



July 23, 2018

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The Honorable Robert E. Lighthizer
U.S. Trade Representative
Office of the U.S. Trade Representative
600 17th Street, N.W., Room F516
Washington, D.C. 20508

**Re: Notice of Action and Request for Public Comment Concerning Proposed
Section 301: China's Acts, Policies, and Practices Related to Technology
Transfer, Intellectual Property, and Innovation
[Docket No. USTR-2018-0018]**

Dear Ambassador Lighthizer:

The Motor & Equipment Manufacturers Association (MEMA) respectfully submits these written comments to the *Notice of Determination and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*¹ ("Determination"), issued by the Office of the United States Trade Representative ("USTR") in the above-referenced proceeding. The USTR has proposed a 25 percent *ad valorem* rate of duty on certain vehicle materials, subcomponents, and parts imported by our members from the People's Republic of China as referenced in List 2 ("Annex C") on \$16 billion worth of goods. While "automotive parts" products under 8708 are not included in Annex C, many products under HTS Chapter 39, 84, 85 and 90² are used in the motor vehicle supplier industry as part of the manufacturing production line or as material or parts to produce vehicle components.

Tariffs on these products will disproportionately harm U.S. businesses, including the vehicle components and systems manufacturers MEMA represents. Though MEMA applauds the administration's efforts to protect intellectual property rights ("IPR"), MEMA respectfully requests that these included products addressed in our comments be removed from the USTR's proposed Annex C subject to 25 percent *ad valorem* duties pursuant to Section 301. Ultimately inclusion of these products will hurt domestic manufacturers and consumers.

A. INTRODUCTION

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 commercial vehicles.³ Our members lead the way in developing advanced, transformative

¹ 83 *Fed. Reg.* at 14906, April 6, 2018

² The full list of HTS Codes MEMA is requesting be removed from USTR's List 2 (a.k.a. Annex C) is included at Attachment 1.

³ 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).



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 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 members operate in a global supply chain of domestic and international suppliers and customers. China is a large and important trading partner for the supplier and motor vehicle manufacturing industry; many U.S. motor vehicle suppliers have manufacturing facilities in China to service Asia and the global marketplace. Our members range in size from large, multi-national corporations to small- and medium-sized enterprises.

MEMA members source certain motor vehicle parts and equipment from qualified Chinese suppliers based on exacting standards and product regulatory requirements. Suppliers have found China to be a good option for sourcing certain parts necessary for manufacturing motor vehicle components and systems. In many cases, these factories in China are the only source for these parts. This global model has allowed for continued growth in motor vehicle production as well as U.S. employment in our industry sector.

B. COMMENTS ON PROPOSAL

Pursuant to the instructions in the *Federal Register* Request for Public Comment, MEMA provides the following information to the USTR in support of the proposed determination's request for comments.⁴ Analysis of these factors, collectively and individually, demonstrates that imports of certain vehicle parts and equipment should be excluded from the proposed list of products in Annex C that are subject to 25 percent additional tariffs pursuant to Section 301. Furthermore, MEMA encourages the USTR to offer an exclusions process, similar to what was offered for List 1 (Annex A/B).⁵

1) Specific products listed in Annex C should be removed

MEMA requests USTR remove the HTS subheadings included in **Attachment 1** of our comments from the proposed determination list – also known as Annex C – of Section 301 tariffs. The attachment represents input from many MEMA members; however, it is by no means an exhaustive list. MEMA anticipates many individual vehicle parts manufacturer companies and other vehicle industry stakeholders will ask the USTR to remove other HTS subheadings that are related to the materials, chemicals, vehicle components, and manufacturing tooling they need to manufacture vehicle parts. These parts and materials fall under the HTS chapters we noted earlier (39, 84, 85, and 90) and are included in the Attachment.

The products listed in Attachment 1 are imported by our members, are manufactured further, and then are either sold to aftermarket distribution and retail channels for sale to consumers or used to support downstream manufacturing in the original equipment vehicle industry. Many of

⁴ See 83 *Fed. Reg.* at 28710

⁵ 83 *Fed. Reg.* at 32181, July 11, 2018

these products are inputs for suppliers to manufacture goods and are not advanced technologies linked to the “Made in China 2025” initiative or other Chinese advanced industrial policies.

The imposition of a 25 percent *ad valorem* duty on these products will be ineffective in eliminating China’s discriminatory acts, policies, and practices. MEMA’s members invest heavily in innovation and understand the importance of IPR protection to the sustained success of the motor vehicle parts manufacturing industry. While MEMA supports the administration’s push for robust IPR protection in China, the proposed 25 percent *ad valorem* rate of duty on certain parts and equipment imported by vehicle suppliers from China is not the solution to these problems.

