Testimony of

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House Committee on Energy and Commerce

"H.R. 5820 - The Toxic Chemicals Safety Act of 2010"

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Mr. Chairman, Congressman Whitfield, members of the Subcommittee – thank you very much for inviting me to testify today. As everyone on this committee knows, the American Chemistry Council is a strong advocate of reform of the Toxic Substances Control Act.

Chemicals and chemical regulation have a broad impact on the American economy. A sustainable American chemistry industry is critical to American security and economic health.

This is why we introduced ten principles around which we believe TSCA modernization can and should be designed. Put briefly, it is our view that any approach toward updating chemical regulation should

- Ensure worker, consumer and public safety as its highest priority;
- Preserve the ability of the United States to serve as the innovation engine for the world; and
- Protect the hundreds of thousands of American jobs fueled directly and indirectly by the business of chemistry.

Recently, we were delighted to hear Speaker Pelosi announce that for the balance of this legislative session Democrats would focus on a "Make it in America" theme. While not always obvious, the chemistry industry and the industries and businesses that rely on it are at the core of our manufacturing sector. For example, the chemical manufacturing sector alone employs more than 800,000 American workers. And, 96% of all manufactured goods are touched in some way by chemistry.

First and foremost, our industry is committed to ensuring our chemicals are safe for their intended use. And we firmly believe that reforming TSCA to enhance the safety assessment of chemicals while maintaining the ability of the U.S. chemical industry to be the international leader in innovation and manufacturing are not mutually exclusive.

However, we must strike the right balance and our assessment of H.R. 5208 as currently drafted promotes unworkable approaches to chemicals management.

It creates additional burdens that do not contribute to and, in fact, detract from making advances in safety, while coming up short with respect to promoting innovation and protecting American jobs.

I greatly appreciate the task you have undertaken. I also greatly appreciate your willingness to listen to our ideas both during the stakeholder process and today at this hearing. My simple request is that we recognize that chemicals management is an extremely complex undertaking that affects the entire American economy and there is much more work that needs to be done.

As to HR 5820, I want to first acknowledge that the bill, as filed, attempts to address some concerns that ACC and others had with the original discussion draft.

For example, the legislation makes it explicit that safety determinations should focus on "intended uses" for chemicals (though there are troubling uncertainties as to how this would be applied under the safety standard as presented in the bill).

It now mandates that EPA develop tiered and varied approaches to gather the data that would be required on chemicals – in keeping with the principles of sound science.

The bill also allows for the renewal of confidential business information claims (although, again, troubling concerns remain).

Despite some improvements, there are still significant fundamental issues in the legislation that undermine its workability.

In modernizing TSCA we need to take stock of the shortcomings we are trying to improve and build on what currently works. Most stakeholders have pointed to the lack of a systematic look back at the grandfathered chemicals in the current program as an area that needs to be addressed – and we agree.

They have also suggested that current TSCA can make it difficult for EPA to get the information it needs and take appropriate actions due to burdensome requirements – and we agree with that as well. But it is important to note that many believe the new chemicals program under current law is working quite well.

There are many aspects of HR5820 that we feel need to be addressed. Today, I'd like to highlight three: the safety standard, the regulation of new chemicals and the regulation of products imported into the United States.

SAFETY STANDARD

I am confident everyone agrees that when someone gets behind the wheel of a car, buys a piece of furniture or puts on clothing, the chemicals in those products should be safe for their intended use.

However, the safety standard as established in this bill sets such an impossibly high hurdle for all chemicals in commerce that it would produce technical, bureaucratic and commercial barriers so significant they would be the law's undoing.

For example, the bill requires that "aggregate exposure" to a chemical or a mixture meets the "reasonable certainty of no harm" standard.

This means that when a chemical or mixture is listed for a safety determination, the manufacturer(s) carries the burden of showing with reasonable certainty not just that the company's use of the chemical and any resulting exposures from those uses pose no harm, but that **all other aggregated exposures** from **all other uses** of the chemical pose no harm. It is not clear to us how any company could actually do that.

TSCA regulates thousands of chemicals, many with hundreds of uses. TSCA chemicals have industrial applications and consumer product applications. I am not sure how industry or the EPA would be able to gather enough information to meet this aggregate exposure standard for each and every chemical.

In addition to aggregate exposure, HR 5820 also requires EPA to consider the "cumulative effects of exposure to chemical substances or mixtures in making its safety determination."

The term "cumulative effects" is undefined and at present there is neither sufficient data nor a sufficient process in science to conduct a proper analysis of cumulative risk.

