



August 7, 2018

The Honorable Dave Reichert
Chairman
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Bill Pascrell
Ranking Member
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Reichert and Ranking Member Pascrell:

Thank you for the opportunity to submit this letter for inclusion in the record on the Subcommittee's hearing "Product Exclusion Process for Section 232 Tariffs on Steel and Aluminum" held on July 24, 2018. The Motor & Equipment Manufacturers Association (MEMA) represents motor vehicle parts manufacturers. Many member companies have direct experience with the exclusion process for steel and aluminum tariffs administered by the Department of Commerce's (DOC) Bureau of Industry and Security (BIS).

Introduction

MEMA represents more than 1,000 vehicle suppliers¹ that manufacture and remanufacture new original equipment (OE) and aftermarket components and systems for use in passenger cars and heavy trucks. Motor vehicle parts manufacturers lead the way in developing advanced, transformative 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. Together with indirect and employment-induced jobs, the total U.S. employment impact of the supplier industry is 4.26 million jobs.² 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 of today's vehicles.

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

¹ MEMA represents vehicle suppliers through the following four divisions: Automotive Aftermarket Suppliers Association (AASA), Heavy Duty Manufacturers Association (HDMA), Motor & Equipment Remanufacturers Association (MERA) and Original Equipment Suppliers Association (OESA).

² "Driving the Future: The Employment and Economic Impact of the Vehicle Supplier Industry in the U.S." Available here: https://www.mema.org/sites/default/files/MEMA_ImpactBook.pdf, released by MEMA in January 2017.



tariffs on steel and aluminum. These tariffs, combined with the uncertainty stemming from the unclear future of the North American Free Trade Agreement (NAFTA), Section 301 tariffs on materials and products imported from China, and the 232 investigation into imported automobiles and motor vehicle parts, are causing significant harm to suppliers. These trade actions impact supplier jobs and the domestic investments made by parts manufacturers. Furthermore, the harm resulting from increased prices on products impacts not only the industry's supply chain customers, but also American consumers.

The product exclusions process for steel and aluminum as administered by BIS has proven to be unworkable for suppliers and unnecessarily difficult and burdensome for applicants. This process is putting US jobs and investment at risk and MEMA urges this subcommittee to work with the administration to improve the exclusion process.

Recommendations to Improve Exclusion Process

On April 12, 2018, MEMA testified before the House Ways and Means Committee and made a number of recommendations on how DOC and BIS could improve the exclusion process. Additionally, MEMA submitted comments on May 18, 2018 to the DOC and BIS on the interim final rule (IFR), which echoed and expanded on our April testimony. MEMA's recommendations included ways to simplify the process and develop clearer procedures and processes for product exclusion applications. Specifically, we urged the DOC and BIS to do the following:

- **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.**
- **Provide timely information to companies exclusion submissions on the completeness of their application to allow the company to submit complete requests quickly.**
- **Streamline the exclusion process to allow for applications covering products with the same Harmonized Tariff Schedule (HTS) code in different dimensions.**
- **Consolidate the process to allow trade associations to apply for exclusions on behalf of an industry to avoid duplicative exclusion requests that places additional workload burdens on BIS.**
- **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 it states "... unless Commerce approves a broader application of the product-based exclusion request to apply to additional importers."³ However, the IFR does not clarify how a broader application will be considered.
- **Publish an "FAQ" page clarifying the exclusion request process.**

³ Supplements at (c)(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.**
- **Allow companies to apply for exclusions for products from countries with exemptions and quotas in place.**

BIS Has Made Little Progress to Address Industry Concerns and Recommendations

Since the Committee's hearing and the closing of the DOC public comment period, BIS published an "FAQ" on document that answered many basic questions from applicants. MEMA applauds BIS for making this important document available to applicants. However, the FAQ document was not posted on the BIS website until July 24, 2018 – about four months after the IFR was published in the *Federal Register*.

Additionally, the FAQ document includes information about how companies can seek refunds for tariffs paid after an exclusion has been granted.

As of today, no further changes have been made by BIS or Commerce.

BIS Exclusions Process Continues to be Difficult and Unworkable

The exclusion application process continues to be problematic and uncertain for many suppliers. After months of reviewing and posting over 24,000 exclusion requests received, the Commerce Department has begun to grant and deny applications. As of today, fewer than ten percent have been finalized. The process is opaque, inconsistent, and inaccessible. Some companies have described the experience as arbitrary and capricious, lacking substantial evidence for the denial determinations.

