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# Opportunity for TSCA reform in the 112th US Congress

**After the mid-term Congressional elections in the US, the key question is: What now are the prospects for continuing the newly initiated process to reform the country's Toxic Substances Control Act (TSCA)? Michael Boucher and Andrew Shaw from the Washington office of law firm McKenna, Long & Aldridge discuss.**

In the 111th Congress which ran from 3 January 2009 to 3 January 2011, the debate about amending TSCA was marked by ideological and partisan divisions. In 2010, Representative Bobby Rush (D-IL) and Senator Frank Lautenberg (D-NJ) introduced companion bills to amend TSCA. These bills were strongly influenced by environmental and public health groups but largely ignored the concerns of Congressional Republicans and industry. Consequently, many saw the bills as one-sided, which contributed to their failure to make significant progress in the 111th Congress.

Despite the partisan battles this year, the main stakeholders in the ongoing debate about TSCA reform – Democrats, Republicans, the Environmental Protection Agency (EPA), public interest groups, and industry – believe that updating TSCA is necessary. Accordingly, an opportunity for bipartisan cooperation exists in the 112th Congress.

The make-up of Congress will be significantly different next year. In the November mid-term elections, Republicans gained 63 seats in the House of Representatives and reclaimed their prior majority. In the Senate, Republicans gained six seats and reduced the Democrats' majority to three.

## Committee shake-ups

During the elections, Congressional Republicans argued that President Barack Obama was dramatically increasing the Federal Government's interference in private enterprise. Republicans especially criticised EPA's regulation of greenhouse gas emissions, mountain-top mining, and industrial boilers. Regardless, Congressional Republicans are now pledging to pursue TSCA reform in the 112th Congress.

Prospects for reform depend enormously on the composition and leadership of key

Congressional legislative committees. The House Republican Steering Committee has selected Representative Fred Upton (R-MI) to serve as Chairman of the House Energy and Commerce Committee next year. Mr Upton is considered politically moderate and has said that he would like to pursue TSCA reform. Representative Ed Whitfield (R-KY), another important Republican on the House Energy and Commerce Committee, recently stated that Congress should take up TSCA reform next year. Initially, Mr Whitfield was expected to chair the Commerce, Trade, and Consumer Protection Subcommittee, which has jurisdiction over TSCA, but he is now also being considered to chair the Energy and Environment Subcommittee.

## Political priorities

In the mid-term elections, Republicans failed to secure a majority in the Senate but their gains ensure that the legislative process will have to be more bipartisan if any bill to amend TSCA is to pass the Senate. Senator Barbara Boxer (D-CA) is the current Chair of the Senate Environment and Public Works (EPW) Committee, which has jurisdiction over TSCA. She survived a tough re-election challenge and will remain chair of the EPW Committee next year. Mr Lautenberg, who authored this year's TSCA reform bill in the Senate, is expected to chair the Senate EPW Subcommittee on Superfund, Toxics, and Environmental Health. This subcommittee is likely to be charged with drafting any Senate legislation to modernise TSCA.

Republicans on the EPW Committee opposed Mr Lautenberg's bill this year, but there have been encouraging statements from Senator James Inhofe (R-OK) about modernising TSCA next year. Mr Inhofe, the Republican Ranking Member on the Committee, is a well known climate change sceptic and has been very critical of cap-and-trade legislation, EPA's regulation of greenhouse gas emissions, and other EPA regulations. Yet Mr Inhofe released a statement earlier this autumn in which he pledged to work with Senate Democrats on TSCA reform next year.

In the new political climate in the US, it is unclear whether President Obama will make

modernising TSCA a priority of his Administration next year. EPA is not expected to draft any legislative proposal of its own. Nonetheless, the Obama Administration is likely to be looking for opportunities to cooperate with Republicans next year, and updating TSCA could be such an opportunity.

Industry also has indicated a willingness to pursue TSCA reform next year. Cal Dooley, president and chief executive officer of the American Chemistry Council (ACC), recently stated that TSCA reform is one of ACC's "high priorities" for next year. Mr Dooley also indicated that he had reached out to John Boehner, the presumed Speaker of the House next year, along with leading candidates to chair the House Energy and Commerce Committee.

But several issues could frustrate potential reform efforts next year. First, the House Republican leadership may not view TSCA reform as a top legislative priority and the House Energy and Commerce Committee's focus will be on repealing the recently passed health care legislation and on increasing its oversight of EPA. Second, any consensus on TSCA reform could become a casualty of partisan battles on other politically-charged issues. Lastly, Republicans and Democrats still have significant differences of opinion regarding how much and what kind of change are needed to update TSCA.

Despite the potential obstacles to TSCA reform, there is reason for optimism. Divided government often produces gridlock but also can produce legislative breakthroughs. In the mid-1990s, President Clinton and a Republican Congress worked together to pass a number of important pieces of legislation, including welfare reform. TSCA reform offers a similar opportunity for bipartisanship.

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