



May 18, 2018

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The Honorable Wilbur Ross  
Secretary  
U.S. Department of Commerce  
Washington, D.C. 20230

**Re: Interim Final Rule on Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel and Aluminum Into the United States; and the Filing of Objections to Submitted Exclusion Requests [Docket Nos. BIS-2018-0002 and BIS-2018-0006]**

Dear Secretary Ross:

The Motor & Equipment Manufacturers Association (MEMA) respectfully submits these written comments to the Interim Final Rule (IFR) on *Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel and Aluminum Into the United States; and the Filing of Objections to Submitted Exclusion Requests*, issued by the Bureau of Industry and Security (BIS), U.S. Department of Commerce on March 19, 2018. This Interim Final Rule amends the National Security Industrial Base Regulations.

In the IFR, the BIS has proposed a process for importers to request product exclusions from the Section 232 tariffs. Commerce and BIS will determine that the product in question is: (a) not produced in the United States in a sufficient and reasonably available amount; (b) produced in the United States but not of a satisfactory quality; or (c) should be granted an exclusion based upon specific national security considerations. The IFR sets the procedures that importers must follow in the exclusion process.

MEMA is very concerned about the adverse impact on manufacturing jobs resulting from the Section 232 tariffs. The impact of these tariffs has made many of our member companies postpone future U.S. investments in anticipation of increased costs and uncertainty due to expected tariffs on steel and aluminum imports. Tariffs will have a negative impact on these manufacturers, the jobs they create, and ultimately the American consumer.

While MEMA continues to oppose the tariffs because of the impact on motor vehicle parts manufacturers, we are deeply concerned that the exclusion request process is flawed and must be improved. We urge Commerce to simplify the process and develop clearer procedures and processes for product exclusion applications.

## **I. Introduction**

MEMA represents 1,000 vehicle suppliers that manufacture and remanufacture new original equipment and aftermarket components and systems for use in passenger cars and heavy trucks.<sup>1</sup> Our members lead the way in developing advanced, transformative technologies that enable safer,

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<sup>1</sup> 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).



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 motor vehicle parts manufacturers and their supported activity. In total, motor vehicle parts suppliers contribute more than 77 percent of the value in today's vehicles.

MEMA members operate in a global supply chain of domestic and international suppliers and customers. Our members range in size from large, multi-national corporations to small- and medium-sized enterprises. This model has contributed to continued growth in vehicle production and jobs here in the United States.

MEMA supports the administration's agenda to assure free, fair, and reciprocal trade and a level playing field for all Americans. MEMA supports the administration's efforts to strengthen our nation's economy. However, MEMA is very concerned about the adverse impact on manufacturing jobs resulting from the Section 232 tariffs.

MEMA urges the administration to reset discussions with our trading partners to pursue our joint goal of free and fair trade.

## **II. Comments on Interim Final Rule**

### **A. Sourcing Specialty Steel and Aluminum**

Suppliers support and rely on a strong domestic steel and aluminum industry to provide a wide range of raw and semi-finished materials to manufacture motor vehicle components and systems in the United States. However, many specialty steel and aluminum materials used in vehicle components are not available domestically.

Often, there are few producers in the world – in some cases only one or two – that can source the grade of specialty materials needed to meet component specifications. Examples include wire used in steel-belted radial tires and specialty metals used in fuel injectors.

These specialty producers operate in small, niche markets of low-volume, high-strength steel manufactured to stringent performance specifications (often for safety-critical, high-durability applications). For domestic producers, it is not a question of whether they can produce these materials, but instead will production of these niche materials be cost-effective and provide them a return on investment.

Given the low volume and high investment necessary to manufacture and smelt these specialty products, many U.S. steel producers simply have made the decision that it is not worth the investment to enter into these markets. Additionally, it can take many years for a company to test and validate that a material producer's product will meet the specifications necessary to perform as required for many of these safety-critical parts.

Specialty materials and components imported by vehicle suppliers are used by hundreds of parts manufacturers. Continued access to these specialized products is critical to the industry and our national economy. Additionally, many of the motor vehicle parts manufacturers who rely on

these specialty materials in turn export the components manufactured in the U.S. using these specialty materials.

Tariffs lead to increases in the costs of materials, ultimately increasing production costs for the products suppliers make for vehicle manufacturers and consumers. Often, these increased production costs cannot be passed on to the vehicle manufacturers. Small- and medium-sized motor vehicle parts manufacturers are particularly susceptible to increased costs, squeezed margins, and added burdens. Furthermore, suppliers are also very concerned that these tariffs will lead to greater importation of finished goods that will compete with U.S.-manufactured goods made with higher-cost steel and aluminum due to the tariffs.

