



**Comments of the
Motor & Equipment Manufacturers Association
to the
U.S. Customs and Border Protection, Department of Homeland Security
and the
Department of the Treasury**

**RE: Notice of Proposed Rulemaking; Request for Comments
Non-Preferential Origin Determinations for Merchandise Imported from
Canada or Mexico for Implementation of the Agreement Between the
United States of America, the United Mexican States, and Canada (USMCA)**

Docket No. USCBP-2021-0025; RIN 1515-AE63

September 7, 2021

The Motor & Equipment Manufacturers Association (MEMA) submits these comments to the Department of Homeland Security's U.S. Customs and Border Protection (CBP) and the Department of the Treasury (Treasury) on the notice of proposed rulemaking (NPRM) to amend 19 CFR Parts 102 and 177 as cited above.

I. Introduction

The Motor & Equipment Manufacturers Association (MEMA) represents more than 1,000 vehicle suppliers that develop innovative technologies and manufacture and remanufacture original equipment (OE) and aftermarket components and systems for use in passenger cars and commercial trucks.¹ This industry operates in all 50 states, directly employs over 907,000 Americans, and is the largest sector of manufacturing jobs in the United States. Direct, indirect, and induced vehicle suppliers' employment accounts for over 4.8 million U.S. jobs and contributes 2.5 percent to U.S. GDP.²

Across the entire range of new vehicle innovation – from automated driving systems to zero-emission technologies – vehicle suppliers are leading the way. Vehicle suppliers conceive, design, and manufacture the OE components and technologies that make up more than 77 percent of the value in new vehicles. Additionally, vehicle suppliers also manufacture aftermarket parts and materials for the service, maintenance, and repair of 290 million vehicles on U.S. roadways. Development of these technologies will allow the

¹ MEMA represents its member companies through its four divisions: Automotive Aftermarket Suppliers Association (AASA); Heavy Duty Manufacturers Association (HDMA); MERA - The Association for Sustainable Manufacturing; and Original Equipment Suppliers Association (OESA).

² [U.S. Labor and Economic Impact of Vehicle Supplier Industry](#), MEMA and IHS Markit. February 2021.

U.S. to be more innovative and globally competitive and lead the world on the path of enhanced mobility for all citizens.

II. Supply Chain Challenges for Vehicle Industry

MEMA has long supported having a strong USMCA-based North American regional supply chain as it allows for more advanced and strategic components to be sourced from the region. At the same time, the U.S. vehicle industry relies on both its global suppliers and its local domestic component manufacturers to be viable with as little disruption and as much predictability as possible. Increasing and diversifying supplies of components and materials around the globe, including in the U.S., are vital to domestic motor vehicle parts manufacturers. Ultimately boosting and diversifying supply helps create more sourcing opportunities and supply chain stability.

The vehicle supply chain, their customers, and the jobs they support are highly interdependent. Even small changes to the supply chain can generate big consequences. Recent examples of broad risks to the supply chain include the shortage of vehicle-grade semiconductors, shipping delays, port backlogs and huge increases in logistical expenses, as well as continuing disruptions due to COVID 19 outbreaks hitting workers at critical supply chain points, and a series of natural disasters at home and abroad. As a result, the industry is anticipating an overall decline in motor vehicle production for the remainder of 2021 and continue into 2022.

Moreover, the ongoing Section 232 and Section 301 tariffs continue to burden vehicle parts manufacturers with increased costs and adverse impact on accessibility of materials and subcomponents vital to production of finished vehicle parts and systems. Furthermore, the vehicle industry has been in the midst of implementing and adapting to an entirely new set of rules of origin (ROO) for automotive goods under the USMCA. In addition, workforce shortages plague our sector throughout the country at motor vehicle parts supplier plants. Finally, the challenges of transforming the motor vehicle parts sector through electrification and automation are significant.

We understand that CBP and Treasury proposes to extend the Part 102 rules beyond country of origin marking requirements for importations from Mexico or Canada, to include all non-preferential origin determinations by CBP, for purposes such as admissibility, quota, procurement by government agencies, and application of Section 232 and Section 301 tariffs. For such purposes, the proposed rule would replace the “name, character or use” test with “tariff shift” rules to determine whether a “substantial transformation” of foreign inputs has occurred for the country of origin of a good to be Mexico or Canada.

The administration’s proposal would require additional adjustments for all industries in a relatively short period of time. Country of origin determinations are often difficult and complex, and it will take significant time and resources for the industry to fully analyze the impact of the proposed rule. Given the relatively brief public comment period, MEMA’s comments below reflect the need to maintain maximum flexibility for the industry while it ensures compliance with new rules. We hope that CBP and Treasury will consider the

alternative proposals as ways to help bridge the gap between the administration's objectives in streamlining the non-preferential rules of origin under the USMCA and the industry's interests in compliance while minimizing disruption and uncertainty.

Therefore, because of a wide range of impacts being experienced by not only the vehicle industry, but many other sectors (supply chain-induced shortages, constrained sourcing, dwindling resources, increased material costs, and adapting to new trade rules), MEMA asks CBP and Treasury to take all these headwinds into context when reviewing and considering the following comments and recommendations from motor vehicle parts manufacturers.

