



Information Technology Industry Council

Hearing on

“S. 1009, the Chemical Safety Improvement Act”

Testimony of

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Before the

Subcommittee on Environment and the Economy

Committee on Energy and Commerce

United States House of Representatives

November 13, 2013



Chairman Shimkus, Ranking Member Tonko and members of the Subcommittee:

Thank you for the opportunity to testify at today's hearing regarding Senate bill 1009 – The Chemical Safety Improvement Act.

My name is Dean Garfield and I am the President and CEO for the Information Technology Industry Council, or ITI. ITI is a global trade association representing over 50 of the world's most innovative companies in the information and communications technology sector. Our members have an abiding commitment to sustainability and corporate social responsibility – a commitment we have again demonstrated through our strong leadership to continually improve our processes, supply chains and our products to better protect human health and the environment.

The tech sector is largely a home-grown U.S. industry that has achieved unparalleled global success. Our companies annually spend billions of dollars in the U.S. on research and development, design and manufacturing, and millions of American workers. America's tech sector is defined by innovators, creating dynamic products and services that transform how we all live, work, and play. We're job creators, putting nearly 6 million people to work across America each day. We're growth engines, contributing about \$650 billion annually to the U.S. economy -- a figure that expands each year. Our sector's hardware, software and service innovations make the rest of the economy more productive, increase energy efficiency, reduce costs and increase the quality of life for Americans and global populations alike.

Our sector is committed to protecting human health and the environment, and we have realized significant gains, often on a voluntary basis, both with regard to the materials and processes we use to manufacture products, and to those materials that are contained within our final products. We have established and implemented high standards throughout our global supply chains: from the sourcing of minerals used in our products; to the conditions in

our suppliers' facilities; to the ongoing use of more environmentally-favorable materials; to the design of products that are more energy efficient and easier to upgrade; to the foremost private sector product refurbishment and recycling programs.

ITI is privileged to be invited to testify at today's hearing regarding the Toxic Substances Control Act (TSCA) and the Chemical Safety Improvement Act. As many people have noted, TSCA has not undergone substantial change since its enactment in 1976. Over the last several years, however, we have seen major changes in the regulatory frameworks used to oversee chemical safety in countries around the world and in some U.S. states. In that context, it is reasonable for Congress to consider whether TSCA needs improvement.

I can summarize our priorities for TSCA reform as legislation that:

- Meets human health and environmental objectives while also enabling U.S. leadership in technology development, manufacturing and economic advancement;
- Maintains an efficient process for the assessment and management of chemicals that allows the chemical industry to provide downstream industries with the materials they need on a timely basis.
- Provides timely evaluation and approval of new chemicals critical to innovation;
- Directs EPA to evaluate and manage chemicals in a transparent manner that ensures that chemical suppliers and downstream user industries have certainty regarding the use and availability of materials;
- Balances the need to ensure necessary confidential business information (CBI) protections with appropriate access to health and safety information to regulators and the public;
- Establishes a consistent set of standards, whenever feasible, across international and state borders that will allow our industry to design and sell the same product in all of our domestic and global markets.

General Perspectives

ITI and our members support targeted TSCA reforms that are consistent with continued U.S. leadership on technology development, manufacturing and innovation. TSCA is a chemicals management statute, meaning that most ITI members have limited, if any, direct compliance obligations. That said, our continued innovation and ability to manufacture and create jobs in the U.S. rests on continued certainty within the federal chemicals management program, timely approvals of new chemicals, and strong CBI protections for us and for our suppliers. In sum, we need a chemicals management program that can work in practice for EPA, for our sector's materials suppliers, and for our customers and the public. We welcome the opportunity to participate in the dialogue as it evolves.

In general, ITI promotes chemicals management approaches that consider the potential hazard of a chemical as well as the potential exposure associated with a particular use of that chemical. Of equal importance, a strong chemicals management program must rely on sound science and data, including the thorough assessment of the potential environmental, energy and human health impacts of proposed alternative substances. Our sector has experience in other jurisdictions with chemicals restrictions or outright bans based on hazard that yield questionable environmental benefits. In many instances, these results are coupled to the challenges or unintended consequences associated with the available substitutes.

