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HIF057.170

HEARING ON ``REVISITING THE TOXIC SUBSTANCES CONTROL ACT OF 1976''

THURSDAY, FEBRUARY 26, 2009

House of Representatives,

Subcommittee on Commerce, Trade, and Consumer Protection

Committee on Energy and Commerce

Washington, D.C.

The subcommittee met, pursuant to call, at 10:15 a.m., in Room 2123 of the Rayburn House Office Building, Hon. Bobby L. Rush (Chairman) presiding.

Members present: Representatives Rush, Schakowsky, Sarbanes, Sutton, Gordon, Stupak, Butterfield, Barrow, Castor, Space, Braley, Waxman (ex officio), Radanovich, Stearns, Terry, Murphy, Gingrey and Scalise.

Staff present: Robin Appleberry, Counsel; Dick Frandsen, Counsel; and Jerry Couri, Minority Counsel.

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Mr. {Rush.} The committee will now come to order.

First of all, I want to welcome the members of the subcommittee to our first hearing on the 111th Congress. I am honored to chair this distinguished subcommittee and I will strive to serve all its members in an honorable way. I truly look forward to working with everybody on a productive legislative and oversight agenda.

In this regard, our first hearing of the 111th Congress is an ambitious one and represents a new addition to the subcommittee's vast jurisdiction. Today's hearing will explore the major issues surrounding the Toxic Substances Control Act, also known as TSCA. TSCA was enacted in 1976 and originally consisted of one title, which today remains at the heart of the statute. While Congress over the years has added additional titles to TSCA addressing individual chemicals and substances, Congress has done very little with regard to Title I. TSCA and Title I have never been reauthorized nor has it been reformed, and very little oversight has been conducted on the statute's effectiveness. Today I hope to start a deliberative process that reverses this Congressional inaction of the past.

By most accounts, TSCA is badly in need of reform. While opinions may vary on the degree and nature of the

reforms needed, there is a broad consensus among a diversity of stakeholders that TSCA needs to be reexamined. The scope of TSCA is very broad and its intent is indeed very ambitious. TSCA is meant to provide adequate data on potential health and environmental risk of all chemical substances and mixtures in the United States. Furthermore, the statute is supposed to provide EPA with adequate regulatory tools to protect the public from unreasonable risk of injury to health or the environment. It is unfortunate that the statute has seemingly been a failure on both of these basic policy goals and objectives. Critics contend that TSCA has failed to generate data on the health risks of approximately 80,000 chemicals currently in use and the approximately 700 new chemicals that are introduced into commerce each and every year.

Even though sections 4 and 5 authorize EPA to force companies to test their chemical products and generate data, the hoops that the EPA must jump through in order to exercise this authority have been much too burdensome. Rulemaking takes years to finalize, costs hundreds of thousands of dollars and is subject to constant legal action by companies who do not want to comply. As the former EPA assistant administrator once said, it almost that we have to first prove that the chemicals are risky before we have the testing

done to show whether the same chemicals are indeed risky.

Furthermore, once EPA has made a determination that a chemical poses a health and environmental hazard, they have been unable to act on this determination. Section 6 of TSCA provides EPA with broad authority to regulate and ban chemicals but the burden of proof for action has been so high that banning a chemical is virtually impossible, and I think most Americans would be very surprised to learn that asbestos, a known carcinogen that kills 8,000 Americans each and every year, has not been banned by the EPA under TSCA because the courts have ruled that EPA did not meet its evidentiary burden of proving that asbestos is an ``unreasonable risk to the public.'' If TSCA is incapable of providing EPA with the regulatory tools to ban asbestos, then the statutes seem to be in dire need of serious repair, and I want to make it clear that reexamining TSCA is not only good for the public health but it is also good for business.

I do not believe that this hearing should reflect public health versus business or environment versus business, and I appreciate the innovative spirit of the American businesses and further recognize the importance of fostering that innovative spirit, especially during these perilous times. The public's faith in the safety of its product and chemicals that make up those products has been shaken and I believe

that reforming TSCA and reestablishing that faith will ultimately be a boon for American businesses of every stripe, and today's hearing is only the first in a series on TSCA. Today we will kick off the process in a deliberative manner and I sincerely hope that we all can work together in a bipartisan manner.

I yield back the balance of my time

[The prepared statement of Mr. Rush follows:]

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Mr. {Rush.} And now I recognize the ranking member, my friend, the gentleman from California, Mr. Radanovich for an opening statement.

Mr. {Radanovich.} Thank you, Mr. Chairman, and I appreciate the fact that you called this hearing today and would like to thank all of our witnesses for taking the time out of your busy schedules to appear before this subcommittee. This is my first hearing as ranking member of the subcommittee and I am very excited to work with you, Mr. Chairman, and the rest of the members of the subcommittee on the broad range of issues that falls under this committee's jurisdiction.

One of those issues is the regulation of industrial chemical manufacturing in what I understand will be the first in a series of discussions of the Toxic Substances Control Act, TSCA, which was signed into law in 1976. It was revolutionary at the time of its passage because it bestowed sweeping authority on the Environmental Protection Agency, just 6 years old at the time, to regulate interstate commerce and the lifecycle of chemicals manufacturing. Congress has barely touched the core of TSCA Title I since it was enacted. Obviously we all want to make sure that the chemicals produced, imported and used in this country are safe. I

think it is reasonable for us to take a look at TSCA but I would urge extreme caution about any efforts to touch what is in the law since TSCA authorities are quite sweeping. It could be that the law is fine and that more funding and enforcement would cure various criticisms. If that is the case, let us be surgical. We should not seek out perfectly functioning laws in an effort to improve or modernize them when neither is needed. Conversely, if something more is needed, we should not use an elephant gun to kill a mosquito.

A timely example of legislative overkill is the recently enacted Consumer Product Safety Improvement Act. Members of Congress like myself who supported the underlying reason behind the legislation are now left scratching our heads in frustration as small businesses, thrift stores and boutique shops in our districts are being forced out of business by the unintended consequence of this otherwise well-intentioned law, a terrible situation in any economy, but particularly during this recession. Unintended consequences are difficult to avoid but when the potential for unintended consequences is foreseen, Congress should move cautiously.

That being the case, a major revision of TSCA, as some of our panelists might suggest today, does pose the potential for a significant threat to small- and medium-sized chemical manufacturers. We should be careful to ensure that all of

the regulated entities will be able to reasonably comply with whatever changes we might make. In retrospect, neglecting the ability of all entities to reasonably comply with new regulations was a major mistake of the toy bill and is something that this committee should look at rectifying.

Some folks want to point to States that have already acted to regulate chemicals. It is well known that my home State of California often brags of leading the Nation in a variety of progressive environmental and consumer protection laws and regulations. Those same folks forget to tell the flipside of the story, because as California desperately tries to claw their way out of a $42 billion budget deficit, which was resolved the other day but in May will be back into deficit spending, Congress should think twice before using any of California's progressive models as a national standard.

My experience has been that California's environmental regulations have increasingly been a hindrance to the success of small businesses and family farms which have had a detrimental impact on the State's overall economy. Unfortunately, the European model of toxic substance regulation is far worse, which is exactly what some of us would like to see in this Congress adopt.

Currently TSCA operates as a risk-based statute and

tries to mitigate potential problems based on a number of relative factors. The European model operates under assumed hazard or precautionary principle which assumes every chemical is harmful until proven otherwise. To me, this is backwards, bureaucratic and a time-consuming way to regulate anything. Appropriately prioritizing chemicals based on risk is a vital component to effective and efficient EPA regulation. In addition to the correct context and risk prioritization, we must be sure that sound, safe and reliable science is guiding regulatory decisions at the EPA.

There are some who want to regulate industrial chemicals similar to how we regulate pesticides under the Federal Insecticide, Fungicide and Rodenticide Act, or FIFRA. My Congressional district is one of the largest agriculture-producing districts in the Nation, and because of this distinction I am well aware of the increasing difficulty farmers face when trying to obtain specialty pesticides. Certain specialty pesticides have a greater risk placed on them because they are applied directly to food that we will eventually touch and put in our mouths and digest. However, it is important that we appreciate the context and the exposure under which industrial chemicals are regulated. Under normal use, and unlike FIFRA-regulated chemicals, the general public will rarely ever be in a position to ingest

the vast majority of industrial chemicals. Otherwise Congress is mixing apples with oranges.

Mr. Chairman, there is quite a bit more I would like to add as this has been 3 decades since this Congress has seriously reviewed this law. I think this hearing is going to be very useful and I am looking forward to hearing suggestions on how we can improve TSCA's performance while doing so in the least burdensome fashion. And with that, I yield back and want to thank you, Mr. Chairman.

[The prepared statement of Mr. Radanovich follows:]

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Mr. {Rush.} I want to thank the ranking member and I want to thank him for agreeing with me right at the start.

Our next speaker is my friend, the gentlewoman from Illinois, Ms. Schakowsky, for 2 minutes of opening statements.

Ms. {Schakowsky.} Thank you, Mr. Chairman, for holding this very important hearing.

When President Ford signed the Toxic Substances Control Act into law in 1976, it was a major victory for environmental protection. For the first time in our Nation's history, tens of thousands of chemicals in commerce would be tested to determine their long-term effects on human health and the environment. However, as we review this law 33 years after enactment, it is clear that TSCA needs to be updated and strengthened. In fact, the law presents so many problems that since 1991 the EPA has not attempted to ban a single chemical under the TSCA statute. In a report published last month, the GAO reported that without significant reforms to TSCA, ``the nation lacks assurance that human health and the environment are adequately protected.''

Perhaps more troubling about TSCA is the strict burden of proof the law requires the Environmental Protection Agency to satisfy in order to ban toxic substances. As interpreted

by the courts, the lengths the EPA must undertaken to meet the burden of proof are so onerous that chemicals known to be extremely hazardous to public health for decades remain outside the scope of TSCA. The perfect example is asbestos. Eight thousand Americans die each year from complications associated with exposure to asbestos. In 1989, EPA attempted to use TSCA to issue a rule to ban the use of asbestos, citing the strong evidence of hundreds of studies that conclusively found that asbestos was extremely hazardous to workers and the public as a whole. Despite the overwhelming evidence, the U.S. Court of Appeals reversed the decision, saying the EPA had not fulfilled the necessary burden of proof under TSCA. The fact that EPA cannot use the law to ban a substance as clearly hazardous as asbestos underscores the need for reform. I look forward to hearing from both panels today, who will share their research and direct experience in dealing with TSCA.

Mr. Chairman, thank you for holding this hearing. I yield back.

[The prepared statement of Ms. Schakowsky follows:]

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Mr. {Rush.} Thank you.

Our next opening statement will be from the gentleman from Nebraska, Mr. Terry.

Mr. {Terry.} Thank you, Mr. Chairman. I appreciate this opportunity. I think as we progress to see what reforms are necessary, the philosophical differences will be lightest touch versus heaviest touch.

I want to relay an experience I had over the district work period when I met with a small business owner, a couple, a married couple that employed his brother, and it was truly one of those family-owned business called Wes and Willie's. I don't know if any of you know of this company but they are a kids' apparel maker. They have the coolest tee shirt designs and they are very popular in a lot of the catalogs that some of us may get. This is an example of when we go too fast and don't think through our legislation enough, but as a result of the lead-based toys we included other chemicals or additives that also have to be tested before they are allowed to come back in. Unfortunately, this company had to make a decision in order to survive that they have offshored some of their apparel making and silk screening of the paint design on the tee shirts. Under the new rules, every different design is treated as a different

product and has to be tested at hundreds of dollars per shirt. But amazingly, while that is a financial hardship to do that on every different design and every different size, there is one of the chemicals that is inherent into the paint that is used and it is such a light level that it barely reads when tested. So the tester said because it is so light, what you have to do is produce 10 tee shirts and we will add them up to see if they accumulate to a level that would be banned. Now, the silliness of that is, how many of us as parents buy 10 of the same tee shirts for our kids and that that child wears all 10 at the same time, but that is what we cause when we rush into something.

So Mr. Chairman, you are on the right path, it is the right idea. Let us make sure that we don't make the mistakes that we did in the toy bill.

[The prepared statement of Mr. Terry follows:]

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Mr. {Rush.} I want to thank the gentleman.

Our next speaker is the gentleman from Maryland, Mr. Sarbanes, for 2 minutes of opening statement.

Mr. {Sarbanes.} Thank you very much, Mr. Chairman. Thanks for holding this hearing. I am looking forward to serving on the subcommittee.

I think obviously there is a need for this review of the Toxic Substances Control Act, as we have heard in the testimony already. There is a staggering number of chemicals in the EPA inventory, 80,000, but of course the data that we have on those chemicals and others that are introduced each year, some 700 additional introduced each year, does not match the degree of hazard that is posed by the chemicals. So just getting the basic data collected and made available is going to be critical, and of course we have heard about the burden of proof issues that need to be addressed. All those are going to come to light, I think, in these hearings. I appreciate your conducting them and I look forward to it.

Thank you, and I yield back.

[The prepared statement of Mr. Sarbanes follows:]

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Mr. {Rush.} The chair thanks the gentleman.

Our next member of the committee is Mr. Murphy of Pennsylvania for 2 minutes of opening statement.

Mr. {Murphy.} Thank you, Mr. Chairman, for holding this hearing on the Toxic Substances Control Act. I look forward to hearing testimony from the witnesses on this issue.

But before I begin, I would like to personally welcome two witnesses from the greater Pittsburgh area, Maureen Swanson from the Learning Disabilities Association of America, whose headquarters are in my district, and Michael Wright of the United Steelworkers from Pittsburgh too. Thank you for taking the time to come up here. I am looking forward to hearing your testimony and your thoughts on protecting children and workers, which are two of my top priorities and I am sure the priorities shared by all my colleagues but these are not mutually exclusively concepts as proper regulation can do both.

My district is home to many chemical companies that directly employ about 8,300 people. These are high-paying jobs with the average employee making a family-supporting wage of over $73,000 a year. As America continues in this recession, these are the kinds of jobs America needs now more than over, high-tech, high-paying jobs for the future, and we

should deal with new legislation that deals with chemicals but we should also be careful that we are doing this in a way that keeps these jobs here in this country and not drives them overseas where there are no regulations to deal with these issues.

Just about everything we come into contact with throughout the day can be traced to chemical companies that help improve our lives and make them better. However, we know there are some harmful chemicals that are harmful to people, animals and the environment and proper controls must be in place. We must understand that effects may not always be immediately visible and that all necessary precautions must be practiced at all times. So I look forward to hearing more about the specifics of what we need to do with the Toxic Substances Control Act and your thoughts on what we can do to make this environment safer for all.

