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STATEMENT

OF

THE ALLIANCE OF AUTOMOBILE MANUFACTURERS

BEFORE THE:

ENERGY AND COMMERCE COMMITTEE
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY
U.S. HOUSE OF REPRESENTATIVES

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PRESENTED BY:

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Summary

The Alliance of Automobile Manufacturers welcomes the draft TSCA Modernization Act of 2015. The Alliance believes it will enhance EPA's ability to more effectively regulate chemical substances, while providing industry with a clear and consistent regulatory environment. Automakers have a long history of corporate stewardship with regard to identifying and reducing specific chemicals or "substances of concern" in automobiles, but they recognize that more can be done to protect the public and environment from potentially harmful chemical substances.

The Alliance supports the manner in which the draft TSCA Modernization Act of 2015 seeks to regulate chemicals in "articles," as defined by EPA in its TSCA regulations and believes it is consistent with existing EPA policy. Automakers are not advocating that articles be exempt from regulation under TSCA, but rather we believe that legislation to modernize TSCA should consider the unique concerns of article manufacturers.

Additionally, we support an exemption of vehicle replacement parts, including the limited exemption contained in this discussion draft. Vehicles should be serviced with parts "as produced" – using the materials that were acceptable when the vehicle produced. Similar laws with goals to replace potentially harmful substances have opted to exempt vehicle replacement parts.

Finally, this draft recognizes the need for a single national regulatory program for chemical management by ensuring that any EPA action would then apply in all the states. However, we recommend the Committee also include language suspending any new state action when EPA decides a chemical substance is a candidate for a risk evaluation to allow EPA the necessary time to conduct a robust, science-based risk and ensure that any final decision take into account the range of possible use and exposure considerations.

Congress is on the cusp of reforming this important environmental statute for the first time in nearly 40 years. The Alliance stands ready to work with the Committee as this discussion draft proceeds through the legislative process.

Testimony

Thank you, Chairman Shimkus, Ranking Member Tonko and members of the Subcommittee. The Alliance of Automobile Manufacturers (Alliance) is a trade association of twelve car and light truck manufacturers comprised of BMW Group, FCA US LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche Cars, Toyota, Volkswagen Group and Volvo Cars. Together, Alliance members account for roughly three out of every four new vehicles sold in the U.S. each year.

On behalf of the Alliance, I appreciate the opportunity to offer our views on the draft TSCA Modernization Act of 2015. We applaud Subcommittee Chairman Shimkus, Chairman Upton and Ranking Member Pallone for the thoughtful approach taken in this bipartisan discussion draft. This streamlined product reflects the hard work this Subcommittee has conducted on this important issue throughout the past two years. We remain encouraged by this process and believe a strong bipartisan approach provides for the best opportunity to reform the Toxic Substances Control Act for the first time since it was enacted in 1976.

The automobile industry is a massive employer -- reaching well beyond the iconic names of auto companies familiar to us all. Auto manufacturing depends on a broad range of parts, components and materials provided by thousands of suppliers, as well as a vast retail network of dealers, service providers and repairers around the globe. In the United States alone, eight million workers and their families depend on the auto industry. Each year, the industry generates $500 billion in paychecks, and accounts for $205 billion in tax revenues across the country.

Automakers have a long history of corporate stewardship with regard to identifying and reducing specific chemicals or “substances of concern” in automobiles. For more than a decade, automakers have maintained an industry-focused global declarable substance list and a sophisticated tracking database to actively reduce industry-wide use of substances of concern in global production. The auto industry has invested more than $30 million on this system, which now tracks more than 3,000 substances used in automotive components to ensure that restricted substances are not in our products. By way of example: automakers have eliminated the use of

mercury-containing switches and lead wheel weights from automobiles; we continue to phase out the use of the flame retardant decaBDE; and we are eliminating copper in brake pads[1]. Most notably, automobiles are among the most recycled consumer products. In the U.S., 95% of retired cars are processed for recycling annually, and approximately 86% of a vehicle's material content is recycled, reused or used for energy recovery.[2]

But automakers recognize that more can be done to protect the public and environment from the risk of harmful exposures to chemical substances and we want to be part of the solution. Despite decades of rapid advancement in the science and technology of chemical use and management, TSCA remains the only major federal environmental statute that has not been substantively revised since its enactment. We welcome the draft TSCA Modernization Act of 2015 and believe it will enhance EPA's ability to more effectively regulate chemical substances in a way that better protects public health and the environment, while providing industry with a clear and consistent regulatory environment.