2) Imposing duties on these products is not practicable or effective to obtain the elimination of China’s acts, policies, and practices

As previously noted, MEMA member companies operate in a global supply chain and many U.S. motor vehicle suppliers either have manufacturing facilities in China or source inputs from Chinese producers. A 25 percent tariff on the materials, subcomponents, and parts at issue will undoubtedly harm MEMA member companies by disrupting their U.S. manufacturing operations and increasing costs. Moreover, proposed tariffs will cause job losses due to a decrease in production if necessary parts and equipment are not available in a timely manner or the costs of production increase. These risks are particularly acute for small- and medium-sized businesses.

MEMA urges the administration to take an approach that specifically targets China’s policies – particularly those that fail to adequately protect IPR – rather than imposing blanket tariffs on imports. Broad-based actions such as tariffs will not effectively eliminate the IPR and licensing issues in China. MEMA proposes the following alternative measures that will be more effective in protecting IPR and less harmful to U.S. interests:

- Elimination of equity restrictions and local partner or technology transfer requirements in the motor vehicle sector;
- Elimination of cybersecurity-related policies that limit data flows and prevent the successful and secure data flows into and out of China, which will limit exposure to hacking or surveillance; and,
- More robust measures to combat counterfeiting, including higher valuation of seized counterfeits based on the value of the genuine branded product.

As stated earlier, the products that MEMA is requesting to have removed from Annex C are not advanced technologies at risk for IPR theft in China. Instead, these are materials or products that are used by suppliers to manufacture standard components and materials for motor vehicle manufacturers and the aftermarket.

3) Examples of products demonstrate case for exclusion from Annex C

For example, Chapter 39 includes a number of resins that are included on the Annex C list. These resins are basic primary material feedstocks for materials such as vinyl and plastics. These products are not advanced technologies and are not vulnerable to IP theft in China. Additionally, these products are not available at sufficient capacity in many cases in the United States or other markets. Placing a 25 percent tariff on resins from China will severely disrupt the U.S. polytetrafluoroethylene (PTFE) market, which has already seen disruptions this year with tight supplies. Additionally, tariffs on PTFE resins will be in addition to significant anti-dumping duties that are already in place on imported material. A large Tier One OE supplier, that employs workers in many states across the U.S., purchases imported PTFE resins. The proposed tariffs will cost one of

their business units at an additional \$750,000 in tariffs on PTFE in the first year. This cost increase cannot always be passed along to their customers. Instead, the company will seek other ways to address the potential unanticipated and unplanned for financial losses, which will ultimately impact U.S. jobs and workers.

As another example, there are several motors from Subheading 8501 that are imported by suppliers. Like the PTFE resin example, these motors are also not used for advanced technology manufacturing and are not linked to China 2025 policies. Instead, these motors are used by suppliers for a variety of applications in a motor vehicle. The applications for these kinds of motors are in vehicle components ranging from powered automatic seats, power windows, and windshield wiper motors. A tariff on these motors will simply increase prices for U.S. suppliers. Again, with limited ability to pass cost increases on to their vehicle manufacturer customers, the suppliers who rely on these motors will either be forced to absorb any cost increases or could face losing a customer that would seek different suppliers for finished parts and components.

These product examples are not part of China's advanced industrial initiatives. While the administration's focus on protecting IPR is something MEMA supports, tariffs on these manufacturing inputs will not protect IPR. Instead, imposing tariffs will lead to increased costs, lack of capacity, loss of customers, and overall long-term business uncertainty.

Imports are necessary because vehicle manufacturers require a reliable supply chain to source the thousands of parts, components, and systems that are ultimately assembled into a finished vehicle. Tariffs on these parts will cause uncertainty, price increases, and potential delays across the vehicle manufacturing supply chain. Furthermore, consumers who rely on affordable service parts to properly maintain the hundreds of millions of vehicles on our nation's roadways will be negatively impacted by increased prices as well.

There is no evidence that applying tariffs to these products will address any of the concerns that China misappropriated intellectual property. Therefore, MEMA believes that these products (as well as those in Attachment 1) should be excluded from USTR's final Annex C list.

4) Proposed tariffs cause disproportionate harm to U.S. interests

In its efforts to protect intellectual property laws and eliminate China's restrictive and discriminatory licensing requirements, we urge the administration to consider the physical presence of many U.S.-based suppliers in China and the downstream manufacturers that rely on a high-quality, reliable, and affordable supply of these materials, subcomponents, and parts to support their business in the United States. Unless these companies notify the U.S. government that they had a problem with China's acts, policies, and practices related to technology transfer, IP, and innovation, it is not appropriate for the U.S. government to require additional tariffs on their products.

The proposed 25 percent tariffs on motor vehicle materials, subcomponents, and parts will cause disproportionate harm to U.S. interests by disrupting American manufacturing operations and increasing costs, both to U.S. producers and consumers. The increased costs resulting from the proposed tariffs will place a significant harmful burden on small- and medium-sized businesses, including the possibility of forced bankruptcy and loss of income.