We have reviewed the Chemical Safety Improvement Act that is now under consideration in the Senate. We applaud the efforts by the supporters of that bill to work together across party lines to find areas of common ground. We also agree with other stakeholders that S. 1009 is a reasonable starting point for consideration of how the TSCA program could be improved. In that regard, we would like to identify some specific areas that we think warrant further discussion.

Consideration of “Articles”

As with numerous other sectors of the American economy, ITI and our members have particular interest concerning how a reformed TSCA statute would address articles – the potential regulation of chemical content in components or finished products. The current TSCA allows EPA to apply its import and export provision to chemicals in articles (e.g., machine parts, computers, vehicles, etc.), as well as to chemical substances and mixtures.

Since the beginning of TSCA’s implementation, however, the U.S. government has exempted articles from these import/export provisions, while reserving its ability to regulate articles on a case-by-case basis. The Senate bill contains a problematic definition in its import provision that conflates articles with chemical substances and mixtures. We suggest that this definition either be deleted or appropriately rewritten to ensure consistency.

With regard to articles, we recommend that any TSCA reform bill:

- Retain the general article exemptions for import/export that have been recognized for over 30 years. Under this approach, EPA can issue a rule, when necessary, that would apply specific obligations to articles on a case-by-case basis. That authority should be retained for use by EPA in special circumstances.
- Include language that would guide EPA in addressing articles across the statute. Prior to considering articles, EPA should be required to demonstrate that the objective of the action cannot be adequately addressed through action on chemical substances and mixtures alone, and that the presence of the substance in the specific article would significantly contribute to public risks within the U.S.

Regulatory Alignment

We recognize that federal preemption is a challenging issue. The Senate bill would preempt certain types of regulations that the states may take once EPA has designated a chemical as a high or low priority, or has established a schedule for the chemical's safety assessment and determination. Our sector cannot manufacture a unique product for a given state, nor do we sell products on a state-by-state basis. Given that we design for a global marketplace and distribute our products on a regional basis through independent third parties, our sector has struggled in the past simply to meet state-specific product labeling requirements. Unique state-specific product design requirements would be unworkable, so we urge Congress to protect interstate commerce which depends upon consistent regulation across all states.

Confidential Business Information

The Senate bill appears to change the Section 14 criteria that EPA must use to determine what information may be claimed as CBI under TSCA. It is unclear at this point how the CBI protections provided under the Senate bill would differ from the protections currently in place. To be clear, ITI members and our supply chain partners need CBI protections to ensure that we can continue to introduce new materials and protect new uses of existing materials that enable competitiveness, innovation, economic progress and job creation. We support necessary CBI protections, while also recognizing that regulators and the public need appropriate access to relevant health and safety information.

Open Questions

ITI and our members have a number of open questions regarding the approach advanced in S. 1009.

First, the Senate bill would require EPA to conduct a risk assessment of high-priority existing chemicals for their “intended uses.” We need clarification as to whether this approach would require EPA to assess all uses of a chemical, including low-risk scenarios, or whether the Agency may focus on significant exposures that account for the chemical’s primary risk. This latter approach is the one that EPA currently applies in the TSCA program, and we support its continuation.

Second, the Senate bill rewrites a significant portion of the Section 5 provisions affecting the review of new chemicals under TSCA. The new provisions appear to incorporate elements of EPA’s implementation of the new chemicals program, but ITI would need to better understand what the intended changes would accomplish before we can fully comment on this language.

Third, the current standard for Section 6 of TSCA is fully compatible with Presidential Executive Orders that have been in place for decades. These EOs require agencies to evaluate regulatory options for achieving the purpose of a rule, and to assess the costs and benefits of all options considered. The Senate bill would divide EPA’s chemical program into a series of discrete steps (i.e., safety assessment, safety determination, risk management action, exemptions). It is not clear when EPA would prepare its Executive Order assessment under this new framework, or how the results of a cost-benefit analysis would be applied during the process.

ITI and our members support targeted TSCA reforms that are consistent with continued U.S. technology leadership, manufacturing and innovation. We welcome the opportunity to continue to participate in this important dialogue.

Thank you again for the invitation to testify today. I would be pleased to answer any questions.