

Union Calendar No. 413

111TH CONGRESS
2^D SESSION

H. R. 4678

[Report No. 111-683, Part I]

To require foreign manufacturers of products imported into the United States to establish registered agents in the United States who are authorized to accept service of process against such manufacturers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 2010

Ms. SUTTON (for herself, Mr. TURNER, Ms. LINDA T. SÁNCHEZ of California, Mr. CONYERS, Ms. ZOE LOFGREN of California, Mrs. MILLER of Michigan, Mr. BRALEY of Iowa, Mr. SARBANES, Ms. GINNY BROWN-WAITE of Florida, Mr. MICHAUD, Mr. DOGGETT, Mr. JONES, Mr. DUNCAN, Mr. HARE, Mr. KILDEE, Mr. STUPAK, Mr. DONNELLY of Indiana, Mr. GENE GREEN of Texas, Mr. TERRY, Ms. EDWARDS of Maryland, Ms. SHEA-PORTER, Mr. OBERSTAR, Mr. RYAN of Ohio, Mr. KANJORSKI, Ms. KAPTUR, Mr. KAGEN, and Mr. YARMUTH) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

DECEMBER 16, 2010

Reported from the Committee on Energy and Commerce with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

DECEMBER 16, 2010

Referral to the Committees on Ways and Means and Agriculture extended for a period ending not later than December 17, 2010

DECEMBER 17, 2010

Referral to the Committees on Ways and Means and Agriculture extended for a period ending not later than December 21, 2010

DECEMBER 21, 2010

Referral to the Committees on Ways and Means and Agriculture extended for a period ending not later than December 22, 2010

DECEMBER 22, 2010

Additional sponsors: Mr. MELANCON, Mr. ELLSWORTH, Mr. LIPINSKI, Mr. HALL of New York, Mr. GARAMENDI, Mr. DAVIS of Tennessee, Mr. DINGELL, Ms. PINGREE of Maine, Ms. CHU, Mr. STARK, Mr. JACKSON of Illinois, Mr. ELLISON, Ms. MCCOLLUM, Mr. VISCLOSKY, Mr. BRIGHT, Mr. SHERMAN, Mr. HOLDEN, Mr. JOHNSON of Georgia, Ms. SPEIER, Mr. FILNER, Ms. FUDGE, Mr. HEINRICH, Mr. CARNEY, Mr. SIRES, Mr. COURTNEY, Ms. TITUS, Mr. MOLLOHAN, Mr. MEEKS of New York, Mr. ISRAEL, Ms. RICHARDSON, Mr. WEINER, Mr. PETERS, Mr. TEAGUE, Mr. SPACE, Mr. DRIEHAUS, Mr. PAYNE, Mr. TIM MURPHY of Pennsylvania, and Mr. SMITH of Washington

DECEMBER 22, 2010

The Committees on Ways and Means and Agriculture discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on February 24, 2010]

A BILL

To require foreign manufacturers of products imported into the United States to establish registered agents in the United States who are authorized to accept service of process against such manufacturers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Foreign Manufacturers*
5 *Legal Accountability Act of 2010”.*

6 **SEC. 2. DEFINITIONS.**

7 *In this Act:*

8 (1) *APPLICABLE AGENCY.*—*The term “applicable*
9 *agency” means, with respect to covered products—*

10 (A) *described in subparagraphs (A) and (B)*
11 *of paragraph (3), the Food and Drug Adminis-*
12 *tration;*

13 (B) *described in paragraph (3)(C), the Con-*
14 *sumer Product Safety Commission;*

15 (C) *described in subparagraphs (D) and (E)*
16 *of paragraph (3), the Environmental Protection*
17 *Agency;*

18 (D) *described in paragraph (3)(F), the Na-*
19 *tional Highway Traffic Safety Administration;*
20 *and*

21 (E) *described in paragraph (3)(G)—*

22 (i) *the Food and Drug Administration,*
23 *if the item is intended to be a component*
24 *part of a product described in subpara-*
25 *graphs (A) or (B) of paragraph (3);*

1 (ii) the Consumer Product Safety Com-
2 mission, if the item is intended to be a com-
3 ponent part of a product described in para-
4 graph (3)(C);

5 (iii) the Environmental Protection
6 Agency, if the item is intended to be a com-
7 ponent part of a product described in sub-
8 paragraphs (D) or (E) of paragraph (3);
9 and

10 (iv) the National Highway Traffic
11 Safety Administration, if the item is in-
12 tended to be a component part of a product
13 described in paragraph (3)(F).