The bill also directs EPA to incorporate recommendations from a recent National Academy of Sciences report called "Science and Decisions,"

which includes some that are quite useful, but others that remain very controversial and are not based on the best available science.

The result of these and other aspects of the safety standard as currently articulated in HR 5820 would be tremendous uncertainty and a bureaucratic stalemate, which would result in less innovation, and job losses rather than job creation. The combined effect would place a serious drag on an already sputtering economy.

NEW CHEMICALS

With respect to new chemicals, many have commented that EPA's current process is the most effective part of existing chemical management regulations.

But the new approach in HR5820 – such as its overly-broad definition of adverse effects and the amount of upfront data required before a new chemical can be put on the market - will effectively discourage the introduction of new chemicals, including new greener chemicals, into commerce in the United States.

If EPA cannot render a timely decision – and doing so may prove to be an overwhelming task-- new chemicals would essentially be barred from the U.S. market.. Even a better resourced EPA will struggle to make these new chemicals decisions while simultaneously evaluating existing chemicals, receiving and managing thousands of minimum data sets and making routine declarations of new uses of existing chemicals. Timely action is almost unimaginable.

Our customers won't stop asking for new chemistries because EPA is unable to act. The result will be that this innovation moves to other countries with more manageable regulatory regimes – and the production of these new chemistries will move with it. We would export innovation and jobs instead of products. Moreover, EPA will now have a full year to approve a new chemical, which is considerably longer than the 90-day period now afforded the agency. The extended time cycle just doesn't work with the realities of the marketplace.

There are better ways to do this – such as requiring additional data as a new chemical's volume increases or as its use patterns undergo significant change.

Related to new chemicals is the provision that provides incentives for development of what are defined as "safer" alternatives. On the surface this sounds appealing but the approach suggested in the bill is problematic.

If a chemical meets the safety standard, it is, by definition, safe for its intended uses. Under the safer alternatives provision, EPA is forced to engage in the impossible and inappropriate task of picking winners and losers among a class of chemicals, all of which have already been deemed to be safe.

By way of example, is a chemical that has a higher flammability but lower acute toxicity a "safer" chemical? Who is best equipped to make that determination?

Just as troublesome is a provision casting doubt over the future of the existing polymer exemption even though in 1995 EPA reviewed the safety of polymers and concluded that this exemption was appropriate. This provision would create serious uncertainty over the future of a major economic engine in our industry.

Innovations in polymer chemistry are creating jobs and providing energy savings by light-weighting vehicles, by creating the products that harness wind and solar energy, and by making appliances, homes and commercial buildings more energy efficient. It would be a giant step backwards to drive the development of these products and the jobs they create off our shores.

IMPORTERS OF ARTICLES

In the discussion draft, one of our greatest concerns was that it created an expensive and time-consuming regulatory burden that would put U.S. manufacturers at a competitive disadvantage to our international competitors. It unintentionally created a double standard by permitting overseas manufacturers the freedom to avoid most of the regulations that would be imposed on domestic manufacturers.

In response to this concern, H.R. 5820 puts the burden of compliance on the retailer and other importers in a manner that is unworkable, unenforceable and not compliant with international trade laws.

For example, a company importing products from China may be required to certify that that the Chinese exporter has conducted a full assessment of the aggregate exposure risk of that product in the United States,.

While we agree that you need to avoid double standards, we're entering into an area of extraordinary complexity that must be thoroughly evaluated. We do not believe the proposed approach is workable, and this, again, reflects the magnitude of the challenge before Congress in addressing chemicals management.

CONCLUSION

For TSCA modernization to succeed, consumers, industry, investors and government alike need a system that is sound, fair and provides a high degree of certainty. Regulatory certainty and workability are critical to the success of U.S. businesses. National uniformity, rather than a patchwork of state laws, is also important.

We must recognize that this is an issue of great national significance. It needs to be addressed in a manner that recognizes its complexity, takes into account what we've learned from TSCA and other regulatory programs and sets up the EPA for success. Reforming TSCA the right way ensures we will "Make it in America."

Modernization of TSCA must also be done in a way that allows the United States to maintain its preeminent role as the country that innovates, the country that makes things and the country that provides jobs and economic security to its people.

HR 5820 includes some improvements over the discussion draft circulated to this committee in the spring, but its foundation is still unworkable. There is clearly significant work that remains to be done.

To that end, the American Chemistry Council and its members are committed to continuing to work with this committee and with other stakeholders to modernize the law in a meaningful and effective way.

We firmly believe that you can develop legislation that ensures safety while promoting innovation and protecting jobs.

Thank you again for this opportunity, I look forward to your questions.