



Comments of the
Motor & Equipment Manufacturers Association
to
U.S. Department of Commerce, Bureau of Industry and Security
RE: Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum
Import Tariffs and Quotas
Docket No. BIS–2020–0012; RIN 0694–XC058
July 10, 2020

The Motor & Equipment Manufacturers Association (MEMA) submits these comments in response to the U.S. Department of Commerce, Bureau of Industry and Security (BIS) notice of inquiry with request for comments published May 26, 2020.¹

MEMA is the nation’s leading trade association representing motor vehicle parts suppliers and represents over 1,000 companies that manufacture components, technologies, and systems for use in passenger vehicles and heavy trucks.² MEMA members provide original equipment (OE) components to new vehicles, as well as aftermarket parts to service, maintain, and repair millions of vehicles on the road today. In total, vehicle parts manufacturers represent the largest sector of manufacturing jobs in the United States, directly employing over 871,000 people in all 50 states and generating 2.4 percent of U.S. GDP. Our members lead the way in developing advanced, transformative technologies that enable safer, smarter, and more efficient vehicles.

The broad negative impact of Sec. 232 and other tariffs cannot be understated. Vehicle parts manufacturers have been squeezed by a cumulative impact of increased material costs, constrained sourcing, and other concurrent tariff actions, which places them at a competitive disadvantage to their global counterparts. Parts 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 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. These specialty producers operate in small, niche markets of low-volume, high-strength materials manufactured to stringent performance specifications (often for safety-critical, high-durability applications). Additionally, it can take many years for a supplier 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

¹ 85 Fed Reg at 31441

² 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).

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

Many of our members have participated in the product exclusion application process, which commenced in mid-2018. While MEMA appreciated some of the adjustments that BIS made to the exclusions process³ – such as the addition of rebuttal and surrebuttal submissions – there continues to be prevailing concerns among our members. These concerns are primarily that the process is not sufficiently transparent or managed equitably. Members continue to experience unresponsiveness from the Department and BIS, despite repeated outreach to them. Claims made by objectors are not fully scrutinized and verified. Additionally, the continuous monitoring of rolling submissions/decisions is onerous, creating an ongoing burden on resources and exacerbating uncertainty. To illustrate these concerns, MEMA submits the following anecdotes.

Lack of Transparency, Impartiality, and Responsiveness

One of our members shared the following frustrating scenario. This vehicle parts supplier has a required steel specification – which was developed by the company’s metallurgical engineers and used for over 30 years in global purchases – that provides a range of values for each element within the steel product. That steel specification range of certain elements took the product outside of one classification. However, the actual imported product’s specification kept it within that classification. The HTS classification of any importation depends on the specific value of the elements in that imported product; these values are described on the mill sheets that must come with each import.

Nearly one year after the exclusion request was filed, the application was denied because this classification did not meet the specification classification. Nevertheless, both classifications were, in fact, correct. Commerce and BIS process does not appear to account for this type of scenario. Commerce/BIS did not conduct any further outreach to further examine, understand, and verify this scenario with the applicant. After the denial, the supplier repeatedly called, emailed, directly appealed, and used third-party interventions to no avail. To date, there has been no response from any Commerce Department representatives.

Another member characterized the product exclusion application decision-making process as an arbitrary and inequitable exercise. Some companies further noted that there have been situations in which two or more companies submitted an exclusion seeking to import the identical product and with similar application circumstances. The decisions appeared to be inconsistent, and inevitably created market inequities based on a largely unknown and unknowable rationale. To date, Commerce has not provided a public explanation for its decision-making process. Additionally, it has been observed (as will be exemplified in the cases below) that applications have been denied simply because an objection was submitted and that supporting evidence provided by an applicant during the rebuttal/surrebuttal process does not appear to have been fully examined or considered by Commerce and BIS. Considering the aforementioned situation where a competitor submits an application for the same good but does not receive an objection and is subsequently granted an exclusion – this makes the process inadequate, inequitable, and inconsistent.

³ 83 Fed Reg at 46026

Objector Claims Not Verified

Before continuing with the anecdote, it is worth noting that the vehicle supply chain typically operates at nearly 100 percent capacity utilization and often under tight production schedules. Suppliers have complex processes to develop and manufacture the components in the volumes needed and the production logistics for “just-in-time” final assembly meticulously aligned with vehicle manufacturers’ production. Furthermore, components and systems are often subject to extensive customer specifications and performance standards as well as to safety and environmental regulations that must be extensively validated. Sourcing disruptions can result in displaced capital and add significant risks for the parts manufacturer. Typically, parts manufacturers are subject to crippling penalties owed to their vehicle manufacturer customers if their parts are late.

