

August 9, 2007

Docket Management Facility  
U.S. Department of Transportation  
400 Seventh Street, S.W.  
Nassif Building, Room PL-401  
Washington, D.C. 0590

RE: Docket No. NHTSA-2007-28104

Dear Sir or Madame:

On behalf of the Japan Automobile Manufacturers Association (“JAMA”), I am writing to present the comments set forth below regarding the proposed extension by the National Highway Traffic Safety Administration (“NHTSA”) of its data collection from motor vehicle manufacturers relating to the country of origin of equipment in new passenger motor vehicles, pursuant to the American Automobile Labeling Act (“AALA” or “the Act”).

JAMA is the trade association of Japan’s motor vehicle manufacturers, representing a significant number of the companies directly affected by the continuing burden of AALA’s labeling, data collection, and reporting requirements. JAMA members have serious objections not only to the collection and use of the required information, but to the efficacy of the underlying statute as well.

**1. NHTSA’s request for public comment asks first whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility. To the latter, the answer is emphatically “no,” especially in view of NHTSA’s 2001 technical report, “Evaluation of the American Automobile Labeling Act,” showing that AALA has a relatively minor effect on vehicle-purchase decisions.**

Enacted in 1992, the American Automobile Labeling Act (PL 102-388) requires manufacturers of automobiles and other passenger motor vehicles sold in the United States as of October 1, 1994, to put a label on each new vehicle identifying where it was assembled and the percentage of foreign-made parts, calculated by their dollar value. NHTSA’s implementing regulations specify the form and content of the label as well as the procedures manufacturers are to follow in developing the information. The label also requires identification of the country of final assembly and the origin of the engine and transmission. AALA requires that NHTSA collect

from automobile manufacturers the data providing the basis for the information on the labels. The flaws in NHTSA's data collection arise directly from deficiencies and ambiguities in the underlying statute that erect insuperable obstacles to the achievement of any "practical utility" from the information gathered.

The American Automobile Labeling Act ("AALA") imposes restrictions and requirements that cut against the grain of a global automotive industry. Among AALA's many drawbacks is its creation of an artificial, inaccurate, and misleading definition of what is "foreign" with respect to the origin of automobiles and auto parts. Every auto company manufacturing in the United States also manufactures automobiles outside of the United States for sale in the U.S. market. Every auto company manufacturing in the United States also sources parts globally for use in their U.S. assembly operations. As a result, the level and complexity of trade in the auto sector have grown and are not easily segmented. The Act fails to appreciate the international nature of the automobile industry, whether in terms of regional production in North America or production on a global scale.

From a regional perspective, the percentage of domestic content for purposes of AALA is calculated using U.S. and Canadian parts. While this approach in some sense recognizes the manufacturing presence General Motors, Ford, and Chrysler have in Canada, as well as the history the United States and Canada share with respect to automobile and auto parts production, it is nonetheless a throwback to the 1965 Auto Pact between the two countries and the idea that the "U.S." and "Canadian" industries, represented by General Motors, Ford, and Chrysler, are essentially integrated.

In the current era this approach is simply misleading because it completely ignores shifting industry trends: Chrysler has not been a wholly-owned U.S. company for most of the last decade; significant parts and automotive production has moved to Mexico; Ford and GM regularly cite their global operations, not simply their U.S. and Canadian operations; and twelve foreign auto companies now have production facilities in the United States, Canada, and Mexico.

Specifically, AALA requirements that distort actual content figures include:

- The failure to account for the value of labor involved in the final assembly of automobiles.

This understates the true domestic content of automobiles assembled in the United States by U.S. workers and allows cars assembled in a "foreign" country to be labeled "domestic" to the extent their components are of U.S./Canadian content. Tabulating "domestic" content on a "parts only" basis, as AALA attempts to do, is overly simplistic. When taking into account all aspects of an auto company's operations worldwide, and the effect global operations have on local decision making, no car offered for sale in the United States is truly "domestic" in the sense suggested by AALA.

- The reporting of content across a single carline.

Under AALA, the domestic content of cars built in the United States or Canada must be calculated without regard to whether cars of the same carline are built in the United States or Canada or built elsewhere and exported to the United States. Thus, some cars within the carline which have a high actual level of U.S./Canadian content may be labeled under AALA as having much lower content. Conversely, some cars within the carline (*e.g.*, imported cars) with low actual U.S./Canadian content may be labeled as having higher content. NHTSA has acknowledged that AALA does create this inconsistency, but has refused to accept the fact that it is inherently misleading. (See *59 Federal Register* 37301, July 21, 1994.) While manufacturers are permitted to clarify this calculation by describing the content of U.S./Canada assembled cars and that of cars assembled elsewhere, NHTSA has specifically determined that such information is not as “useful” as the overall carline content calculation. (*Id.* at 37302).

- The failure to account for the U.S./Canadian content of imported parts.

Components that may have U.S./Canadian content, but are assembled overseas by an independent supplier, may be excluded from the “domestic” content calculation if the U.S./Canada value added cannot be documented.

- The unique definition of “final assembly.”

