

July 31, 2007

VIA FAX AND E-MAIL

The Honorable Susan C. Schwab
US Trade Representative
600 17th Street, NW
Washington, D.C. 20508

Re: In the Matter of Certain Auto Parts (ITC Inv. No. 337-TA-557)

Dear Ambassador Schwab:

In your role as the United States Trade Representative, you are entrusted by the President and the Congress with fostering American prosperity and economic growth by strengthening U.S. competitiveness, promoting trade and investment, and ensuring fair trade. Competition serves as a cornerstone of the American economy. It helps to ensure American consumer choice, promote U.S. innovation, and spur economic growth in the United States.

With these fundamental principles in mind, we wish to apprise you of our deep concern about the harmful precedent and potential economic impact of the decision of the International Trade Commission (“ITC”) in the Section 337 case, *In Re Matter of Certain Auto Parts* (Investigation No. 337-TA-557). We foresee that the ITC’s decision and the remedial action it entails will trigger a plethora of new Section 337 cases aimed at foreclosing competition for automotive parts produced other than by vehicle manufacturers. The inevitable effect of such cases, if successful in their goals, will be serious harm to American consumers, to innovation in competitive value and supply chains, and to the American economy. The development of effective auto aftermarket parts competition over the last 20 years has created numerous new business opportunities for independent parts importers, distributors, wholesalers and retailers. This has multiplier economic benefits, in the form of jobs, price and quality competition, and consumer spending-power, throughout the United States.

We therefore urge you to protect the public interest by carefully considering the adverse implications of the ITC’s decision and, based on such consideration, by rejecting the ITC’s proposed remedy.

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There are multiple reasons why we believe you should reject the Commission's recommendation.

First, competition is central to the vitality of the American economy. It fuels performance, innovation and growth. Consumers have the most to gain because competition means lower prices and greater choice. The Commission's determination in this matter will affect consumer choice and aftermarket competition far beyond the specific Ford F-150 parts involved in the instant proceeding. If Ford is permitted to leverage its existing design patent rights to control markets in interoperable aftermarket products, competition cannot flourish in those markets.

A fundamental tenet of American public policy long has been that the United States protects competition, not competitors. This public policy principle, essential to the vitality of our economy over many years, should be adhered to here. Competition affects not only prices but also the availability of supply, consumer choice, innovation and, ultimately, the vitality of the economy. Indeed, the expanding range of supply chains that have been created in recent years in the auto aftermarket parts sector offer consumers an increasing array of choices, at lower prices. These dynamic supply chains also create far more jobs and tax revenue than would exist if only a handful of large corporations regained the monopoly power that they exploited prior to the 1980s, when no effective competition existed in the aftermarket for exterior automobile parts.

Second, Congress explicitly has mandated that the broader public interest be considered in Section 337 proceedings. Ford's goal is clear: to restrict aftermarket parts competition in order to reap monopoly profits. As the United States Trade Representative, your interest on behalf of the broader American public is in not permitting companies like Ford to use methods such as design patents and Section 337 proceedings to encumber competition by blocking independent repair and service competitors' access to alternative parts.

In this context, it is important to ensure that the vitality and competitiveness of the American automotive sector is not undermined by half a dozen original equipment auto manufacturers like Ford that have an interest in trying to use the Section 337 process as a strategic tool to foreclose competition. Any unwarranted Section 337 relief for Ford in this proceeding would set a damaging precedent that likely would cascade rapidly to include other vehicles and their component parts and chill the vibrant parts competition that has provided enormous benefits to the American economy in the 20 years since it began to emerge.

Third, if the proposed ITC remedy is adopted, consumers could be denied market choices and the direct benefits that competition makes possible -- including service, quality and new innovations in products and supply chains. To be sure, design plays an important role in consumers' original choice of a car when it is sold new. After the purchase, however, consumers need the flexibility to repair and maintain their vehicles with the maximum number of choices possible that will "fit" and "match" the other parts. American consumers should not be forced to pay repeatedly a monopoly price for a design patent on an interoperable part such as a mirror, headlamp, bumper or tail light -- first, when he or she buys the car and then again, whenever it needs repairs.

Fourth, if the ITC's recommendation is adopted, American consumers could well face significant harm through monopoly prices. Ford -- and no doubt other original equipment manufacturers ("OEMs") who are likely to follow a similar business strategy to foreclose competition for their cosmetic parts -- will be able to charge markedly higher prices for these parts. By enabling monopoly pricing, enforcement of the ITC's decision could impose a hefty new tax on the overwhelming number of American consumers who depend on affordable auto transportation to get them to work, to their children's soccer games, to their community activities, etc.

