

113TH CONGRESS
1ST SESSION

H. R. 1910

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.

IN THE HOUSE OF REPRESENTATIVES

MAY 9, 2013

Mr. CARTWRIGHT (for himself, Mr. TURNER, Mr. BRADY of Pennsylvania, Mr. BRALEY of Iowa, Mr. CONYERS, Mr. COURTNEY, Mr. DOGGETT, Mr. ELLISON, Mr. ENYART, Mr. GENE GREEN of Texas, Mr. HASTINGS of Florida, Mr. JOHNSON of Georgia, Mr. JONES, Mrs. MCCARTHY of New York, Ms. NORTON, Mr. PETERS of Michigan, Mr. RYAN of Ohio, Ms. LINDA T. SÁNCHEZ of California, Ms. SHEA-PORTER, Mr. TIERNEY, Mr. VELA, Mr. YARMUTH, Mr. MICHAUD, Mr. GRAYSON, Mr. JOYCE, Mr. KEATING, Mr. PERLMUTTER, Mr. COHEN, Mr. ANDREWS, Ms. BONAMICI, Ms. KUSTER, Ms. EDWARDS, and Mr. POCAN) 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

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.

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 2013”.

4 **SEC. 2. FINDINGS.**

5 Congress makes the following findings:

6 (1) Each year, many people in the United
7 States are injured by defective products manufac-
8 tured or produced by foreign entities and imported
9 into the United States.

10 (2) Both consumers and businesses in the
11 United States have been harmed by injuries to peo-
12 ple in the United States caused by defective prod-
13 ucts manufactured or produced by foreign entities.

14 (3) People in the United States injured by de-
15 fective products manufactured or produced by for-
16 eign entities often have difficulty recovering damages
17 from the foreign manufacturers and producers re-
18 sponsible for such injuries.

19 (4) The difficulty described in paragraph (3) is
20 caused by the obstacles in bringing a foreign manu-
21 facturer or producer into a United States court and
22 subsequently enforcing a judgment against that
23 manufacturer or producer.

24 (5) Obstacles to holding a responsible foreign
25 manufacturer or producer liable for an injury to a

1 person in the United States undermine the purpose
2 of the tort laws of the United States.

3 (6) The difficulty of applying the tort laws of
4 the United States to foreign manufacturers and pro-
5 ducers puts United States manufacturers and pro-
6 ducers at a competitive disadvantage because United
7 States manufacturers and producers must—

8 (A) abide by common law and statutory
9 safety standards; and

10 (B) invest substantial resources to ensure
11 that they do so.

12 (7) Foreign manufacturers and producers can
13 avoid the expenses necessary to make their products
14 safe if they know that they will not be held liable for
15 violations of United States product safety laws.

16 (8) Businesses in the United States undertake
17 numerous commercial relationships with foreign
18 manufacturers, exposing the businesses to additional
19 tort liability when foreign manufacturers or pro-
20 ducers evade United States courts.

21 (9) Businesses in the United States engaged in
22 commercial relationships with foreign manufacturers
23 or producers often cannot vindicate their contractual
24 rights if such manufacturers or producers seek to
25 avoid responsibility in United States courts.

1 (10) One of the major obstacles facing busi-
2 nesses and individuals in the United States who are
3 injured and who seek compensation for economic or
4 personal injuries caused by foreign manufacturers
5 and producers is the challenge of serving process on
6 such manufacturers and producers.

7 (11) An individual or business injured in the
8 United States by a foreign company must rely on a
9 foreign government to serve process when that com-
10 pany is located in a country that is a signatory to
11 the Convention on the Service Abroad of Judicial
12 and Extrajudicial Documents in Civil or Commercial
13 Matters done at The Hague November 15, 1965 (20
14 UST 361; TIAS 6638).