Body assembly and painting costs are not included in the U.S./Canadian equipment value if these processes occur at the final assembly point. However, these costs are included in the U.S./Canadian equipment value if the body assembly and painting processes are performed at a separate facility. This distinction defies all economic logic and cannot be reasonably explained.

The effect of the U.S./Canadian combination is to conceal the true level of U.S. content and Canadian content. This is unjustifiable, particularly in light of the WTO ruling on the Auto Pact, which underscores that all auto imports between the United States and Canada should be taxed based on their country of origin, negating the concept of “unity” between the U.S. and Canadian auto industries. The entire premise for one vital component of AALA – a unified production region – has essentially disappeared. If Canada were considered “foreign” under AALA, a large portion of the domestic fleet would be labeled “foreign” as well.

The very purpose of AALA is, in fact, redundant. Other Motor Vehicle Safety Act provisions also require identification of the place of assembly for automobiles sold in the U.S. market, including distinctive vehicle identification number (“VIN”) requirements (49 C.F.R. Part 565). AALA only adds another layer to the origin analysis – one which often contradicts the information provided by other labeling requirements.

AALA conceals or significantly distorts the true content or “origin” of cars sold in the United States. This undermines the purpose of the law, which is to “provide the ultimate purchaser of a new passenger motor vehicle with the best and most understandable information possible about the foreign and U.S./Canada origin of such vehicles.” The result is an unnecessary and confusing presentation to consumers that adds nothing to the knowledge or understanding of the buyer and actually provides information that is inaccurate.

Moreover, with the inception of NAFTA in 1993, an increasing amount of U.S. original equipment (“OE”) parts and automobile production serving the U.S. market operates in Mexico. In 2006, imports of vehicles from Mexico to the United States totaled \$23.4 billion. Imports of parts were \$26.4 billion, a total of \$5.9 billion more than total parts imports from Canada by the United States in 2006. Why then has Mexico not been invited into the “North American club” for purposes of AALA? From a North American perspective, Mexican content in autos destined for the U.S. market is no less “domestic” or “integrated” than Canadian content. In this light, the U.S./Canada distinction appears completely arbitrary and highly misleading.

As a result, AALA has never produced an accurate reflection of whether a vehicle is “foreign” or “domestic” and, in any event, the dramatic changes in global manufacturing and complex interrelationships between multinational automobile companies since AALA’s enactment have rendered that distinction obsolete and outdated. Instead of obtaining benefits from new and valuable information, consumers are given information of little or no value or meaning, which must be compiled by auto manufacturers despite its worthlessness.

JAMA’s conclusion appears to be directly supported by NHTSA’s 2001 technical report, “Evaluation of the American Automobile Labeling Act.” The report is based on surveys of consumers, manufacturers, and dealers, and on analysis of parts content after 1994. The NHTSA report first indicates that the average new-vehicle customer places relatively minor importance on the country-of-origin of a vehicle compared to other, significantly more important factors such as reliability, safety, price, and styling. (Report at p. 4.) The NHTSA report shows that the minority of U.S. vehicle purchasers for whom the U.S./Canada origin of a vehicle is “critically important” expresses its personal preference “simply by acquiring any Big 3 vehicle assembled in North America” without using AALA-mandated label. (Report at p. 2.)

Perhaps most telling, NHTSA found that the overwhelming majority of consumers surveyed had not noticed the AALA-mandated label, despite its posting in clear view on vehicles, and, of the minority of consumers who had actually read it, “not a single person explicitly stated they had used the numerical parts-content score on AALA label to comparison-shop among make-models according to their percentages of U.S./Canadian parts content.” (Report at p. 2, emphasis added.)

**2. NHTSA's request asks for comment on whether the Department's estimate for the burden of the proposed information collection is accurate. JAMA believes that the illogical and unsound assumptions of the Act and regulations have led to an inaccurate understanding of the overall administrative burden of complying with the information collection requirements. This burden goes beyond simple cost estimates.**

The NHTSA information-collection activities proposed for extension are part of the complex and cumbersome regulatory structure established to implement AALA. The existing AALA regulatory scheme is the result of extended, controversial rulemaking proceedings, in which NHTSA was forced to devise formulas, definitions, and interpretations that in many cases are pure administrative constructs. Moreover, a massive record of questions and agency responses involving the minutest details of parts procurement, production, company ownership, management and control, and marketing practices has grown up around these regulations.

- AALA separates auto parts suppliers into two distinct categories, depending on who owns the parts supplier. This produces confusing, inconsistent and illogical results.
- The AALA label must provide information on the percentage of the parts which came from the United States and Canada which, as stated above, AALA has combined into a single country, and on the names of the top two countries, other than the United States and Canada, that contributed at least 15 percent of the parts. The content calculation is based solely on the cost of the parts themselves, and does not include the cost of labor for assembly or other kinds of overhead.
- AALA approaches "domestic" content in an extremely narrow fashion. Indeed, no other U.S. law addressing domestic content employs such a narrow definition. For example, the Corporate Average Fuel Economy ("CAFE") content standards, also focused on the auto industry and used to designate "foreign" and "domestic" automobile fleets, apply a value-added definition which includes advertising, overhead, and depreciation of plant and equipment. NAFTA rules of origin also employ a value-added calculation for determining origin. Ironically, the U.S. Federal Trade Commission has declared that in order to label or advertise an item as "Made in the U.S.A.," the item must be assembled in the United States, in addition to being of all or virtually all U.S.-origin components. AALA, in effect, says that a vehicle may be labeled as "American" even if it is assembled overseas from U.S.-origin parts.