14 (2) *COMMERCE*.—The term “commerce” means
15 trade, traffic, commerce, or transportation—

16 (A) between a place in a State and any
17 place outside thereof; or

18 (B) which affects trade, traffic, commerce,
19 or transportation described in subparagraph (A).

20 (3) *COVERED PRODUCT*.—The term “covered
21 product” means any of the following:

22 (A) Drugs, devices, and cosmetics, as such
23 terms are defined in section 201 of the Federal
24 Food, Drug, and Cosmetic Act (21 U.S.C. 321).

1 (B) A biological product, as such term is
2 defined in section 351(i) of the Public Health
3 Service Act (42 U.S.C. 262(i)).

4 (C) A consumer product, as such term is
5 used in section 3(a) of the Consumer Product
6 Safety Act (15 U.S.C. 2052).

7 (D) A chemical substance or new chemical
8 substance, as such terms are defined in section 3
9 of the Toxic Substances Control Act (15 U.S.C.
10 2602).

11 (E) A pesticide, as such term is defined in
12 section 2 of the Federal Insecticide, Fungicide,
13 and Rodenticide Act (7 U.S.C. 136).

14 (F) A motor vehicle or motor vehicle equip-
15 ment, as such terms are defined in section 30102
16 of title 49, United States Code.

17 (G) An item intended to be a component
18 part of a product described in subparagraph (A),
19 (B), (C), (D), (E), or (F) but is not yet a compo-
20 nent part of such product.

21 (4) *DISTRIBUTE IN COMMERCE.*—The term “dis-
22 tribute in commerce” means to sell in commerce, to
23 introduce or deliver for introduction into commerce,
24 or to hold for sale or distribution after introduction
25 into commerce.

1 (5) *FOREIGN MANUFACTURER OR PRODUCER.*—

2 *The term “foreign manufacturer or producer” does*
3 *not include—*

4 (A) *a foreign manufacturer or producer of*
5 *covered products that is owned or controlled, di-*
6 *rectly or indirectly, by one or more United*
7 *States natural or legal persons, if—*

8 (i) *the United States natural or legal*
9 *person has assets in excess of the foreign*
10 *manufacturer or producer; or*

11 (ii) *the United States natural or legal*
12 *person owns or controls more than one for-*
13 *foreign manufacturer or producer of covered*
14 *products and such person has assets in ex-*
15 *cess of the average assets held by each for-*
16 *foreign manufacturer or producer; or*

17 (B) *a foreign manufacturer or producer of*
18 *covered products that owns or controls, or*
19 *through common ownership or control is affili-*
20 *ated with, directly or indirectly, one or more*
21 *United States operating legal persons if the prin-*
22 *cipal executive officer residing in the United*
23 *States of each United States operating legal per-*
24 *son certifies in writing to the applicable agency*
25 *that such person—*

1 (i) is responsible for any liability from
2 a covered product of the foreign manufac-
3 turer or producer, including liability from
4 the design, testing, assembly, manufac-
5 turing, warnings, labeling, inspection, pack-
6 aging, or any other cause of action related
7 to the covered product; and

8 (ii) will serve as the initial point of
9 contact for the applicable agency in case of
10 a voluntary or mandatory recall or other
11 issue involving the safety of a covered prod-
12 uct.

