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Questions for the Record

**Ms. Jennifer Thomas on behalf of the Alliance of Automobile Manufacturers
March 12, 2014 Subcommittee on Environment and the Economy Hearing on the
Discussion Draft entitled the “Chemicals in Commerce Act”**

Questions from Ranking Member Waxman:

Some automotive replacement parts have been demonstrated to be significant sources of chemical exposures and to pose significant risks, including asbestos brake pads, lead wheel weights, and mercury switches. Progress has been made through TSCA actions to reduce the risk from mercury switches, and many of your members have voluntarily joined the National Lead Free Wheel Weight Initiative. You cite progress in eliminating those risky parts, and the flame retardant deca-BDE as success stories in your testimony. Yet, at the same time, you argue for a “full outright exemption” from TSCA requirements for automotive replacement parts.

First, the Alliance would like to point out that the automaker phase-outs of mercury-containing switches, asbestos brake pads and lead wheel weights were not a result of TSCA action, but rather were due to the voluntary actions undertaken by automakers.

Second, and to be clear, the Alliance is not advocating that all automobile parts be exempt from TSCA requirements. Rather, we are seeking an exemption for replacement parts used to service in-use vehicles – a much smaller universe of auto parts. Vehicles should be serviced with parts “as produced”, meaning the service parts should use the materials that were acceptable when the vehicle was originally launched. This “repair as produced” concept prevents using brake pads containing asbestos from a vehicle “produced” with asbestos-free pads, as well as replacing lead-free wheel weights with ones containing lead.

An exemption for replacement parts is necessary because it is impractical, and in many cases infeasible, to redesign and re-source a part for a vehicle that is no longer in production. Replacement parts are often manufactured in bulk at the end of a vehicle production run, while the tooling is still available. Storing and maintaining old tooling or building new tooling to manufacture new redesigned replacement parts can be inefficient,

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impractical and cost prohibitive. This does not even take into account the obstacles associated with validating such parts for vehicles that have already gone out of production to ensure the parts meet the necessary federal safety and/or emissions requirements.

In our view, any TSCA regulation applicable to automobiles should focus on risks identified in connection with original equipment parts. To the extent the original equipment parts in vehicles are changed based on such risks, such changes will also carry over to replacement parts manufactured for service and repair for those vehicles.

1. Do you believe that existing TSCA regulations for mercury switches should be eliminated?

It is important to clarify that the automaker phase-out of mercury-containing switches as well as the creation of the voluntary programs End of Life Vehicle Solutions (ELVS) and the National Vehicle Mercury Switch Recovery Program (NVMSRP) were initiated *prior* to any EPA rulemaking under TSCA.

Automakers see no reason to eliminate these regulations as the industry voluntarily phased out the use of mercury-containing switches in the 1990s and early 2000s. It was this voluntary effort that allowed EPA to adopt its significant new use rule on automotive mercury switches in 2007, since by that time the use of mercury-containing switches had become “new” (i.e., no longer ongoing). While vehicle occupants were not at risk from mercury exposure during the life of a vehicle, concerns were raised about the possibility that mercury from improperly discarded switches could escape into the environment. Automakers responded by creating ELVS. Comprised of light, medium and heavy-duty vehicle manufacturers, ELVS is committed to providing educational outreach and technical assistance on best practices for the safe removal and proper disposal of mercury-containing switches from scrapped motor vehicles.

Additionally, the NVMSRP is a voluntary collaboration among relevant stakeholders including EPA, states, environmental organizations, automakers, auto dismantlers and recyclers, and steelmakers to recover mercury-containing switches from scrapped vehicles. As a partner in the NVMSRP, ELVS has collected approximately 5,685,000 switches, preventing over 12,500 pounds of mercury from being released into the environment.

2. Do you believe that the phase out of lead wheel weights should be reversed?

No, but to be clear, lead wheel weights have never been regulated under TSCA. Much like the case with mercury-containing switches, automakers voluntarily phased out the use of lead wheel weights prior to model year 2010, without the need of a federal mandate. In 2008, the EPA built on this voluntary action by bringing together the tire manufacturers and retailers and creating the National Lead-Free Wheel Weight Initiative. All automakers have been using lead-free alternative wheel weights since 2010.

3. Do you believe that a reformed TSCA should be barred from addressing the risks posed by asbestos brake pads?

To the best of our knowledge, automakers no longer utilize asbestos-containing brake pads. Replacement and original equipment non-asbestos brake pads have been available since the mid-1990s. This voluntary change-over from asbestos-containing brake pads occurred despite the 1991 court decision invalidating EPA's ban of asbestos in brake pads and other products. Given the timing of the phase-out, automakers agree that replacement pads designed "as produced" should be asbestos free.

4. In general, where an automotive replacement part itself poses or contributes to an unreasonable risk to human health or the environment, do you think it should be exempt from regulation under TSCA?