15 (12) An injured person in the United States
16 must rely on the cumbersome system of letters roga-
17 tory to effect service in a country that did not sign
18 the Convention on the Service Abroad of Judicial
19 and Extrajudicial Documents in Civil or Commercial
20 Matters. These countries do not have an enforceable
21 obligation to serve process as requested.

22 (13) The procedures described in paragraphs
23 (11) and (12) add time and expense to litigation in
24 the United States, thereby discouraging or frus-
25 trating meritorious lawsuits brought by persons in-

1 jured in the United States against foreign manufac-
2 turers and producers.

3 (14) Foreign manufacturers and producers
4 often seek to avoid judicial consideration of their ac-
5 tions by asserting that United States courts lack
6 personal jurisdiction over them.

7 (15) The due process clauses of the fifth
8 amendment to and section 1 of the fourteenth
9 amendment to the Constitution govern United States
10 courts' personal jurisdiction over defendants.

11 (16) The due process clauses described in para-
12 graph (15) are satisfied when a defendant consents
13 to the jurisdiction of a court.

14 (17) United States markets present many op-
15 portunities for foreign manufacturers.

16 (18) In choosing to export products to the
17 United States, a foreign manufacturer or producer
18 subjects itself to the laws of the United States. Such
19 a foreign manufacturer or producer thereby acknowl-
20 edges that it is subject to the personal jurisdiction
21 of the State and Federal courts in at least one
22 State.

23 **SEC. 3. SENSE OF CONGRESS.**

24 It is the sense of Congress that—

1 (1) foreign manufacturers and producers whose
2 products are sold in the United States should not be
3 able to avoid liability simply because of difficulties
4 relating to serving process upon them;

5 (2) to avoid such lack of accountability, foreign
6 manufacturers and producers of foreign products
7 distributed in the United States should be required,
8 by regulation, to register an agent in the United
9 States who is authorized to accept service of process
10 for such manufacturer or producer;

11 (3) it is unfair to United States consumers and
12 businesses that foreign manufacturers and producers
13 often seek to avoid judicial consideration of their ac-
14 tions by asserting that United States courts lack
15 personal jurisdiction over them;

16 (4) those who benefit from exporting products
17 to United States markets should expect to be subject
18 to the jurisdiction of at least one court within the
19 United States;

20 (5) exporting products to the United States
21 should be understood as consent to the account-
22 ability that the legal system of the United States en-
23 sures for all manufacturers and producers, foreign,
24 and domestic;

1 (6) exporters recognize the scope of opportuni-
2 ties presented to them by United States markets but
3 also should recognize that products imported into
4 the United States must satisfy Federal and State
5 safety standards established by statute, regulation,
6 and common law;

7 (7) foreign manufacturers should recognize that
8 they are responsible for the contracts they enter into
9 with United States companies;

10 (8) foreign manufacturers should act respon-
11 sibly and recognize that they operate within the con-
12 straints of the United States legal system when they
13 export products to the United States;

14 (9) United States laws and the laws of United
15 States trading partners should not put burdens on
16 foreign manufacturers and producers that do not
17 apply to domestic companies;

18 (10) it is fair to ensure that foreign manufac-
19 turers, whose products are distributed in commerce
20 in the United States, are subject to the jurisdiction
21 of State and Federal courts in at least one State be-
22 cause all United States manufacturers are subject to
23 the jurisdiction of the State and Federal courts in
24 at least one State; and

1 (11) it should be understood that, by reg-
2 istering an agent for service of process in the United
3 States, the foreign manufacturer or producer ac-
4 knowledges consent to the jurisdiction of the State
5 in which the registered agent is located.