13 **SEC. 3. REGISTRATION OF AGENTS OF FOREIGN MANUFAC-**
14 **TURERS AUTHORIZED TO ACCEPT SERVICE**
15 **OF PROCESS IN THE UNITED STATES.**

16 (a) *REGISTRATION.*—

17 (1) *IN GENERAL.*—Beginning on the date that is
18 180 days after the date on which the regulations are
19 prescribed pursuant to section 3(d) and except as pro-
20 vided in this subsection, the head of each applicable
21 agency shall require foreign manufacturers and pro-
22 ducers of covered products distributed in commerce to
23 register an agent in the United States who is author-
24 ized to accept service of process on behalf of such
25 manufacturer or producer for the purpose of any

1 *State or Federal regulatory proceeding or any civil*
2 *action in State or Federal court related to such cov-*
3 *ered product, if such service is made in accordance*
4 *with the State or Federal rules for service of process*
5 *in the State in which the case or regulatory action is*
6 *brought.*

7 (2) *LOCATION.—The head of each applicable*
8 *agency shall require that an agent of a foreign manu-*
9 *facturer or producer registered under paragraph (1)*
10 *be—*

11 (A) *located in a State chosen by the foreign*
12 *manufacturer or producer with a substantial*
13 *connection to the importation, distribution, or*
14 *sale of the products of the foreign manufacturer*
15 *or producer; and*

16 (B) *an individual, domestic firm, or domes-*
17 *tic corporation that is a permanent resident of*
18 *the United States.*

19 (3) *DESIGNATION BY MANUFACTURER OR PRO-*
20 *DUCER AND ACCEPTANCE BY AGENT.—The head of*
21 *each applicable agency shall, at a minimum, require*
22 *a—*

23 (A) *written designation by a foreign manu-*
24 *facturer or producer with respect to which para-*
25 *graph (1) applies—*

1 (i) signed by an official or employee of
2 the foreign manufacturer or producer with
3 authority to appoint an agent;

4 (ii) containing the full legal name,
5 principal place of business, and mailing ad-
6 dress of the manufacturer or producer; and

7 (iii) containing a statement that the
8 designation is valid and binding on the for-
9 eign manufacturer or producer for the pur-
10 poses of this Act.

11 (B) written acceptance by the agent reg-
12 istered by a foreign manufacturer or producer
13 with respect to which paragraph (1) applies—

14 (i) signed by the agent or, in the case
15 in which a domestic firm or domestic cor-
16 poration is designated as an agent, an offi-
17 cial or employee of the firm or corporation
18 with authority to sign for the firm or cor-
19 poration;

20 (ii) containing the agent's full legal
21 name, physical address, mailing address,
22 and phone number; and

23 (iii) containing a statement that the
24 agent accepts the designation and acknowl-
25 edges that the duties of the agent may not

1 *be assigned to another person or entity and*
2 *the duties remain in effect until withdrawn*
3 *or replaced by the foreign manufacturer or*
4 *producer.*

5 (4) *APPLICABILITY.*—

6 (A) *IN GENERAL.*—*Paragraph (1) applies*
7 *only with respect to a foreign manufacturer or*
8 *producer that exceeds minimum requirements es-*
9 *tablished by the head of the applicable agency*
10 *under this section.*

11 (B) *FACTORS.*—*In determining the min-*
12 *imum requirements for application of paragraph*
13 *(1) to a foreign manufacturer or producer, the*
14 *head of the applicable agency shall, at a min-*
15 *imum, consider the following:*

16 (i) *The value of all covered products*
17 *imported from the manufacturer or pro-*
18 *ducer in a calendar year.*

19 (ii) *The quantity of all covered prod-*
20 *ucts imported from the manufacturer or*
21 *producer in a calendar year.*

22 (iii) *The frequency of importation from*
23 *the manufacturer or producer in a calendar*
24 *year.*

1 **(b) REGISTRY OF AGENTS OF FOREIGN MANUFACTUR-**
2 **ERS AND CERTIFICATIONS.—**

3 **(1) IN GENERAL.—***The Secretary of Commerce*
4 *shall, in cooperation with each head of an applicable*
5 *agency, establish and keep up to date a registry of*
6 *agents registered under subsection (a), certifications*
7 *submitted under section 2(5)(B), and certifications re-*
8 *moved pursuant to subsection (e).*