The Alliance supports the manner in which the draft TSCA Modernization Act of 2015 seeks to regulate chemicals in "articles," as defined in TSCA. The approach taken is consistent with existing EPA policy, which has traditionally recognized the complexity of regulating chemicals in articles by exempting articles from most TSCA requirements. This discussion draft will allow EPA to regulate chemical substances in articles, but "only to the extent necessary to mitigate the identified risk."

Automakers are not advocating that articles be exempt from regulation under TSCA. Rather, we believe that any legislative efforts to modernize TSCA should consider the unique concerns of article manufacturers or assemblers. The average automobile has 30,000 unique components and each individual component is comprised of multiple materials, including a range

[1] Memorandum of Understanding on Copper Mitigation in Watersheds and Waterways between U.S. EPA and Motor Equipment Manufacturers Association, Automotive Aftermarket Suppliers Association, Brake Manufacturers Council, Heavy Duty Manufacturers Association, Auto Care Association, Alliance of Automobile Association, Association of Global Automakers, Truck and Engine Manufacturers Association, and Environmental Council of the States, January 21, 2015, http://water.epa.gov/polwaste/npdes/stormwater/upload/copper_brakepads_mou.pdf.
[2] "Vehicle Recycling, Reuse, and Recovery: Material Disposition from Current End of Life Vehicles," Society of Automotive Engineers (SAE), 2011.

of chemicals and mixtures. Most of these components never come into contact with people or the environment during use. Each automaker works with a global, multi-tiered network of more than 1,000 suppliers, spanning multiple sectors from electronics to textiles. Most automotive components are obtained from suppliers as finished products, which are then integrated into the vehicle. Regulating the construction and assembly of automobiles on a component-by-component basis is burdensome, inefficient, and unnecessary to effectively manage chemicals.

Again, we understand the potential need to regulate articles in some circumstances; however, this should be based on risk of exposure to the chemical in question. For example, there is a clear and dramatic difference between the risks of exposure to a chemical substance found in a baby bottle versus an engine component under the hood of a car. In the event EPA determines it is appropriate to regulate chemicals in articles, feasible alternatives must be available and EPA should allow sufficient lead-time to implement the necessary changes. The Alliance supports the language in this discussion draft that allows for these operational constraints to be considered.

Additionally, automakers support the "repair as produced" concept – and the exemption of vehicle replacement parts, including the limited exemption contained in this discussion draft. Vehicles should be serviced with parts "as produced," meaning the service parts should use the materials that were acceptable when the vehicle was designed, certified, and warranted, even if manufactured after the effective date of a restriction on use of a chemical contained in those parts. To be clear, we are 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 that were designed prior to the effective date of chemical restrictions – a much smaller universe of auto parts.

Each major automaker carries over 250,000 active replacement parts, with roughly 20,000 new service parts added annually (~3,000 for each new vehicle introduced). Replacement part demand is small -- generally 1% to 5% of the production volume of all vehicle parts -- and declines over time. Since the average age of vehicles on the road today is more than 11 years and many vehicles last much longer, replacement parts must be available for many years so that vehicles already purchased by consumers can continue to be maintained.