With that, I yield back, Mr. Chairman.

[The prepared statement of Mr. Murphy follows:]

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Mr. {Rush.} The chair thanks the gentleman.

The next member recognized is my friend, the gentleman from Michigan, Mr. Stupak, the chairman of the Oversight Subcommittee, for 2 minutes of opening statements.

Mr. {Stupak.} Thank you, Mr. Chairman, and congratulations on your chairmanship, and I will waive my opening statement and ask for extra time for questions.

[The prepared statement of Mr. Stupak follows:]

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Mr. {Rush.} Thank you very much.

Our next speaker is the gentleman from my birth State, Mr. Gingrey, recognized for 2 minutes of opening statement.

Mr. {Gingrey.} Mr. Chairman, thank you and thank you for holding this hearing, and I also thank Ranking Member Radanovich. Obviously these are important issues that come before the subcommittee. I have some prepared written remarks. It probably would take a little more than 2 minutes and I think I will skip those and just speak off the cuff.

Mr. Chairman, I have a bachelor of science in chemistry from Georgia Tech and I am a medical doctor, as my colleagues know. I can remember as a youngster seeing Dupont ads on television. I think their slogan was ``Better Living through Chemistry.'' I believe it was Dupont. But I think what I have heard so far in the opening statements of my colleagues is that there are concerns and that this is a 30-year-old law and it needs to be looked at very carefully and possibly updated. From my side of the rostrum, I think what you are hearing is, we don't want to overshoot, and I can think of so many things since I have been here in my three terms like this Community Reinvestment Act back in the late 1970s and the unintended consequences of that in light of our current economic situation.

Mr. Chairman, I am very happy as a new member of the subcommittee and the committee to be here at this type of hearing. I want to hear very carefully from both panels and try to learn, but again, I think I agree with my colleagues on this side that we really want to make sure that we keep in mind the unintended consequences, and if we make some changes that we do it in the right way and make sure we strike a proper balance.

With that, Mr. Chairman, I will yield back.

[The prepared statement of Mr. Gingrey follows:]

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Mr. {Rush.} The next speaker will be the gentleman from Ohio, Mr. Space, recognized for 2 minutes of opening statement.

Mr. {Space.} Thank you, Mr. Chairman.

I represent a district of small towns and villages in a very rural part of Ohio, the hills of Appalachia, in fact, and perhaps the best phrase to describe those folks that I represent is decent and hardworking, and they I think have a right and we have an obligation to ensure that their workplaces are safe, their children are not exposed to hazardous chemicals, and at the same time that we encourage and promote a business environment that will allow some degree of profitability. The statement has been made by I believe the ranking member that we should not use an elephant gun to kill a mosquito, and I certainly couldn't agree more, but at the same time we should not use a bug light to kill an elephant, and I appreciate the opportunity to hear from our witnesses today on TSCA because doing so allows this subcommittee to move forward in improving what is at best an outdated law and at worst a risk to public health, environmental safety and business innovation. I look forward to exposing exactly what is needed to bring our toxic substance regulatory policy into the 21st century and I am

also looking forward to being a part of this committee in a proactive approach to this issue.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Space follows:]

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Mr. {Rush.} The chair thanks the gentleman.

The chair now recognizes the chairman of the full committee, my friend, the gentleman from California, Chairman Waxman.

The {Chairman.} Thank you very much, Mr. Chairman. I want to commend you for holding the subcommittee's first hearing in the 111th Congress on the incredibly important issue of reforming the Toxic Substances Control Act of 1976, or TSCA.

This is an important day for consumers, businesses, workers and especially for kids who are most vulnerable to the effects of toxic chemicals. Today marks the beginning of a much-needed national conversation on the use of chemicals in our communities. This conversation is long overdue. For years it has been clear that TSCA is not living up to its intent. For example, in 1991 the Environmental Protection Agency tried to ban the use of asbestos, a known human carcinogen, but EPA's efforts were struck down on the grounds they didn't satisfy the statute's requirements. The Government Accountability Office first recommended changes to make TSCA more effective in 1994. Now 13 years later, GAO has added EPA's assessment and control of toxic chemicals to its high-risk series list of the government programs most at

risk for failure. GAO added only three issues to its high-risk list this year. The other two were the entire financial regulatory system and the safety of medical devices and drugs, so that gives you a sense of just how urgent GAO believe this problem is.

This hearing is a good beginning to address the challenge of TSCA reform. In the coming months we will look closely at the specific provisions of the statute and their implementation. We will learn from what has been done in the States and in other countries to create a more effective system of protecting against the dangers of toxic chemicals. In order to be successful, however, we will have to work cooperatively to ensure that a reformed TSCA achieves its essential goals to protect human health and the environment, to make decisions based on sound science and to encourage American innovation and leadership.

We need to get this right. We owe it to our children and our grandchildren to protect them from the dangers of toxic chemicals, and I look forward to meeting this challenge with Chairman Rush, Ranking Member Radanovich, Ranking Member Barton and all the members of the committee.

And finally, let me just say, I know this subcommittee will tackle many other important issues this Congress as well, and I want to commend Chairman Rush for his leadership

on all these issues. Thank you, Mr. Chairman.

[The prepared statement of Mr. Waxman follows:]

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Mr. {Rush.} Thank you, Mr. Chairman.

The chair now recognizes the gentleman from Iowa, Mr. Braley, for 2 minutes.

Mr. {Braley.} Thank you, Mr. Chairman, and thank you for holding this important hearing. It is an honor to serve on this subcommittee, and I think it bears mentioning that the title of this subcommittee includes the words ``consumer protection.'' That is the most important responsibility we have when it comes to issues of safety, and I can think of no greater indictment than what we included on page 3 of the memorandum prepared for every member of the committee where it says that in the entire period of time that this Act has been in effect, EPA has not attempted to ban a single chemical under this bill. And then when you see the reference in here to first President Bush's former director of EPA general counsel, if after thousands of deaths from asbestos exposure it is virtually impossible for EPA to regulate any chemical under section 6, what does that say about the impact of this legislation.

It is important for us to have balance, it is important for us to rely upon scientific-based regulation, but it is also important for us to understand the basic purpose of this subcommittee. That is to protect consumers. It is long

overdue that we take another look at this Act and provide meaningful opportunities to protect consumers despite the fact that thousands of people have died from exposure to toxic substances since 1991, and I yield back.

[The prepared statement of Mr. Braley follows:]

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Mr. {Rush.} The chair now recognizes my friend, the chairman of the Committee on Science, Mr. Gordon, for the purpose of 2 minutes of opening.

Mr. {Gordon.} Thank you, Mr. Chairman. I will waive my statement so that we can start hearing from our witnesses.

[The prepared statement of Mr. Gordon follows:]

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Mr. {Rush.} Thank you. Now the chair recognizes the gentleman from Florida for the purposes of 2 minutes of opening statements, Mr. Stearns.

Mr. {Stearns.} Thank you, Mr. Chairman, and I look forward to the next 2 years and the hearings we are going to have, and I appreciate you bringing up this topic, a somewhat controversial issue of industrial chemicals and the way they are currently regulated in the United States under the Toxic Substances Control Act. I know when you look through this, it is going to be pros and cons on both sides of this but I think it is important we have these witnesses and I appreciate them being here.

The long and short of it is, we probably have to look at other models to see if they are working. If we move towards a purely European approach to regulate chemicals such as what the Europeans are doing with their REACH program, regulation, evaluation, authorization and restriction of chemical substances, we will have to carefully consider that.

I serve as the lead Republican on the transatlantic dialog with the European Union. Ms. Shelly Berkley from Las Vegas is the chairwoman and I am co-chair and we have been actively involved with this issue and have to impress upon our European counterparts to ensure that the United States

cosmetic industry, which is a $2 billion industry, was not taken off the shelves in Europe due to their new overly burdensome REACH requirements and so I put that into perspective, Mr. Chairman, because a lot of U.S. industry would be hurt by this REACH program that the European Union has implemented.

So I think we have an opportunity to have a constructive discussion today on this very important issue and I thank the chairman for this hearing. I yield back.

[The prepared statement of Mr. Stearns follows:]

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Mr. {Rush.} The chair thanks the gentleman. At this time the chair would like an unanimous consent request to enter the opening statement of the chairman emeritus, John Dingell, for the record. Not hearing any objections, so approved.

[The prepared statement of Mr. Dingell follows:]

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Mr. {Rush.} Now we are privileged to have a fine array of panelists to appear before this subcommittee, and we want to thank them beforehand for taking the time out from their busy schedules to make this first appearance before the 111th Congress on this particular issue.

I want to introduce the witnesses first and then we will ask them to have opening statements for 5 minutes of opening statements. To my left, to your right, Mr. John Stephenson is the director of Natural Resources and Environment of the Government Accountability Office, GAO. Mr. Stephenson has been the director of the environmental protection issues within GAO's natural resources and environment team since October 2000. Seated next to him is Mr. J. Clarence (Terry) Davies, senior fellow, Resources for the Future. Mr. Davies was an EPA assistant administrator for policy in the Administration of President George H.W. Bush. Seated next to Mr. Davies is Ms. Maureen Swanson of the Healthy Children Project, and she is coordinator of Learning Disabilities Association of America. Seated next to Ms. Swanson is Cecil Corbin-Mark, who is the deputy director and the director of policy initiatives for WE ACT for Environment Justice, and that stands for the West Harlem Environmental Action Group, and Mr. Cecil Corbin-Mark is a lifelong resident of Hamilton

Heights in Harlem, New York, where his family has lived for the last 6 decades. Seated next to him is Mr. Michael Wright, who is the director of health and safety for United Steelworkers.

With those introductions, I would ask the panel to begin now with their opening statements, and please limit your opening statements to 5 minutes and please pull the microphone directly in front of you as you speak. The chair recognizes Mr. Stephenson.

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^TESTIMONY OF JOHN STEPHENSON, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, GOVERNMENT ACCOUNTABILITY OFFICE; J. CLARENCE (TERRY) DAVIES, SENIOR FELLOW, RESOURCES FOR THE FUTURE, AND FORMER EPA ASSISTANT ADMINISTRATOR FOR POLICY, ADMINISTRATION OF PRESIDENT GEORGE H.W. BUSH; MAUREEN SWANSON, HEALTHY CHILDREN PROJECT COORDINATOR, LEARNING DISABILITIES ASSOCIATION OF AMERICA; CECIL CORBIN-MARK, DEPUTY DIRECTOR/DIRECTOR FOR POLICY INITIATIVES, WE ACT FOR ENVIRONMENTAL JUSTICE (WEST HARLEM ENVIRONMENTAL ACTION); AND MICHAEL WRIGHT, DIRECTOR OF HEALTH AND SAFETY, UNITED STEELWORKERS

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^TESTIMONY OF JOHN STEPHENSON

} Mr. {Stephenson.} Thank you, Mr. Chairman and other members of the subcommittee. I am pleased to be here today to discuss our work supporting the need to improve the Toxic Substances Control Act.

Congress passed TSCA, as many of you have mentioned, in 1976 to enable EPA to obtain more information on the risk of commercially used chemicals and to control those that EPA determines may pose unreasonable risk. However, TSCA's cumbersome regulatory structure and its high legal

evidentiary standards have proven difficult for EPA to use to obtain the information it needs to effectively assess and control toxic chemicals. While TSCA authorizes EPA to review existing chemicals, it generally provides no specific requirement, timeframe or methodology for doing so.

Significantly, chemical companies are not required to develop and submit toxicity information to EPA on existing chemicals unless the agency finds that a chemical may present an unreasonable risk of injury to human health or the environment. This structure places the burden primarily on EPA to demonstrate that a chemical poses a risk rather than on the company that produces it to demonstrate that it is safe. The procedures EPA must follow to obtain test data from companies can take from 2 to 10 years and hundreds of thousands of taxpayer dollars to complete. As a result, in 30 years of TSCA has used its authorities for only about 200 of the roughly 80,000 existing chemicals to require testing. Moreover, TSCA does not require chemical companies to do toxicity tests for the approximate 700 new chemicals introduced into commerce annually and companies generally do not voluntarily provide such testing. In contrast, the European Union's control legislation called REACH generally places the burden on companies to provide health effects data on the chemicals they produce.

Our reports include recommendations that the Congress consider giving EPA more authority to obtain data from the companies producing chemicals and that remains one of the most viable options for improving the effectiveness of TSCA, in our opinion. While TSCA authorizes EPA to issue regulations that may, among other things, limit the production or use of toxic chemicals or ban their use, the statutory requirements EPA must meet to do this presents a legal threshold that has proven difficult for EPA and discourages the agency from using these authorities. For example, EPA must demonstrate unreasonable risk, which requires it to conduct extensive cost-benefit analysis to ban or limit chemical production. Since 1976, EPA has issued regulations to control only five existing chemicals, and one of these, a 1989 regulation phasing out most uses of asbestos, was vacated by the federal courts in 1991 because it did not meet the test of substantial evidence. In contrast, the European Union and a number of other countries have banned asbestos, a known human carcinogen that can cause lung cancer and other diseases.

GAO has previously recommended and continues to believe that Congress should consider amending TSCA to reduce the evidentiary burden EPA must meet to regulate toxic substances. EPA has also limited ability to provide the

public with information on chemical production and risk because of TSCA's prohibitions on the disclosure of confidential business information. About 95 percent of the required notices companies have provided to EPA on new chemicals contain some information claimed as confidential. Evaluating the appropriateness of confidentiality claims is time consuming and resource intensive, and as a result EPA does not challenge most claims. State environmental agencies and others have told us that information claimed as confidential would help them in such activities as better preparing emergency response personnel to deal with high-toxic substances at manufacturing facilities and their localities.

The European Union's chemical control law generally provides greater public access to chemical information it receives. GAO has previously recommended that Congress consider providing EPA additional authorities to make more chemical information publicly available.

In numerous reports over the past several years, we have recommended both statutory and regulatory changes to, among other things, strengthening EPA's authority to obtain additional information from the chemical industry, shift more of the burden to chemical companies for demonstrating the safety of their chemicals and enhance the public's

understanding of the risk of chemicals to which they may be exposed but little has changed. As a result, in January 2009 we added EPA's processes for assessing and controlling toxic chemicals to GAO's list of high-risk programs in need of broad-based transformation. This list is updated every 2 years and released at the start of each new Congress to help in setting oversight agendas.

