

No. 19A\_\_\_\_\_

---

In the  
SUPREME COURT OF THE UNITED STATES  
October Term 2019

---

FORD MOTOR COMPANY,  
*Applicant,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

---

**Application for an Extension of Time Within Which  
to File a Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Federal Circuit**

---

**APPLICATION TO THE HONORABLE  
CHIEF JUSTICE JOHN G. ROBERTS, JR.  
AS CIRCUIT JUSTICE**

---

PETER D. KEISLER\*  
RICHARD M. BELANGER  
GORDON D. TODD  
ERIKA L. MALEY  
DANIEL J. HAY  
SIDLEY AUSTIN LLP  
1501 K Street, N.W.  
Washington, D.C. 20005  
(202) 736-8000  
pkeisler@sidley.com

*Counsel for Applicant Ford Motor Company*

November 20, 2019

\* Counsel of Record

---

## **PARTIES TO THE PROCEEDING**

Petitioner (plaintiff-appellee below) is Ford Motor Company. Respondent (defendant-appellant below) is the United States of America.

## **STATEMENT PURSUANT TO RULE 29.6**

Pursuant to Supreme Court Rule 29.6, Applicant Ford Motor Company states as follows: Ford Motor Company is a publicly traded company with no parent corporation. State Street Corporation owns 10% or more of Ford Motor Company's stock.

## **APPLICATION FOR EXTENSION OF TIME**

Pursuant to this Court's Rules 13.5, 22, and 30.3, Applicant Ford Motor Company ("Ford") hereby requests a 30-day extension of time, to and including February 13, 2020, within which to petition for a writ of certiorari in this case. Absent an extension, the petition would be due on January 14, 2020. This application is made at least 10 days before that date.

## **JUDGMENT FOR WHICH REVIEW IS SOUGHT**

The judgment sought to be reviewed is the decision of the United States Court of Appeals for the Federal Circuit in *Ford Motor Co. v. United States*, 926 F.3d 741 (Fed. Cir. 2019) (attached hereto as Exhibit A).

## **JURISDICTION**

The Federal Circuit issued its decision on June 7, 2019. On October 16, 2019, the court denied Ford's petition for panel rehearing and rehearing *en banc* (unreported order attached as Exhibit B). This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

## **REASONS JUSTIFYING AN EXTENSION OF TIME**

1. This case concerns the proper classification of Ford's Transit Connect vehicles under the Harmonized Tariff Schedule of the United States ("HTSUS"). The Transit Connect is a multipurpose vehicle available in passenger and cargo configurations, which Ford manufactures in Turkey. Each Transit Connect, which is built on the chassis of a Ford Focus sedan and is modeled after a passenger van that Ford sells in Europe, is designed to meet all safety requirements for a passenger vehicle, and is imported into the United States with either one or two

rows of rear passenger seatbacks. After importation, certain Transit Connects—called in this litigation the “Transit Connect 6/7s,” based on a digit in their Vehicle Identification Number—are converted into cargo vans by removing the rear seatbacks and seat belt, covering the rear footwells, and adding a cargo floor mat.

2. For years, and with the full knowledge of the U.S. Customs and Border Protection (“Customs”), Ford declared the Transit Connect 6/7s as passenger vehicles under Heading 8703 of the HTSUS (“vehicles principally designed for the transport of persons”) and paid a tariff of 2.5% *ad valorem*. In 2013, Customs issued a ruling that the Transit Connect 6/7s should instead be tariffed under Heading 8704 (“Motor vehicles for the transport of goods”) at a rate of 25% *ad valorem*, because after importation those vehicles are converted from passenger vans to cargo vans. Ford challenged that ruling in the Court of International Trade (“CIT”). Consistent with this Court’s long-established rule that “[t]he dutiable classification of articles imported must be ascertained by an examination of the imported article itself, *in the condition in which it is imported*,” *Worthington v. Robbins*, 139 U.S. 337, 341 (1891) (emphasis added), the CIT granted summary judgment in favor of Ford, ruling that the Transit Connect 6/7s are imported as passenger vehicles and that post-importation modifications do not affect their classification.