Original equipment suppliers facing increased costs have two options – pass the price increases on to the vehicle manufacturer customer or absorb the price increase, possibly limiting future investments. Passing on the costs is not possible because the OEM customer would seek other

suppliers – potentially overseas. If the supplier absorbs the costs, they may be forced to delay or cancel planned U.S. investments, such as workforce training or facility expansion. Either choice results in financial losses to the supplier, impacting their U.S. workers.

Additionally, the vehicle aftermarket provides finished components via a variety of channels directly either to consumers or to vehicle service technicians and repair facilities. These goods are used for the maintenance and repair of over 260 million cars, trucks, and buses on our nation's roadways. Consumers rely on these parts and subcomponents to keep their vehicles safely and properly maintained for on-road use. A 25 percent tariff on these parts will harm consumers who desire affordable and convenient service to maintain the millions of vehicles on the road today, keeping them operating safely, appropriately, and efficiently.

C. CONCLUSION

Motor vehicle component and systems manufacturers are the largest employers of manufacturing jobs in the United States. The proposed tariffs will cause job losses due to a decrease in production if necessary parts and equipment are not available in a timely manner or the costs of production increase. Increased production costs threaten small- and medium-size U.S. businesses and their employees that depend on a reliable supply of automotive materials, subcomponents, and parts to make repairs to automobiles. Tariffs on these products could lead to downsizing, layoffs, or even cause certain U.S. production to move overseas.

By contrast, without the additional 25 percent tariffs, our member companies anticipate continued job growth in our industry for workers such as engineers, technicians, and skilled trades. Removal of the relevant motor vehicle materials, subcomponents, and parts from USTR's list will make U.S. manufacturers more competitive and create more American manufacturing jobs. Consistent with the stated goals of this administration, the USTR should therefore exclude imports of motor parts and equipment from the proposed list of products to be covered by the 25 percent tariff pursuant to Section 301.

For these reasons, MEMA respectfully requests USTR to remove the products listed in Attachment 1 from the proposed Annex C, in addition to those listed in comments from individual vehicle component manufacturers and other vehicle industry stakeholders. Certain vehicle materials, subcomponents, and parts imported from China should not be subject to the proposed tariffs pursuant to the Section 301 action. As stated above, the products in Attachment 1 are not products within the scope of China's advanced industrial initiatives and are not advanced technologies at risk for technology theft and infringement in China. Lastly, MEMA asks the USTR to offer an exclusion process pursuant to its final determination for Annex C.

Please contact me via email 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

HTS Code	Product Description
39042200	Polyvinyl chloride, mixed with other substances, plasticized, in primary forms
39094000	Phenolic Resins (Resorcinol Formaldehyde Resin)
39174000	Fittings of plastics, for plastic tubes, pipes and hoses, nesoi
39191020	Self-adhesive plates, sheets, other flat shapes, of plastics, in rolls n/o 20 cm wide, not having a light-reflecting glass grain surface
39199050	Self-adhesive plates, sheets, other flat shapes, of plastics, not having a light-reflecting surface produced by glass grains, nesoi
84198995	Industrial machinery, plant or equipment for the treatment of materials, by process involving a change in temperature, nesoi
84833080	Bearing housings nesoi; plain shaft bearings
85013140	DC motors, nesoi, of an output exceeding 74.6 W but not exceeding 735 W
85013220	DC motors nesoi, of an output exceeding 750 W but not exceeding 14.92 kW
85030095	Other parts, nesoi, suitable for use solely or principally with the machines in heading 8501 or 8502
85078040	Other storage batteries nesoi, of a kind used as the primary source of electrical power for electrically powered vehicles of 8703.90
85291091	Other antennas and antenna reflectors of all kinds and parts, for use
85365070	Certain specified electronic and electromechanical snap-action switches, for a voltage not exceeding 1,000 V
85365090	Switches nesoi, for switching or making a connection to or in electrical circuits, for a voltage not exceeding 1,000 V
85367000	Connectors for optical fibers, optical fiber bundles or cables
85411000	Diodes, other than photosensitive or light-emitting diodes
85414060	Diodes for semiconductor devices, other than light-emitting diodes, nesoi
85423100	Electronic integrated circuits: processors and controllers
85423300	Electronic integrated circuits: amplifiers
85423900	Electronic integrated circuits: other
85437045	Other electric synchros and transducers; defrosters and demisters with electric resistors for aircraft
85437099	Other machinery in this subheading
85444920	Insulated electric conductors nesoi, for a voltage not exceeding 80 V, not fitted with connectors
90251980	Pyrometers, not combined with other instruments
90271020	Electrical gas or smoke analysis apparatus
90292040	Speedometers and tachometers, other than bicycle speedometers
90299080	Parts and accessories of revolution counters, production counters, odometers, pedometers and the like, of speedometers nesoi and tachometers