9 **(2) AVAILABILITY.—***The Secretary of Commerce*
10 *shall make the registry established under paragraph*
11 *(1) available—*

12 **(A)** *to the public in a searchable format*
13 *through the Internet website of the Department of*
14 *Commerce; and*

15 **(B)** *to the Commissioner responsible for*
16 *U.S. Customs and Border Protection in a format*
17 *prescribed by the Commissioner.*

18 **(c) CONSENT TO JURISDICTION.—**

19 **(1) IN GENERAL.—***A foreign manufacturer or*
20 *producer of a covered product that registers an agent*
21 *under this section thereby consents to the personal ju-*
22 *risdiction of the State and Federal courts of the State*
23 *in which the registered agent is located for the pur-*
24 *pose of any judicial proceeding related to such covered*
25 *product.*

1 (2) *RULE OF CONSTRUCTION.*—Paragraph (1)
2 *shall not apply to actions brought by foreign plain-*
3 *tiffs where the alleged injury or damage occurred out-*
4 *side the United States.*

5 (d) *REGULATIONS.*—

6 (1) *IN GENERAL.*—Not later than one year after
7 *the date of the enactment of this Act, the Secretary of*
8 *Commerce, the Commissioner responsible for U.S.*
9 *Customs and Border Protection, and each head of an*
10 *applicable agency shall prescribe regulations to carry*
11 *out this section.*

12 (2) *INTERAGENCY COOPERATION.*—The Secretary
13 *of Commerce, the Commissioner responsible for U.S.*
14 *Customs and Border Protection, and each head of an*
15 *applicable agency shall cooperate and consult with*
16 *one another for the purpose of—*

17 (A) *prescribing consistent regulations to the*
18 *extent necessary for the effective and efficient*
19 *sharing of information and establishment of sys-*
20 *tems and procedures necessary to carry out this*
21 *section; and*

22 (B) *establishing minimum requirements de-*
23 *scribed in subsection (a)(4), and to the extent ad-*
24 *visable and practicable for the purpose of estab-*
25 *lishing consistent minimum requirements.*

1 (e) *CERTIFICATION REQUIREMENTS.*—Upon actual
2 knowledge or verified information that any person to whom
3 the requirements of section 2(5)(B) applies has failed to ful-
4 fill such requirements the applicable agency shall—

5 (1) notify the Secretary of Commerce that the
6 certification of such person must be removed from the
7 registry under section 3(b); and

8 (2) notify such person that the related foreign
9 manufacturer or producer must comply with section
10 3.

11 **SEC. 4. PROHIBITION OF IMPORTATION OF PRODUCTS OF**
12 **MANUFACTURERS WITHOUT REGISTERED**
13 **AGENTS IN UNITED STATES.**

14 (a) *IN GENERAL.*—Beginning on the date that is 180
15 days after the date the regulations required under section
16 3(d) are prescribed, a person may not import into the
17 United States a covered product (or component part that
18 will be used in the United States to manufacture a covered
19 product) if such product (or component part) or any part
20 of such product (or component part) was manufactured or
21 produced outside the United States by a manufacturer or
22 producer who does not have a registered agent described in
23 section 3(a) whose authority is in effect on the date of the
24 importation.

1 (b) *ENFORCEMENT.*—*The Secretary of Homeland Se-*
2 *curity shall prescribe regulations to enforce the prohibition*
3 *in subsection (a).*

4 **SEC. 5. REPORTING OF DEFECTS IN COVERED PRODUCTS**
5 **IN FOREIGN COUNTRIES.**

6 (a) *DETERMINATION BY MANUFACTURER OR PRO-*
7 *DUCER.*—*Not later than 5 working days after determining*
8 *to conduct a safety recall or other safety campaign in a*
9 *foreign country of a covered product that is identical or*
10 *substantially similar to a covered product offered for sale*
11 *in the United States, the manufacturer or producer of the*
12 *covered product shall report the determination to the head*
13 *of the applicable agency.*

