October 31, 2019

Edward Gresser  
Chair, Trade Policy Staff Committee  
Office of the United States Trade Representative  
600 17th Street, NW  
Washington, DC 20508

Submitted electronically via www.regulations.gov

Re: Docket USTR–2019–0012, Request for Comments to Compile the National Trade Estimate Report on Foreign Trade Barriers

Dear Mr. Gresser:

As the leading trade association representing the manufacturers of electrical and medical imaging equipment, the National Electrical Manufacturers Association (NEMA) provides the attached comments in response to the September 3, 2019, solicitation of public input to inform preparation of the annual National Trade Estimate Report on Foreign Trade Barriers.

NEMA (and MITA, the Medical Imaging Technology Alliance, which is part of NEMA) represents nearly 325 electrical equipment and medical imaging manufacturers that make safe, reliable, and efficient products and systems. Our combined industries account for 370,000 American jobs in more than 6,100 facilities covering every state. These industries produce $124 billion in shipments and $42 billion in exports of electrical equipment and medical imaging technologies per year.

Please note that when specific countries and measures are mentioned they are to illustrate challenges faced by our Member companies and are not intended to be an exhaustive list of all such challenges. We are ready to discuss these comments further and provide additional details at your request. Our Member companies count on your careful consideration and we look forward to outcomes that meet their expectations.

If you have any questions on these comments, please contact Craig Updyke of NEMA at 703-841-3294 or craig.updyke@nema.org.

Sincerely,

Philip Squair
Vice President, Government Relations
NEMA Comments for the National Trade Estimate Report on Foreign Trade Barriers

NEMA Members seeking to export from the United States too often face tariff and/or standards, regulatory, and/or conformity assessment barriers. In select markets, NEMA Members also face government procurement or other restrictive sourcing policies. In all markets, effective intellectual property protection is paramount; lack thereof can prevent NEMA Members from seriously considering a market. Lastly, but not least, NEMA Member export sales prospects rely increasingly on openness of digital trade.

Tariffs

The worldwide elimination of tariffs on electrical and medical imaging products remains a fundamental NEMA goal. We urge the U.S. to pursue tariff elimination for electrical and medical imaging products in all negotiating fora, including bilateral, regional, plurilateral and multilateral.

Several key foreign markets with potential to produce strong U.S. export growth continue to apply high customs import duties. These include, but are not limited to, Brazil and India.

NEMA supports USTR initiative to persuade certain advanced economies to abandon self-identification as developing countries in order to evade commitments to comply with World Trade Organization (WTO) rules or decline to open their markets to fair competition from abroad.

However, NEMA Members also face additional tariffs of 5-25 percent imposed by multiple foreign governments in retaliation for the USG trade enforcement actions taken under Section 232 of the Trade Expansion Act of 1962 and Section 301 of the Trade Act of 1974.

Broad, global commitments to reduce and eliminate tariffs and provide industrial market access would be welcome, although they are also unlikely at this stage. Targeted U.S. efforts, however, can bear fruit: For example, the USG focus on modernization of the North American Free Trade Agreement with Canada and Mexico has produced a state-of-the-art model trade agreement that sets the stage for bilateral trade agreements with Japan and other key partners.

NEMA remains an advocate for focused tariff elimination initiatives among willing countries under the auspices of the WTO, including the Information Technology Agreement, as expanded in 2016, and negotiations on an Environmental Goods Agreement (EGA), which are suspended.
Technical Barriers to Trade

Standards and Regulations

As discussed in previous written submissions to USTR\(^1\), technical Standards play an important part in the design, engineering, production, distribution, installation and use of electrical equipment and medical imaging technology destined for both national and international commerce. Documents developed as voluntary consensus Standards often form the basis for national or regional mandatory technical regulations.

NEMA Members face two crosscurrents. First, we face the onward rise of technical Standards developed by international standards development organizations (SDOs) where European countries hold the largest influence and number of votes (and in which the U.S. holds a single vote). Second, we face the rise of China, and to a lesser extent, Russia, to leadership roles in these organizations. In the case of China, its growing economic and market power may translate very soon into greater power within these institutions as well as in the organization’s individual standardization projects. Indeed, the then-Director of National Intelligence went so far in January 2019 as to label this trend a threat to U.S. national and economic security.

The term “international Standard” can have multiple and conflicting definitions, as noted by CEN/CENELEC in April 2019 written comments to the EU Commission in response to a public consultation on potential U.S.-EU regulatory cooperation projects.\(^2\) The general definition is a Standard used in multiple countries, for example, the three countries in North America. Peculiarly, the EU appears to hold that international Standards may only be developed by one of the three Geneva-based “I” institutions: the International Electrotechnical Commission (IEC), the International Organization for Standardization (ISO) or the International Telecommunications Union.