MEMA submitted comments to the administration (May 31, 2017<sup>2</sup>, June 20, 2017<sup>3</sup>, February 13, 2018<sup>4</sup>) noting that disruptions to supply chains or increases in production costs will not contribute to the national security of the United States and will have a negative impact on the ability of suppliers to continue domestic investments in developing new products, facilities, and jobs.

#### **B. Amend the IFR to Improve the Product Exclusions Application Process**

Now that Section 232 tariffs have been imposed, suppliers, working with their importers, will be applying for product exclusions. However, the process is already creating significant burdens on these companies. The exclusion request process lacks transparency and will be particularly burdensome for smaller manufacturers. It is unbalanced and appears to not allow for successful granting of exclusions to downstream users.

In previous comments and communications, MEMA has made several recommendations on how to improve the exclusion request process. The following comments address and apply equally to the two new supplements amending Part 705 of Subchapter A of the National Security Industrial Base Regulations. Supplement No. 1 to Part 705 details the requirements for exclusion requests regarding steel products. Supplement No. 2 to Part 705 details the requirements for exclusion requests regarding aluminum products.

MEMA urges the Department to simplify the process and develop clearer procedures and processes for product exclusion applications. As currently configured, the exclusion request process is not working well. Specifically, MEMA urges the Department to update the IFR and to do the following:

1. **Allow duty refunds to the date an exclusion request is deemed complete instead of the date the request is published in the *Federal Register* and clarify how companies can seek refunds.** The Supplements do not indicate how a company that successfully obtains a product exclusion may obtain a refund on duties paid. While an amendment to each of the proclamations has partially addressed this,<sup>5</sup> retroactive relief is only to the date the exclusion request is publicly posted by BIS to the docket.

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<sup>2</sup> In response to the *Notice Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Steel*, 82 Fed. Reg. at 19205.

<sup>3</sup> In response to the *Notice Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Aluminum*, 82 Fed. Reg. 21509 (May 9, 2017); *Change in Comment Deadline for Section 232 National Security Investigation of Aluminum*, 82 Fed. Reg. 11557 (June 2, 2017).

<sup>4</sup> MEMA letter to the President, February 13, 2018.

<sup>5</sup> *Presidential Proclamation Adjusting Imports of Steel into the United States* (Mar. 22, 2018) at (7); *Presidential Proclamation Adjusting Imports of Aluminum into the United States* (Mar. 22, 2018) at (7).

There are a few problems with this resolution. First, no information is provided as to how successful applicants will be able to obtain a refund. This can be addressed by amending the IFR with a clear and detailed description of the refund process.

Additionally, the tariffs went into effect on March 23, 2018, and no exclusion requests have been granted as of today. Currently, the time period between filing the exclusion request and the date the application is posted appears to be taking weeks. That delay is unjustly penalizing companies.

MEMA urges Commerce to change the allowed date for refunds to the date the application was deemed complete by BIS.

2. **Provide timely information to companies requesting exclusions on the completeness of a request to allow the company to submit complete requests quickly.** MEMA urges Commerce to promptly communicate any need for additional information in an exclusion request in order to allow companies to file complete requests as quickly as practicable. This could include guidance on the BIS website, such as “FAQs” (see below).
3. **Streamline the exclusion process to allow for applications covering products with the same Harmonized Tariff Schedule (HTS) code in different dimensions.** The IFR requires that a separate request must be submitted for each variation of a product, even those variations with minor differences such as width or length. This restriction makes the filing process unnecessarily complicated and increases the paperwork burden on companies filing for exclusions with no added benefit.

MEMA urges Commerce to update the IFR to allow for exclusion requests to cover ranges of dimensions under a given code to simplify the application process.

4. **Consolidate the process to allow trade associations to apply for exclusions on behalf of an industry to avoid placing burdens on BIS.** The IFR limits exclusion requests to “Only individuals or organizations using [steel/aluminum] in business activities . . . in the United States may submit exclusion requests.”<sup>6</sup> The Department should allow trade associations to apply on behalf of its members, allowing multiple companies within the same industry to consolidate applications through one source.

This would be particularly helpful to supplier companies, many of which rely on the same imported raw and semi-finished steel and aluminum for further manufacturing in the United States. A number of these materials are not produced or are unavailable in sufficient quantities from U.S. producers. A single trade association application will decrease costs for companies filing exclusion requests – particularly small- and medium-sized enterprises. Additionally, consolidated applications would make the BIS process to review applications more efficient.

MEMA encourages Commerce to extend the ability to file exclusion requests to include trade associations.

5. **Clarify how a broader application of granted exclusions will work and the criteria for same.** The IFR clearly considers allowing broad approvals of products for exclusions when

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<sup>6</sup> Supplements at (c)(1)

it states “. . . unless Commerce approves a broader application of the product-based exclusion request to apply to additional importers.”<sup>7</sup> However, the IFR does not clarify how a broader application will be considered. MEMA urges the Department to clarify this in the IFR and to allow trade associations to file blanket exclusion requests.