Mr. Chairman, we applaud you for holding this hearing and hope it is a first step toward bringing much-needed changes to the way we control toxic chemicals in this country. That concludes my summary, and I will be happy to take questions at the appropriate time.

[The prepared statement of Mr. Stephenson follows:]

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Mr. {Rush.} Thank you very much.

The chair now recognizes Mr. Davies for the purposes of 5 minutes of opening statements.

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^TESTIMONY OF J. CLARENCE DAVIES

} Mr. {Davies.} Thank you, Mr. Chairman. My name is J. Clarence Davies. I am a senior advisor to the Project on Emerging Nanotechnologies at the Woodrow Wilson International Center for Scholars and a senior fellow at Resources for the Future. The opinions expressed here are my personal opinions and do not represent the views of those organizations or their funders.

I commend the subcommittee for holding this hearing. The committee's focus on TSCA is timely because of changes taking place both at the State level and internationally. States are increasingly taking the initiative to deal with toxics. Internationally, the European Union's launch of the REACH directive has radically changed the requirements for marketing chemicals in Europe. The huge impact of technologies that were unknown when TSCA was enacted adds to the importance of reviewing TSCA now.

I have followed TSCA from its inception. In 1969 I wrote a book which called for a law regulating new chemicals and in 1970 I wrote the original version of what became TSCA. In the past several years I have written three reports on oversight of nanotechnology. Each of them is relevant to the

subject of this hearing and I would like permission to submit them for the record.

Mr. {Rush.} So granted.

Mr. {Davies.} Thank you.

Before dealing with TSCA's weaknesses, let me note some of its strengths. First is the broadness and potential flexibility of the law. Its coverage is not limited to any one part of the environment, a definite asset, because most chemicals are not limited to air or water or land. TSCA also allows EPA to choose among a broad range of measures to control chemical risks. Another strength is TSCA's reporting mechanism. Section 8(e), which requires manufacturers to immediately notify EPA of new risk information, is particularly important. I believe that the general cost-benefit framework of TSCA needs to be preserved. The law deals with products, not with pollutants. Commercial products by definition have benefits so limiting their use or banning them to prevent adverse effects almost always has costs. This fact makes an absolute safety standard unwise because the government would be forced to ban chemicals than do more good than harm.

Many of the good things in TSCA are undermined by the procedural landmines in the Act. The Act contains difficult, perhaps impossible requirements that must be met before a

chemical can be regulated. For example, EPA must show that the regulation is less burdensome than any alternative. All the requirements must be supported by substantial evidence in the rulemaking record, an extraordinarily high legal criterion. These provisions make it practically impossible for EPA to regulate existing chemicals. Equally damaging is TSCA's implicit assumption that no knowledge or no data is equivalent to no risk. Most of the new chemical notices contain no testing information. However, as the chairman mentioned, if EPA lacks the information to evaluate the risk of the chemical, the agency cannot get the information without showing that the chemical may present an unreasonable risk. It is a classic catch-22 and badly needs to be changed.

Confidential business information is a third problem area. A very large portion of information submitted under the Act is classified as confidential. The Act prohibits sharing of confidential information with States or with foreign governments. The result is that TSCA is less conductive to State, federal and international cooperation than any other environmental statute.

EPA estimates that it received notice of about 50 nanomaterials under TSCA's new chemical provisions because TSCA defines a chemical only by its molecular structure and

does not consider size. Many, perhaps most, nanomaterials are considered existing chemicals, not new ones. This is important because the TSCA provisions relating to existing chemicals have mostly been rendered inoperative. Also, because size is a defining factor for nanomaterials, EPA cannot be sure which new chemicals are nonmaterials, even though the risks of nanomaterials may be quite distinct from both materials. There is a general issue of the capability of the existing regulatory systems to deal with the new technologies that are emerging at an accelerating pace. Nanotechnology is one example. Another is synthetic biology, which TSCA also has jurisdiction over in part. A particular challenge for EPA will be its ability to assess the risks of future complex synthetic organisms that have no counterpart in nature and TSCA does not provide adequate authority or tools to address those kinds of risks.

I urge this committee to devote some time and effort to consider what new oversight and regulatory approaches are needed to deal with 21st century science and technology. Considering TSCA's effectiveness is a step in the right direction but over the long run we are going to need whole new approaches to deal with the new technologies. Thank you.

[The prepared statement of Mr. Davies follows:]

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Mr. {Rush.} The chair thanks the gentleman. And now I have been told by the subcommittee staff of a new procedure especially at it relates to the oversight aspects of these hearings, and that is I am supposed to swear in all the witnesses, so I am going to ask the witnesses to please stand to be sworn in, and I am going to ask those that testified whether or not you want to keep your testimony consistent pre-swearing in the same as post swearing in, so if you didn't like before, then--excuse me for saying that. I shouldn't have said that. We just want you to be consistent in your testimony both prior to the swearing in and after the swearing in.

[Witnesses sworn.]

Mr. {Rush.} Please let the record reflect that all the witnesses have answered in the affirmative, and now our next witness will be Ms. Swanson for the purposes of opening statement.

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^TESTIMONY OF MAUREEN SWANSON

} Ms. {Swanson.} Thank you, Mr. Chairman and Ranking Member Radanovich. My name is Maureen Swanson and I direct the Healthy Children Project for the Learning Disabilities Association of America. I also am here on behalf of the organizations of the Learning and Developmental Disabilities Initiative, which I have described my written testimony.

I would like to explain the connection between neurodevelopmental disabilities and the need to reform TSCA. Certain diseases and disorders including neurodevelopmental disorders are increasing among American children. This is particularly true of autism and attention deficit hyperactivity disorder, or ADHD. On average it costs twice as much to educate a child with a neurodevelopmental disability as it does to educate a child who does not have these disabilities. A growing body of scientific evidence shows that some of this increase is due to exposure to toxic chemicals. Most recently, a study by researchers at the University of California found that a large portion of the increase in the State's autism cases is most likely due to toxic chemical exposures.

Children are especially vulnerable to toxic chemicals.

Relative to adults, children eat more, drink more and breathe more. They spend a lot of time on the ground and they put things in their mouths. From conception to early childhood is a time of rapid brain development, a time when even a tiny dose of a toxic chemical can cause neurological problems that last a lifetime. Of the 80,000 chemicals registered under TSCA, about 3,000 are produced at more than 1 million pounds a year. Of these 3,000 chemicals, we know for certain that 10 are neurotoxins. They affect brain development. We have good evidence that another 200 are neurotoxins but we don't have better information or more information because there is no requirement under TSCA to test chemicals for effects on brain development. Isn't it right for parents to assume that the government will protect their children from toxic chemical exposures?

When I talk to people and they find out that the vast majority of chemicals used in products are not tested for health effects, first they are dumbfounded and then they are outraged. I share that outrage. As the mother of a 2-year-old and a 4-year-old, I know how hard it is to figure out which shampoos and sippy cups and toys are safest for my kids. No parent should have to stand in front of a store shelf full of toys and guess which ones have toxic constituents and none of us should have to pay a premium for

a specially made nontoxic product. No one should have to buy their way out of health risks to their children.

LDA began its focus on neurotoxins decades ago by supporting efforts to get lead out of gasoline. Once lead was removed from gasoline, blood lead levels in American children dropped dramatically. At the same time, IQ levels increased. Another LDA concern is chemicals that are endocrine disruptors, particularly those that affect the thyroid gland, which is essential for healthy brain development. These chemicals are often found in plastics and include phthalates, Bisphenol A, dioxins and brominated flame retardants.

I would like to thank Congress for its bipartisan support of the Consumer Products Safety Improvement Act, which will keep lead and phthalates out of children's products. This is a crucial step toward preventing toxic chemical exposures. TSCA, on the other hand, demands that the government prove beyond all reasonable doubt that a chemical is toxic after it has been put on the market, after it has infiltrated our homes and our bodies. We need legislation that requires manufacturers to prove that a chemical is safe before it can be used in products and before it can put our children at risk. We know that a preventive policy works. Lead is just one example. Chlorpyrifos is

another. Chlorpyrifos is a widely used pesticide and a neurotoxin. Since EPA banned its residential use in 2001, a study in New York City showed that levels of chlorpyrifos in maternal and umbilical cord blood have decreased by a factor of 10 and the newborns in the study showed an increase in birth weight and length, which are measures of healthy development.

To stem the rising incidence of childhood diseases such as asthma, autism and cancer, we need a preventive approach to toxic chemical policy that requires manufacturers to test chemicals for health effects including neurodevelopmental effects and prohibits the use of toxic chemicals that can harm the developing fetus, infants and children. For more than 30 years, TSCA has enabled the chemical industry to take risks with our children's health that no parent would ever knowingly permit.

We urge Congress to reform TSCA without further delay and provide all our children the opportunity to lead healthier and fuller lives. Thank you.

[The prepared statement of Ms. Swanson follows:]

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Mr. {Rush.} Thank you.

Our next witness is Mr. Cecil Corbin-Mark. Mr. Mark, you are recognized for 5 minutes.

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^TESTIMONY OF CECIL CORBIN-MARK

} Mr. {Corbin-Mark.} Good morning. I want to thank Chairman Rush for his leadership on this committee and in bringing this issue to the forefront. I also want to recognize and thank Mr. Radanovich and likewise to all the other distinguished members who are present and here today. And lastly, I want to thank the committee staff for their dedication and professionalism.

So why is a guy from Harlem here to talk to you about Toxic Substances Control Act? Quite simply because I have been impacted by chemicals and my family has and some of my neighbors have. Two quick stories. I can remember a long time ago when my mother brought home a chemical curtain, that I later found out was a chemical curtain, but a curtain filled with superheroes imprinted on it, and I couldn't wait to actually take a shower with that chemical curtain. I wanted to be in that shower because I thought the superheroes would transfer their powers to me and I could join their ranks. Instead, what happened was, I came out dizzy, unsure of what was happening and filled with a really piercing headache.

The next story is about my son, the pride and joy of my

life. I am a doting dad, and my son is in school in New York City and is playing on a basketball team. I am across the country at a conference in San Francisco and his mom calls to say that they have had to rush him to the hospital for an asthma attack at a visiting school. In talking to him later that day, I asked him what do you remember, what happened, how did this happen, and after pressing him he realized one thing that he did remember was the smell of pesticides in the visiting locker room of his team's locker room.

I want to share with you that I think that in places like the community that I live and work in Harlem, New York, many people are exposed to toxics. I live in, as I said, Harlem and it is a community of 7.4 square miles and is home to more than 650,000 mostly low- and middle-income African-Americans and Latinos. It is known for its richly diverse population and cultural history but the area also bears disproportionate rates of disease, air pollution and toxic exposures. Northern Manhattan leads the Nation in asthma hospitalizations, low birth weight and lead poisoning, to name a few, and diabetes and obesity are also raging epidemics in our communities. High levels of public assistance in our neighborhoods are a part of the fabric and residents often don't have health insurance. And while downtown Manhattan may be known for Broadway, the Empire

State Building, the Statue of Liberty and other iconic landmarks, uptown our neighborhoods have auto body shops, dry cleaners collocated with residential apartments, diesel bus depots across the street from parks and bedroom windows, and likewise nail salons and dollar stores with many products that contain ingredients capable of disrupting a woman's or a man's reproductive system abound in northern Manhattan.

While I am describing my hometown, I could be talking about any place in Texas, Michigan, Louisiana, Ohio, Georgia, you name the State, and you might conclude that because these facilities or stores are located in our neighborhoods, that doesn't necessarily mean that we might be impacted by chemicals, but I assure you, you could be wrong.

I want to just point out a couple of studies, one of them from the New York Research Public Interest Group done a couple of years ago that documented while upstate is the major agricultural production area for New York State, it is in New York City that the greatest tons of poundage of pesticides are actually used and they are applied to public buildings like schools or hospitals. Another one, the New York State Department of Health conducted a study in East Harlem and found high levels of PERC in apartments where dry cleaners were collated. PERC is a volatile organic compound with many health effects that moves easily through walls and

easily enters the bloodstream. The Columbia Mailman School of Children's Environmental Health Center that we co-partner with conducted studies that looked at 700 mother-children pairs and examined dust samples in their homes and found high levels of pesticides like chlorpyrifos and diazinon, which transfer readily to the fetus, and these were found to reduce birth weight by an average of 6.6 ounces. Furthermore, high prenatal exposure to pesticides like chlorpyrifos was found to be associated with psychomotor cognitive delay and attentional disorders at age 3. Early findings from another study projected that the same cohort is indicating dibutyl phthalate, which is commonly found in perfumes, is staying in mothers' bodies longer than thought.

Toxic chemicals don't belong in people, and while researchers don't have all the answers to what the health effects are, environmental justice advocates are mobilizing to fix what we see as a flawed chemical system.

What are the problems in this system? I mean, there are many and I have submitted them in my testimony. I urge you to read them, but we need a comprehensive regulatory reform for toxic chemicals and I ask you to help us in making that possible. Thank you.

[The prepared statement of Mr. Corbin-Mark follows:]

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Mr. {Rush.} Thank you very much.

Our final witness for purposes of opening statements is Mr. Wright. Mr. Wright, you are recognized for 5 minutes.

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^TESTIMONY OF MICHAEL J. WRIGHT

} Mr. {Wright.} Thank you, Chairman Rush, and thank you, Ranking Member Radanovich, for the opportunity to testify before you this morning.

My name is Mike Wright. I am the director of health, safety and the environment for the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, and I promise not to use the full name again. We are the USW for short. We represent 850,000 workers in the sectors I just mentioned and many others including a majority of unionized workers in the chemical industry and hundreds of thousands of workers who use industrial chemicals on the job.

My written statement details my background. Let me just say I have been dealing with chemical issues for more than 30 years, both within my union and internationally, primarily through several United Nations organizations.

I will talk this morning about one mission that affected me the most and it still haunts me to this day. I was a member of an international team which traveled to Bhopal, India, to investigate the December 1984 methyl isocyanate release from a Union Carbide plant that took several thousand

lives, nobody knows how many, in the first few hours, and many more in subsequent weeks and continues to claim victims at a rate of one or two a week even a quarter century later. In my sleep I still see the faces of parents whose children died. I still see children left without parents. I can still hear the constant coughing of victims who survived but with most of their lungs burned away. Two members of that team were from the United States, and one thing we quickly realized was, had the Bhopal plant existed in the United States, none of the underlying causes of the accident, none of them, would have violated any OSHA or EPA or any other regulation and that includes the Toxic Substances Control Act, even though TSCA was then in force. Think about that for a minute. The Toxic Substances Control Act wouldn't have controlled the causes, much less prevented, the worst toxic substance accident in human history. Much has changed since then. We have a lot of laws and regulations which chip at the edges but the basic chemical safety law in this country, TSCA, the cornerstone on which everything else rests, remains unchanged.

