

112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3646

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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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 13, 2011

Ms. SUTTON (for herself, Mr. TURNER of Ohio, Mr. CONYERS, Ms. LINDA T. SÁNCHEZ of California, Ms. ZOE LOFGREN of California, Mr. RYAN of Ohio, Mr. LIPINSKI, Mr. STARK, Mr. JONES, Mr. MICHAUD, Mr. ISRAEL, Mr. PETERS, Mr. HASTINGS of Florida, Mr. COURTNEY, Mr. ANDREWS, Ms. KAPTUR, Mr. JOHNSON of Georgia, Mr. HOLDEN, Mr. YARMUTH, Mr. MURPHY of Connecticut, Mr. CRITZ, Ms. SCHAKOWSKY, Mr. GENE GREEN of Texas, and Mr. SARBANES) 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

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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.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Foreign Manufacturers  
3 Legal Accountability Act of 2011”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) **APPLICABLE AGENCY.**—The term “applica-  
7 ble agency” means, with respect to covered prod-  
8 ucts—

9 (A) described in subparagraphs (A) and  
10 (B) of paragraph (3), the Food and Drug Ad-  
11 ministration;

12 (B) described in paragraph (3)(C), the  
13 Consumer Product Safety Commission;

14 (C) described in subparagraphs (D) and  
15 (E) of paragraph (3), the Environmental Pro-  
16 tection Agency;

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

20 (E) described in paragraph (3)(G)—

21 (i) the Food and Drug Administra-  
22 tion, if the item is intended to be a compo-  
23 nent part of a product described in sub-  
24 paragraph (A) or (B) of paragraph (3);

25 (ii) the Consumer Product Safety  
26 Commission, if the item is intended to be

1 a component part of a product described in  
2 paragraph (3)(C);

3 (iii) the Environmental Protection  
4 Agency, if the item is intended to be a  
5 component part of a product described in  
6 subparagraph (D) or (E) of paragraph (3);  
7 and

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

12 (2) COMMERCE.—The term “commerce” means  
13 trade, traffic, commerce, or transportation—

14 (A) between a place in a State and any  
15 place outside thereof; or

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

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

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

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  
9 3 of the Toxic Substances Control Act (15  
10 U.S.C. 2602), in its imported form.

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  
16 30102 of title 49, United States Code.

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

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

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

4 (a) REGISTRATION.—

5 (1) IN GENERAL.—Beginning on the date that  
6 is 180 days after the date on which the regulations  
7 are prescribed pursuant to subsection (d) and except  
8 as provided in this subsection, the head of each ap-  
9 plicable agency shall require foreign manufacturers  
10 and producers of covered products distributed in  
11 commerce to register an agent in the United States  
12 who is authorized to accept service of process on be-  
13 half of such manufacturer or producer for the pur-  
14 pose of any State or Federal regulatory proceeding  
15 or any civil action in State or Federal court related  
16 to such covered product, if such service is made in  
17 accordance with the State or Federal rules for serv-  
18 ice of process in the State in which the case or regu-  
19 latory action is brought.

20 (2) LOCATION.—The head of each applicable  
21 agency shall require that an agent of a foreign man-  
22 ufacturer or producer registered under paragraph  
23 (1) be—

24 (A) located in a State chosen by the for-  
25 eign manufacturer or producer with a substan-  
26 tial connection to the importation, distribution,

1 or sale of the products of the foreign manufac-  
2 turer or producer; and

3 (B) an individual, domestic firm, or domes-  
4 tic corporation that is a permanent resident of  
5 the United States.