3. The government appealed, and the Federal Circuit reversed. Despite acknowledging that Heading 8703 is an *eo nomine* provision—meaning that the tariffed good must be assessed based on what it is and not how it is used—the court ruled that Heading 8703 “inherently suggests a type of use” and thus considered the

post-importation modification and use of the Transit Connect 6/7s to determine the applicable HTSUS heading. *See Ford*, 926 F.3d at 750. The court concluded that the vehicles' intended post-importation use as cargo vans overrode their condition at importation as street-legal passenger vehicles.

4. Ford believes the Federal Circuit's decision warrants this Court's review, because it conflicts with this Court's precedent on how Customs should assess the tariff classification of an imported good—namely, that it should look to the condition of the good at the time of importation, rather than any post-importation modifications or use. *See Worthington*, 139 U.S. at 341; *accord United States v. Citroen*, 223 U.S. 407, 414–15 (1912); *United States v. Schoverling*, 146 U.S. 76, 81–82 (1892); *Merritt v. Welsh*, 104 U.S. 694, 701 (1882). The decision below is the latest and most deeply problematic of a line of cases holding that Customs may consider a good's "inherently suggest[ed] ... use" in determining its tariff classification. Judges have warned that the Federal Circuit's emerging case law on this point "blurs the boundaries between *eo nomine* and principal use provisions in ways that will promote confusion and error." *GRK Can., Ltd. v. United States*, 761 F.3d 1354, 1366 (Fed. Cir. 2014) (Reyna, J., dissenting). What is more, the Federal Circuit has inconsistently applied this novel and misguided rule. *Compare Ford*, 926 F.3d 741 ("vehicles principally designed for the transport of persons" inherently suggests use), *with W. States Import Co. v. United States*, 154 F.3d 1380 (Fed. Cir. 1998) (bicycles "not designed for use with [wide] tires" does *not* inherently suggest use). This inconsistency and departure from controlling precedent has undermined Congress' goal of a "simple and workable" customs law

that ensures “uniformity in the imposition of duties.” *Citroen*, 223 U.S. at 414–15, 424. Ford therefore intends to ask this Court to grant a writ of certiorari to correct the decision below and to bring the Federal Circuit’s practice into conformance with this Court’s precedent.

5. There is good cause for a 30-day extension of time to file a petition for writ of certiorari in this case. The record below is voluminous, and contains confidential business information and other confidential material. Moreover, an extension is warranted to permit counsel sufficient time to address the complex factual and legal issues presented by this case.

6. The extension of time is also necessary because of the press of other client business. For example, undersigned counsel of record is responsible for delivering oral argument in *National Ass’n of Manufacturers v. U.S. Department of Treasury*, No. 1:19-cv-00053-JAR (Ct. Int’l Trade), on December 3, 2019. Ford’s other counsel, likewise, have various professional obligations during that time, including other briefs and motions, arguments, and trial.

7. An extension of 30 days will not cause any prejudice to Respondent. The Federal Circuit’s mandate in this case issued on October 23, 2019, and Ford is, under protest, declaring newly imported Transit Connect 6/7s under Heading 8704. Accordingly, the brief extension of time requested will have no effect on the Treasury or the government’s ability to apply its tariff ruling.

## CONCLUSION

For the foregoing reasons, Ford respectfully requests that this Court grant a 30-day extension of time, to and including February 13, 2020, within which to petition for a writ of certiorari.

Dated: November 20, 2019

Respectfully submitted,

/s/ Peter D. Keisler

PETER D. KEISLER\*

RICHARD M. BELANGER

GORDON D. TODD

ERIKA L. MALEY

DANIEL J. HAY

SIDLEY AUSTIN LLP

1501 K Street, N.W.

Washington, D.C. 20005

(202) 736-8000

pkeisler@sidley.com

*Counsel for Applicant Ford Motor Company*

\* Counsel of Record