Let me turn to the impact of TSCA or rather the lack of impact in the workplace. I am wearing a little lapel pin this morning. It is a tiny birdcage with a canary. Thousands of our members and many of our supporters wear

them. It symbolizes what workers have become in relation to toxic chemicals. Before the invention of modern testing equipment, miners used to bring canaries underground. If the bird died, you knew something in the air was toxic and you got out. Today we are the canaries in those cages. Others might testify as time goes on in these activities about things like Bisphenol A, phthalates, carbon nanotubes. All of them may pose serious risk to consumers and communities but we are the first to be exposed and we are usually the highest exposed. Most epidemiology regarding toxic substances uses cohorts of workers. In other words, it is our bodies that get counted in these retrospective human experiments.

My colleagues and I in the USW's health, safety and environment department visit several hundred workplaces a year in all manner of industries. Collectively, we have a lot of experience with chemicals and chemical hazards so our members depend on us to say whether what they are working with is safe. Too often we don't have a clue. OSHA requires labels and written information sheets for workplace chemicals but they frequently contain almost no useful information beyond acute toxicity because the chemicals have never been tested for any other effects. Too often we learn the consequences of that ignorance only by chance and only too

late. My written testimony includes several examples of chemicals found to be dangerous only because the men and women using them on the job died or became critically ill and they are only the very small tip of a very large iceberg. The dangers of these chemicals were discovered only through unusual circumstances like rare medical conditions, an overwhelming number of deaths or a chance discussion by workers. We have no idea how many more untested chemicals are causing unrecognized illness among workers and consumers. In short, the way we now evaluate many potentially toxic chemicals is by counting bodies and measuring human misery long after those chemicals have been introduced. That has to change.

Let me turn for a minute to economics. Of course, the main reason for reforming TSCA is for human health but there are also good economic reasons. There will be many who say that we can't afford to reform chemical policy, especially not in the current economic climate. In truth, we can't afford not to. First, there is the economic burden of occupational disease and environment disease, which I discuss in my written statement. It saps our productivity, destroys the earning potential of our families, increases healthcare costs. Then there is the issue of competitiveness. Europe has adopted a strong new system called REACH and it has been

mentioned earlier this morning, designed to ensure that chemicals and products made with chemicals are safe to manufacture and use. Unless the United States follows suit, consumers will ultimately come to trust European products more than they trust American products. I believe it was the great consumer advocate Esther Peterson who said, ``Made in USA should be a guarantee, not a warning.''

I have great faith in the chemical industry. Our members work in the chemical industry. I actually believe all those Sunday morning commercials about the human element and the innovative potential of American chemistry. I believe we can produce chemical products that are safe to manufacture and safe to use. Thousands of our members work in the industry. They want to make things that are safe for them, safe for their kids, safe for the planet. They know that in the long run their jobs depend on that as well. The critical first step is the reform of our basic chemical safety law, TSCA.

Mr. Chairman, you, your committee and this Congress can make that happen. We urge you to do so, and I want to thank you again for the opportunity to testify this morning.

[The prepared statement of Mr. Wright follows:]

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Mr. {Rush.} Thank you very much, and we thank all the witnesses. I have been informed by staff that around 11:20 there will be three votes on the Floor, and these will be the only votes of the day. However, the chair would like to proceed with its questions and we will get as far as we can before we have to go for a vote, but I would also like to ask the witnesses if they can possibly remain until we come back from the Floor where we will be voting.

The chairman recognizes himself for 5 minutes. I would like to get each of you on the record on a very basic question. Do you believe that TSCA needs to be reformed? And please answer with a yes or no, starting with my guest and my friend, Mr. Stephenson.

Mr. {Stephenson.} Yes.

Mr. {Rush.} Mr. Davies?

Mr. {Davies.} Yes.

Mr. {Rush.} Ms. Swanson?

Ms. {Swanson.} Yes, Mr. Chairman.

Mr. {Rush.} Mr. Corbin-Mark?

Mr. {Corbin-Mark.} Yes.

Mr. {Rush.} Mr. Wright?

Mr. {Wright.} Yes.

Mr. {Rush.} All right. I have heard some suggestion

the problem here is not really the statute, but the problem is EPA's interpretation of the statute. It seems to me that after 30 years of failed efforts to carry out the law through many different Administrations of different political stripes, it is fair to say that there are some serious problems with the statute itself. Do you agree with this conclusion?

Mr. {Stephenson.} That it is EPA's interpretation and not the law itself? Was that the question?

Mr. {Rush.} No, that we have some serious problems with the statute itself.

Mr. {Stephenson.} Yes.

Mr. {Rush.} Mr. Davies?

Mr. {Davies.} Yes, I do agree.

Mr. {Rush.} Ms. Swanson?

Ms. {Swanson.} Yes, I agree.

Mr. {Rush.} Mr. Corbin-Mark?

Mr. {Corbin-Mark.} Absolutely, I agree.

Mr. {Rush.} Mr. Wright?

Mr. {Wright.} Yes.

Mr. {Rush.} Let me ask you another question and answer as briefly as you possibly can. What are the top two or three areas of TSCA that you think are in most need of reform? Please follow with your reasoning and be as brief as

you possibly can. Did you hear my question?

Mr. {Stephenson.} I think the evidentiary standard that we talked about is too high and I think there is room for better hearing of information to the public and I think that the burden of proof for safe chemicals is tipped entirely on the government right now and should be moved more to industry. We are not here to endorse REACH. We are only using that as an example where the chemical industry is required to provide information to show that the chemicals are safe. We think it can be risk based. We think it can be production volume based but nevertheless the way TSCA works right now, in 30 years it has just proven so burdensome that it doesn't serve its purpose.

Mr. {Rush.} Mr. Davies, would you care to respond?

Mr. {Davies.} I agree with Mr. Stephenson. Let me make two quick comments. One, in terms of the evidentiary burden, it is different from what it is in almost all of the other environmental statutes. I mean, arbitrary and capricious is the standard used in almost all the environmental statutes, and in TSCA it is substantial evidence on the record, which is an incredibly high burden, and when you combine that with the other requirements in the Act, that is enough to undermine everything. The other thing is, again I would just urge the committee to pay some attention to things like

nanotechnology and synthetic biology, which are coming down the track very fast. The regulatory system is not equipped to address those kinds of problems and we have to try to think through what changes are needed to address those things.

Mr. {Rush.} Thank you very much.

Ms. Swanson?

Ms. {Swanson.} I would agree that a major area for reform is to shift the burden of proof from government and proving that a chemical is toxic after it is on the market, shift that to industry proving that a chemical is safe before it goes on the market. That is just a key element that needs to be reformed. Also, we would like to see neurodevelopmental testing specifically included as part of the toxicity testing that is required by the statute.

Mr. {Corbin-Mark.} I think that the one-by-one review approach of chemicals that is under TSCA sorely needs to be reformed. Many low-income communities and communities of color are not impacted by chemicals on a one-by-one basis but through their multiple and synergistic effects. I also think that the fragmentation that TSCA provides for chemical policy is really bad. The fact that some chemicals are regulated in the workplace and some chemicals are regulated in food and some chemicals are regulated in cosmetics and they are all

regulated differently is a problem. A chemical is a chemical is a chemical. And then lastly, the whole notion of sort of the risk-based approach with which our chemicals are dealt with under TSCA is a problem. From our standpoint, risk models do not often include people of color, they don't include women and they often don't include children, some of the most vulnerable populations, given some of the things that I have talked about in terms of the communities that I work and organize in.

Mr. {Rush.} Thank you very much.

Mr. Wright?

Mr. {Wright.} Well, I agree with all of the above, but let me add to the list the great trade secrecy burdens that really prevent people from getting much information about the chemicals to which they are exposed. I also think that a new statute should require a lot more testing. Most chemicals are tested really only for their acute toxicity and not for chronic, long-term effects, and I think we need a combination of a risk-based and a hazard-based approach. That is to say the reporting should be the reporting by a company of the intrinsic hazards of a chemical that they produce whether it is acutely toxic, whether it is a neurotoxin, whether it causes cancer, and after that is done, after we have that information which we need to evaluate the risk, that is when

you look at risk and that is when you look at how you actually deal with that chemical.

Mr. {Rush.} Thank you very much.

The chair now recognizes for 5 minutes the ranking member.

Mr. {Radanovich.} Thank you, Mr. Chairman, and again I appreciate the testimony of the panel. Let me start off by saying I know firsthand on the issue of chronic disease and diseases for which you cannot take a pill to get an immediate cure. I deal with that in my family as we speak, so I understand fully, Ms. Swanson and Mr. Corbin-Mark. I am empathetic with your issues and I care about the same things that you care about. However, I just want to make sure that whatever is done in something like this has to be based on good science and it has to be done in such a way that doesn't cripple a good industry, and I think those are the points that I think I would like to leave you with to make sure that whatever is done in a law that is generally accepted the fact that it needs to be updated and reformed, that we don't do it in such a way that we cripple an entire industry that is legitimate out there.

So I guess, Mr. Stephenson, if I could ask you a question. There were either 80,000 or 82,000 chemicals registered--

Mr. {Stephenson.} Eighty thousand on the existing chemical--

Mr. {Radanovich.} It is 80,000?

Mr. {Stephenson.} Yes.

Mr. {Radanovich.} In your view, do you think that the industry, the chemical industry should be on the hook to prove that every one of those by good science is a safe material? Do you believe that under the law that the industry should take on every one of them and then come back with--

Mr. {Stephenson.} I don't think you can apply a one size fits all to everything. That has been the complaints of the European approach under REACH, that they require too much information on some chemicals that are known to be safe. I am not a chemistry expert but I think there are ways to segment that family of chemicals into those where the chemical industry should be required to provide information and those that should not. I think EPA has even offered to scrub the list in some way. They haven't done that but they could do that.

Mr. {Radanovich.} And also in your testimony, was it the number 200 that were--200 chemicals that were--

Mr. {Stephenson.} Where they actually required additional information from industry, and there is a burden

of proof on EPA and a case that it has to go through and years that it takes even to get that. So in 30 years of TSCA, there has been 200 times where the law has worked to require additional information.

Mr. {Radanovich.} In your view, knowing what you know about the industry, can you give me a sense of--you know, because we are looking at 200 to 80,000, somewhere in between there a sense of the chemicals that are out there that need to be looked at further?

Mr. {Stephenson.} The catch-22 that Mr. Davies pointed to is the biggest problem. EPA is required to prove the chemical is dangerous and it needs information to do that. Well, who has the information? The person who produced it does so they can't meet that burden without information from the industry so there has to be more of a collaboration here for EPA to get the information that it needs to do its job more easily than it can right now.

Mr. {Radanovich.} Thank you.

Ms. Swanson, you mentioned a list of chemicals, the same 80,000 that are registered, of course, that is common, 3,000, and then 10 that were proven. Can you go over that list and give me an idea of what you are talking about in the overall chemical world of all those registered on TSCA how many things we are looking at here?

Ms. {Swanson.} Yes, I mentioned of the 80,000 that are registered, about 3,000 are produced at more than 1 million pounds annually so these high-volume chemicals, there are 3,000 of those which might be one good starting point for requiring information, and of those 3,000 we know that 10 are neurotoxins and there is good evidence to suggest that another 200 are neurotoxins.

Mr. {Radanovich.} Are those 10 neurotoxins that you know of for sure backed by good science and still in products today, being manufactured into products today?

Ms. {Swanson.} It is backed by a very good body of science that in many cases stretches over decades. Some of them are not--well, lead is one of the main and most potent neurotoxins that we know about and so lead has been gotten out of a lot of products certainly, but then some of the others are still being used in products today such as the chemicals that come from combustion. Those are used in products today. A lot of the solvents are known neurotoxins so compounds that are used in products like lighter fluid and oils and paint strippers and thinners, a lot of those chemicals are known neurotoxins and are still being used. So it varies. PCBs are a known neurotoxin that has been banned so some of them we have gotten rid of and some of them are still being used.

Mr. {Radanovich.} My time is expiring but I look forward to further questioning after we get done here, but I would like to go into a little bit more about a good idea, that the devil usually comes in the detail and when you do these regulations how they can have an unintended consequence on an industry that drives up the cost of purchased goods and such. So there is another side of this thing that I would like to continue discussing when we get back.

Thank you, Mr. Chairman.

Mr. {Rush.} The chair now recognizes Mr. Sarbanes for 5 minutes of questioning.

Mr. {Sarbanes.} Thank you, Mr. Chair.

Ms. Swanson, you said in your testimony that many people, particularly parents, would be, I think you said, dumbfounded and then outraged to learn that there isn't more oversight and data available with respect to these chemicals, and I am frankly becoming dumbfounded as I learn more about what hasn't happened as a result of what the expectations were of TSCA, and I would be very interested to hear from anyone that wants to comment on it briefly, because TSCA was hailed in the day when it was passed as this huge step. What happened? In other words, what expectations for what it was going to do were not met and how different is the oversight environment now as a result of the passage of TSCA, given the

interpretations of it compared to the way things were before it was passed?

Mr. {Stephenson.} I will take a stab at part of it, the evidentiary standard we talked about. Just the use of the term ``unreasonable risk'' in a legal sense bears a high evidentiary burden, one that EPA can seldom meet, and that is why the asbestos case is important. They finally spent the 2 to 10 years that it took to make the case that it needed more information only to have it thrown out by the courts by not meeting that high evidentiary standard that is spelled out in the rule. That is why as a minimum we think that kind of language needs to be modified.

Mr. {Davies.} Just in terms of the history of the Act, basically the sort of fundamental tradeoff made when the Act was formulated under the Nixon Administration was a set of very broad and sweeping authorities in exchange for a bunch of very high procedural hurdles, and the court decisions since then, particularly corrosion-proof fittings, which is the 1991 decisions, made it very clear that in effect those broad and fairly sweeping authorities to take action were undetermined and negated by the procedural hurdles.

Mr. {Sarbanes.} So basically it sounds like a lot of it has to do with judicial interpretation subsequent to the passage of the Act, which is not an unusual thing to happen.

