



June 3, 2019

VIA EMAIL [oir\\_submissions@omb.eop.gov](mailto:oir_submissions@omb.eop.gov)  
PUBLIC DOCUMENT

Attention: USTR Desk Officer  
United States Office of Management and Budget  
Office of Information and Regulatory Affairs  
725 Seventeenth Street NW,  
Washington, DC 20503

**Re: Office of the United States Trade Representative; Requests for Emergency Clearance of a Collection of Information by the Office of Management and Budget and for Comments Related to Section 301 Exclusion Requests**

To Whom It May Concern:

Pursuant to 5 CFR 1320.13 and the Request for Comments issued by the Office of the United States Trade Representative (USTR) in the above-referenced proceeding,<sup>1</sup> the Motor & Equipment Manufacturers Association (MEMA) respectfully submits these written comments. MEMA's comments concern the USTR's Information Collection Request (ICR) relating to the process for parties to seek exclusions from the third tranche 25 percent *ad valorem* tariffs pursuant to Section 301 of the Tariff Act of 1974 (List 3).<sup>2</sup> These comments are timely submitted to the Office of Management and Budget (OMB) in accordance with the USTR's instructions.<sup>3</sup>

### **INTRODUCTION & OVERVIEW**

MEMA represents 1,000 vehicle suppliers that manufacture and remanufacture components and systems providing new original equipment and aftermarket parts for use in passenger cars and heavy trucks. Our members lead the way in developing advanced, transformative technologies that enable safer, smarter and more efficient vehicles.

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.<sup>4</sup>

---

<sup>1</sup> *Requests for Emergency Clearance of a Collection of Information by the Office of Management and Budget and for Comments*, 84 Fed. Reg. 23,145 (USTR May 21, 2019) (*Request for Comments*).

<sup>2</sup> 19 U.S.C. § 2411.

<sup>3</sup> *Request for Comments* at 23,145.

<sup>4</sup> "[Driving the Future: The Employment and Economic Impact of the Vehicle Supplier Industry in the U.S.](#)" MEMA



MEMA members operate in a global supply chain of suppliers and customers both in and outside of the United States. China is a large and important trading partner for our industry. Many U.S. motor vehicle suppliers have manufacturing facilities in China, while others source motor vehicle parts and equipment from qualified Chinese suppliers based on exacting standards and on product regulatory requirements.

Our members have found China to be a good option for sourcing certain parts necessary for manufacturing motor vehicle components and systems. This model has allowed for continued growth in motor vehicle production as well as U.S. employment in our industry sector.

For the reasons that follow, MEMA respectfully requests that the OMB order the following changes to the proposed exclusion request process for List 3 as a precondition to granting the USTR's request for emergency processing this Information Collection Request (ICR):

- The process should include a mechanism for parties to designate certain information requested as business confidential. Of particular concern are the requirements for value and quantity purchased by year/quarter and gross revenue. The List and List 2 forms addressed the option under Question 1 – “Indicate whether the comments contains business confidential information (BCI) or is a public version of a BCI document?”
- The USTR should permit parties to submit requests by product category with a specific range of dimensions, rather than requiring a separate request for each unique dimension of the same product;
- The USTR should implement an expedited review process for requests that do not receive an objection to ensure timely consideration of all filed requests;
- The USTR should clarify which fields in the application are required (e.g., asterisks are used on the form for multiple purposes and not just to indicate a required field);
- The USTR should clarify if there is any size limitation to the attachments that can be uploaded in support of the application;
- Parties should be notified when their request has posted and if it receives an objection to ensure that they have an opportunity to submit a rebuttal;
- Granted exclusion requests should be retroactive to September 24, 2018 – the implementation date of the List 3 tariffs;
- The USTR should remove Items 8-10 from the request form. These questions require significant historical information about products, and it is not clear what practical utility these answers would offer; and,
- The USTR should remove Item 13 from the request form as it asks companies to identify economic harm at the 10 percent tariff level, as opposed to the current 25 percent tariff level. Economic harm may not be proportional at each of these levels as companies have varying degrees of flexibility to defray costs at 10 percent compared to 25 percent.

### **CRITERIA UNDER REVIEW**

Pursuant to the instructions in the Request for Comments, these comments address the following four points indicated by the USTR.<sup>5</sup> As detailed below, we urge the OMB to require certain changes to the proposed exclusion request process for List 3 as a precondition to

---

<sup>5</sup> See *Request for Comments* at 23,145-46.

granting the USTR's request for emergency processing of this ICR.

**1) Whether the proposed ICR is necessary for the proper performance of USTR's functions, including whether the information will have practical utility.**

