreign country-of-origin**. Trinity supports revocation of these rulings.

In an attempt to block Customs' revocation efforts, and to preserve the advantage for U.S. finishers, H.R. 4128 would codify the very interpretation of the current marking law that Customs seeks to revoke. By permitting U.S. finishers to sell foreign articles that have undergone minor processing without country-of-origin marking, the statutory amendment proposed in H.R. 4128 would deprive end-users of essential information, and would permit U.S. finishers and/or their distributors to pass off foreign articles as U.S.-manufactured fittings and flanges to unsuspecting end-users. Even if these U.S. purchasers were able to infer from their low prices that the articles were imported unfinished fittings and flanges that were finished in this country, they would be unable to determine from which foreign country the unfinished article had been imported, a potentially key determinant of product quality.

II. Analysis of the Statutory Amendment Proposed by H.R. 4128

H.R. 4128 would amend Section 304 of the Tariff Act of 1930 (19 U.S.C. §1304), which governs the country-of-origin marking of imported articles and their containers. Section 304(a) sets out the general rules for marking imported articles. In pertinent part, this section states that every article imported into the United States

> shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such a manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article.[3]

Section 304(a) also provides that the Secretary of the Treasury may issue regulations that exempt an article from the general country-of-origin marking requirement under one of the circumstances set our in Section 304(a)(3). However, Section 304(c) prohibits the Secretary from establishing marking exemptions for certain imported pipe and fittings. This section states that

> no exception may be made under section (a)(3) of this section with respect to pipes of iron, steel, or stainless steel, to pipe fittings of steel, stainless steel, chrome-moly steel, or cast and malleable iron . . . .[4]

This prohibition on marking exemptions for pipes and pipe fittings is shared by only a handful of other products,[5] which demonstrates Congress' recognition of the importance of country-of-origin marking with respect to these articles. Before Section 304(c) was added to the statute in 1984, steel pipes and pipe fittings were included within an exemption from marking for articles incapable of being marked, articles to be processed in a manner which would destroy or cover the mark, and similar articles; only these articles' containers were required to be marked with the country-of-origin.[6] The Senate found in 1984, however, that "[t]here appears to have been significant evasion of the law

[3] 19 U.S.C. §1304(a) (emphasis added).

[4] 19 U.S.C. §1304(c)(1) (emphasis added). This section further provides that pipe and pipe fittings "shall be marked with the English name of the country of origin by means of die stamping, cast-in-mold lettering, etching, engraving, or continuous paint stenciling", or by other marking methods if it is technically or commercially infeasible to use one of the referenced methods. 19 U.S.C. §1304(c)(1) and (2).

[5] The other articles are: compressed gas cylinders; certain manhole rings or frames, covers, and assemblies thereof; certain coffee and tea products; and spices. *See* 19 U.S.C. §1304(d), (e), (f), and (g).

[6] *See* S. Rep. No. 98-308 at 32-33 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4910, 4941-42.

with regard to these articles."[7] To address this evasion, the Senate determined that "it would be more appropriate to require the labeling of these matters where the public – which is the ultimate purchaser and user of the item – would be informed of its origin in accordance with the general intention of the U.S. marking law."[8] With respect to pipe and pipe fittings, the result of this effort was the current Section 304(c) of the marking law, which highlights the importance of country-of-origin marking for these articles.

H.R. 4128 would amend Section 304(c) by adding language that would codify the identity of the "ultimate purchaser" with respect to certain steel pipe fittings and flanges[9] in a manner that is inconsistent with the intent of this section – to inform the public, the user of the fittings and flanges, as to their country-of-origin – and thereby undermine the prohibition on marking exceptions for these articles set out in the existing Section 304(c). Specifically, H.R. 4128 would add a paragraph to Section 304(c) stating that for country-of-origin marking purposes, the ultimate purchaser of imported fittings and flanges "shall be the person in the United States that subjects such fittings or flanges to –

(A) at least one of the following processes:
(i) bevelling;

[7] *Id.* The reference to "these articles" is to the three articles addressed by section 206 of the Senate amendment to H.R. 3398, which is the subject of the cited Senate Report. That section created stringent country-of-origin marking requirements for certain pipe and fittings, compressed gas cylinders, and certain manhole rings or frames. *See also* Trade and Tariff Act of 1984, Pub. L. No. 98-573, §207, and 19 U.S.C. §1304(c), (d) and (e).