You have expectations of what will be changed, and then once it gets into the court system, things get more nuanced.

Let me move on real quick because I got 2 minutes here. I was curious, what other--are there analogies on this issue of the burden of proof, which now resides heavily on EPA to prove that something is unsafe, versus on the manufacturers and so forth to prove that it is? Are there analogies to other statutes administered by the EPA where you see that sort of what I would call imbalance at work or is this one of the more egregious instances of where you have got the burdens flipped in the wrong direction? That is my view of it.

Mr. {Davies.} The two more egregious examples in my mind in addition to TSCA are cosmetics and dietary supplements. In both cases, the burden of proof is entirely on the agency, in that case Food and Drug Administration, and furthermore, the statute in effect prohibits any kind of adequate oversight, which is even further than TSCA goes, but TSCA is definitely if not the most important definitely one of the most important examples where the burden of proof problems interfere with the effectiveness of the statute.

Mr. {Sarbanes.} Thank you. I yield back.

Mr. {Rush.} The chair thanks the gentleman.

I think that we will stand in recess until we return

from the votes, and we again ask the witness if they will remain for the conclusion of this first panel. Thank you. The committee is in recess.

[Recess.]

Mr. {Rush.} The committee is called to order. I want to thank the panelists and our guests for their patience. I think that right now we will recognize Ms. Castor, the gentlelady from Florida, for 5 minutes of questioning to the panel.

Ms. {Castor.} Thank you very much, Mr. Chairman.

Thank you to the panel very much for attending today. The evidentiary standard obviously is very problematic and you made your points very well on that. I would like to move on and have a better understanding of the statute, how it forbids EPA from sharing information that it obtains, the sharing of scientific data that it obtains with the public. Could you all comment on that, please?

Mr. {Stephenson.} I will take the first shot at it. When a new chemical is introduced, the industry has to submit what is called a pre-manufacturer notice, and as part of that there is actually a box on the form that you check that claims competitive business information and we have been told often that that is the default and we think if there was more guidance or definition as to when that claim could

legitimately be made or if there was a certification that the industry would make to certify the fact that is indeed CBI would be better than the way it works now.

Mr. {Davies.} That is a key part of the problem but also it is made worse because unlike most of the other environmental statutes, TSCA doesn't allow EPA to share confidential business information with either States or with other national governments. In most of the statutes, it says if the State or the other national government can provide equivalent protection for that trade secret information, then you can share it with them. TSCA doesn't have any provision like that. It has a flat prohibition on sharing any confidential business information. So that combined with the ease with which you can classifying something as confidential, that is what contributes to the problem.

Mr. {Wright.} If I can add kind of another model, the OSHA hazard communication standard also has a provision for trade secrecy but it has two important provisions. One is that if chemical in question, the chemical mixture usually is obtainable on the open market and can be essentially, it is called reverse engineered, analyzed in a lab to figure out what it is, then it is really not much of a trade secret because any competitor can do that. So the standard excludes things that can be reverse engineered. And second, it

provides a provision that people with a legitimate need to know that information, for example, in our case, a worker representative, a worker himself or herself, somebody providing medical treatment can also get what would otherwise be confidential business information. And those would be good things to include.

Ms. {Castor.} Yes, I think it is fairly obvious that we can modernize the statute to better serve the public, especially when it comes to information that families need to understand. It is true that since TSCA was adopted in 1976 that it has only led to one group of chemicals that have been subjected to a ban because of its properties?

Mr. {Stephenson.} The example we use, there has only been five in total, and I don't know what chemical classes those were in but even of those, the corrosion fitting case that dealt with asbestos, the courts threw that out because it couldn't meet the high evidentiary standard within the law. The courts didn't address whether the asbestos was safe or not. Like courts often do, they just showed that it didn't meet the standards in TSCA.

Ms. {Castor.} Mr. Stephenson, in your written testimony, you gave an example of formaldehyde, and I think it would be very helpful to take just a minute and explain that circumstance of the formaldehyde in wood coming from

China that now cannot go to other countries but continues to be marketed in the United States.

Mr. {Stephenson.} Well, you are getting even beyond TSCA into assessing the toxicity of chemicals as well and there are many ways you can do that. It doesn't fall under TSCA. That process is also broken at EPA, the integrated risk information system process, and formaldehyde is a case where the research is compelling but not compelling enough for EPA to regulate, so that is sort of related but a little bit different issue.

Ms. {Castor.} My time is running out. I recommend that you all review this case of the wood now that other countries are able to regulate and keep out of their countries because of the toxic chemicals contained therein but it is still coming to the United States including some of the trailers that were provided to Katrina victims.

Mr. {Stephenson.} Absolutely. That is true of asbestos too. Nearly every other country in the world has banned it. We have not.

Ms. {Castor.} Thank you, Mr. Chairman.

Mr. {Rush.} Seeing that there are no more members, I want just to thank this panel. This will conclude your testimony, and I want you to understand that all witnesses should be prepared to respond to written follow-up questions

submitted by members of the subcommittee. I again want to thank you so much for your patience and you really helped us along. You provide a real service to the American people by your presence here today. Thank you, and may God bless you in your travels.

As the first panel departs, I would ask that the second panel be prepared now to come and join us at the witness table. I want to advise the second panel that they will be testifying under oath, and as a result of that, would you please rise to be sworn in?

[Witnesses sworn.]

Mr. {Rush.} Please let the record reflect that all witnesses have responded in the affirmative. Please take your seats.

I want to introduce the witnesses beginning at my left, your right. Mr. Richard Denison is the senior scientist for the Environmental Defense Fund. Ms. Kathy Gerwig is the vice president of Workplace Safety and Environment. She is the stewardship officer at Kaiser Permanente. An ex-Member of the House is with us here, Mr. Cal Dooley. Mr. Dooley is now the president and CEO of the American Chemistry Council. He served in the House from 1991 to 2005, representing the 17th and 20th districts of California. He didn't represent them all at the time. Mr. V.M., Jim, DeLisi is the president of

Fanwood Chemical Incorporated. He is the chairman of the International Affairs Committee for the Synthetic Organic Chemical Manufacturers Association. Mr. Charles T. Drevna is the president of the National Petrochemical & Refiners Association.

I would ask that the panelists now provide a maximum of 5 minutes of opening statements beginning with Mr. Denison.

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^TESTIMONY OF RICHARD DENISON, SENIOR SCIENTIST, ENVIRONMENTAL DEFENSE FUND; KATHY GERWIG, VICE PRESIDENT, WORKPLACE SAFETY AND ENVIRONMENTAL STEWARDSHIP OFFICER, KAISER PERMANENTE; CAL DOOLEY, PRESIDENT AND CEO, AMERICAN CHEMISTRY COUNCIL; V.M. (JIM) DELISI, PRESIDENT, FANWOOD CHEMICAL INC., AND CHAIRMAN, INTERNATIONAL AFFAIRS COMMITTEE, SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS ASSOCIATION; AND CHARLES T. DREVNA, PRESIDENT, NATIONAL PETROCHEMICAL& REFINERS ASSOCIATION

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^TESTIMONY OF RICHARD DENISON

} Mr. {Denison.} Thank you, Chairman Rush and Ranking Member Radanovich for holding this hearing today.

I would like to do three brief things in my testimony today. I want to start with a story about one chemical. In fact, it is the chemical that Congresswoman Castor was just speaking about that illustrates why reform of TSCA is so urgent. I then want to briefly describe several structural problems with TSCA that help to explain why EPA has been unable to act effectively to ensure chemical safety. And finally I want to describe how U.S. policies are falling behind those of the rest of the world, putting U.S. companies

at risk of losing access to global markets and putting all of us at risk of becoming a dumping ground for unsafe products made elsewhere in the world.

That brings me to the story about that one chemical. The United States imports vast amounts of plywood from China that is made using formaldehyde-based adhesives, a chemical known to cause cancer, to exacerbate asthma and to cause numerous other respiratory ailments. Some of that plywood ended up in the infamous FEMA trailers to which so many people were forced to flee in the wake of Hurricane Katrina. That toxic exposure turned what was already a national scandal into a true debacle. The plywood China sells to the United States cannot legally be sold to Japan or the European Union nor can it be sold even for domestic use in China, and that is because all of those countries have enacted strong regulations that restrict the release of formaldehyde. As of January of this year, California also enacted such regulations.

Now, China exports a low-formaldehyde version of this plywood to Japan and the European Union but it continues to enjoy a market for its more toxic product here in the United States. Domestic makers of low- or even formaldehyde-free plywood can't compete with those cheap imports from China so we are hurting American businesses that have found safer

alternatives to this use. Last year EPA was petitioned by 5,000 citizens to take the California regulations and adopt them nationally. EPA promptly denied that petition. It said that the information available on formaldehyde, one of the best-studied chemicals in all of commerce, was insufficient. As bad as that sounds, what is worse is that EPA is likely right. EPA must show that a chemical presents an unreasonable risk as defined under TSCA and interpreted by the courts, and I think many other witnesses have already alluded to the fact that that burden is so high that it essentially is impossible to meet. Over the history of TSCA, EPA has banned only one group of chemicals, PCBs, and that was because Congress legislated the ban. It has partially restricted four other sets of chemicals in the 33-year history. In the 1980s EPA tried to ban asbestos, as we have heard, and it was immediately challenged by industry and the courts overturned that decision.

A lot has been said about that already but I want to add two other things. First, EPA took over 10 years to develop that regulation and they amassed a 45,000-page documentary record of the risks of asbestos. Despite that, the courts found EPA had not met its burden under TSCA. Now, it has become fashionable in some circles to argue that the problem with TSCA is that EPA hasn't been trying hard enough or

hasn't been doing a good enough job. I ask you, if 45,000 pages of documentation and 10 years of regulatory development is not enough to ban a chemical like asbestos, what is? Something is badly broken. TSCA has never been significantly amended in the 33-year life it has lived despite enormous changes in our chemicals economy and our state of knowledge about chemicals. One example. We now know that all Americans including newborn infants carry hundreds of synthetic chemicals in their bodies, some at levels that we already know are high enough to cause harm in laboratory animals. The more chemicals we look for in people, the more we find, and yet government nor industry can tell us how those chemicals got there nor can they adequately explain what their impact will be on our health. TSCA fails to provide EPA with the authority it needs to develop information to identify not only unsafe chemicals but safe chemicals that could be substitutes for the risky ones and TSCA forbids EPA from sharing that information even with other levels of government, as we have already heard. Companies are largely free to claim the information that they deem confidential. Those claims are rarely, if ever, reviewed or even required to be justified up front, and even the name and identity of a chemical that is being submitted because of a study that shows high risk, the identity of that

chemical can be hidden from the public.

EPA had to resort to voluntary programs, given these constraints that it has to operate under. The most notable of these is the High Production Volume Challenge program. Now, we supported that when it was launched a decade ago.

Mr. {Rush.} Will you please bring your testimony to a close? You are over the 5 minutes. Please bring it to a close.

Mr. {Denison.} But that program--I will wrap up very quickly here. That program has failed to deliver the data because it is a voluntary program. I want to just end by saying that lest you think that what we are looking for with TSCA reform is a heavier hand of government, the largest failing of TSCA is the dysfunctional market it perpetuates, one that is ill informed and does not allow anyone who needs to make good decisions about chemicals access to the information to make those good decisions. Thank you very much.

[The prepared statement of Mr. Denison follows:]

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Mr. {Rush.} Thank you very much.

Ms. Gerwig, please, 5 minutes.

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^TESTIMONY OF KATHY GERWIG

} Ms. {Gerwig.} Mr. Chairman and distinguished members of the subcommittee, thank you very much for inviting me to testify today. I am Kathy Gerwig. I am vice president and environmental stewardship officer for Kaiser Permanente. That is the Nation's largest integrated healthcare delivery system. We provide comprehensive health services to 8.7 million people in nine States and the District of Columbia.

At Kaiser Permanente, we recognize that a healthy environment is critical to the health and wellness of every person. We are dedicated to environmental sustainability as we believe it has direct positive effects on individual and community health. We lead and support innovative efforts to decrease pollutants and enhance the environment. This year we will spend about $13 billion on purchased products and services. We lease or own more than 65 million square feet of real estate. We have a 10-year capital plan of more than $30 billion.

Despite this leverage, we have experienced limitations in achieving our goal of using products and materials that are environmentally sustainable. We have developed our own chemicals disclosure document that is required for all of our

large purchasing contracts. This disclosure asks suppliers for information on the categories of persistent bioaccumulative toxic compounds, carcinogens, mutagens, reproductive toxins and specific chemicals of concern such as mercury, polyvinyl chloride, phthalates, Bisphenol A and halogenated flame retardants. When the information is provided by suppliers, there are many times that it is not meaningful due to the vendor's lack of knowledge, trade secret caveats or the absence of safety information for thousands of chemicals in commerce today.

We are also challenged by suppliers' claims that a product is green when it doesn't meet our environmental criteria. For example, a product that saves energy, which is good, might be made of vinyl, which creates dioxin pollution. Starting in 1997, Kaiser Permanente spent 10 years virtually eliminating mercury, a neurotoxin, from our operations. We now use digital thermometers and blood pressure devices. The mercury in esophageal dilators was replaced with tungsten by that industry. Now there is emerging evidence that tungsten is related to leukemia in towns near tungsten mining operations. This is an example of a large effort across the healthcare sector to replace a known hazardous material which may be resulting in the unintentional use of potentially hazardous material.

Another example includes the replacement of products containing di(2-ethylhexyl) phthalate, or DEHP, which is used as a plasticizer in flexible medical devices such as intravenous tubing and bags. DEHP can leach from the plastic, posing health risks. Our project began in 2001 when evidence was available to show that DEHP is a potential reproductive toxicant to neonatal males. We identified alternatives, conducted clinical trials before we were able to begin using products free of DEHP.

For more than 10 years, Kaiser Permanente has been working to reduce our use of vinyl products because vinyl creates dioxin pollution when it is manufactured or incinerated. In 2004 we were instrumental in driving the creation of a vinyl-free carpet suitable for healthcare settings. It was a multi-year effort that took considerable time and resources on our part. We now contract exclusively with a vendor that created that product and we have installed approximately 10 million square feet of this carpet in our facilities.