- Why does the USTR now require the importer of record (Item 1)? Do they intend to limit exclusions by the importer of record and limit the exclusion to that importer? What if there are multiple importers of record for the same product. Would that require separate requests even if the products are identical?
- Why does the USTR now require the Headquarters Country (Item 1)? How is it relevant where a company is headquartered? How can USTR even ensure that applications are responding to this item consistently? If the requestor has a facility in the United States, they should be considered a US company without any unnecessary bias.
- Why do they need product function, application, and principal use (Item 2)? Are they intending to limit granted exclusion by use? What about products with a dual-use – would that require separate requests even if the products are identical?
- It is difficult to provide the value and quantity information for Chinese, domestic, and U.S. sources at the level of product detail requested by the USTR (Items 8-10). If separate requests are required for each “unique product,” including any differences in dimensions, applications will need to be filed by part number. This is very labor intensive and not in keeping with how the USTR has been granting exclusions, which is by 10-digit HTS or range of dimensions. For example, under List 1, one of our members had 91 requests granted by one exclusion. This could have been one request that included a range of dimensions.
- What type of information is being requested for support of the exclusion request in accordance to the instructions provided in Section [B] (Item 14)? This request is not clear because the information required to address the instructions of Section [B] appear to be covered by other items in the proposed 301 Exclusion Request Form. The USTR should provide examples of the type of information they are requesting with respect to Item 14.
- What is the purpose of requiring parties to submit information regarding exclusion requests submitted for List 1 and List 2 (Item 15)? Is there a way to demonstrate the cumulative impact of the List 1-3 tariffs, even if an exclusion was not submitted for List 1 or List 2?
- Questions 11 and 15 request broad levels of information about the company filing a request and may provide unhelpful and misleading information that could result in an exclusion request being treated differently based on a company's size. When it comes to products that are sold on very narrow margins, it is possible that these additional tariffs could cause major disruptions in production or result in a loss of availability of a specific product in the U.S., regardless of the size of the filing entity.

**2) The accuracy of USTR's estimate of the burden of the proposed ICR, including the validity of the methodology and assumptions used.**

- The USTR's estimate that it will receive 60,000 requests for exclusion is conservative.
  - For List 1, which covers \$34 billion in imports, 10,834 requests were received. The USTR's estimate assumes that the number of requests received will be proportional

to the import value of the list (i.e. \$200 billion in imports would equal 63,729 requests based on the response to List 1).

$$\begin{array}{r} \frac{34,000,000,000}{200,000,000,000} = \frac{10,834}{x} \\ \hline x = 63,729 \end{array}$$

- However, the number of requests is actually proportional to the number of covered product lines. List 1 covered 818 product lines and 10,834 requests were received. Based on the same rate, the 5,745 product lines covered by List 3 would yield 76,090 requests.

$$\begin{array}{r} \frac{818}{5,745} = \frac{10,834}{x} \\ \hline x = 76,090 \end{array}$$

- The USTR estimates that it will take “approximately 60 minutes” for parties to prepare and submit a request to exclude a particular product. This timeline underestimates the burden of gathering the necessary data, confirming the classification, refining the product description, and filling out multiple exclusion request forms for the same product.
- Auto parts are often custom-made to customer requirements and the same essential part may therefore be manufactured with multiple dimensions. The USTR’s requirement that a separate request be submitted for each unique product, without allowing requesters to submit dimensions in a range, requires requesters to file upwards of 100 requests for a single product. The burden on one party to request the exclusion of one product can therefore exceed 100 hours (2.5 weeks). Many requesters submit requests for more than one product category, further exacerbating this impact.

### 3) Ways to enhance the quality, utility, and clarity of the ICR.

- Item 1 of the form asks: “Are you a third party, such as a law firm, trade association, or customs broker, submitting on behalf of an organization or industry?” The form should make clear that “organization” includes private and public companies as well as trade associations, non-profit organizations, and any other groupings of individuals.
- It is not clear what information is required to file a request. USTR indicates that “Fields Marked with an asterisk (\*)” are required. However, the only fields with an asterisk are the HTSUS (Item 2) and a complete and detailed description of the particular product of concern (Item 3). USTR should clarify whether additional fields are required for a request to be considered “complete”.
- It is not clear from the USTR’s form what practical information will be obtained from specific.
- It is not clear from the USTR’s form whether there is an opportunity for parties to designate information as BCI. This is particularly important for small- and medium-size businesses that do not release their gross revenue information (Item 11), for example, publicly.
- It is not clear from the USTR’s form how the information requested in the form will be used. Some of the information requested (Item 11 and Item 15) could be unhelpful and give misleading information that could result in an exclusion request being treated differently based on a company’s size.

- It is not clear from the USTR's notice whether there will be a hard deadline for the submission of exclusion requests (like List 1 and List 2), or whether the deadline will be rolling (like 232). The notice only states that the window for submission will "open on or around June 30, 2019." List 1 and List 2 had 90 days for parties to submit exclusions requests so this period should be at least 90 days or longer for List 3.
- It is not clear from the USTR's notice whether requests will be retroactive to September 24, 2018 – the date the tariffs took effect at a rate of 10 percent - or to May 10, 2019 – the date the rate was increased to 25 percent.
- The USTR does not address how it intends to handle the volume of requests. Of the 10,834 requests filed for List 1, more than one quarter (2,872 requests) remain pending in review stages with USTR and CBP. As of the date of this submission, these requests have been pending for 241 days or more than 8 months. If 60,000 requests are received for List 3, which as discussed above is a conservative estimate, it will take the USTR several years to review and process them if they continue at the current rate.

**4) Ways to minimize the burden of the ICR on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.**

- The process should include a mechanism for parties to designate certain information requested as business confidential.
- The USTR should permit parties to submit requests by product category with a specific range of dimensions, rather than requiring a separate request for each unique dimension of the same product.
- The USTR should implement an expedited review process for requests that do not receive an objection to ensure timely consideration of all filed requests.
- Parties should be notified when their request has posted and if it receives an objection to ensure that they have an opportunity to submit a rebuttal.
- Granted exclusion requests should be retroactive to September 24, 2018; the implementation date of the List 3 tariffs at a 10 percent rate.

**CONCLUSION**

We appreciate the Department's consideration of these comments. Please contact Catherine Boland, MEMA vice president, legislative affairs, via email ([cboland@mema.org](mailto:cboland@mema.org)) or call 202-312-9241, if there is any additional information MEMA can provide.

Sincerely,



Ann Wilson  
Senior Vice President of Government Affairs