[8] S. Rep. No. 98-308 at 32-33 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4910, 4941-42 (emphasis added). The cited language is taken from the report's example of "significant evasion of the law with regard to these articles". While this example, deals specifically with manhole covers, rings, and assemblies, we submit that the example was intended to be relevant with regard to all three articles covered by Section 206 of H.R. 3398. *See also* H.R. Conf. Rep. No. 98-1156 at 126 (1984), *reprinted in* 1984 U.S.C.C.A.N. 5220, 5243 ("The conferees agreed to the Senate provision.")

[9] H.R. 4128 defines the pipe fittings and flanges subject to its statutory changes as "all articles provided for under subheadings 7307.21, 7307.23, 7307.91, and 7307.93 of the Harmonized Tariff Schedule of the United States, as in effect on January 1, 2002, except for articles imported from Canada or Mexico that are subject to other marking requirements under the North American Free Trade Agreements Implementation Act or regulations issued thereunder."

(ii) threading;
(iii) center or step boring; and
(iv) machining the gasket face; and

(B) at least two of the following processes:
(i) heat treating;
(ii) recoining or resizing;
(iii) taper boring;
(iv) machining ends or surfaces other than a gasket face;
(v) drilling bolt holes;
(vi) deburring or shot-blasting;
(vii) painting;
(viii) passivating; and
(ix) marking its name on the fittings or flanges.

Thus, as amended by H.R. 4128, the statute would define the “ultimate purchaser”, the last party to whom the country of origin of the imported article must be indicated, as a processor that finishes the imported article. As the ultimate purchaser, the U.S. finisher would have no responsibility under the law to disclose the foreign origin of the imported fitting or flange to the distributor or end-user in the United States to which it sells the finished article. The end-user, of course, is the party to whom the country-of-origin has actual significance.

Moreover, H.R. 4128 would permit U.S. finishers to import fittings and flanges in <u>nearly finished condition</u> and subject these articles to <u>truly minor processing</u>, and thereafter sell them in the United States without country-of-origin marking. For example, based on the language of H.R. 4128 set out *supra*, a U.S. finisher could purchase an imported fitting, bevel its edges ((A)(i)), paint it ((B)(vii)), and mark its own name on the fitting ((B)(ix)), and thereby qualify for the marking exemption.[10] Not only sophisticated processors, but <u>any machine shop</u> could accomplish these superficial procedures. Thus, H.R. 4128

[10] Another flaw in H.R. 4128 is that it does not define the country-of-origin marking requirements, the “ultimate purchaser”, for imported fittings and flanges that are not subjected to the referenced finishing steps.

proposes to amend the statute so that it ensures U.S. finishers' ability to flood the U.S. market with fittings and flanges processed from cheap, nearly-finished, imported articles, while depriving U.S. consumers of information that may be critical to their purchasing decision.

III. H.R. 4128 is Directly Contrary to Customs' Policy

Besides being a true detriment to U.S. consumers and U.S. manufacturers, the statutory amendment proposed by H.R. 4128 runs contrary to Customs' proposed interpretation of the country-of-origin requirements for these articles.

Based on the analysis set out in *Midwood Industries, Inc. v. United States,* 313 F.Supp. 951 (Cust. Ct.), *appeal dismissed*, 57 C.C.P.A.141 (1970) ("*Midwood*"), Customs issued a series of rulings that exempted U.S. finishers from the country-of-origin marking requirement of 19 U.S.C. §1304(a) with respect to certain imported unfinished steel flanges and pipe fittings that underwent finishing operations in the United States. These rulings decided the country-of-origin marking requirements applicable to these articles based on the conclusion reached in *Midwood*, namely, that the processing performed in the United States changed the name, character, and use of the imported unfinished fittings – a "substantial transformation" of the imported article into a new article of commerce. On that basis, Customs ruled that the U.S. finisher was the "ultimate purchaser" of the imported unfinished fittings and flanges, and thus had no responsibility to mark the articles it processed in the United States with the country-of-origin of the imported unfinished fittings.

However, based upon the guidance of the Court of International Trade ("CIT") in *Boltex Manufacturing Co., L.P. et al., v. United States*, 14 F.Supp. 2d 1339 (CIT 2000),

further analysis of the factual circumstances presented in each of its earlier rulings, and decisions of the CIT and the U.S. Court of Appeals for the Federal Circuit subsequent to *Midwood*, Customs announced in November 2001 that it intends to revoke this group of rulings. Customs concluded that in each of the referenced rulings, "there in fact has been no change in name, character, and use [*i.e.*, no substantial transformation] as a result of the processing performed in these particular cases. Therefore, we find that the steel flanges and pipe fittings processed from forgings in these cases, will be required to be marked with the country of origin of the forging."[11] In this way, Customs recognized the importance of informing the end-user in the United States as to the country of origin of fittings and flanges finished from imported unfinished fittings and flanges, and consequently that it is the end-user, not the U.S. finisher that is the "ultimate purchaser" with respect to the finished fittings and flanges.