When we were testing alternatives to hard surface flooring made from vinyl, we had to actually invent our own testing protocol and use in-house certified industrial hygienists to perform tests to understand the health impacts of the alternatives. As we strive to use products that are

not harmful, we invest significant time and resources. That degree of investment is simply not feasible for most products and materials we buy nor is it possible for smaller organizations that don't have the resources and skills that Kaiser Permanente has developed over the decades. Mechanisms are needed to support downstream users such as us in procuring safer products and materials for our needs.

Mr. Chairman and members of the committee, thank you for this opportunity and I look forward to answering any questions.

[The prepared statement of Ms. Gerwig follows:]

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Ms. {Sutton.} [Presiding] Thank you, Ms. Gerwig.

Mr. Dooley.

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^TESTIMONY OF CAL DOOLEY

} Mr. {Dooley.} Thank you, members of the subcommittee. My name is Cal Dooley and I am president and CEO of the American Chemistry Council, and our council represents about 140 member companies that produce almost 85 percent of the chemicals manufactured in this country.

I would just ask you to briefly consider the role that chemicals played in your lives today. Chemical products are fundamental to the clothes you wear, the way you got to work this morning, the electronic products that you communicate with, the chair you are sitting on, the protective finish on the dais and the desk. Chemicals are the medicines that help save lives, the safety equipment that protect our children and our military forces, and the insulation in the lightweight vehicles that reduce greenhouse gas emissions and save energy.

ACC and its members share your goal of protecting human health and the environment from risks associated with some chemicals. In the vast majority of cases, however, chemicals can be and are used safely. While ACC believes that TSCA has been protective of health and the environment, there are good reasons why Congress should consider modernizing the statute.

First, it is clear that the public for a variety of reasons does not have confidence that the regulatory system is adequately ensuring the safety of the products they use. Second, science and technology of testing and detecting chemicals has advanced considerably since TSCA was enacted and we can more effectively incorporate these new capabilities into a modernized regulatory system. And third, modernizing TSCA will make the best use of emerging developments in science and technology and protect our Nation's interests in an innovative, competitive chemical industry.

My simple message to the subcommittee this morning is that ACC and its member companies are prepared to work with you in modernizing TSCA. I would like to quickly address a few of the areas where Congress should focus its attention in considering changes to TSCA. We are committed to having the appropriate hazard, use and exposure information necessary to make decisions about safe use and we think the approach should be reflected in law. In general, we think it is appropriate to have more information about those uses where there are or may be exposures to humans or the environment. Information requirements should be driven by use and exposure patterns. We support new detection methodologies like biomonitoring. We think the federal chemical management

system should be robust enough to apply that data and other relevant information in a prioritization process that allows a focus on key health and safety concerns like potential exposures to children. EPA should use hazard, use and exposure information to determine the safety of priority chemicals for their intended uses.

Safety assessments conducted by EPA should not simply rely, however, on hazard as a sole determinant of the outcome. As an example, consider a single chemical that might be used in many different applications, maybe from bullet-resistant vests and goods that are used in the retail marketplace to a chemical input in an industrial process. While the hazard characteristics are clearly the same regardless of the application, the exposure and risk considerations will vary significantly. This simple example helps illustrate the questions that a federal chemical management system must be capable of addressing. For example, what additional information is needed to ensure that the chemical can be used safely for its intended purpose? On what basis should EPA make a decision that it is safe? How should EPA weight the relative hazards and risks of the alternatives? And how can we ensure that the decisions are made in a timely manner and that they protect health and the environment and the national interests and technological

innovation?

In ACC's view, a robust federal chemical management system must be capable of providing chemical manufacturers, users, the public and the government with the answers to those questions. Those are the questions that we are committed to addressing and we are also committed to working with you toward the goal of modernizing TSCA. Thank you.

[The prepared statement of Mr. Dooley follows:]

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Ms. {Sutton.} Thank you, Mr. Dooley.

Mr. DeLisi.

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^TESTIMONY OF V.M. DELISI

} Mr. {DeLisi.} Good afternoon. It is a pleasure being before this distinguished subcommittee. My name is Jim DeLisi and I am president of Fanwood Chemical located in Fanwood, New Jersey. Fanwood Chemical is a member of SOCMA, the leading trade association representing the batch and custom chemical industry.

Our industry makes a $60 billion annual contribution to the U.S. economy and contributes to the chemical industry's position as the Nation's leading exporter. SOCMA supports EPA's and Congress's fundamental goal of protecting health and the environment. SOCMA members are prepared to do our part in that effort. We are pleased to have this opportunity to share with you our perspective on revisiting the Toxic Substances Control Act. As I will explain today, SOCMA agrees with many that TSCA needs to be revisited and certain aspects of EPA's TSCA program could be improved but a sweeping overhaul like implementing Europe's REACH is unnecessary and would be unwise. Since its enactment, TSCA and its unreasonable-risk standard have generally stood the test of time as a flexible law that has protected human health and the environment without crippling innovation.

First, I would like to start by saying that any evaluation of TSCA should consider the contributions the chemical industry has made in providing the United States with one of the highest standards of living in the world, even as overall indices of public health and environmental quality have improved. Secondly, any evaluation should also take into account the vast amount of data that have been submitted by our industry to the EPA and to other agencies such as the FDA, DOT, OSHA, Consumer Products Safety Commission under other statutes that regulate our industry. Lastly, it should look at how this balance between protecting human health and the environment and preserving innovation has been achieved and how it can be maintained. SOCMA believe this balance has been and will continue to be achieved by a chemicals policy that is fundamentally guided by science in a careful assessment of risk. Data requirements have been driven by the intended and foreseeable use and disposal of a chemical. This fundamental approach should be maintained when considering a revised approach to chemical risk management.

One area of TSCA that has faced substantial criticism is the reporting requirements applicable to industry. In particular, many believe that EPA does not have sufficient authority under TSCA to request data. SOCMA disagrees with

this claim but we do believe that data gathering is an area worthy of improvement and that we should reconsider what is the best approach to gathering data and information on chemicals. In order to do this, Congress should look at how EPA currently implements TSCA and consider how the program could be enhanced.

Before amending TSCA to create new obligations for EPA, Congress should also explore whether EPA can better leverage activities going on outside of the TSCA program, whether occurring under federal agencies like FDA or abroad. For example, companies are embarking on a massive project to generate standardized test data for European REACH program. Through collaborative data-sharing efforts, EPA should be able to take advantage of the work done for that program just as other countries can leverage the work conducted here. Why should the United States want to duplicate testing that is already being conducted? A collaborative approach should be promoted by Congress.

This leads me to the Chemical Assessment and Management Program, better known as ChAMP, the voluntary program to which the United States committed in 2007 along with Canada and Mexico under the Security and Prosperity Partnership. Through this program, EPA is prioritizing chemicals by hazard and risk in order to systematically decide what further

action may or may not be required. EPA is already well down the path of implementing this program. ChAMP is also addressing the TSCA inventory. EPA has initiated action to reset the TSCA inventory to more accurately identify chemicals in commerce. Many people do not realize that at any given time, significantly fewer than the roughly 80,000 chemicals currently on the inventory are likely to actually be in commerce. For example, the last inventory update reported only 6,200 chemicals in commerce during 2005. Admittedly, that does not include materials produced on a single site at less than 25,000 pounds a year. Nevertheless, this important fact is conveniently ignored by those who try to show that TSCA is inadequate, who claim that the inventory reflects the number of chemicals in commerce and then compare that number to the number of existing chemicals that have been studied by EPA under section 4.

In closing, SOCMA has pointed out several main areas of TSCA that are being enhanced and we would urge you to focus your current inquiry on how to better implement existing authorities and activities. SOCMA believe that TSCA will not require a complete overhaul but could be enhanced by new challenges. Thank you, and I look forward to taking questions.

[The prepared statement of Mr. DeLisi follows:]

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Mr. {Rush.} Mr. Drevna.

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^TESTIMONY OF CHARLES T. DREVNA

} Mr. {Drevna.} Chairman Rush, Ranking Member Radanovich and the rest of the subcommittee, thanks for having us here. My name is Charlie Drevna. I am president of NPRA, the National Petrochemical & Refiners Association. Our member companies produce the basic chemicals that are the building blocks of the thousands of finished products that help make our lives simpler and safer. NPRA welcomes the opportunity to provide its perspective on the Toxic Substances Control Act, which is one of the key laws that can directly affect the marketplace, both for chemicals and for finished products.

Congress enacted TSCA in 1976 as an effort to categorize and evaluate the risk that chemicals may pose to humans and the environment. NPRA believes that the intent of Congress in crafting the statute was to construct a scientifically based chemical risk management program that was protective of human health and the environment while also allowing the development of products that will enhance health, safety and the environment. NPRA fully understands the committee's desire to examine TSCA's implementation and where necessary make the appropriate modifications to the statute to ensure

that its goals and objectives are realized.

We live in an era where global competition and rapid technologic change now unfortunately coupled with a debilitating financial crisis are calling into question the business and political foundations upon which our prosperity has rested for decades. NPRA believes we must ensure the overarching goals of TSCA are achieved while at the same time promoting innovation in creating life-saving or -enhancing products, promoting economic growth and strengthening American competitiveness in the global marketplace. We are confident that these goals are complementary, not mutually exclusive, as some would say, and NPRA pledges to work with Congress and with all stakeholders to ensure the desired outcome.

Recently, several groups have called for a substantial overhaul of TSCA to make it more like the system recently adopted in Europe, otherwise known as REACH. While I agree that we could all benefit by first reviewing and then perhaps reforming TSCA and updating certain sections, I do not believe that a wholesale rewrite is necessary, especially given the fact that systems like REACH are largely new and untested. We have not yet begun to see what the impact of REACH will have on chemicals management in the E.U. or its effect on a European economy. My written testimony further

elaborates on this point.

NPRA believes that a more pragmatic approach to TSCA reform will result in a better chemicals management system and still achieve the original intent of Congress. Key areas to explore while examining TSCA reform include information sharing, information collection and use, and a statutory recognition of EPA's own best practices and timelines for action. For example, EPA could share confidential business information with other types of government officials, both domestic and foreign, as long as that information is afforded the same level of protection required of EPA. NPRA would not object to changes in the statute that would allow for better information sharing.

Another area that could be updated is how EPA collects information and prioritizes future work. Under TSCA, EPA is given the authority to collect information on the hazards, potential exposures and risks of chemicals. However, the statute does not mandate that the information be collected in any particular order nor does it require EPA to collect and disseminate the information in a timely manner. In addition, test rules could be updated to reflect EPA's own best practices and specific timelines for action. Test rules could also institutionalize a tiered, targeted and risk-based approach, which has proven over time to be the most effective

and efficient chemicals policy.

NPRA urges this subcommittee to consider the approaches used by Canada and the United States under the Security and Prosperity Management Program, otherwise known as ChAMP, and at EPA it is also undertaking and making significant progress. This innovative program should be afforded the opportunity to work and produce the desired results.

The last area I would like to address is EPA resources for TSCA implementation. While many say the statute is flawed or outdated, I contend that a lack of sufficient funding has been every bit as big a problem as any challenge imposed by statutory language. EPA must be given the resources to appropriately manage chemicals in commerce.

In conclusion, I believe that if we take a careful, thorough look at TSCA and the history of its implementation along with the funding requirements associated with this kind of complex and technical work, we will find a strong statutory framework. I think if we work together as stakeholders in a transparent process and give this effort the time and thought that it deserves, we will end up in this Nation with a chemicals management system that is unparalleled. I thank you for your attention and the opportunity to be here today and look forward to your questions.

[The prepared statement of Mr. Drevna follows:]

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Mr. {Rush.} The chair thanks all the witnesses. I recognize myself for 5 minutes for the purposes of questioning the panel.

I would like to ask each one of you on the record the same basic question that I asked the first panel. Do you believe that TSCA needs to be reformed? Please answer yes or no beginning with Mr. Denison.

Mr. {Denison.} Yes, I do, Mr. Chairman.

Mr. {Rush.} Ms. Gerwin?

Ms. {Gerwin.} Mr. Chairman, my organization has not taken a public policy position.

Mr. {Rush.} Cal Dooley?

Mr. {Dooley.} We support modernization and reform, yes.

Mr. {Rush.} Mr. DeLisi?

Mr. {DeLisi.} We support revisiting the statute.

Mr. {Rush.} Mr. Drevna?

Mr. {Drevna.} Mr. Chairman, we support the revisiting, then if necessary the reform. I think it has to be a stepwise process.

Mr. {Rush.} Mr. Denison, it sounds to me like there are a lot of problem with this statute. It looks that way to me. Furthermore, it sounds to me like these are generally problems that cannot be fixed by having EPA take a different

approach to interpreting the statute or getting a few more staff. At the same time, others have suggested that the problem here is not really the statute, that the problem is EPA's interpretation of the statute. Now, what do you believe? Do you believe that the statute really needs to be rewritten or do you think that changes at the EPA will address all these problems and concerns?

Mr. {Denison.} Mr. Chairman, I believe that the problems with TSCA are fundamentally structural and inherent to the language with the addition that legal interpretation of those standards has made matters even worse and has confounded the Congressional intent, as evidenced in the original statute. But the problems are structural in that they require such heavy burdens on the agency in terms of both resources and evidence that they effectively take provisions that would work if those burdens were not so high and make them unworkable. For example, the requirement that EPA must face to require a company to test a chemical is so onerous in terms of having to first have evidence that that chemical may pose a risk in order to require information, the catch-22 that was alluded to earlier is in operation. Even if that were not there, the fact that a rule to require testing has to go through full notice and comment rulemaking and takes many hundreds of thousands of dollars to develop

and 2 to 10 years to develop means that when we are dealing with tens of thousands of chemicals, we simply can't rely on a system that has that level of burden placed on the agency and that level of resource required.

Mr. {Rush.} Ms. Gerwin, you mentioned in your testimony about the difficulties that your company is facing trying to move toward using safer chemicals, and I applaud your company's efforts. You describe tremendous costs that Kaiser Permanente has taken on in this effort including hiring your own industrial hygienist and coming up with the testing protocols to test the safety of products and chemicals that you use. This sounds to me like it is a very large burden that you have assumed. Are you aware of any other companies that are doing similar things? Do you think that a smaller company would be able to do what you have done?

Ms. {Gerwin.} It is a significant use of our time and resources to do the kind of testing that we have done, and I think there are other organizations that take on some similar tasks. I don't know of any that actually go to the lengths that we have gone to for so long. As I had mentioned in my testimony, we have been doing this for more than a decade, and I think smaller organizations would find it to be an extreme burden on their resources to try to do the kind of work that we are doing. So it is an investment on our part

that we are making in order to achieve the goals that we want to achieve and it represents an organizational burden of time and resources.

