

TSCA Hearing February 26 Provides Preview of Coming Attractions

The House subcommittee with oversight of TSCA had its first oversight hearing on TSCA at 10:00 a.m. EST on Thursday, February 26, 2009.

The House Subcommittee on Commerce, Trade & Consumer Protection, chaired by Representative Bobby L. Rush (D-IL), held this hearing, which is entitled "Revisiting the Toxic Substances Control Act of 1976." In addition to Chairman Rush, the Subcommittee membership includes the following Representatives:

Jan Schakowsky, IL, Vice Chair	George Radanovich, CA, Ranking Member
John P. Sarbanes, MD	Cliff Stearns, FL
Betty Sutton, OH	Ed Whitfield, KY
Frank Pallone, Jr., NJ	Joseph R. Pitts, PA
Bart Gordon, TN	Mary Bono Mack, CA
Bart Stupak, MI	Lee Terry, NE
Gene Green, TX	Sue Wilkins Myrick, NC
Charles A. Gonzalez, TX	John Sullivan, OK
Anthony D. Weiner, NY	Tim Murphy, PA
Jim Matheson, UT	Phil Gingrey, GA
G. K. Butterfield, NC	Steve Scalise, LA
John Barrow, GA	Joe Barton, TX (ex officio)
Doris O. Matsui, CA	
Kathy Castor, FL	
Zachary T. Space, OH	
Bruce L. Braley, IA	
Diana DeGette, CO	
John D. Dingell (ex officio)	
Henry A. Waxman, CA (ex officio)	

A representative from the GAO, which has TSCA on its 2009 "high-risk for failure" list, was the hearing's lead-off witness. The Subcommittee also heard from representatives from business, the insurance industry, consumer protection groups, and the USW. In their responses to questions from the Subcommittee, consensus emerged among the hearing witnesses that TSCA is a statute in need of modernization; predictably, their

views proceeded to diverge widely over the degree of change that Congress should attempt to undertake.

Repeated discussion at the hearing took place on the subject of moving the burden from EPA to industry for proving that the chemicals they introduce into commerce are safe for their intended use. EPA's failure to ban asbestos under TSCA was used time and time again as an example of the need to reform the evidentiary standard of Section 6. The Subcommittee tried to extract a sense of the number of harmful chemicals currently in commerce, based on either toxicity or high volume, with estimates given of from 20 to possibly 200. In this regard, the Subcommittee was reminded to consider a targeted approach to reform. Several witnesses emphasized that the 80,000 chemicals on the TSCA Inventory do not all require the same degree of scrutiny, and that many of these chemicals are not currently in use. Notably, the GAO witness specifically indicated that his testimony was not intended to be an endorsement of REACH.

Perhaps the most dramatic point in the hearing came as several Subcommittee members, having just recently participated in the process of Consumer Product Safety legislative reform, emphasized the need to avoid unintended consequences that could be harmful to the U.S. economy, particularly small businesses. Nevertheless, the USW witness admonished, "Made in America" should be a guarantee, not a warning.

Additional themes raised as priorities in need of attention were increasing consumer right-to-know and government information sharing, with a corresponding de-emphasis on the current trade secret protection provisions of the law. The need for more data on chemicals existing and new was discussed, with specific recommendations pointing toward neurotoxin data and long range data development. One of the original authors of TSCA, J. Clarence Davies, cited nanotechnology and the biosciences in reminding Congress of the need to approach reform with a view toward 21st century science and technology.

The Subcommittee indicated that this hearing is the first of a series. Each Monday, the Energy and Commerce Committee hearing schedule is posted on the Committee website. All hearings and markups are available via either video Webcast (for room 2123 Rayburn) or audio Webcast (for room 2322 Rayburn). The Webcast will begin generally 10 minutes before the meeting begins. [Windows Media Player](#) is required to view the Webcast. If possible, the archived Webcast will be posted by close of business on the day the hearing or markup is held on the respective hearing or markup page. Check out: <http://energycommerce.house.gov/> for this and other information, including how to connect to the webcast of the hearing.

We hope that the Subcommittee will follow through on its plan for a series of hearings and commit to exploring and understanding this statute, which has long lain dormant on the Hill. The development of a serious legislative proposal should only take place after a deliberative, information gathering process. In response to the keen desire to avoid unintended consequences in enacting reform legislation, we think that this is something that a deliberative process can be used to avoid.