6 (3) DESIGNATION BY MANUFACTURER OR PRO-  
7 DUCER AND ACCEPTANCE BY AGENT.—The head of  
8 each applicable agency shall, at a minimum, require  
9 a—

10 (A) written designation by a foreign manu-  
11 facturer or producer with respect to which  
12 paragraph (1) applies—

13 (i) signed by an official or employee of  
14 the foreign manufacturer or producer with  
15 authority to appoint an agent;

16 (ii) containing the full legal name,  
17 principal place of business, and mailing ad-  
18 dress of the manufacturer or producer; and

19 (iii) containing a statement that the  
20 designation is valid and binding on the for-  
21 eign manufacturer or producer for the pur-  
22 poses of this Act; or

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

1 (i) signed by the agent or, in the case  
2 in which a domestic firm or domestic cor-  
3 poration is designated as an agent, an offi-  
4 cial or employee of the firm or corporation  
5 with authority to sign for the firm or cor-  
6 poration;

7 (ii) containing the agent's full legal  
8 name, physical address, mailing address,  
9 and phone number; and

10 (iii) containing a statement that the  
11 agent accepts the designation and acknowl-  
12 edges that the duties of the agent may not  
13 be assigned to another person or entity  
14 and the duties remain in effect until with-  
15 drawn or replaced by the foreign manufac-  
16 turer or producer.

17 (4) APPLICABILITY.—

18 (A) IN GENERAL.—Paragraph (1) applies  
19 only with respect to a foreign manufacturer or  
20 producer that exceeds minimum requirements  
21 established by the head of the applicable agency  
22 under this section.

23 (B) FACTORS.—In determining the min-  
24 imum requirements for application of para-  
25 graph (1) to a foreign manufacturer or pro-

1           ducer, the head of the applicable agency shall,  
2           at a minimum, consider the following:

3                   (i) The value of all covered products  
4                   imported from the manufacturer or pro-  
5                   ducer in a calendar year.

6                   (ii) The quantity of all covered prod-  
7                   ucts imported from the manufacturer or  
8                   producer in a calendar year.

9                   (iii) The frequency of importation  
10                  from the manufacturer or producer in a  
11                  calendar year.

12           (b) REGISTRY OF AGENTS OF FOREIGN MANUFAC-  
13           TURERS.—

14                   (1) IN GENERAL.—The Secretary of Commerce  
15                   shall, in cooperation with each head of an applicable  
16                   agency, establish and keep up to date a registry of  
17                   agents registered under subsection (a).

18                   (2) AVAILABILITY.—The Secretary of Com-  
19                   merce shall make the registry established under  
20                   paragraph (1) available—

21                           (A) to the public in a searchable format  
22                           through the Internet website of the Department  
23                           of Commerce; and



1 (B) to the Commissioner responsible for  
2 U.S. Customs and Border Protection in a for-  
3 mat prescribed by the Commissioner.

4 (c) CONSENT TO JURISDICTION.—

5 (1) IN GENERAL.—A foreign manufacturer or  
6 producer of a covered product that registers an  
7 agent under this section thereby consents to the per-  
8 sonal jurisdiction of the State and Federal courts of  
9 the State in which the registered agent is located for  
10 the purpose of any judicial proceeding related to  
11 such covered product.

12 (2) RULE OF CONSTRUCTION.—Paragraph (1)  
13 shall not apply to actions brought by foreign plain-  
14 tiffs where the alleged injury or damage occurred  
15 outside the United States.

16 (d) REGULATIONS.—

17 (1) IN GENERAL.—Not later than one year  
18 after the date of the enactment of this Act, the Sec-  
19 retary of Commerce, the Commissioner responsible  
20 for U.S. Customs and Border Protection, and each  
21 head of an applicable agency shall prescribe regula-  
22 tions to carry out this section.

23 (2) INTERAGENCY COOPERATION.—The Sec-  
24 retary of Commerce, the Commissioner responsible  
25 for U.S. Customs and Border Protection, and each

1 head of an applicable agency shall cooperate and  
2 consult with one another for the purpose of—

3 (A) prescribing consistent regulations to  
4 the extent necessary for the effective and effi-  
5 cient sharing of information and establishment  
6 of systems and procedures necessary to carry  
7 out this section; and

8 (B) establishing minimum requirements  
9 described in subsection (a)(4), and to the extent  
10 advisable and practicable for the purpose of es-  
11 tablishing consistent minimum requirements.