With respect to companies' actual compliance with NHTSA's information collection, AALA imposes significant administrative burdens on auto manufacturers and parts manufacturers. As the attached chart based on the experience of one JAMA member company demonstrates, complying with AALA requires the manufacturer to establish and administer a system for cataloguing parts by carline, creating a structure in which to determine the origin of those parts using AALA criteria (which are unique and wholly artificial), obtaining certified data from parts manufacturers, calculating carline content, creating and producing the required label, and

affixing the label as part of the manufacturing process. Within these steps, there must be separate distinctions for engines and transmissions because of the different criteria for measuring their content, and there must be constant updating and revision based on new carlines, new parts, and new sourcing. This entire system goes to support a labeling requirement and a data collection process that fails to fulfill AALA's statutory, informational or policy purposes.

At the inception of AALA, the U.S. Department of Transportation estimated that complying with the law would cost each automaker \$500,000 to \$1,000,000 in the first year of enforcement. It was also estimated that the annual cost to maintain and report data collected pursuant to AALA amounted to an additional \$75,000 to \$150,000 plus about 10 cents per label. JAMA notes the industry cost estimates provided by NHTSA which, at \$4,700,000 annually, are in and of themselves significant. While we cannot comment on the entire industry, our latest estimates made in 2004 indicate that the average cost burden per JAMA member company is about \$90,000 per year. This having been said, however, JAMA does not believe that the administrative burden to the companies can, in any event, be justified by consumer benefit.

**3. NHTSA's request for public comment asks how to enhance the quality, utility, and clarity of the information to be collected. JAMA believes the law is fundamentally defective and that, therefore, the information collection cannot be improved within the construct of AALA as it currently exists.**

AALA requirements are burdensome, misleading, outdated, and unjustifiable in today's global manufacturing setting. AALA does not achieve its stated intent of informing the consumer. Instead, AALA works against that objective by deceiving the consumer. No *legitimate* U.S. interest is served by such an outcome. It is difficult, if not impossible, to fathom how quality, utility, and clarity of the information collected can be improved in view of AALA's inherent flaws and illogical assumptions.

AALA creates burdens that adversely affect auto manufacturers. Because of the unjustified burdens these regulations create, they should simply be repealed. The law is so hopelessly defective and weighted against any meaningful or accurate depiction of the true content of a vehicle that it is arguably impossible to improve. Moreover, there is no need for AALA requirements, since other vehicle content regulations are already in place and provide a far more accurate accounting of origin, e.g., CAFE or NAFTA requirements.

**4. Finally, NHTSA requests ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. JAMA does not believe that changes in the method of information collection will alleviate AALA's burdens on respondents.**

AALA's burden on respondents does not lie in how the required data is transmitted to NHTSA but, rather, in the fundamentally flawed premise of the Act itself, the Act's outdated, obsolete, and restrictive approach to a globalized industry, and a set of implementing regulations that force

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the industry to try to fit the everyday realities of international automobile manufacturing into an artificial administrative construct. Therefore, automated, electronic, or other collection techniques or other forms of information technology would not minimize the burden – nothing short of AALA’s repeal can.

JAMA appreciates the opportunity to comment on this important statutory and regulatory matter. If NHTSA officials have any questions regarding this submission or if JAMA can provide further information, please feel free to contact the undersigned at (202) 296-8537.

Sincerely,

William C. Duncan  
General Director

Attachment

## OPERATIONS REQUIRED TO COMPLY WITH AALA

The attached chart describes the operations required for each model. This is based on the operations of one JAMA member company in responding to the labeling law.

### 1. Generate the Parts List

Generate a list of parts by supplier and by model.

### 2. Further Development with the Supplier

The manufacturer establishes the parts list and the forms (certification documentation) by which the supplier reports the ratio of local US/Canadian content in local parts procurement by individual part. This requires two separate forms -- one for suppliers who supply engines and transmission and another for suppliers of general parts.

### 3. Data Entry by Supplier

The supplier lists its parts, including imported parts, which include US/Canadian value added and enters and returns unit price, local procurement ratios, etc. All structural parts of vehicles sold in the US are subject to this analysis.

### 4. Collection and Sorting of Certification Documentation

The manufacturer sorts the certification documents received from suppliers and sends them to the departments responsible for cost administration. In the case of local production of vehicles these forms are sent to overseas administration points.

### 5. Calculation of U.S./Canada Added Value

The manufacturer's cost administration department calculates the US/Canadian content by model.

### 6. Design the Label

The manufacturer prepares and checks the label with the label maker. The completed label is supplied to the factory.

### 7. Affix the Label

The assembly worker attaches the label at the manufacturer's factory assembly line.