In contrast, the World Trade Organization’s Technical Barriers to Trade Committee, of which the U.S. and EU are members, reached and issued a Decision many years ago that an international Standard is not defined by the geographic location of the SDO but by the process the SDO uses to develop and adopt the Standard. This Decision has been reaffirmed via U.S. regional trade agreements in which the Parties have agreed to apply it as they develop mandatory technical regulations.

NEMA does not dispute that a Standard developed by an “I” institution may be the right Standard for a particular country or regulator. However, depending on how it was developed and

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\(^2\) The document had been available via the EU Commission’s website for public consultations; as of October 18, however, the document is no longer accessible.
approved, the “I”-Standard may not include essential requirements for a local market or may present “fundamental technological problems” that make it unsuitable for adoption.

NEMA focuses on helping countries find or develop Standards that fulfil regulatory and market-driven essential requirements and provide for access to a range of safe and compliant equipment.

As the U.S. and others strive to achieve the promise of emerging technologies such as advanced manufacturing, an Internet of Things (IoT), and connected and autonomous transportation, technical Standards are playing their key role. Moreover, U.S. government trade agencies have an important part to play in working with foreign governments, NEMA, and others in the private sector to keep markets open and competitive. This should preclude creation of new barriers to trade, while enabling connectivity and interoperability all the while safeguarding privacy and cybersecurity in electrotechnical and medical imaging products.

Conformity Assessment and Certification

In-country testing requirements continue to act as difficult, costly and time-consuming market barriers in many countries for NEMA manufacturers of electrical equipment and medical imaging equipment. Colombia is an example. A menu of approaches exists on how to replace these barriers, including:

- U.S. trading partners should commit to and accredit qualified U.S.-based and global conformity assessment bodies and afford them national treatment to test and certify products for their markets

- U.S. trading partners should join multilateral agreements that facilitate international trade in equipment and services – while maintaining required levels of safety – by providing for acceptance of testing results (e.g., the IEC System of Conformity Assessment Schemes for Electrotechnical Equipment and Components (IECEE) and the IEC System for Certification to Standards Relating to Equipment for Use in Explosive Atmospheres (IECEX System)).

In addition to local testing and certification requirements, compliance with country- or region-specific certification marks and language requirements are costly to U.S. manufacturers. To affix required labels and attestations is often challenging (as often there is insufficient space on the product to contain them). Due to specific regulations that require specific labels/marks for individual countries, a product may be different only because of the required test marks and local language text for functional or safety information (i.e. warnings, control panels, etc.) when, alternatively, one test mark and international symbol could be used. Electronic labeling, where a mechanism such as a QR-code can be used to access certification or other product information
from a manufacturer – not a government – website in the user’s language, is becoming more widely used and should be promoted by USTR as an option for foreign regulators.

Companies that manufacture durable equipment, which typically remain in production for 7+ years without a major redesign, report that immediate or one-year implementation dates for new and revised regulations and Standards are a major problem for legacy products that have been exported and imported without incident for many years.

**Other Regulatory and National Treatment Barriers**

Government procurement: U.S. electrical equipment and medical imaging equipment manufacturers will face significant disadvantages when seeking to compete for sales to Canadian federal and provincial government entities under the 2018 U.S. Mexico Canada Agreement (USMCA). While the EU and Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) countries have negotiated preferential market access through trade agreements with Ottawa, under USMCA U.S.-Canada procurement terms are set to devolve to the WTO GPA level. This effectively places U.S. companies well behind major competitors in Germany, Japan, Mexico, etc., and incentivizes U.S. companies to serve those potential customers from locations within the EU or CPTPP membership.

Another barrier to procurements can be governments’ focus on first costs only, to the detriment of understanding the total project cost and value over its life cycle. The U.S. should continue its leadership and training with respect to value-based procurement.

Local content/value-added/sourcing requirements: Even if well intentioned, local sourcing requirements do not help NEMA Members optimize their supply chains to deliver the best product from the U.S. to any customer around the world for the best overall value over the life cycle of the product.

Remanufacturing: We urge USTR to remain active in preventing and removing barriers to international trade in high-quality remanufactured equipment, including medical imaging units.

Overall, MITA and its members have cited and remain concerned about multiple measures taken at the national, provincial and local levels in China that would have the effect of disadvantaging non-Chinese companies that manufacture medical technologies.

END COMMENTS