12 **SEC. 4. DECLARATION TO U.S. CUSTOMS AND BORDER PRO-**  
13 **TECTION.**

14 (a) DECLARATION.—Beginning on the date that is  
15 180 days after the date on which the regulations required  
16 under section 3(d) are prescribed, any person importing  
17 into the United States a covered product if such product  
18 was manufactured or produced outside the United States  
19 shall provide to U.S. Customs and Border Protection a  
20 declaration that—

21 (1) the person has made appropriate inquiry as  
22 to whether the manufacturer or producer of the cov-  
23 ered product has complied with the requirements of  
24 section 3, including by seeking appropriate docu-  
25 mentation from the exporter of the covered product

1 and by consulting the registry established pursuant  
2 to section 3(b); and

3 (2) to the best of the person's knowledge, with  
4 respect to each importation of a covered product, the  
5 foreign manufacturer or producer of the product has  
6 registered an agent in the United States as required  
7 under section (3)(a).

8 (b) PENALTIES.—An importer who fails to provide a  
9 declaration required under subsection (a), or files a false  
10 declaration, shall be subject to the applicable penalty  
11 under section 592 of the Tariff Act of 1930 (19 U.S.C.  
12 1592) or under title 18, United States Code, with respect  
13 to importation of a covered product.

14 (c) REGULATIONS.—

15 (1) IN GENERAL.—Not later than 1 year after  
16 the date of the enactment of this Act, the Commis-  
17 sioner of U.S. Customs and Border Protection shall  
18 prescribe regulations to carry out this section. The  
19 regulations shall provide that the declaration of the  
20 importer required under subsection (a) shall accom-  
21 pany the entry summary documentation or, in the  
22 case of repeated transactions, may be submitted on  
23 an annual basis.

24 (2) FORM.—The regulations shall provide for  
25 the declaration to be submitted electronically and

1 maintained as an electronic record within the data  
2 management systems of U.S. Customs and Border  
3 Protection.

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.—  
15 Not later than 5 working days after receiving notification  
16 that the government of a foreign country has determined  
17 that a safety recall or other safety campaign must be con-  
18 ducted in the foreign country of a covered product that  
19 is identical or substantially similar to a covered product  
20 offered for sale in the United States, the manufacturer  
21 or producer of the covered product shall report the deter-  
22 mination to the head of the applicable agency.

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

1 ble agency shall prescribe the contents of the notification  
2 required 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 ad-  
14 visability of requiring foreign producers of food dis-  
15 tributed in commerce to register an agent in the  
16 United States who is authorized to accept service of  
17 process on behalf of such producers for the purpose  
18 of any State or Federal regulatory proceeding or any  
19 civil action in State or Federal court related to such  
20 food 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 PROD-**  
4 **UCTS.**

5 Not later than 2 years after the date of the enact-  
6 ment of this Act, the head of each applicable agency  
7 shall—

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

19 (2) submit to Congress a report on the findings  
20 of the head of the applicable agency with respect to  
21 the study.

1 **SEC. 8. STUDY ON ENFORCEMENT OF UNITED STATES**  
2 **JUDGMENTS RELATING TO DEFECTIVE**  
3 **DRYWALL IMPORTED FROM CHINA.**

4 Not later than 1 year after the date of the enactment  
5 of this Act, the Comptroller General of the United States  
6 shall—

7 (1) complete a study on methods to enforce  
8 judgments of any State or Federal regulatory pro-  
9 ceeding or any civil action in State or Federal court  
10 relating to defective drywall imported from the Peo-  
11 ple's Republic of China and distributed in commerce  
12 during the period 2004 through 2007 and used in  
13 residential dwellings in the United States; and

14 (2) submit to Congress a report on the findings  
15 of the Comptroller General with respect to the study.

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

17 Nothing in this Act shall affect the authority of any  
18 State to establish or continue in effect a provision of State  
19 law relating to service of process or personal jurisdiction,  
20 except to the extent that such provision of law is incon-  
21 sistent with the provisions of this Act, and then only to  
22 the extent of such inconsistency.

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