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September 28, 2017

Mr. William L. Busis
Deputy Assistant U.S. Trade Representative for Monitoring and Enforcement
Chair, Section 301 Committee
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, D.C. 20510

Re: Request for Comments on Section 301 Investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation [Docket No. USTR-2017-0016]

Dear Mr. Busis:

The Motor & Equipment Manufacturers Association (MEMA) represents 1,000 vehicle suppliers that manufacture and remanufacture new original equipment (OE) and aftermarket components and systems for use in passenger cars and heavy trucks.[1] Our members lead the way in developing advanced, transformative technologies that enable safer, smarter and more efficient vehicles, all within a rapidly growing global marketplace with increased regulatory and customer demands.

Vehicle suppliers are the largest sector of manufacturing jobs in the United States, directly employing over 871,000 Americans in all 50 states plus the District of Columbia. Together with indirect and employment-induced jobs, the total employment impact of the motor vehicle parts manufacturing industry is 4.26 million jobs. Nearly $435 billion in economic contribution to the U.S. GDP is generated by the motor vehicle parts manufacturers and its supported activity. In total, motor vehicle parts suppliers contribute more than 77 percent of the value in today's vehicles.

MEMA is pleased to provide its feedback to the U.S. government on the initiation of a Section 301 investigation concerning China's policies and practices related to technology transfer, intellectual property, and innovation, pursuant to President Donald Trump's August 14, 2017 executive memorandum and in accordance with your *Federal Register* notice. MEMA members operate in a global supply chain of suppliers and customers both in and outside of the United States. This model has allowed for continued growth in motor vehicle production as well as U.S. employment in our industry sector. MEMA urges the administration to view this investigation through the lens of free and fair trade that promotes U.S. competitiveness, including investment in China and elsewhere abroad and domestic employment opportunities at home.

[1] MEMA represents its members through four divisions: Automotive Aftermarket Suppliers Association (AASA); Heavy Duty Manufacturers Association (HDMA); Motor & Equipment Remanufacturers Association (MERA); and, Original Equipment Suppliers Association (OESA).

Motor vehicle parts manufacturers are innovators, conducting almost one-third of the annual $18 billion investment by the automotive industry in research and development. This industry commitment has made the U.S. a leader in more fuel efficient, cleaner and safer vehicles resulting from domestic development and manufacturing of advanced vehicle technologies. Given this investment in innovation, intellectual property rights (IPR) protection is critical to the sustained success of the motor vehicle parts manufacturing industry. The IPR of a company is among its most valuable assets here in the U.S. and abroad. Strong IPR protections encourage companies to support important research and development investment and to foster innovation as IPR owners are provided certainty that their inventions and technological advancements will be safe from infringers.

China is a large and important trading partner for the supplier and motor vehicle industry. In addition to the importance of China as a trading partner, China remains a competitor and challenge for motor vehicle suppliers. This challenge is particularly significant when it comes to protecting IPR. Motor vehicle suppliers are part of a global vehicle industry with facilities located around the globe, including China. The physical presence of suppliers in China can pose challenges in protecting their IPR as they invest in the development and production of new advanced technologies.

There are several Chinese policies and practices that place IPR at risk, including:

- **Promotion of Technology Localization based on Chinese government-led industrial plans.** In recent years, China has released several policies designed to promote the development of strategic industries. For example, the "Made in China 2025" initiative identifies "new energy vehicles" (NEVs) as one of ten priority sectors. As part of this initiative, China set a target to sell 35 million vehicles annually by 2025, with a further objective that at least one-fifth of them be classified as NEVs. The plan has a domestic content goal of 70 percent by 2020 and 80 percent by 2025. While perhaps well-intentioned to spur Chinese innovation, the government assistance procured under this program is given only to Chinese industries, thus reducing the overall competitiveness of foreign firms operating in China. Furthermore, such policies focused on developing and acquiring advanced technologies raise concerns that foreign companies may be vulnerable to unfair practices focused on technology transfer, which will also make it difficult to compete and protect IPR in China and abroad.
- **Pending Chinese ban on use of Virtual Private Networks (VPNs).** Earlier this year, it was reported that China requested that state-run telecom operators prevent their customers from running VPN applications on their networks by February 1, 2018. Such locked-down, restricted access would make it difficult if not impossible for manufacturers with facilities and/or employees in China to conduct business successfully and securely. Additionally, actions like this make a company's global operations even more susceptible to a broad exposure of its research, development, IPR and trade secrets.
- **Laws and policies governing cybersecurity, data and software.** China's legal and regulatory framework governing information technology pose serious