The auto industry suggests adopting a "repair as produced" principle for replacement parts, as used in a number of other global chemical initiatives. This methodology represents a balanced strategy by allowing replacement parts to be comprised of the chemicals/materials that were acceptable when the vehicle was originally designed and certified to meet the applicable substance requirements, as well as the applicable federal safety and/or emissions requirements. The market for replacement parts represents a significantly smaller universe of risk – a study by the European Automobile Manufacturers Association states that more than 90% of spare parts have a production rate of less than 0.1% of the original mass production volume. This approach therefore represents a reasonable approach that holistically addresses vehicle safety, environmental risk and customer satisfaction by providing reliable inventory of cost-effective and quality replacement parts in a timely manner; while still maintaining compliance with an array of global regulatory standards.

Nevertheless, the infeasibility to redesign and validate numerous replacement parts for vehicles that are no longer in production presents significant challenges –

potentially impacting automakers' ability to fulfill consumer warranties, recalls, and repairs of the existing fleet. This is significant, as there are more than 250 million vehicles currently on U.S. roads and the average age of an automobile is 11 years old. As such, the Alliance believes exempting replacement parts from TSCA requirements is necessary to avoid a potential disruption in the supply of older model replacement parts, a disruption that would disproportionately affect and likely harm owners of older vehicles.

In addition to federal actions under TSCA to address mercury switches, some states have passed laws to minimize the risks posed by such switches. For example, since 2006, Illinois has had in effect a law that requires recordkeeping for the removal of mercury switches from end-of-life cars and prohibits people from falsely claiming that mercury switches have been removed.

5. Has the law impacted your members' ability to manufacture and distribute cars in the United States or in Illinois?

Thus far, state requirements related to mercury have not restricted our ability to manufacture or distribute vehicles. However, these state-by-state removal requirements, with their unique program elements, have resulted in significant administrative and implementation costs that could have been considerably reduced if the same requirements have been implemented at the federal level. It is for reasons such as this that the auto industry continues to urge Congress to reform TSCA to ensure a more consistent program across the entire nation.

It is worth noting the use of mercury-containing switches by automakers ceased entirely in 2003 – three years *prior* to the Illinois statute cited in the question. Indeed automakers comply with any obligations imposed on them by a state law or regulation pertaining to mercury-containing switches at the national level, through the National Vehicle Mercury Switch Removal Program. As noted earlier, this voluntary program, brought together all the various stakeholders, including states, and has resulted in the safe removal and proper disposal of approximately 5,685,000 mercury-containing switches nationwide.

6. Do you believe that law should be preempted?

Alliance members comply with all state laws and regulations. However, a patchwork of state-by-state regulations presents significant challenges to manufacturers of complex durable goods, such as automobiles. Automakers design

and build vehicles to meet an array of customer needs and demands, and to comply with thousands of pages of federal regulations. As a practical matter, automakers simply cannot manufacture vehicles on a state-by-state basis. We strongly believe that reforming TSCA in a manner such as the proposed draft “Chemicals in Commerce Act”—which encourages state participation—is more in line with today’s manufacturing realities and will better protect public health while supporting U.S. competitiveness and innovation. We support state input into EPA regulatory activities.

7. Please provide a list of any and all state laws that have impeded your members’ ability to manufacture and distribute cars in the United States.

Alliance members comply with all state laws and regulations. However, inconsistent or conflicting state requirements with respect to the design or content of motor vehicles do present compliance obstacles. For example, California and Washington State both have environmental protection laws to restrict heavy metals and asbestos in brake friction material. While the Alliance appreciates the efforts made by the two states to collaborate, there are still differences in their laws and implementing regulations. For example, both states ultimately require brakes to contain less than 0.5% copper. In California this must be accomplished by 2025, however in Washington the date is eight years following its determination that a viable alternative exists. Both states allow manufacturers to make an application for an extension from that requirement, however, the applications and timing for applying are not identical, and, most importantly, each state has its own process for determining whether to grant these extensions, which means one state could grant an extension while the other does not. This extension process is labor intensive and costly, and having to repeat it for multiple states is inefficient, and adds a large amount of uncertainty.

In addition, it appears there may be edge code marking requirement discrepancies between the same two states for brakes that have received extensions. This has the likelihood of causing a logistical nightmare for industry despite the fact that we are only talking about two states. However, this could be multiplied by many more. Even if the states harmonize, manufacturers must still spend considerable time and resources monitoring multi-state regulations, submitting multiple reports, satisfying individual state notification and approvals, etc.

Finally, we are noticing a significant trend towards state legislation and regulations targeting not just chemicals but consumer products (i.e., articles). In 2013, at least 16 broad-reaching chemical regulation bills were introduced by state legislatures

across the country. While some had a specific focus, the definitions went beyond the scope of federal definitions and were broad enough to include consumer products and automobiles. As a result, we expect the number of conflicting and duplicative laws and regulations will only increase.