In MEMA’s comments on the Section 232 investigations in 2017, we included lists of steel and aluminum products that were critical to motor vehicle parts manufacturers and either not available in the U.S. or not available in sufficient quantities. A number of those products are included in the tariffs. A list of those Harmonized Tariff Schedule codes is included with these comments in **Attachment 1**. MEMA urges Commerce to consolidate existing applications for exclusions for these products and quickly grant a broad approval. This is not an exhaustive list. BIS should proactively grant exclusions on these and other products that are being requested by many companies within the same manufacturing sector.

### **C. Consider Recommended Improvements to the Tariff Program and Process**

In addition to the specific recommendations that would require amending the IFR, MEMA encourages the Department to consider a number of other improvements to the tariff program and exclusion process.

1. **Publish an “FAQ” page clarifying the exclusion request process.** An “FAQ” page, written in plain language, is necessary to address some confusion companies are experiencing. Such a page should include who must file, what should be included in supplemental materials, how to protect sensitive information and trade secrets, and differences with the separate proposed Section 301 tariffs. The similar timing of the proposed Section 301 tariffs has caused confusion with the steel and aluminum tariffs.
2. **Review, on a regular basis, the impact of tariffs on the economy and downstream users and develop and implement a plan to sunset them if they prove to have a significant negative impact.** We urge Commerce to consider the unintended consequences of these tariffs in any review. One such consequence would be companies further down the supply chain importing finished goods at lower prices instead of purchasing higher priced U.S. manufactured goods from companies that imported raw and semi-finished materials subject to tariffs.
3. **Authorize all companies granted product exclusions to import tariff-free from any available market economy source country because the basis of the exclusion request is that the U.S. company cannot source the product domestically.** While the exclusion request process, managed by Commerce, is separate from the country exemption process being managed by the U.S. Trade Representative (USTR), both Commerce and USTR should coordinate and allow companies to apply for and be granted exclusion requests or pay the tariffs on products that go beyond a country’s quota.
4. **Allow companies to apply for exclusions for products from countries with exemptions and quotas in place.** MEMA understands that Commerce will not entertain exclusion requests covering steel from South Korea that is subject to a filled quota. However, we urge Commerce to reverse this policy as it treats steel from countries with exemptions, such as South Korea, less favorably than those countries that have not been granted exemptions,

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<sup>7</sup> Supplements at (c)(2)

such as Russia and China. In this example, Russian and Chinese steel and aluminum will be permitted to be imported into the U.S. with an exclusion or be subject to tariffs. After the steel quota for Korea is reached, companies are not permitted to apply for exclusions or pay tariffs on additional Korean steel, and steel shipments must either be returned or destroyed.

5. **Permit and clarify flexibility in certain situations particular to the motor vehicle industry in the designation of the proper party to make the exclusion request.** There are certain situations that may be unique to the motor vehicle industry. This is illustrated in the following examples.

The first example is a “resale” program, which is common in the motor vehicle industry. In this program, the purchaser and user of the materials are not the same company. The vehicle manufacturer will purchase steel directly from the foreign steel company but will then resell the steel to a parts supplier. The supplier will then use the steel in the production of a part to be sold to the vehicle manufacturer who originally purchased the materials.

The second example, the vehicle manufacturer will instruct the parts supplier to purchase specific materials from a foreign producer. The properties or chemical makeup of the materials being purchased and used may be unknown to the supplier.

MEMA urges Commerce to clarify the application process and provide flexibility allowing either the parts supplier or the vehicle manufacturer to make the exclusion request. Lack of clarity has made it difficult to determine which party should submit the exclusion request and led to confusion. An “FAQ” page (see above) can help explain the process for the motor vehicle industry.

### III. Conclusion

For the reasons set forth above, MEMA respectfully requests the Department of Commerce to make changes to the IFR that will simplify and clarify the exclusion process. In addition to the IFR clarifications we raised, please consider MEMA’s further recommendations to improve the overall process. Please contact me via email [awilson@mema.org](mailto:awilson@mema.org) or call 202-312-9246, if there is any additional information MEMA can provide.