The basic economic business model for replacement parts is that manufacturers put a marginal supply of these parts in stock while a vehicle is in production. However, not all replacement parts are produced at the end of production of a vehicle. To the extent that customers need replacement parts beyond what is initially stocked, there is a "production-on-demand market" whereby suppliers continue to produce replacement parts typically using the same materials, production processes and engineering specifications as for the original vehicle. While replacement parts theoretically might be redesigned for vehicles no longer in production, there are technical, economic, and logistical barriers that often make such redesign infeasible, if not impossible, in most cases. Similar laws with goals to replace potentially harmful substances have examined this issue and have opted to exempt vehicle replacement parts. (*See*, e.g., European Union End-of-Life Vehicle Directive, Directive 2000/53/ELC; Canada Consumer Product Safety Act; California's standards on motor vehicle brake friction materials, Cal. Health and Safety Code § 25250.50 *et seq*; Washington state's motor vehicle brake pads standards, Wash. Rev. Code Chapter 70.285; and Maryland's standards governing decaBDE in various products, MD Code § 6-1201.)

Finally, the draft TSCA Modernization Act of 2015 recognizes the need for a single national regulatory program for chemical management by ensuring that any EPA final determination on a chemical substance will preempt state chemical restrictions. We appreciate this new and simplified approach to state preemption. However, we recommend the Committee also include language suspending any new state action when EPA decides a chemical substance is a candidate for a risk evaluation. This "pause" would allow EPA the necessary time to conduct a robust, science-based risk evaluation. It should be structured to ensure state participation in the risk evaluation process, so that any final EPA decision takes into account the range of possible use and exposure considerations.

Because automakers sell the same products across all 50 states, one state's chemical restriction or ban is, in effect, a *de facto* U.S.-wide (and possibly even global) requirement. Therefore, preemption of state law after an EPA regulation is finalized may come too late to provide relief from inconsistent or ill-considered state restrictions because automakers may already have had to comply with the state restriction. Preemption, or a "pause" on additional

state legislation/regulation, should begin once EPA begins the assessment process. We are aware that some have expressed concern about the passage of time while EPA considers regulatory action. In response, we support language in this draft setting forth an expedited timeline for EPA action. We cannot support a situation in which a state regulates a chemical substance while EPA is considering whether to regulate the same substance, and may regulate in a different manner than the state does. In such cases, the most stringent regulation quickly becomes the default standard for the industry.

As an example of the compliance challenges posed by a state-by-state approach, both California and Washington have environmental protection laws to restrict heavy metals and asbestos in brake friction material. Although the two states have made conscious efforts to collaborate on their approaches, there are still conflicting differences between their laws and implementing regulations. For example, while both states ultimately require brakes to contain less than 0.5% copper, each state has its own deadlines and regulatory processes. In California, the copper reduction goal must be accomplished by 2025; however in Washington, the deadline is eight years following the state's determination that a viable alternative exists. Both states allow manufacturers to make an application for an extension from their respective requirements, but, the applications and timing for applying are not identical, and, 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.

Imagine this scenario multiplied across 48 additional states. Compliance would be both labor-intensive and costly, and inefficient to have to go through processes of this kind on a state-by-state basis. We are noticing a significant trend towards state legislation and regulations targeting not just chemicals but consumer products (i.e., articles) containing specified substances. In 2014, at least 43 broad-reaching chemical regulation bills were introduced by state legislatures across the country. Even if the states attempt to harmonize their requirements – an effort that usually falls short to one degree or another – automakers will still have to spend considerable time and resources monitoring multi-state regulations, submitting multiple reports, satisfying individual state notification and approvals, etc.

We appreciate the opportunity to offer our views on the draft TSCA Modernization Act of 2015. Congress is on the cusp of reforming this important environmental statute for the first time in nearly 40 years. We are encouraged by the significant progress that has been made on this issue in this Committee, as well by the action occurring simultaneously in the Senate. We strongly believe that the final, bipartisan product will more effectively regulate harmful chemical substances in a way that protects the health and safety of all Americans, while providing industry the certainty and consistency it needs. The Alliance stands ready to work with the Committee as this discussion draft proceeds through the legislative process. Thank you again and I will be happy to answer any of your questions.