

May 8, 2013

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TO: <http://www.regulations.gov/#!submitComment;D=USTR-2013-0019-0001>

SUBJ: Transatlantic Trade and Investment Partnership (TTIP)  
Docket ID No.USTR-2013-0019-001

U.S. negotiators and companies that may consider business initiatives within the European Union should be aware of developments related to EU Directive 2006/40/EC (17 May 2006), and how similar situations might negatively impact U.S. manufacturers and other businesses in the future.

EU Directive 2006/40/EC included the mandate that any company selling light vehicles in the European market needed to begin using refrigerants with global warming potential (GWP) under 150 in any all-new vehicles from model year 2011. After years of prototyping, safety testing and cost evaluation, the OEMs seemed to have settled on R-1234yf as the best alternative in view of all the variables.

The mild flammability of the new chemical was acknowledged—shops work with other flammables all the time—and the product underwent extensive specific testing and lab analysis around the world. Governments and professional engineering bodies found that it could be used safely if reasonable precautions were taken, and the U.S. EPA ultimately added it to the SNAP list for use in systems specifically designed for it. Although not required by law in North America, carmakers can pick up some mpg credits for vehicles using a less polluting refrigerant so the choice was important here as well as for the European market.

Once the industry preference was decided, component and tool suppliers, service trainers and everybody else moved into action to support the replacement refrigerant. Many product suppliers had to scramble to meet the relatively short lead-time to get their products approved by the various OEMs who would use them as “factory tools” in dealerships and training facilities.

Limited production and supply of R-1234yf initially delayed its introduction, and in early 2012, the European Commission said “... in light of the exceptional circumstances, solely with respect to the shortage of the refrigerant, and for a limited period of time (until December 2012), the Commission will refrain from launching infringement procedures on its own initiative or when receiving complaints regarding non-conformity of vehicles manufactured before 31 December 2012.”

In a November 23, 2012 letter to MACS, Philippe Jean (a European Union official) stated “It was established by Commission decision that this would apply until the supply problems have been solved with the limit of 31 December 2012. After this date, the EU Member States cannot allow registration of cars (those type-approved for the use of the new gas) still using the old gas 134a. You are probably aware that both suppliers of HFO 1234yf (Honeywell and Dupont) have confirmed that the supply situation has been solved (both companies issued press releases confirming this information, on 17 and 29 October 2012).”

On Jan. 31, MACSI wrote Mr. Jean requesting an update with the following questions: “Can you tell me if there have been further developments in this area since the first of this year? Are vehicles using low GWP refrigerants being introduced, or are manufacturers still using R-134a? If there is non-compliance, have any penalties been imposed?”

On Feb. 8, 2013, MACS received the following response:

“Thank you for your message of 31 January. I can confirm to you that Directive 2006/40/EC on mobile air conditioning (MAC) became applicable, in all its effects, on 1 January 2013.

“This Directive bans, de facto, the use of current refrigerant R134a in newly type-approved vehicles because of its impact on Climate Change. The automotive manufacturers have decided, in 2009, on the use of refrigerant HFO 1234yf as the technical solution to comply with the Directive’s targets. Alternatives, such as the carbon dioxide based refrigerant R744, have not been embraced by these manufacturers. The MAC Directive is a key EU piece of legislation in the general efforts to reduce the environmental footprint of the automotive industry. Until the end of 2012 it has not been applied to its full effects due exclusively to a problem of supply of the refrigerant, which has now been solved.

“According to EU legislation (Framework Directive 2007/46/EC), it is not possible for motor vehicles to be registered and marketed in the EU if they are not in conformity with the relevant legislation.

“As a general rule, each Member State is responsible for the implementation of EU law within its own legal system. The Commission is responsible for ensuring that EU law is correctly applied. Where a Member State fails to comply with EU law, the Commission has powers of its own (action for non-compliance) to try to bring the infringement to an end. Under the non-compliance procedure started by the Commission, the 1st phase is the pre-litigation administrative phase, the “infringement proceedings”, that enables the Member State to conform voluntarily with the requirements of the law.”

Kind regards.

**PHILIPPE JEAN**

Head of Unit



**European Commission**

DG Enterprise and Industry

Sustainable mobility and Automotive industry (B4)

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However, despite Mr. Jean’s assurances, after more than four months we have seen no concrete action on the part of the EU or its member states to ensure compliance with its regulation or to impose penalties for non-compliance.

Our tool, equipment and component supplier members have committed extensive time and resources to provide service solutions for a range of low global warming refrigerants options that were under consideration by the industry. While the choice of refrigerant to meet the mandate of the EU directive can only be made by the vehicle manufacturers, it is important that regulatory mandates be enforced.

The fact that the subject EU mandate has not, to date, been effectively enforced may be a valuable object lesson. Apparently this firm mandate has become infinitely flexible, causing our members to lose confidence in the process. As a result, it will be more difficult for them to commit resources to support future initiatives.

Sincerely,

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