In one case, an original equipment (OE) parts manufacturer (Company A) purchased substantial quantities of specialty steel from one domestic steel manufacturer (Company Z). Unfortunately, over the course of one year, Company Z was repeatedly late with deliveries to Company A’s parts manufacturing facilities. During that year, the Company A repeatedly tried to work with Company Z to ensure timely deliveries, with little success. In the interim, Company A submitted a product exclusion application. In turn, Company Z submitted an objection to Company A’s application, despite them being unable to supply the current orders to Company A. Accompanying the Company Z’s objection was a vague press release indicating their company’s potential for future new capacity; no further evidence was submitted to support those claims. To the best of Company A’s knowledge, no additional actual capacity materialized from Company Z. In fact, Company A submitted to the Commerce Department detailed order information and paperwork demonstrating Company Z’s continuously late deliveries and insufficient product capacity during that period. Despite this evidence, Commerce denied Company A’s exclusion requests on the grounds that Company A could obtain that steel in the United States in sufficient quantities.

In this next case, the OE parts manufacturer (Company B) utilizes specialty steel for one of their parts. Most U.S. steel producers focus on high-volume, mass-produced materials as opposed to the specialty materials that are more niche, low-volume materials. Specialty materials are typically only made by a limited number of producers – sometimes there are only one or two in the world. As previously noted, these highly specialized materials are typically used for high-durability, safety-critical components and must be at the grade and quantity necessary to meet vehicle industry component specifications and stringent testing. Company B purchases as much domestic U.S. steel as possible, but when it cannot find domestic materials in the quantities or specifications it needs, the company must supplement its domestic purchases with imported material. In this case, Company B sourced the required specialty steel from Japan. In the past, Company B has gone through their qualifications process (which takes between one and two years) with various U.S. steel companies that claim they can produce the specialty steel Company B requires. Unfortunately, over the years, these domestic companies were unable to pass Company B’s qualification tests. In fact, one month before the Sec. 232 steel tariffs were imposed in 2018, one prospective domestic steel manufacturer (Company Y) failed Company B’s qualification tests. Their failure notwithstanding, Company Y still filed an objection to Company B’s product exclusion application stating that it could make that particular product. Company B submitted evidence to the contrary that included copies of Company Y’s failed qualification test results and other documentation showing a lack of domestic capacity for this specialty steel. As in the previous case, despite

Company B's evidence and counterpoints, the application was denied on the grounds that Company B could obtain that steel in the United States in sufficient quantities and necessary quality.

Requests for Volumes Significantly Higher than Historic Data and Exceeds Market Demand

Members of ours that utilize aluminum have observed that some parties try to manipulate the process by requesting volumes of product that are exponentially higher than historical volume and market demand data show. Nevertheless, requests like this have been granted for excessive amounts of product than can be supported by the market. The significant downward pressure on domestic manufacturers puts them at a cost disadvantage. During the application review process, MEMA urges the Commerce Department and BIS to ensure that the requested volumes are sensible in context to the applicant and are in proportion to historical import data as well as to U.S. market demand. In situations where the applicant is making such excessively high-volume requests, the applicant must validate and defend these types of claims, and Commerce should fully analyze all relevant information before making its determination.

Requests for Imports from Countries Subject to Antidumping and Countervailing Duties

As other commenters have noted, MEMA supports recommendations that Commerce automatically deny exclusion requests for imports from countries subject to antidumping and countervailing duties. Commerce and BIS would be well justified not to grant such applications because it would reinforce the AD-CVD determination that their imports harm U.S. industry. Such entities should not be rewarded by receiving exemptions on Section 232 tariffs.

"Rolling" Process Adds to Administrative Burden and Exacerbates Uncertainty

Because the process is structured to submit/receive applications on a rolling basis, it has created an additional administrative burden on companies that must continuously monitor, evaluate, and respond, as necessary, to their applications. While some companies may only have a few submissions, many more have dozens or hundreds of submissions to monitor – all with varying timetables and each with unique information and evidence related to the specific product exclusion request. Whether a few or many – these submissions require significant resources and constant monitoring. Resources are being increasingly constrained – particularly in light of the current economic downturn due to the global pandemic. Therefore, these administrative burdens will take a toll on many companies – many of which are under extreme economic pressure. The rolling application process and variable timelines also create uncertainty and make it difficult for all parties to plan accordingly – the downstream users as well as the steel and aluminum material manufacturers. Therefore, BIS should re-evaluate the efficacy of this type of system and consider establishing schedules for submitting product exclusion applications, submitting objections, rebuttals, and surrebuttals, and issuing determinations in such a way that is equitable, manageable, and practical. Having a clearly defined schedule and structure to the process will be to the benefit of all parties, including the Commerce Department resources that are dedicated to administering the program. Furthermore, having a workable schedule cadence will enable BIS to have more opportunities to evaluate and verify the claims submitted during the objection/rebuttal/surrebuttal period more fully.

In closing, MEMA appreciates Commerce's consideration of these comments and our members' anecdotes about their experiences with the Section 232 product exclusions process. Their stories indicate that there is room for improvement in the process – including, but not limited to, enhancing scrutiny and validation of objectors' claims, increasing communication and responsiveness from staff, and creating a structured schedule that offers more certainty and uniformity to the overall process.

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