Trinity supports Customs' proposal to revoke its *Midwood*-based rulings, and believes that revocation of these rulings would restore reasonableness, consistency, and uniformity to the country of origin marking requirements for steel fittings and flanges.[12] Moreover, in the 30 years since the decision in *Midwood* was announced, the practice has evolved whereby steel fittings and flanges are imported into the United States in virtually-completed condition, subjected to minimal finishing processes, and then sold to the customer without identifying the fact that the essence of the article, the unfinished fitting, was produced outside the United States. This practice has become more and more

[11] *PROPOSED REVOCATION OR MODIFICATION OF RULING LETTERS AND TREATMENT RELATING TO THE COUNTRY OF ORIGIN DETERMINATION OF PIPE FITTINGS AND FLANGES*, 35 Customs Bulletin and Decisions 35 (November 21, 2001) at 38 ("Notice of Intent to Revoke"). Note that unfinished fittings and flanges are sometimes referred to as "forgings".

[12] Trinity filed written comments on December 21, 2001 in support of Customs proposal to revoke these rulings, pursuant to Customs' Notice of Intent to Revoke.

egregious, with U.S. finishers constantly seeking ways to minimize the amount of U.S. processing that is performed on the imported article.

The *Midwood* court could not have foreseen that its ruling would be stretched to extremes that are deceptive to the customer, and highly detrimental to the survival of Trinity and other integrated U.S. producers who continue to manufacture fittings and flanges in the United States. Trinity is deeply concerned that H.R. 4128 would thwart Customs' determined and vitally important efforts to restore country-of-origin marking requirements for fittings and flanges that are consistent with 19 U.S.C. §1304(a) and (c).

IV. H.R. 4128 is Directly Contrary to the Marking Rules for NAFTA Imports

The statutory amendment proposed in H.R. 4128 would not apply to imports from countries that are signatories to the North American Free Trade Agreement ("NAFTA"). This is not surprising, as the rules governing the country-of-origin marking for imports NAFTA countries are not consistent with, and indeed are completely contradictory to, the practice based on *Midwood* that has been applied to imports of fittings and flanges from non-NAFTA countries. Specifically, the NAFTA marking rules establish that where unfinished fittings and flanges imported from Canada or Mexico are finished in the United States, the finished article must identify Canada or Mexico, as the case may be, as the country of origin.[13] This outcome is completely opposite to the country-of-origin marking analysis under *Midwood*, and to the country-of-origin marking rules proposed in H.R. 4128, where the unfinished fitting is imported from a non-NAFTA country.[14] Thus, **while**

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[13] 19 C.F.R. §102.20.

[14] *See, e.g.*, Customs' proposed revocation/modification of HRL 559871 (February 18, 1997), in which Customs imposed different country of origin marking requirements with respect to fittings made from Mexican forgings (U.S. finishers required to mark the fittings) and fittings made from forgings imported from Italy or Germany (U.S. finishers not required to mark the fittings); Customs' proposed revocation/modification would eliminate this disparate result.

Customs' proposed revocation of its *Midwood* rulings would harmonize the marking rules for NAFTA and non-NAFTA imports of fittings, H.R. 4128 would perpetuate that inconsistency, at least for the time being.

Paragraph (c) of H.R. 4128 opens the door to consultations with Canada and Mexico intended to weaken the marking law with respect to imports of fittings and flanges from NAFTA countries, as well. Trinity supports the current regulations that govern the country-of-origin marking of imports from Canada and Mexico, which require U.S. finishers to convey critical country-of-origin information to U.S. purchasers of fitting and flanges. Trinity opposes the proposal in H.R. 4128 to make the regulations governing imports from NAFTA countries consistent with the untenable *Midwood* decision.

Thus, because of the detrimental effect it would have on U.S. integrated producers of steel fittings and flanges, U.S. consumers of those articles, and the consistency and efficacy of the country-of-origin marking law, the Ways and Means Committee must not include H.R. 4128 within in a miscellaneous trade package.

Respectfully submitted,

/ S /

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