14 (b) *DETERMINATION BY FOREIGN GOVERNMENT.*—*Not*
15 *later than 5 working days after receiving notification that*
16 *the government of a foreign country has determined that*
17 *a safety recall or other safety campaign must be conducted*
18 *in the foreign country of a covered product that is identical*
19 *or substantially similar to a covered product offered for sale*
20 *in the United States, the manufacturer or producer of the*
21 *covered product shall report the determination to the head*
22 *of the applicable agency.*

23 (c) *REPORTING REQUIREMENTS.*—*Not later than the*
24 *date described in subsection (d), the head of each applicable*

1 *agency shall prescribe the contents of the notification re-*
2 *quired by this section.*

3 (d) *EFFECTIVE DATE.*—*Except as provided in sub-*
4 *section (c), this section shall take effect on the date that*
5 *is one year after the date of the enactment of this Act.*

6 **SEC. 6. STUDY ON REGISTRATION OF AGENTS OF FOREIGN**
7 **FOOD PRODUCERS AUTHORIZED TO ACCEPT**
8 **SERVICE OF PROCESS IN THE UNITED**
9 **STATES.**

10 *Not later than 1 year after the date of the enactment*
11 *of this Act, the Secretary of Agriculture and the Commis-*
12 *sioner of Food and Drugs shall jointly—*

13 (1) *complete a study on the feasibility and advis-*
14 *ability of requiring foreign producers of food distrib-*
15 *uted in commerce to register an agent in the United*
16 *States who is authorized to accept service of process*
17 *on behalf of such producers for the purpose of any*
18 *State or Federal regulatory proceeding or any civil*
19 *action in State or Federal court related to such food*
20 *products; and*

21 (2) *submit to Congress a report on the findings*
22 *of the Secretary with respect to such study.*

1 **SEC. 7. STUDY ON REGISTRATION OF AGENTS OF FOREIGN**
2 **MANUFACTURERS AND PRODUCERS OF COM-**
3 **PONENT PARTS WITHIN COVERED PRODUCTS.**

4 *Not later than 1 year after the date of the enactment*
5 *of this Act, the head of each applicable agency shall—*

6 *(1) complete a study on determining feasible and*
7 *advisable methods of requiring manufacturers or pro-*
8 *ducers of component parts within covered products*
9 *manufactured or produced outside the United States*
10 *and distributed in commerce to register agents in the*
11 *United States who are authorized to accept service of*
12 *process on behalf of such manufacturers or producers*
13 *for the purpose of any State or Federal regulatory*
14 *proceeding or any civil action in State or Federal*
15 *court related to such component parts; and*

16 *(2) submit to Congress a report on the findings*
17 *of the head of the applicable agency with respect to*
18 *the study.*

19 **SEC. 8. STUDY ON ENFORCEMENT OF UNITED STATES**
20 **JUDGMENTS RELATING TO DEFECTIVE**
21 **DRYWALL IMPORTED FROM CHINA.**

22 *Not later than 1 year after the date of the enactment*
23 *of this Act, the Comptroller General of the United States*
24 *shall—*

25 *(1) complete a study on methods to enforce judg-*
26 *ments of any State or Federal regulatory proceeding*

1 *or any civil action in State or Federal court relating*
2 *to defective drywall imported from the People's Re-*
3 *public of China and distributed in commerce during*
4 *the period 2004 through 2007 and used in residential*
5 *dwellings in the United States; and*

6 *(2) submit to Congress a report on the findings*
7 *of the Comptroller General with respect to the study.*

8 **SEC. 9. RELATIONSHIP WITH OTHER LAWS.**

9 *Nothing in this Act shall affect the authority of any*
10 *State to establish or continue in effect a provision of State*
11 *law relating to service of process or personal jurisdiction,*
12 *except to the extent that such provision of law is incon-*
13 *sistent with the provisions of this Act, and then only to*
14 *the extent of such inconsistency.*

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A BILL

To require foreign manufacturers of products imported into the United States to establish registered agents in the United States who are authorized to accept service of process against such manufacturers, and for other purposes.

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The Committees on Ways and Means and Agriculture discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed