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Statement by the Honorable Bobby L. Rush, Chairman
Committee on Energy and Commerce
Subcommittee on Commerce, Trade and Consumer Protection
Hearing: Revisiting the Toxic Substances Control Act of 1976
February 26, 2009

WASHINGTON, DC — "I want to welcome the Members of the Subcommittee to our first hearing of the 111th Congress. I am honored to chair this distinguished subcommittee and I will strive to serve all of its members honorably.

"I truly look forward to working with everyone 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 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 remains 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 or 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.

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"The scope of TSCA is very broad, and its intent is ambitious. TSCA is meant to provide adequate data on the potential health and environmental risks 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. Unfortunately, the statute has seemingly been a failure on both of these basic policy goals.

"Critics contend that the TSCA has failed to generate data on the health risks of the approximately 80,000 chemicals currently in use and the approximately 700 new chemicals introduced into commerce every year. Even though Sections 4 and 5 of TSCA authorize EPA to force companies to test their chemical products and generate risk data, the hoops the agency must jump through in order to exercise this authority have proven to be too burdensome. Rulemakings take years to finalize, cost hundreds of thousands of dollars, and are subject to constant legal action by companies who do not want to comply. As a former EPA Assistant Administrator once said, *"It's almost as if we have to, first, prove that the chemicals are risky before we can have the testing done to show whether or not the chemicals are risky."*

"Furthermore, once the EPA has made a determination that a chemical poses a health or environmental hazard, they have been unable to act on this determination. Section 6 of TSCA provides EPA with broad authority to regulate and ban toxic chemicals, but the burden of proof for action has proved so high that banning a chemical is virtually impossible. I think most Americans would be very surprised to learn that asbestos—a known carcinogen that kills 8,000 Americans 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 need of serious repair.

"I want to make clear that I believe reexamining TSCA is not only good for public health, but it's good for business. I do not believe that this hearing should reflect the old divisions of public health versus business, or the environment versus business. I appreciate the innovative spirit of American businesses and further recognize the importance of fostering that innovative spirit, especially during these perilous economic times. But the public's faith in the safety of its products and the chemicals that make up those products has been seriously shaken. I believe that reforming TSCA and re-establishing that faith will ultimately be a boon for American businesses of every stripe.

"Today's hearing is only the first in a series on TSCA. Today, we kick off the process in a deliberative fashion, and I hope that we can all work together in a bipartisan fashion.

"I yield back the balance of my time."

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