challenges for companies that rely on global connectivity. Suppliers rely on the seamless and secure flow of data in a protected environment. While cybersecurity threats are a constant concern anywhere in the world, MEMA's members have indicated that less secure environments, such as in China, present even more significant apprehensions.

Additionally, China (and other countries), have placed data residency and privacy requirements on companies. Regulations of this type increase costs and complexities of doing business in these jurisdictions and raise more barriers for non-domestic competition.

Policies and regulations in China governing software can unintentionally cultivate the proliferation of IPR cybertheft. For example, a company doing business in China must physically install any software in that country. Such a policy gives cyber criminals more access and opportunity to steal information directly from business owners.

- **Duties and Value Added Tax (VAT).** Foreign companies in the Chinese market already face higher cost structures due to government policies. These policies, coupled with the VAT and duties, create a catalyst for the manufacture of "knock-off" parts. As an example, Chinese entities will import U.S. aftermarket auto parts for a period of time, obtaining brand and part recognition. After that recognition is obtained, the Chinese importers shift to a "knock-off" that is produced locally and, oftentimes, without regard to product quality or compliance. Those parts are then available at a much lower price point, providing Chinese producers a significant cost advantage.

- **Enforcement actions by the Chinese government do not adequately protect IPR and allow infringement and trade secret theft to continue.** China has demonstrated efforts to improve the laws and regulations that protect IPR, but MEMA members are concerned that these protections are not adequately enforced and progress is not happening quickly enough. This lack of strong IPR enforcement actions leads to a proliferation of manufacturing and trafficking of counterfeit parts, which is a serious problem for motor vehicle suppliers.

  For the brand owner, counterfeiting leads to significant costs, including lost sales, reduced markets and margins, damages to brand reputation, and significant legal and investigation expenditures. Perhaps more importantly, counterfeit motor vehicle parts pose a serious threat to the motoring public because of the likelihood that a part will not perform like a genuine part or could fail. Weak enforcement of existing laws and regulations means little is done to stop counterfeiting and the trafficking of counterfeit goods.

  Additionally, the valuation of seized counterfeits in China by local enforcement authorities often does little to discourage the manufacture and trafficking of fake goods. These valuations can be based on local manufacturing costs or the value at which the fake goods will be sold instead of the value of genuine branded products. These low values mean that many seizures do not reach the criminal threshold, and punishments, if any, are minor. Assessing the value of counterfeits based on the value of genuine branded products would discourage counterfeiting in China because it would increase the likelihood of enhanced punishments for activity already criminal under Chinese law.

As USTR conducts this investigation, MEMA urges it to work closely with industry stakeholders. Such a partnership is critical given the potential impacts, both beneficial and negative, of the investigation results on the global motor vehicle supplier industry. The protection of IPR is of critical importance to motor vehicle suppliers. A lack of strong IPR protections in China reduce markets and margins for the domestic industry, placing U.S. companies at a competitive disadvantage.

MEMA appreciates your consideration of these comments. Please contact Catherine Boland (cboland@mema.org or 202-312-9241) if there is any additional information MEMA can provide for this investigation.

Sincerely,

Ann Wilson

Ann Wilson
Senior Vice President, Government Affairs