Sincerely,



Ann Wilson  
Senior Vice President of Government Affairs

## Attachment 1

*This is a non-exhaustive list of examples of steel and aluminum products where there is either no U.S. supply or insufficient U.S. supply of producer-developed specialty steel or aluminum.*

<b>HTS Code</b>	<b>HTS Description</b>
7211.29.60.30	Flat-rolled products of iron or non-alloy steel, of a width of less than 600mm, not clad, plated or coated:(con.) Not further worked than cold-rolled(cold-reduced); of a thickness exceeding 1.25mm
7213.20.00	Bars and rods, hot-rolled, in irregularly wound coils, of iron or nonalloy steel: of free-cutting steel
7213.91.30.11	Bars and rods, hot-rolled, in irregularly wound coils, of iron or non-alloy steel: Not tempered, not treated and not partly manufactured; Tire cord-quality steel wire rod as defined in statistical note 4 of this chapter
7213.99.00.30	Bars and rods, hot-rolled, in irregularly wound coils, of iron or non-alloy steel: of circular cross-section: with a diameter of 14mm or more but less than 19mm
7215.10.00	Other bars and rods of iron or nonalloy steel; of free-cutting steel, not further worked than cold-formed or cold-finished
7215.50.00	Other bars and rods of iron or nonalloy steel; Other, not further worked than cold-formed or cold-finished Containing by weight less than 0.25 percent of carbon
7217.10.50.30	Wire of iron or nonalloy steel with a diameter of 1.5 mm or more Heat treated
7217.10.50.90	Wire of iron or nonalloy steel with a diameter of 1.5 mm or more
7217.10.70	Flat wire
7217.10.80.20	Round wire Containing by weight 0.25 percent or more but less than 0.6 percent of carbon; Containing by weight more than 0.6 percent of carbon: Heat treated
7217.30.45.30	Plated or coated with other base metals containing by weight 0.6 percent or more of carbon with a diameter of 1.0 mm or more but less than 1.5 mm
7217.30.45.60	Plated or coated with other base metals Containing by weight 0.6 percent or more of carbon
7217.30.45.90	Plated or coated with other base metals with a diameter of 1.5 mm or more
7217.30.75	Plated or coated with other base metals with a diameter of 1.5 mm or more
7221.00.00	Bars and rods, hot-rolled, in irregularly wound coils, of stainless steel
7222.20.00.43	Bars and rods, not further worked than cold-formed or cold-finished Containing 8 percent or more but less than 24 percent by weight of nickel; with a maximum circular cross-sectional dimension of 18 mm or more and less than 152.4mm
7223.00.10.31	Round wire with a diameter of 0.25 mm or more but less than 0.76 mm
7223.00.10.61	Wire of stainless steel; Round wire with a diameter of 1.52 mm or more but less than 5.1mm
7223.00.10.76	Wire of stainless steel; Round wire with a diameter of 5.1 mm or more
7223.00.50.00	Flat wire

<b>HTS Code</b>	<b>HTS Description</b>
7225.11.00	Flat-rolled products of other alloy steel, of a width of 600mm or more; Grain-oriented
7225.19.00	Flat-rolled products of other alloy steel, of a width of 600mm or more;
7225.50.80.80	Flat-rolled products of other alloy steel, of a width of 600mm or more; Other, not further worked than cold-rolled(cold-reduced)
7225.92.00	Flat-rolled products of other alloy steel, of a width of 600mm or more; Otherwise plated or coated with zinc
7225.99.00.90	Flat-rolled products of other alloy steel, of a width of 600mm or more; of high-nickel alloy steel
7226.11.10	Flat-rolled products of other alloy steel, of a width of less than 600mm: of silicon electrical steel: Grain-oriented of a width of 300 mm or more
7226.11.90.30	Flat-rolled products of other alloy steel, of a width of less than 600 mm: of silicon electrical steel: Grain-oriented of a width of less than 300 mm of thickness not exceeding 0.25mm
7226.11.90.60	Flat-rolled products of other alloy steel, of a width of less than 600 mm: of silicon electrical steel: Grain-oriented of a width of less than 300 mm
7227.90.10.30	Bars and rods, hot-rolled, in irregularly wound coils, of other alloy steel: of tool steel (other than high-speed steel): Not tempered, not treated, and not partly manufactured. of ball-bearing steel
7227.90.60.40	Bars and rods, hot-rolled, in irregularly wound coils, of other alloy steel; with a diameter of 19 mm or more
7228.30.80.15	Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or non-alloy steel; with a diameter of less than 76mm
7306.40.50	Other tubes, pipes and hollow profiles (for example, open seamed or welded, riveted or similarly closed), of iron or steel; Other, welded, of circular cross section, of stain less steel; Having a wall thickness of 1.65 mm or more
7601.00.00	Unwrought aluminum
7605.19.00	Aluminum wire: of aluminum, not alloyed
7606.12.30	Aluminum plates, sheets and strip, of a thickness exceeding 0.2mm: Rectangular (including square): with a thickness of more than 6.3m
7606.12.60	Aluminum plates, sheets and strip, of a thickness exceeding 0.2mm: Rectangular (including square); Clad
7607.11.60	Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm; Not backed: of a thickness not exceeding 0.01mm
7607.11.90.9	Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm; Not backed: Aluminum can stock
7607.19.60	Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm; Not backed
7608.20.00	Aluminum tubes and pipes of aluminum alloys
7609.00.00	Aluminum tube or pipe fittings (for example, couplings, elbows, sleeves)