For example, a large Tier One vehicle supplier reported to us that several of their requests have been denied on the grounds that it was not a "complete submission" where BIS stated that information provided was insufficient information to verify the product description and the HTS code. This is simply not the case; the company used the HTS code provided by their importer. They also included the manufacturer, manufacturer identification number, and port, which appear on the customs entry forms. In this case, there should be no issue about identifying the product. The challenge is in the process established by Commerce, not in the applicant's request.

Many suppliers have indicated that they have had requests for more information because the iron content has not been included in the original request. This content figure is not a number that is used in the industry and is not relevant to the HTS classification. DOC and BIS have not provided sufficient explanation about why that information is necessary. Additionally, this unnecessary request for more information regarding iron content effectively delays the posting of request on Regulations.gov for several weeks and limits the ability of the company to receive refunds on tariffs paid until the date of posting.

Member companies report – and a cursory examination on Regulations.gov show – that as exclusions are granted or denied, final decision memos are not always linked or are linked incorrectly to the application’s unique docket ID number. Suppliers would like to re-file the exclusion requests that have been denied, but in cases where a decision memo is not posted, are unable to ascertain the reason for the denial and respond to the denial in a future filing.

Another challenge for filers is that it is difficult to rebut any objections. Our member companies report objections that have been filed to their applications by steel and aluminum producers that have failed product testing and validation. Other objections have been filed by producers that are late on current deliveries. In both cases, it is difficult or impossible for the applicant to file rebuttals to these objections demonstrating why the steel or aluminum supplier is unable to meet the specific requirements. In fact, the direction from BIS is that the company must start from square one and file a brand-new application and include any refuting information. MEMA argues that it is inefficient and burdensome on both the company and the government resources required to re-process refuting applications.

Allow Exclusions on Materials from Countries with Quotas in Place

The inability for a company to apply for an exclusion for materials from countries with quotas in place creates an unnecessary burden on suppliers and could put jobs at risk. Motor vehicle parts manufacturers depend on specialty materials that are unavailable in sufficient quantities or not available at all in the U.S. For example, a large Tier One supplier is facing steel shortages due to hard quotas on a specialty steel imported from South Korea and Brazil. This specialty steel is not available from any other steel producer. For this company, quotas are having a more drastic impact than tariffs would because they are facing shortages. If the necessary steel is unavailable, this company could be forced to shutter facilities and lay off workers.

MEMA has urged DOC and BIS to allow companies to seek exclusions on steel and aluminum imported from countries with quotas in place due to 232 action. Currently, there is no avenue for relief from quotas. For example, if steel can only be sourced from Brazil, U.S. manufacturers who depend on that steel are left without supply once the quota has been met. This could be addressed by creating an exclusion process for quota countries by utilizing the BIS tariff exclusion process. Many product tariff exclusion requests are already in the pipeline. This would allow a supply of steel sufficient for a company to avoid a shutdown and provide time to certify and validate domestic suppliers. Additionally, exclusions are company-specific and expire in one year. They can be renewed or revoked depending on market situation once transition into the quota regime is more mature.

Conclusion

Representing the largest employer of manufacturing jobs in the United States, motor vehicle suppliers operate in a complex integrated global supply chain with access to open

markets with free and fair trade. Our members are very concerned about the impacts of these tariffs and the unnecessary challenges created by this unworkable and broken exclusion process. If tariffs remain in place and the challenges caused by this process are not solved, the results will be supply chain disruptions and increased costs. This will not contribute to the national security of the U.S. and will have a negative impact on the ability of suppliers to continue investing in U.S. facilities and jobs.

MEMA urges this subcommittee to work with Congress and the administration to improve the exclusion process and conduct oversight on a product exclusions process being implemented by the U.S. Trade Representative (USTR) on China Section 301 tariffs to avoid similar problems.⁴

We appreciate the opportunity to submit a statement to the subcommittee and we look forward to continuing to work with you on these issues. If you have any questions, please contact Catherine Boland, vice president of legislative affairs, at cboland@mema.org.

Sincerely,

A handwritten signature in cursive script that reads "Ann Wilson".

Ann Wilson
Senior Vice President, Government Affairs
MEMA

⁴ 83 Fed. Reg. at 33608