

# MAYER • BROWN

## BY EMAIL

May 31, 2017

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## PUBLIC DOCUMENT

RE: Comments of Weldbend Corporation  
in the Section 232 National Security Investigation of Imports of Steel

Dear Mr. Botwin:

This letter provides comments on behalf of Weldbend Corporation (“Weldbend”) (NAICS code 332919) in the investigation being conducted by the U.S. Department of Commerce’s Bureau of Industry and Security (the “Department”), initiated under Section 232 of the Trade Expansion Act of 1962, as amended, and Part 705 of the National Security Industrial Base Regulations (15 C.F.R. parts 700 to 709) (“NSIBR”), to determine the effects on the national security of imports of steel. *See Notice Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Steel*,” 82 Fed. Reg. 19,205 (April 26, 2017) (the “Notice”). Weldbend submitted a request to appear and make an oral presentation at the hearing conducted by the Department on May 24, 2017, but was not selected. Weldbend appreciates the opportunity now to submit its written comments for the Department’s consideration.

Weldbend is a leading U.S. producer of carbon steel butt-weld pipe fittings, in both finished and unfinished form (“fittings”), and of finished carbon steel flanges (“flanges”). Fittings and flanges are imported into the United States from a number of foreign countries, usually under the following categories of the U.S. Harmonized Tariff Schedule (“HTS”), based on the following characteristics:

Carbon Steel Butt-Weld Pipe Fittings

7307.93.3010 and 7307.93.3040 – Inside diameter of less than 360mm

7307.93.9010 and 7307.93.9040 – Inside diameter of 360mm or more

Carbon Steel Flanges

7307.91.5010 and 7307.91.5030 – Inside diameter of less than 360 mm

7307.91.5050 and 7307.91.5070 – Inside diameter of 360 mm or more

Weldbend is a family-owned business, with 60 years of American leadership in the production and supply of fittings and flanges for use in connecting pipes in sizes ranging from ½-inch through 60 inches. Weldbend is the only domestic manufacturer of both fittings and flanges; other domestic manufacturers focus on one or the other of the two products. Weldbend markets its fittings and flanges to U.S. distributors for resale to end users. Weldbend has over 330,000 square feet of manufacturing and warehousing facilities located at 6600 South Harlem Avenue in Argo, Illinois. Weldbend employs approximately 170 employees, all of whom are based in the United States and who, collectively, have close to 1000 years of experience in producing the highest quality fittings and flanges.

Over the years, Weldbend has invested millions of dollars in its U.S. facilities. This investment includes a commitment of over \$12 million since November 2016 alone in the purchase of additional production equipment to make its manufacturing even more efficient and

to broaden its product offerings. Weldbend prides itself on having U.S. fitting and flange manufacturing operations that are the most technologically advanced in the world.

Fittings are used to connect pipe sections where conditions require permanent, welded connections. Fittings are welded into piping systems that convey gases or liquids in plumbing, heating, refrigeration, air-conditioning, automatic fire sprinklers, electrical conduit, irrigation, and process-piping systems. Fittings are also found in structural applications, where pipes and fittings are used as support members. Flanges are used for connecting pipes, valves, pumps, and other equipment to form a piping system, particularly at points in the system where easy access for cleaning, inspection, or modification is desired. Flanges are usually welded or screwed to the pipes or other equipment requiring a connection. Flanged joints are made by bolting together two flanges with a gasket between them to provide a seal. Fittings and flanges are complementary, but not interchangeable.

Fittings and flanges are essential for piping systems in a broad range of applications, including for transporting crude oil, refined petroleum products, petro-chemicals, natural gas, and natural gas liquids; industrial and chemical manufacturing operations; electric and nuclear power generation; shipbuilding and various defense-related industries; commercial and residential construction; and water supply and sewage systems. In short, fittings and flanges are used in every military installation, every aircraft carrier, every government office building, every pipeline, every energy-generation plant, and every manufacturing and municipal facility in the United States.

This significant number of critical applications highlights the importance of a strong and viable domestic fitting and flange industry to U.S. national security and economic independence. Yet the strength of the fittings and flanges industry remains under constant threat, due to increasing volumes of imports from numerous countries, abetted by dumping, subsidization, and other illegal trade practices. The domestic industry has brought numerous trade actions in response. Nevertheless, the influx of fitting and flange imports continues, and it jeopardizes U.S. national security with regard to both products.

Pursuant to petitions filed by the domestic industry, the Department conducted antidumping (“AD”) investigations against finished and unfinished fittings of less than 14 inches (approximately 360 millimeters) in inside diameter (“subject fittings”) imported from Brazil, Japan, and Taiwan in 1986. Once those AD orders were issued, imports from China and Thailand dramatically increased, which led to a second set of successful AD investigations. All of these investigations resulted in relatively high duties being levied against subject fittings imports. Subject fittings from China, for example, are subject to AD duties of up to 182.9 percent.

Together with the U.S. International Trade Commission (the “Commission”), the Department has conducted a total of four five-year sunset reviews of these AD orders, the most recent of which was concluded in 2016. Each time, based upon the evidence reviewed, the Department and the Commission found that revocation of any of the AD orders would be likely to lead to continuation or recurrence of dumping and material injury to the U.S. industry within a

reasonably foreseeable time.<sup>1</sup> Weldbend and other domestic fittings producers have participated actively in each of the sunset reviews. By contrast, only in the second of the four sunset reviews, completed in October 2005, did any producers or exporters from the subject countries participate.

The Department and the Commission have just completed or are about to complete AD investigations of finished carbon steel flanges from India, Italy, and Spain, and a CVD investigation of finished carbon steel flanges from India (collectively, “subject flanges”), which were initiated pursuant to petitions filed by Weldbend and another U.S. flange producer in June 2016.<sup>2</sup> The Commission issued its preliminary affirmative injury determinations in August 2016.<sup>3</sup> The Department issued its preliminary affirmative CVD determination against India in November 2016<sup>4</sup> and its affirmative preliminary AD determinations against all three subject countries in January 2017.<sup>5</sup> The Department issued its final AD affirmative determination

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<sup>1</sup> *Carbon Steel Butt-Weld Pipe Fittings From Brazil, Japan, Taiwan, Thailand, and the People's Republic of China: Continuation of Antidumping Duty Orders*, 81 Fed. Reg. 57,562 (Aug. 23, 2016) (Fourth Rev.); 76 Fed. Reg. 21,331 (Apr. 15, 2011) (Third Rev.); 70 Fed. Reg. 70,059 (Nov. 21, 2005) (Second Rev.); 65 Fed. Reg. 753 (Jan. 6, 2000) (First Rev.); *Carbon Steel Butt-Weld Pipe Fittings from Brazil, China, Japan, Taiwan, and Thailand*, Inv. Nos. 731-TA-308-310 and 520-521, USITC Pub. 4628 (Fourth Rev.) (Aug. 2016) (“ITC Fourth Review”); Inv. Nos. 731-TA-308-310 and 520-521, USITC Pub. 4222 (Third Rev.) (Apr. 2011) (“ITC Third Review”); Inv. Nos. 731-TA-308-310 and 520-521, USITC Pub. 3809 (Second Rev.) (Oct. 2005); Inv. Nos. 731-TA-308-310 and 520-521, USITC Pub. 3263 (First Rev.) (Dec. 1999).

<sup>2</sup> *Finished Carbon Steel Flanges From India, Italy, and Spain: Initiation of Less-Than-Fair-Value Investigations*, 81 Fed. Reg. 49,619 (July 28, 2016); *Finished Carbon Steel Flanges From India: Initiation of Countervailing Duty Investigation*, 81 Fed. Reg. 49,625 (July 28, 2016).

<sup>3</sup> *Finished Carbon Steel Flanges From India, Italy, and Spain*, Inv. Nos. 701-TA-563 and 731-TA-1331-1333 (Preliminary), USITC Pub. 4631 (Aug. 2016) (“ITC Preliminary Flanges Report”).

<sup>4</sup> *Finished Carbon Steel Flanges From India: Preliminary Affirmative Countervailing Duty Determination*, 81 Fed. Reg. 85,928 (Nov. 29, 2016).

<sup>5</sup> *Finished Carbon Steel Flanges From Italy: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 82 Fed. Reg. 9711 (Feb. 8, 2017); *Finished Carbon Steel Flanges From India: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 82

against Spain in April 2017, with dumping rates exceeding 24 percent.<sup>6</sup> The Department is scheduled to issue its final AD determinations against India and Italy and the final CVD determination against India on June 23, 2017. The Commission has held its final injury hearing and already held an affirmative injury vote against flanges from Spain. The Commission will hold its vote on India and Italy following the Department's determinations. Assuming these determinations are affirmative, as Weldbend expects, the subject flanges will be assessed AD and CVD duties.

In the case of fittings, the AD orders and ongoing high duties have significantly reduced the volume of subject imports. However, this has led to a substantial increase in imports from non-subject countries. For instance, according to data compiled by the Commission during its five-year sunset reviews, non-subject country imports increased from around 9 million kilograms in 1999, when the first review was completed, to over 40 million kilograms in 2015.<sup>7</sup> This more than four-fold increase in imports reflects the futility of addressing the influx of imports based on country-by-country trade remedies. Once the domestic industry obtains antidumping or countervailing duty relief against certain countries, other countries supplant them. The foreign country with the highest fittings import volume today is Malaysia. Imports from Malaysia of fittings subject to the AD orders (inside diameter of less than 14 inches) totaled 17.1 million

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Fed. Reg. 9719 (Feb. 8, 2017); *Finished Carbon Steel Flanges From Spain: Preliminary Determination of Sales at Less Than Fair Value*, 82 Fed. Reg. 9723 (Feb. 8, 2017).

<sup>6</sup> *Finished Carbon Steel Flanges From Spain: Final Determination of Sales at Less Than Fair Value*, 82 Fed. Reg. 18,108 (Apr. 17, 2017).

<sup>7</sup> ITC Fourth Review at Table I-4; ITC Third Review at Table I-6. Pounds were converted to kilograms for consistency.

kilograms in 2012, or 37 percent of the total, according to public import data compiled by the Department and the Commission. Malaysian imports of these products increased to over 20 million kilograms in 2015. This was almost 18 percent higher than in 2012 and 44 percent of total imports in 2015.

Imports and overall U.S. consumption of fittings and flanges declined in 2016 and into 2017 due to the major downturn in the oil and gas industry. The trend of increasing import market shares relative to domestic shipments has continued, however, and is certain to do so in the future. For instance, according to public import data, since the AD and CVD investigations on finished flanges were initiated in mid-2016, the volume of flange imports from the subject countries (India, Italy, and Spain) decreased sharply, from approximately 17.1 million kilograms during January through March 2016, to 5.6 million kilograms during the same period in 2017, a difference of over 67 percent. Meanwhile, imports from non-subject China, Korea, and Malaysia increased over 38 percent during the same comparative year-to-date periods, from 4.1 million kilograms to 5.7 million kilograms.

Weldbend also participated in the safeguard investigation of steel imports conducted by the Commission in 2001 under Section 201 of the Trade Act of 1974, which included both fittings and flanges. Based on the Commission's findings, the President ultimately imposed temporary tariff increases against all imports of fittings and flanges. Those tariffs were soon removed, however, and the impact of imports on the domestic industry has increased over the ensuing years. The Section 232 investigation offers the opportunity for the United States to take a more comprehensive approach to imports of fittings and flanges than is possible through country-specific trade remedies.

Country-specific trade remedies have also proven deficient because of the long history of fittings subject to one or more of the AD orders being transshipped through non-subject countries or being mismarked as to their country of origin. The Department determined in March 1994 in a formal anti-circumvention proceeding that the AD order on fittings from China was being circumvented by means of shipping unfinished fittings to Thailand for finishing and subsequent export to the United States as subject fittings of Thailand.<sup>8</sup> More recently, on May 1, 2017, domestic fittings producers requested that the Department conduct another anti-circumvention inquiry. This request presents evidence that subject fittings are being exported from China to Malaysia for minor finishing operations – or simply for marking as Malaysian in origin – before being reexported to the United States and sold as products of Malaysia. The Department has only begun to consider this request, but seems almost certain to initiate a formal inquiry. Weldbend shares the concerns about circumvention by China that are expressed in this recent request for an anti-circumvention inquiry.

This latest anti-circumvention request should come as no surprise. Fittings and flanges are regularly imported into the United States in violation of the AD/CVD laws and various other U.S. laws. As the Department is aware, U.S. Customs and Border Protection (“CBP”) has in place procedures for enforcing the AD/CVD laws. CBP has specifically designated AD/CVD enforcement as a Priority Trade Issue (“PTI”). PTIs are defined as high-risk areas that can cause significant revenue loss, hurt the U.S. economy, or threaten the health and safety of the American people. According to the annual AD/CVD enforcement report prepared by CBP and

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<sup>8</sup> *Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China; Affirmative Final Determination of Circumvention of Antidumping Duty Order*, 59 Fed. Reg. 15,155 (Mar. 31, 1994).



the Department of Homeland Security for Congress, in FY 2014 CBP levied 29 monetary penalties totaling over \$61 million on importers for fraud, gross negligence, and negligence related to AD/CVD violations.<sup>9</sup> Moreover, an entry summary-based operation on unpaid AD duties on Chinese fittings resulted in the collection of \$2.3 million in additional duties.<sup>10</sup>

Weldbend is grateful for these efforts. However, the additional duties that CBP is able to recoup are surely only the tip of the iceberg. Over the years, Weldbend has brought to the attention of CBP and other U.S. government agencies substantial evidence of unlawful practices that have enabled imported fittings and flanges to displace U.S.-origin products. Each such instance of illegal transshipment or mismarking graphically demonstrates the impact of foreign unfair competition on the economic welfare of the fittings and flanges industry, an industry indispensable to America's national security. Examples of Weldbend's efforts include:

- In 2001, Weldbend met with CBP officials to provide documentary evidence of transshipment of Chinese fittings through Korea and Taiwan.
- In 2002 and 2003, Weldbend met with officials of the Department of Justice and CBP to alert them to information about fittings imports originating in China and elsewhere being transshipped through Mexico or Canada without appropriate country-of-origin markings. Weldbend also discussed concerns about fittings and flanges from Malaysia and Vietnam.
- In 2004, Weldbend spoke with several CBP officials about fittings marked "USA" that had apparently originated in Malaysia. Weldbend also discussed evidence of flange transshipments from China.
- In 2005, Weldbend presented a CBP official with evidence of the transshipment through Japan and Korea of Chinese-origin flanges.

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<sup>9</sup> Department of Homeland Security and U.S. Customs and Border Protection, Fiscal Year 2015 Report to Congress, "Antidumping and Countervailing Duty Enforcement Actions and Compliance Initiatives: FY 2014," at 2 (Aug. 5, 2015) ("2014 AD/CVD Report").

<sup>10</sup> 2014 AD/CVD Report, at 5.

- In 2007, Weldbend contacted CBP to convey information about a Korean supplier that was apparently sending unmarked fittings through the Port of Houston.
- In 2009 and 2010, Weldbend alerted officials at the Federal Trade Commission (“FTC”) of claims by some U.S. companies sourcing Indian flange forgings that the flanges they were selling were “Made in USA,” in contravention of the FTC rules against such misrepresentations.
- In 2011, Weldbend provided additional information to FTC officials and met at the FTC to present further evidence.

Weldbend is unaware of what, if anything, came of its repeated communications with U.S. authorities. It never received any reports of corrective action, nor noticed any changes in the marketplace. To the contrary, Weldbend continues to receive proposals from foreign vendors expressly describing their willingness and ability to evade U.S. trade laws. Although Weldbend has always rejected such proposals, their frequency indicates the degree to which widespread evasion, along with deficient enforcement, threatens U.S. national security with regard to both fittings and flanges. For example, during 2011 alone:

- Weldbend received a proposal from a Chinese supplier of subject fittings, which, as noted, are subject to AD duties of up to 182.9 percent. When Weldbend asked how the supplier could sell into the United States in light of the duties, the supplier said, “We can show two Bills of Lading. One is for you and another is for Customs.”
- Another Chinese supplier of fittings made the following offer, after being asked whether the word “China” would appear on the product: “We can mark any word on fittings that you want, according to your request.”
- Yet another Chinese fittings supplier, in response to a query about how the AD duties are handled, said: “It is not necessary Marking ‘China’ on fitting. It depends on you.” This, of course, would be directly contrary to U.S. law.
- A Chinese supplier of flanges assured Weldbend that it was “not necessary” to mark the flanges with the Chinese country of origin.
- Another Chinese flange vendor explained, “Whether or not the country of origin will be marked on the flange forgings is solely determined by the customer. We will

supply forgings in accordance with the customer's individual preference.”

The recent downturn in the U.S. oil and gas industry has made the fittings and flanges industry even more vulnerable to imports. Although both imports and overall U.S. consumption of fittings and flanges declined in 2016 and into 2017, the trend of increasing import market shares relative to domestic producers' market shares has continued. The oil and gas industry will eventually rebound, but the dual pressure from depressed demand and increased imports may, in the absence of a comprehensive remedy, render the domestic fittings and flanges industry too weakened to respond to a rise in domestic needs. U.S. national security has already suffered and will do so further if the erosion of this important segment of the nation's industrial base is permitted to persist.

The size of the domestic fittings and flanges industry is already small by historical standards. According to the Commission, the number of U.S. fittings producers has contracted significantly from the 12 firms identified in the original AD investigations in 1986-1987. Since the first five-year reviews in 1999-2000, the number of meaningful U.S. producers has stood at only four, including Weldbend.<sup>11</sup> Publicly available data from the Commission make clear that these producers account for the vast majority of domestic production.

U.S. fittings production and the volume of shipments have drastically declined in recent years. Domestic producers' shipments, for example, fell from 28.7 million kilograms in 2004 to 15.8 million kilograms in 2015, a decrease of 45 percent.<sup>12</sup> According to the Commission, this

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<sup>11</sup> ITC Fourth Review Report at I-16.

<sup>12</sup> *Id.* at Table I-3. Pounds were converted to kilograms for consistency.

represents a decline from 64.8 percent of total market share in 1999 during the first reviews to only 23.9 percent in 2015.<sup>13</sup>

The decline in production and shipments is not due to the contraction in the fittings industry: the remaining producers have ample capacity, but it is not being used because of the inroads of imports. The U.S. fittings industry's capacity utilization has fallen from 59.5 percent during the second five-year reviews in 2004 to 48 percent in 2015, following a low of 31 percent in 2009 during the third reviews.<sup>14</sup> This low level of capacity utilization suggests that U.S. producers would be able to increase production of fittings substantially if given the opportunity to do so. Thus, any tariffs imposed on imported fittings as a result of the Section 232 investigation would not undermine the available supply of fittings to downstream users in the U.S. market, but instead would increase the proportion of that fittings supply that is produced here in America.

U.S. flange producers are facing similar adversity, and have declined in number in recent years. Domestic producers' shipments fell from 68.7 million kilograms in 2013 to 45.4 million kilograms in 2015, a decline of 34 percent.<sup>15</sup> With this decline in shipments, domestic producers' market share also deteriorated, from 39.8 percent in 2013 to only 28.3 percent in 2015.<sup>16</sup> Domestic flange capacity utilization decreased from 71 percent in 2013 to 44 percent in 2015, and further to 33 percent in January-March 2016, the most recent period for which

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<sup>13</sup> *Id.* at Table I-6.

<sup>14</sup> *Id.* at Table I-3.

<sup>15</sup> ITC Preliminary Flanges Report at Table III-6.

<sup>16</sup> *Id.* at Table IV-5.

Commission data are available.<sup>17</sup> As with fittings, this low level of domestic flange capacity utilization suggests that U.S. producers would be able to increase production of flanges substantially. Higher tariffs would not disable downstream users in the U.S. market from obtaining supplies of flanges, but would enable domestic flange producers to gain market share. Restricting imports would bolster American manufacturing and American jobs.

In sum, fittings and flanges are essential to the nation's critical infrastructure and military readiness. Yet, as noted, the U.S. fittings and flanges industry is experiencing steep declines in shipments and market share,<sup>18</sup> as well as associated reductions in production, employment, and investment.<sup>19</sup> Pursuant to Section 705.4 of the NSIBR, the massive displacement of domestic fittings and flanges by imports threatens the ability of the United States to meet its own industrial and defense requirements. Weldbend urges the Department to fashion a remedy that will sustain an industry so vital to the national security.

If there are any questions concerning this submission, please do not hesitate to contact the undersigned.

Respectfully submitted,



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<sup>17</sup> *Id.* at Table III-4.

<sup>18</sup> ITC Fourth Review Report at Table I-3 and Table I-6; ITC Preliminary Flanges Report at Table III-4 and Table III-6.

<sup>19</sup> ITC Fourth Review Report at Table I-3; ITC Preliminary Flanges Report at Table III-4, Table III-10 and Table VI-4.