As shown in data compiled in 2001, the average price difference between OEM parts and non-OEM parts ranged from 34 percent to 83 percent.¹ These cost savings on non-OEM parts, however, do not tell the full story. The benefits of competition are magnified because additional cost savings result from the competitive effects that the availability of non-OEM parts have on prices in the entire auto parts aftermarket, including on those replacement parts available from the OEMs. The presence of non-OEM parts as an alternative to OEM parts has significantly pressured major automobile manufacturers such as Ford to cut the prices of their OEM parts in order to remain competitive.²

¹ Market Research Part Price Comparison (Jan. 11, 2002), *available at* Certified Automotive Parts Association.

² See John C. Bratton and Stephen M. Avila, *After-Market Crash Parts: An Analysis of State Regulations*, 18 J. Ins. Reg. 150, 169 (Winter 1999) ("As a result of competition from after-market suppliers, prices of many OEM parts decreased substantially, while prices in non-competitive markets continued to increase.").

Fifth, the total costs to the American economy of the ITC's proposed remedy would be significant. In addition to the direct losses to consumers in paying higher prices and to independent suppliers from being foreclosed from the market, the largest purchaser of aftermarket parts -- the insurance industry -- estimates that it would add approximately \$1 billion or more each year to their costs. When auto crash parts cost more, the insurers, following actuarial principles, may properly pass on the cost increases to their policyholders in the form of higher premiums.

Further, higher repair costs and the reduction in crash parts availability at competitive prices may force insurers to classify more vehicles as "constructive total losses" because the cost of making the repairs no longer makes economic sense. To the extent that insurers increasingly pay policyholders the actual cash value of the vehicle, vehicle insurance premiums may increase in order to reflect the costs incurred from the increasing number of vehicles that have been "totaled." In addition, if a loan existed on the totaled vehicle, the total loss may also cause the consumer to have a balance on an auto loan for a now-totaled auto.

As the car companies' replacement parts monopoly grows, the cost to the consumer could reach \$12 billion over ten years. This means that consumers actually may pay for the design patent on the interoperable part at least three times: (1) in the original purchase price for the vehicle, (2) through higher monopoly prices on the aftermarket part, and (3) from higher insurance premiums as the insurers must pass along their increased cost of doing business. Such a heavy, anti-consumer burden reduces the amount of money consumers have to spend on other goods and services and this, in turn, causes an inefficient allocation of resources in the American economy.

Sixth, the competitiveness of the American automotive sector extends far beyond the handful of original equipment car and truck manufacturers -- only two of which are American-owned. The sale of a new vehicle only begins the product life cycle and sets in motion years of preventive maintenance, specialized services, and repairs. These services and parts, in turn, are provided by a dense web of American businesses and individual entrepreneurs ranging from well-known automotive specialists such as AutoZone and O'Reilly's to tens of thousands of family-owned automotive businesses not controlled by the large OEMs, which depend on imported parts and effective competition to survive and prosper.

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Indeed, the development of effective auto aftermarket parts competition over the last 20 years has created numerous new business opportunities for independent parts importers, distributors, wholesalers and retailers, many of them small- and medium-sized enterprises. It has created entirely new value and supply chains that now employ many thousands of Americans, including a growing internet business in non-OEM aftermarket parts. This, in turn, fosters a more dynamic U.S. market by increasing consumer choice, lowering prices, spurring new innovations in product delivery, services and supply chains, and creating numerous economic multiplier effects throughout the country.

The American public interest in this matter is clear. American competitiveness cannot be sustained without competition and a clear focus on consumer welfare. Competition and consumer welfare drive American innovation, which in turn creates U.S. economic growth. The United States Government should not permit Ford to use its intellectual property rights in an overreaching manner that ultimately will foreclose competition in interoperable aftermarket auto parts at the expense of consumers and the broader interests of the American economy.

For all of these reasons, we strongly urge you to reject the ITC's proposed remedy in the Ford Section 337 case.

Respectfully submitted,

American Insurance Association
Automotive Aftermarket Industry Association
Automotive Body Parts Association
Coalition for Auto Repair Equality
National Association of Mutual Insurance Companies
Property Casualty Insurers Association of America

cc: Warren Muruyama, Esq.