III. Allow Companies to Apply Either Part 102 "Tariff Shift" Rules Or "Name, Character, or Use" Test

MEMA recommends that CBP provide companies with an option to use either the "name, character, or use" test or the Part 102 "tariff shift" rules to determine the country of origin of imports from Mexico or Canada. According to Treasury and CBP, the Part 102 rules are intended to produce the same determinations as to country of origin as the "name, character, or use" test because both apply the same "substantial transformation" standard. In practice, applying the Part 102 rules can sometimes lead to a different origin determination than the "name, character, or use" test. For example, in CBP Headquarters Ruling Letter H300226, dated September 13, 2018, CBP found that the country of origin of electric motors was Mexico for marking purposes and China for Section 301 purposes.

Because both tests are intended to implement the "substantial transformation" standard, companies should be permitted to apply either test in determining the country of origin of imports from Mexico or Canada. This would result in a fair application of the rules that would not disadvantage companies that have been relying on favorable rulings under the "name, character, or use" substantial transformation test.

In implementing this proposal, MEMA recommends that CBP provide that if a good undergoes "substantial transformation" in Mexico or Canada under either the Part 102 rules or the "name, character, or use" test, the country of origin of the good is Mexico or Canada, as appropriate. In addition, if this proposal were to be adopted, we hope that CBP and Treasury would support further solicitation from industry to ensure that it can be administered in a fair and transparent manner.

IV. Allow Phase-In of Effective Date

If CBP and Treasury decide to go forward with its proposed rule – *i.e.*, apply the Part 102 rules for all CBP's non-preferential origin determinations for goods imported from Mexico or Canada – MEMA recommends that CBP and Treasury provide for a delayed effective date (*e.g.*, two years) to allow companies to make necessary supply chain decisions. As noted above, many companies have been relying on favorable rulings under the "name, character, or use" test to determine the country of origin of their imports from Mexico or Canada.

Changing the standard under which origin determinations are made would require companies to reexamine their supply chain, including manufacturing and sourcing

decisions, which is a time-consuming and resource-intensive task. A delayed effective date – MEMA recommends at least two years – would allow companies sufficient time to adjust to the new rules, assess their impact, and make changes to their business operations as necessary.

V. Modernize the Part 102 Rules

MEMA recommends that CBP modernize Part 102 by adding “tariff shift plus” rules, as necessary, to reflect current CBP substantial transformation rulings that consider key processing such as functionality and software development, particularly for automotive electronics products. As noted above, applying the Part 102 rules can sometimes lead to a different origin determination than the “name, character, or use” test. This is particularly true of many electronic goods, which may undergo substantial transformation via processing such as software development but may not necessarily “tariff shift” under the Part 102 rules.

There is precedent for CBP to take such action. In 2011, for example, CBP issued a rule (76 FR 54691) updating the Part 102 rules applicable to pipe fittings and flanges, greeting cards, glass optical fiber, rice preparations, and certain textile and apparel products. In many cases these changes were made to better conform the “tariff shift” rule with CBP’s substantial transformation rulings.

“Tariff shift plus” rules also have precedent in both preferential and non-preferential rules of origin. For example, the current Part 102 rules contain a “chemical reaction origin rule” that provides that for certain chemical products, the product will be considered a good of the country in which a chemical reaction has occurred. This rule applies notwithstanding whether a tariff shift occurred.

In addition, because the Part 102 rules are structured as a hierarchy of rules, there is opportunity for creating rules that appropriately reflect the amount of value-added processing can occur even without a tariff shift. If this proposal were to be adopted, MEMA encourages CBP and Treasury to seek input from various industries on how the rules may be crafted to reflect the “substantial transformation” that occur in these contexts.

In summary, if CBP extends the Part 102 rules to all non-preferential origin determinations for imports from Mexico or Canada, then CBP should ensure that the Part 102 “tariff shift” rules reflect its rulings on substantial transformation on products such as automotive electronics. If the tariff shift rules alone cannot adequately reflect the outcome in these rulings, “tariff shift plus” rules should be created to supplement the current Part 102 rules.

VI. Conclusion

Finally, MEMA wishes to note that it offers these comments in the view that this proposal is limited to CBP’s non-preferential origin determinations for goods imported from USMCA countries, *i.e.*, Mexico or Canada. If at some point in the future, CBP or Treasury intends to propose applying the Part 102 rules globally, *i.e.*, for goods imported from other countries, we would strongly urge the government to fully evaluate and

consider the impact of such a change, including seeking public input from stakeholders and support from the industry before making such a proposal. We note that, in 2008, CBP issued a proposal for uniformed rules of origin for imported merchandise, which was later withdrawn. We would urge CBP or Treasury to solicit input from the trade community before reissuing a similar proposed rulemaking notice.

In conclusion, MEMA respectfully asks CBP and Treasury to allow for a dual approach, implement a phase-in effective date of at least two years, and modernize Part 102 with “tariff shift plus” rules. MEMA appreciates the opportunity to provide this feedback to the administration. If you have additional questions or would like more information, please contact Leigh Merino, vice president of regulatory affairs at lmerino@mema.org.

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