Mr. {Rush.} Are you aware of any other companies besides Kaiser, your company, that are doing similar things?

Ms. {Gerwin.} I am not aware of any organization that is doing the amount of testing that we are doing but I know that there are other organizations and some healthcare organizations that are focusing on single chemicals or single products.

Mr. {Rush.} The chair now recognizes the ranking member for 5 minutes of questioning.

Mr. {Radanovich.} Thank you, Mr. Chairman.

I want to welcome the panel and thank you for being here. I want to preface the discussion that we have by quoting a New York Times article that was printed on June 30, 2008, and it is regarding the hyperbole of taking on difficult subjects like this. It starts out by saying ``Need press, repeat, green, sex, toxic, cancer, secret and fat.'' Those are the things that get attention on the press, and the reason I am saying that is because when you start talking about, a previous witness mentioned the idea of the shower curtains that were a problem emitting odors and it was later on debunked in total because after they went into and found

out that there was nothing behind the accusation that it could be releasing as many as 108 volatile chemicals, and this is the scary part about getting into changes like this. Most people here agree that TSCA needs to be looked at, but what I don't want to see is a repeat of the Consumer Products Safety Act where you end up putting an incredible burden on industry, raising their costs in association with this. So again, you know, this is the red flag that needs to go up when the consideration of the revision of something like TSCA needs to happen.

I do have a couple of questions. Mr. Denison, when you mentioned on the issue of asbestos, was it TSCA that prevented asbestos from--as I understand the regulations that were being sought after had failed in court. Wasn't it shoddy workmanship on the part of EPA that brought that case to the court that ended up preventing the listing of asbestos?

Mr. {Denison.} Congressman, it absolutely was not. EPA spent more than a decade and millions of dollars developing that regulation. It amassed, as I said, a 45,000-page record of documentation. What the court found was on several levels that the agency had not examined every possible alternative to asbestos in every possible use of asbestos on the market, and if you read that court decision and the analyses that

have been done of it, you find very quickly that the amount of work that the agency would have had to have done to have met the statutory requirements as interpreted by the courts was simply impossible to reach.

Mr. {Radanovich.} Let me read the court decision. It says, ``We note that of all the asbestos bans, the EPA did the most impressive job in this area both in conducting its studies and in supporting its contention that banning asbestos products would save over 102 lives. Were the petitions only questioning the EPA's decision to ban friction products like brake pads, we would be tempted to uphold the EPA.''

Mr. {Denison.} Well, in that particular case, I am not familiar with that particular passage but I think what they were saying was that the standard of evidence that was required under the statute was only met according to the court in that one area. That doesn't mean that that is the only area that EPA looked at the risks or looked at the benefits but that is how high the bar was.

Mr. {Radanovich.} Thank you, Mr. Denison.

One of the other questions, I want to repeat this throughout this hearing because I think it needs to be a mantra, the previous witness had mentioned the awful accident in Bhopal, India. I fail to see any part of TSCA that had

anything to do with that accident or where that law came into it but you bring up these sexy things that get press and you alarm people and it opens the door to regulations that can be not really done surgically to make a law better but it brings it in with a meat cleaver and makes a mess out it. So that is the caution that I want to make, that is, if we move forward in regulation that it works for everybody and it keeps a legitimate, good industry and allows them to continue to thrive.

So with that, Mr. DeLisi, I would like to ask you a question. I come from the point of view that managing risk is not as simple as removing risk but rather gets into the business of risk-risk tradeoffs. Could you please tell me if you agree with this risk-risk tradeoff concept as it relates to the regulation of chemicals, for example, maybe formaldehyde?

Mr. {DeLisi.} Absolutely. Frankly, I would not want to be a regulator that had to try to make some of these decisions, but when you replace a chemical, you need to understand completely what the tradeoffs are and some of the things that have been suggested for replacement, things like benzene, I mean, if you don't have benzene you don't have Tylenol. So there needs to be a careful study of the tradeoffs that are being made, things like tires. We all

understand the risks. Tires can explode. I was on the New Jersey Turnpike yesterday and a truck lost a tire that exploded. We face that every day. So we all face risk tradeoffs in our lives every day and also involved in the chemical industry too.

Mr. {Radanovich.} Thank you, sir.

Mr. Chairman, I see that I am over time so I would request one more round of questioning.

Mr. {Rush.} The chairman is committed to a second round of questions for those members who can't complete their line of questioning in the 5-minute time.

Mr. {Radanovich.} Thank you so much, Mr. Chairman.

Mr. {Rush.} The chair now recognizes Ms. Schakowsky of Illinois.

Ms. {Schakowsky.} Thank you, Mr. Chairman.

First let me apologize to the panel for not being in the room for your testimony. I think as Mr. Dooley is well aware, that won't prevent me from asking questions, even if it should.

Mr. Denison, this is directed to you. Actually, they all are. As we have heard from several members today, everybody supports the use of good science I think it is instructive to the committee to be aware of the recent observations of a committee of the National Research Council.

In a 2006 report entitled ``Toxicity Testing for the Assessment of Environmental Agents,'' the committee stated, ``TSCA authorizing EPA to review existing chemicals for toxicity and exposure information on them is typically so incomplete that it does not support the review process. The basis for establishing priorities and requiring testing for industrial chemicals in the United States has not progressed much over the last 20 years.'' I am wondering if you agree with this assessment of the scientific experts.

Mr. {Denison.} Congresswoman, I do very much. I believe the National Academy was one of the first to sound the alarm about the lack of data way back in the mid-1980s and pointed out that TSCA was failing even then to generate the information needed to base good scientific decisions about chemicals on and that report that you alluded to just 2 years ago simply says that we have not made much progress in the intervening 2 decades in terms of tackling that basic problem. The Academy has also issued a set of reports over the last few months on risk assessment as managed by the Environmental Protection Agency and it has found that there are major problems with the assumptions that EPA uses and with the lack of ability for EPA to recognize that people are exposed to multiple chemicals at the same time, not just one chemical at a time.

So I think the good science mantra that we hear here is absolutely a need that requires TSCA reform because TSCA is not using the best science, and I think that we have an opportunity here to bring our chemicals management program into the 21st century in terms of using the best science out there to drive these decisions. So the notion that good science is only practiced by industry somehow or that this is a one-sided issue is not the case.

Ms. {Schakowsky.} This all may have come up already in testimony, so were we to do in a perfect world the kind of review that is necessary, it wouldn't just be chemical-by-chemical review, we would also be looking at the cumulative effect and the interactions as well?

Mr. {Denison.} That is right. We are exposed to multiple chemicals from multiple sources all at the same time and yet our assessment methods and our way of going about getting data on chemicals one at a time does not lend itself to elucidating the question, what is the impact of all of that cumulative and aggregate exposure. So there is a lot of new science going on here that could begin to answer that question. We need to incorporate that best science into the way EPA assesses chemicals.

Ms. {Schakowsky.} We worked a lot in this subcommittee and committee on the Consumer Products Safety Commission

Improvement Act, and I have hear some suggest that we shouldn't worry about levels of a particular chemical in a particular product such as phthalates in rubber duckies because it is far too low to have any impact. How are we to respond to that kind of charge?

Mr. {Denison.} Well, it is a very good question. I think the emphasis that the associations at this table just made on the need to look at use of chemicals and making decisions about them I hardly endorse. The problem has been that we have done a very lousy job as a Nation in understanding what we can be exposed to and how. The phthalates in plastics, the brominated flame retardants used in our furniture are all chemicals that for decades we were told there would be no human exposure to those chemicals. They absolutely would stay put and we would never be exposed to them. We have found out how wrong those assumptions were. So I think part of the reason why I call for much more comprehensive information about chemicals including the use of chemicals, because I agree that is very important, is because without that information, we make wrong assumptions that prove wrong only decades later when essentially the entire human population has been exposed to those chemicals and we still don't know what the risks are.

Ms. {Schakowsky.} Well, this is a new area of

jurisdiction for our subcommittee that we look very much forward to working on. I thank all of you for your input and testimony.

Mr. {Rush.} The chair now recognizes Mr. Sarbanes.

Mr. {Sarbanes.} Thank you, Mr. Chairman.

Thank you all for your testimony. I am trying to understand how TSCA is viewed from sort of different quarters, and I imagine there are some people who would say that it is a joke. If you were just at lunch with somebody, Mr. Denison, and they said oh, yeah, TSCA, you know, that regulates chemical safety, would you, well, that is really kind of a joke or would you say it is an open secret that it doesn't really do much, or do you say well, that is a reasonably good statute that just needs some upgrading and overhauling? Just kind of put it in a vernacular for me.

Mr. {Denison.} Congressman, I think I would probably aim toward the middle of the three statements that you made. I think it is largely an open secret that this policy has not been sufficiently protected, that EPA has not been able to get the information it needs and has not been able to act on that information when it does happen to obtain it. So I don't know that it is a joke. I think the intent at the time and the policy statements in TSCA are very solid. The problem has been that it simply has not delivered on the

promises it made, and I think that is inherent in the statute that has not been looked at for essentially 3 decades. So we have to go back and figure out why it didn't work and fix those structural defects.

Mr. {Sarbanes.} Let me ask you about REACH because a couple people have alluded to that, some with a sense of alarm, and I would ask anyone on the panel to speak to this. Is REACH too far, is that overreaching to go to REACH? I mean, how much of a burden would that really represent? Describe that burden in terms of there might be an initial period of assimilating the new standards but presumably over time you can make the gathering of information, the presentation of safety data and other things part of the course of your operations such that it would not be so burdensome. And I don't know that REACH is the answer. It just that it has been invoked a couple of times as a standard either to be concerned about or to reach for. So again, anybody can speak to that.

Mr. {DeLisi.} I would like to make a couple of comments on that. First, many of the things that have been discussed this morning and this afternoon are not regulated by TSCA. There was a lot of discussion this morning about exposure to biocides and insecticides and things like that, which are regulated under FIFRA, not under TSCA, and my understanding

from my friends in the ag chemical industry is, there is broad reviews being undertaken on a whole swath of ag chemicals under the FIFRA statute. There was some reference this morning to some cleaning products and some consumer goods. I don't think TSCA was ever envisioned to be involved in that. That is the Consumer Products Safety Commission and other places where things are reasonably well regulated.

REACH is a significant overreach because of the deadlines and the way things are put together under REACH and the so-called substance information exchange forms. When the E.U. proposed REACH, they expected to have somewhere around 30,000 products and 300,000 pre-registrations. What they ended up with is 2.5 million pre-registrations of 150,000 products. Until the world gets a chance to see if REACH can work, 3 or 4 years from now we may all be sitting here saying REACH is an outstandingly good way to regulate chemicals and be recommending it to Congress and EPA to look at it, but I think the E.U. needs a chance to test it and see if it works. There are many of us that believe it is going to have a substantial detrimental effect on the E.U. economy all the way up the line.

Mr. {Dooley.} Congressman Sarbanes, I would just encourage the committee--Stu Eisenstadt has submitted a statement for the record that deals with REACH and I

encourage you to read it. It includes some of the information that Mr. DeLisi also addressed, but I would also encourage the committee to look not only at reach but look at the Canadian system that they are currently putting in place because they are somewhat different, and I think they are instructive in terms of how we think we can be most effective in modernizing our TSCA system.

One of our concerns about REACH is, is that it doesn't really embrace a prioritization system. You know, we always are going to have to recognize that, you know, a regulatory agency such as EPA is going to have limited resources. We ought to be targeting those resources and focusing our greatest concern on those chemicals that are chemicals of concern, that might be those that are persisted, that are bio cumulative and that we ought to also then have a prioritization where you are going to require more information from my member companies when you have these high chemicals of concern, which REACH doesn't address effectively. The Canadian system takes a much different approach where they have analyzed about 23,000 different chemicals. They identified 4,000 or so that we ought to be focusing most of our attention on. When we are talking about modernizing TSCA, we think that has to be one of the fundamental components of it. You know, let us set up a

system where we are providing more information and data out there. Let us identify those chemicals which we should be most concerned with in terms of the health risks. Let us ensure that EPA has the resources and the ability to make a safety assessment of those chemicals that are going into the marketplace because ultimately, you know, my manufacturers, my companies want to ensure that Kaiser has the confidence in the products that they are using and they are going to have the confidence when they are assuring that the private sector is providing the right information and EPA and the regulatory process is doing the appropriate science-based assessment of the safety of those products.

Mr. {Sarbanes.} Thank you.

Mr. {Denison.} Could I briefly address that, Congressman?

Ms. {Schakowsky.} [Presiding] Yes.

Mr. {Denison.} REACH is a reality. It is in place and it changes the dynamic of many of the issues we are talking about as we look at TSCA reform. So most of the chemical industry is global in nature and many of the companies represented by the associations at this table do business in Europe. They are already going to have to comply with REACH. They are going to have to develop the data that it requires. That makes our lift that much easier. You know, we don't

have to reinvent the wheel, and I totally agree with Mr. Dooley, we shouldn't be out there testing chemicals that have already been tested in Europe. So I think REACH, regardless of how good or bad a model people think it is, it changes the entire chemical global economy in a way that has to be recognized and has to be taken into account in terms of how we think about TSCA reform. The idea of getting to all of the chemicals in commerce which REACH is trying to do I think is fundamentally where we need to go. How fast we can get there and how we do it and how we prioritize that, those are all great areas for discussion. But we have to get to that point.

Ms. {Schakowsky.} My friend, Mr. Stearns from Florida.

Mr. {Stearns.} Thank you, Madam Chair.

Mr. DeLisi, is it unfair to say that since the World Trade Organization will make it very tough to ban articles in commerce, if we ban chemicals in the United States, the manufacturers of those chemicals in the United States will go somewhere else, but the products for which the chemicals were made will still wind up being sold in the United States, and if so, why?

Mr. {DeLisi.} Basically the United States consumer will look for the best value they can get, and if you take a chemical out of commerce in the United States that products a

product that the consumer wants to buy and they can get the same finished product, the same finished article from India, China or Korea or anyplace else, that material will find its way to the United States market and the United States will have lost the ability to produce that product and the WTO would make it very difficult to ban the importation of that article as long as there was no exposure to that particular product.

Mr. {Stearns.} Do you want to add to that, Mr. Drevna?

