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August 14, 2006

*VIA E-MAIL*

The Honorable Charles Grassley  
Chairman, Committee on Finance  
United States Senate  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Max Baucus  
Ranking Member, Committee on Finance  
United State Senate  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

Re: Comments on S. 3602, A Bill to Provide Duty-Free Treatment for Certain  
Parts of Motor Vehicles

Dear Chairman Grassley and Senator Baucus:

On behalf of Marmon Herrington Co. ("Marmon Herrington"), we thank you for the opportunity to submit comments on S. 3602, A Bill to Provide Duty-Free Treatment for Certain Parts of Motor Vehicles.

## **I. Marmon Herrington**

Marmon-Herrington is unique in its business in the United States. Marmon-Herrington imports axles and transfer case components and, at its facility in Louisville, Kentucky, incorporates these components into all-wheel drive kits for installation on heavy-duty and medium-duty motor vehicles. The resulting all-wheel drive heavy-duty and medium-duty vehicles are primarily vocational and government/military vehicles that must operate off-road.

Examples of the vehicles into which Marmon-Herrington's kits are incorporated include increasing numbers of troop carriers, supply trucks, fire trucks, and armored

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personnel and mine-detecting trucks used by the U.S. Armed Forces in locations such as Afghanistan and Iraq. Marmon-Herrington's kits also are installed in concrete mixers, tree trimmers, snow blowers, agricultural vehicles, and other commercial heavy-duty and medium-duty trucks.

Marmon-Herrington has been in this business for 70 years and has operated in Louisville, Kentucky since 1983. Currently, Marmon-Herrington employs 38 people at its facility in Louisville, Kentucky. Marmon-Herrington is one of the original affiliate companies of the Marmon Group (since 1963) whose companies employ both in Kentucky and elsewhere in the United States.

## **II. Proposed Legislation**

S. 3602 would provide for duty-free importation of many of the axles and transfer cases that Marmon-Herrington imports for incorporation into its installation kits. Currently, imports of these axles and transfer cases, covered by subheadings 8708.50.50, 8708.50.80, and 8708.99.67 in the Harmonized Tariff Schedule of the United States ("HTSUS"), are subject to an *ad valorem* duty of 2.5 percent.

The proposed legislation will not provide duty-free treatment for all imported axles and transfer cases. The proposed amendments to the HTSUS would create new duty-free classifications for a specifically defined subset of drive axles with differential for vehicles of HTSUS headings 8702 to 8705. To be eligible for duty-free treatment, these axles must be of either double reduction (planetary) design with 13,000 to 26,000 lb capacity, hub reduction from 3.46:1 to 3.95:1, and for use with brakes with 16.5 x 7 inch linings, or of single reduction design suited to run with both hydraulic disc and air brake hubs and with 8,000 to 13,000 lb capacity. The proposed legislation would also add a new HTSUS provision for duty-free treatment for transfer cases with all of the following characteristics: torque input designs from 7,400 lb-ft to 19,900 lb-ft, air-actuated 2-speed function, and housing designed for use with torque-proportioning differential output shafts.

## **III. Legal Effects of Proposed Legislation**

The proposed legislation corrects an incidence of "tariff inversion." Tariff inversion exists when the duties for the importation of parts exceed the duties applicable to the importation of the finished article made with those parts. According to *United States v. J.M. Lehman, Co., Inc.*, 22 C.C.P.A. 106, T.D. 47081 (1934), *United States v. American Shipping Co.*, 13 Ct. Cust. 346, T.D. 41254 (1925), *Oxford University Press, N.Y., Inc. v. United States*, 20 Ct. Cust. 78, C.D. 1088 (1948), *Kuyper & Co. v. United States*, 7 Cust. Ct. 212, T.D. 36509 (1916), and *John V. Carr & Son, Inc. v. United States*, 25 Cust. Ct. 77, C.D. 1267 (1950), imposing a lower duty rate on a finished product than on its component materials or parts is anomalous and thus disfavored.<sup>1</sup> The source of the

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<sup>1</sup> Cited in Neville Peterson, *Customs Law and Administration: Commentary* § 51.4 (3d ed. 2004).

disfavor is that imposing higher duty rates on parts encourages the importation of finished goods with lower duty rates and thereby discourages U.S. production or manufacturing of the finished goods.

Many of the motor vehicles of HTSUS headings 8702 to 8705 may be imported free of duty. For instance, mobile cranes, mobile drilling derricks, fire fighting vehicles, concrete mixers, wreckers, mobile cranes, road sweepers, spraying vehicles, and dumpers designed for off-highway use may all be imported at a free rate of duty. The axles and transfer case components that Marmon-Herrington imports to install in all-wheel drive vehicles, however, are currently subject to import duties of 2.5 percent. Thus, tariff inversion exists.

The proposed legislation eliminates the duty on certain imported axles and transfer cases, particularly the axles and transfer cases that create off-road capability in special purpose vehicles like those listed above. The proposed legislation therefore also eliminates significant instances of tariff inversion.

#### **IV. Comments in Support of Proposed Legislation**

Marmon-Herrington unambiguously supports the passage by Congress of S. 3602. These provisions accurately describe a large portion of the axles and transfer case components that Marmon-Herrington imports. Accordingly, the duty savings resulting from the proposed legislation would be a critical benefit to Marmon-Herrington.

To the best of Marmon-Herrington's knowledge, the axles and transfer cases that Marmon-Herrington uses to produce all-wheel drive installation kits are not manufactured in the United States. Thus, elimination of the currently applicable import duties on these products creates a win-win situation. Duty-free treatment supports Marmon-Herrington's continued provision of these installation kits to U.S. companies that transform heavy-duty and medium-duty commercial vehicles into specialty all-wheel drive vehicles. But at the same time, there is no risk of increased imports competitive with the product of any U.S. industry.

The potential indirect benefits of the proposed duty exemption are also great. Marmon-Herrington and its employees will benefit from the elimination of the import duty on these axles and transfer cases. The effects of the resulting cost reduction could include increased production of installation kits and increased employment at Marmon-Herrington's facility in Louisville, Kentucky. Increased production and sales of installation kits also benefits the U.S. companies that purchase the kits and create all-wheel drive vehicles. In addition, an increased supply of installation kits and of heavy-duty and medium-duty all-wheel drive vehicles would contribute to the continued provision of the support trucks, armored personnel trucks, and mine-detecting trucks that are crucial to the operations of our military both in the United States and abroad.

Because of the clear benefits to Marmon-Herrington, its Kentucky employees, its customers, and the end-users of converted off-road vehicles, Marmon-Herrington supports the HTSUS amendments proposed in S. 3602.

**V. Conclusion**

Marmon Herrington therefore requests that Congress pass S. 3602. Marmon Herrington appreciates the opportunity to present these comments and is happy to meet with Members of the Senate Finance Committee to discuss any questions regarding these comments or the proposed legislation. Please feel free to contact us if the Committee believes such a meeting would be beneficial.

Respectfully submitted,

/s/ BJ Shannon