Mr. {Drevna.} I would like to add one thing to that and maybe augment it a bit, and again, you know, I think we are all sitting at the table, and the first panel, I think we don't disagree on a lot. It is how we get there that is the important thing and do it the right way. But in follow-up to Mr. DeLisi's comment, if you don't make the finished product, if you don't have the chemical here, you are not going to make the finished product here, and if you start going down the food chain, so to speak, you are not going to have the building blocks made here either, my members, the petrochemical producers. So if we don't do this right, we will be ceding our entire manufacturing base to foreign suppliers. So these are the kind of things I think that Ranking Member Mr. Radanovich was speaking about, that whatever we do, let us do it right. From the industry side

here, we are not sitting here saying don't do anything to TSCA, leave us alone, you have beaten us up over the last 30 years. No, we are not saying that at all. We all have the same objective, I hope, because if not, we shouldn't even be here. But let us make sure we do it right so from Mr. Denison's side of the table, and I don't want to put sides on this thing, that we get to where he and his group wants to go but we still maintain a strong manufacturing base and employment in this country. And again, they are not mutually exclusive.

Mr. {Stearns.} Mr. DeLisi, small- and medium-sized companies, can they do the REACH themselves?

Mr. {DeLisi.} It is almost impossible. The setup under REACH, all the testing work has to be done in so-called substance information exchange forms, many of which have more than 4,000 or 5,000 members, and so what is happening is that consortia are being formed to do some of the testing and in many instances the consortia are being controlled by very large European companies and sometimes they are not allowing U.S. and other producers equal access to the data. It is going to be very, very difficult to figure out how small- and medium-sized companies can survive under REACH-like requirements.

Mr. {Stearns.} Maybe we can talk about, I guess REACH

is just starting in Europe. Can you tell me the laboratory capacity in Europe maybe after REACH went into effect? Has this allowed the European chemical manufacturers to innovate with better or safer chemicals or more carbon emission-friendly efforts like alternative energy or green energy? What is the status here?

Mr. {DeLisi.} Well, it has been widely published that most, if not all, the laboratory capacity in Europe is being diverted to REACH testing requirements, and in fact a lot of the laboratory capacity all over the world is being diverted to that and so it is not doing other kinds of things that may or may not have a better result.

Mr. {Stearns.} So you are saying basically they are not innovating and they are not necessarily providing safer chemicals, they are just complying with all the regulations?

Mr. {DeLisi.} There is only a limited amount of resource to put into R&D activities and a lot of it right now is being diverted into REACH.

Mr. {Stearns.} So if that happened in the United States, do you expect the same thing to happen here that is happening in Europe?

Mr. {DeLisi.} Undoubtedly.

Mr. {Stearns.} Is your contention that the main difference between REACH and TSCA is not section 6(c)

requirements to consider other factors but rather whether sound, high-quality and repeatable science underpins the regulation rather than unsubstantiated research or gaps in the data? A very contorted question. The main difference between REACH and TSCA.

Mr. {DeLisi.} The main difference between REACH and TSCA is, there is no grandfathering under REACH and so it requires complete testing data sets to be done on everything that is going to continue to be in commerce regardless of the inherent hazards or known on the products. So it is requiring the redoing of an awful lot of effort that is reasonably well known by industry.

Mr. {Stearns.} Mr. Drevna, do you want to comment on that too?

Mr. {Drevna.} Well, you know, I only go to say that, you know, and I will agree with Mr. Denison, if it already done, why duplicate it, and to force that on every manufacturer in the United States will cause paralysis.

Mr. {Stearns.} Thank you, Madam Chair.

Ms. {Schakowsky.} My friend, Ms. Sutton, the Representative from Ohio, is next.

Ms. {Sutton.} Thank you, Chairwoman Schakowsky.

Mr. Denison and all of you, it has been alluded to here today, and I think that most Americans would be shocked that

asbestos is not currently banned. I think that they would be surprised to learn that. A week or so ago we had a hearing in another area but I am noticing a pattern here, and it dealt with the tainted peanut butter that has resulted in a salmonella outbreak across this country killing people where I live, and we learned then, or I know because I knew it because we introduced a bill last year to give the FDA mandatory recall authority, which people were likewise shocked to understand that our government didn't have the authority to recall things when they know that there is a problem, that it is voluntary, that we expect companies to just do what is in the best interest of the American public and perhaps sometimes they live up to that more than others. Certainly some do, some obviously do not.

And then you come and tell us about the issue of formaldehyde in plywood, and I just have to get more information about this. You made a reference to the United States becoming a dumping ground for unsafe products and you used the example of the plywood coming in from China, plywood that does not even reach standards that allow it to be utilized in China or Japan or other parts of the world, but it coming to the United States. And I guess my first question is this. It is coming to the United States because it is cheaper?

Mr. {Denison.} Yes, that is the primary reason. Those adhesives are less expensive than the safer alternatives and they reduce cost and there are other reasons that have to do with why it is being made in China in the first place that make it cheaper as well.

Ms. {Sutton.} And I would love in another venue to talk about those other reasons because, you know, I am a person that thinks frankly our international trading system isn't living up to the promise that perhaps it could but another day and another time.

Okay. So it is coming in because of its cost, lower cost, it is being imported. I assume that it has been banned for use in these other countries because of data that exists that shows it is dangerous, correct, so we know it? And what is the liability for a company that is choosing because it is cheaper to import this which we know is toxic for the American people? Can you give us an idea about what potential consequence that company has when, you know, years from now people suffer and die because we are allowing it to come into the country?

Mr. {Denison.} Well, I do think that the contrast between asbestos and an example like formaldehyde is an important one. Part of the reason that asbestos despite the fact that it was not banned is actually largely off the

market, it is creeping back in in a few places but it is largely off the market, is because of liability that the companies that made it and used it face. But that is a very special case because asbestos causes a signature disease that can be linked directly to asbestos exposure. Most chemicals are far more complex than that and the ability to go to court and say this chemical caused that person to get that disease is very limited. That is part of the new science that we have to incorporate into the way we think about chemicals because we can't wait until we can have absolute proof that chemical X is the sole cause of disease Y in order to regulate. Formaldehyde is in that case where we know it is linked to many different diseases, and in fact actually there the evidence of its ability to cause cancer is established firmly. But I think we have to adapt our model and the way we think about chemicals and this burden of proof to reflect the reality of the science that we now know about chemical exposures and effects.

Ms. {Sutton.} Well, I appreciate that and I would love to follow up with you after the hearing. Thank you.

Mr. {Denison.} I would be happy to.

Ms. {Schakowsky.} Now a new member to this Congress and to this committee, Mr. Scalise.

Mr. {Scalise.} Thank you, Madam Chair.

Mr. Dooley, we have had some testimony in other subcommittees where the effects of energy regulation is being considered, what effects that would have on various industries, and there were a few industry members of your organization that had talked about the various problems they have had as energy costs went up but also as some of these changes are being anticipated and what that meant to jobs in the United States and in some case layoffs here and other cases people making decisions to move operations overseas so as not to be regulated in an overly burdensome way, and I think as we look at TSCA and revisit the changes that might be made and we realize the importance of being cautious that we address problems without being over-regulatory in a way that actually creates jobs that are safe jobs in this country. How is your industry looking at this and what things have you seen already or what concerns do you have about how that may impact jobs for businesses that are playing by the rules, doing things right but concerned about over-regulation?

Mr. {Dooley.} I think what our industry is supportive of is a modernization of our chemical management system that is done in a manner which enhances the public confidence that consumers and users of our products have, that also ensures we are enacting a system that is science based and is

efficient and also embraces a risk-based approach, and we think we can do that through this modernization that would accomplish a lot of the objectives of all parties that have testified today. But there are some areas which we think are critical in order to maintain the investment in the United States in the development of these innovative and technological advances that are contributing to the U.S. chemical industry being at the leading edge of, you know, a lot of the energy efficiency technologies that are being developed.

And if I can just touch a little bit of where we at, which is again, as I have stated before, is that, you know, we are committed to providing the appropriate data. You know, there needs to be some improvements in what we have seen in the past. We need, though, to ensure that we are prioritizing when we are providing all that data, unlike what REACH does where you have, you know, millions of these applications that are coming in, is that you need to be, you know, targeting those chemicals that should be the greatest concern, and then when you have those chemicals that are the greatest concern, it might be formaldehyde, it might be asbestos, it might be something else, is it doesn't mean that those chemicals or products are going to be dangerous in all applications because some applications might not have an

exposure to humans and so then you are going to have to have a system that will allow you to go down and to identify where those chemicals are at risk, those exposures which we should be concerned with so that we can also incorporate that data that can help us manage that. And the one thing that also brings into play is, is like REACH is taking more of what we refer to as a hazard-based approach, that if you have a chemical that is identified as a chemical of concern, is that you could ban it for all applications versus just those applications which result in an exposure that could result in a problem. And that is a system that we think if you put in place will ensure that our industry can continue to be competitive internationally.

Mr. {Scalise.} And I think there are some--ethanol is an example where used at a high level it is very dangerous but it is actually very prevalent in a number of products that are used across the board at a low level and it causes no problem, so obviously the dosage, the amount is something that has really go to be focused on.

Mr. {Dooley.} And that is a great example. We had Ms. Swanson with the Learning Disabilities Association which talked about, you know, some of their concerns with neurological impacts of various chemicals. Ethanol is in fact a chemical that has been demonstrated if used in excess

to cause fetal alcohol syndrome, a neurological disease, and something nobody wants to, you know, see occur. But ethanol is also a naturally occurring product in apple juice. If you took it to the extreme and took a hazard-based approach because ethanol created a neurological response, you would end up then again in the extreme banning apple juice and a lot of other, you know, natural products which actually have no risk or pose no risk to consumption. And so that is the challenge we face here is, you know, how do we put together a system where we provide the adequate information, we have those exposures which create a risk and a problem and ensure that we are providing that level of safety.

Mr. {Scalise.} And I think that is a concern, that we take a responsible approach that encompasses all those variables

I will yield back. Thank you.

Ms. {Schakowsky.} Representative Castor of Florida.

Ms. {Castor.} Thank you, Madam Chair.

I would like each of you on the panel to just state very briefly whether or not you support as part of the modernization of TSCA the shifting of the burden of proof to the chemical manufacturer rather than forcing EPA to assume complete responsibility for determining risk.

Mr. {Drevna.} Ms. Castor, I think a lot of that is

already being done. There has been talk that a REACH-like approach would take all the burden off the government and put all the burden on the industry. The industry is more than willing to give the appropriate data and to do what is right but that is not going to relieve government, the EPA, whatever authority you deem necessary to handle these myriad of laws, that they can't get data from other sources, and they do, and I think there is either a miscommunication or a misunderstanding with how much data EPA has and what they have done with it. They have got tons of data.

Ms. {Castor.} So is that a yes or a no?

Mr. {Drevna.} I am sorry. Yes, we think that the industry has and will step up more to the plate.

Ms. {Castor.} And you would support a statutory change?

Mr. {Drevna.} If it is done--again, as I said before, if it gets to the end, the result without extra burdens, without making it non-competitive vis-à-vis international and keeping the American economy strong and growing or hopefully get back to that.

Mr. {DeLisi.} I agree basically with what has been said and I think at the end of the day that burden is going to need to be shared.

Mr. {Dooley.} I would just echo that. It is an inevitably going to be a shared responsibility. Our board at

the American Chemistry Council has adopted a position where EPA needs to be in a position of assessing the safety of the products that we put into the marketplace. So, you know, we are willing to accept a much greater responsibility than is currently required under statute but it will inevitably have to be a shared responsibility.

Mr. {Gerwig.} And I think where the burden of proof should not exist is at the end-user level, which is the experience that I have been describing at Kaiser Permanente. So I think the discussion that others on the panel have been having about perhaps a shared collaborative approach would be a good one.

Mr. {Denison.} I do think in a legal basis, the industry needs to have the burden of proof, but I absolutely agree, EPA needs to play an oversight role of that that is very careful.

I do want to say, there have been, with all due respect, a number of major inaccuracies stated about REACH. It does prioritize. It does not require the same data for all chemicals. It has some aspects that are driven by hazard but its fundamental framework is risk based, not hazard based, and it does consider uses of chemicals in deciding whether or not to restrict a particular use.

Ms. {Castor.} Thank you, and I have one other question.

I would ask you to submit your answers for the record because I think it is going to be a more involved answer. I would ask you all to explain why since the adoption of TSCA in 1976 only one group of chemicals has been barred.

With that, I will yield back my time.

Ms. {Schakowsky.} Thank you.

At this point let me ask unanimous consent to submit a number of documents including those from Mr. Radanovich and others into the record.

[The information follows:]

********** COMMITTEE INSERT **********

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Ms. {Schakowsky.} Mr. Radanovich has asked to have one more question, and you may.

Mr. {Radanovich.} Thank you, Madam Chair.

Mr. Dooley, welcome to the panel and back to Congress. Cal and I shared a district in California, a big ag producing district, so I have got a FIFRA question. But I wanted a real quick once, since we are running out of time and going to vote, on the change-o-meter if zero is no change to TSCA and 10 is change like the Consumer Products Safety Act, where would you be in the zero to 10 range?

Mr. {Dooley.} That is tough because that is always going to be relative, and, you know, I could say that 50 percent but Mr. Denison might think my 50 percent is only 25 percent. But, you know, I would contend that TSCA is not broken but is in dire need of modernization and we think that it provides a good foundation to move forward, and so I will go with a 50 percent change-o-meter.

Mr. {Radanovich.} Real quickly, Mr. Dooley, if FIFRA-- there is a lot of people that feel that the FIFRA, which deals with pesticides, agriculture stuff, that the rules of FIFRA ought to just be flipped into TSCA and that be done. Can you state whether or not that would be a great idea or not?

Mr. {Dooley.} Well, we would be very, very cautious about going down that path, again because of the--it wouldn't in many cases be effective at enhancing the public safety of our products, but I would say again that when you go through a process of prioritization and you do find a chemical that is of great concern because it might be an endocrine disruptor, it might be biocumulative, is that we are going to have to have a different standard in terms of the amount of data that the industry is going to have to provide and the scientific research and assessment of those products. We don't contend it would be FIFRA necessarily but it will be a higher standard than what is currently being provided under TSCA.

Mr. {Radanovich.} All right. Thank you, Mr. Dooley, and Madam Chair, I yield back.

Ms. {Schakowsky.} Thank you. At this point let me thank our panel for their testimony, we appreciate it very much, and the hearing is adjourned.

[Whereupon, at 1:46 p.m., the subcommittee was adjourned.]