6 **SEC. 4. DEFINITIONS.**

7 In this Act:

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

11 (A) described in subparagraphs (A) and
12 (B) of paragraph (4), the Food and Drug Ad-
13 ministration;

14 (B) described in paragraph (4)(C), the
15 Consumer Product Safety Commission;

16 (C) described in subparagraphs (D) and
17 (E) of paragraph (4), the Environmental Pro-
18 tection Agency; and

19 (D) described in subparagraph (F) of
20 paragraph (4)—

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 paragraphs (A) and (B) of paragraph (4);

1 (ii) the Consumer Product Safety
2 Commission, if the item is intended to be
3 a component part of a product described in
4 paragraph (4)(C); and

5 (iii) the Environmental Protection
6 Agency, if the item is intended to be a
7 component part of a product described in
8 subparagraphs (D) and (E) of paragraph
9 (4).

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

12 (A) between a place in a State and any
13 place outside of the State; or

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

17 (3) COMMISSIONER OF U.S. CUSTOMS AND BOR-
18 DER PROTECTION.—The term “Commissioner of
19 U.S. Customs and Border Protection” means the
20 Commissioner responsible for U.S. Customs and
21 Border Protection of the Department of Homeland
22 Security.

23 (4) COVERED PRODUCT.—The term “covered
24 product” means any of the following:

1 (A) Drugs, devices, and cosmetics, as such
2 terms are defined in section 201 of the Federal
3 Food, Drug, and Cosmetic Act (21 U.S.C.
4 321).

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

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

11 (D) A chemical substance or new chemical
12 substance, as such terms are defined in section
13 3 of the Toxic Substances Control Act (15
14 U.S.C. 2602).

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

18 (F) An item that is intended to be a com-
19 ponent part of a product described in subpara-
20 graph (A), (B), (C), (D), or (E) but is not yet
21 a component part of such product.

22 (5) DISTRIBUTE IN COMMERCE.—The term
23 “distribute in commerce” means to sell in commerce,
24 to introduce or deliver for introduction into com-

1 merce, or to hold for sale or distribution after intro-
2 duction into commerce.

3 **SEC. 5. REGISTRATION OF AGENTS OF FOREIGN MANUFAC-**
4 **TURERS AUTHORIZED TO ACCEPT SERVICE**
5 **OF PROCESS IN THE UNITED STATES.**

6 (a) REGISTRATION.—

7 (1) IN GENERAL.—Beginning on the date that
8 is 180 days after the date on which the regulations
9 are prescribed pursuant to subsection (e)(1) and ex-
10 cept as otherwise provided in this subsection, the
11 head of each applicable agency shall require foreign
12 manufacturers and producers of covered products
13 distributed in commerce to establish a registered
14 agent in the United States who is authorized to ac-
15 cept service of process on behalf of such manufac-
16 turer or producer for the purpose of any State or
17 Federal regulatory proceeding or any civil action in
18 any State or Federal court relating to such covered
19 product, if such service is made in accord with the
20 State or Federal rules for service of process in the
21 State in which the regulatory action or case is
22 brought.

23 (2) LOCATION.—The head of each applicable
24 agency shall require that an agent of a foreign man-
25 ufacturer or producer registered under this sub-

1 section with respect to a covered product be located
2 in a State with a substantial connection to the im-
3 portation, distribution, or sale of the covered prod-
4 uct.

5 (3) DESIGNATION AND ACCEPTANCE.—

6 (A) DESIGNATION BY FOREIGN MANUFAC-
7 TURERS AND PRODUCERS.—The head of each
8 applicable agency shall require each foreign
9 manufacturer and producer described in para-
10 graph (1) to provide to the applicable agency a
11 written designation of the agent established by
12 the foreign manufacturer or producer pursuant
13 to paragraph (1) that—

14 (i) is signed by an official or employee
15 of the foreign manufacturer or producer
16 who has authority to appoint an agent;

17 (ii) contains the full legal name, prin-
18 cipal place of business, and mailing ad-
19 dress of the foreign manufacturer or pro-
20 ducer; and

21 (iii) contains a statement that the
22 designation is valid and binding on the for-
23 eign manufacturer or producer for the pur-
24 poses of this section.

1 (B) ACCEPTANCE BY AGENTS.—The head
2 of each applicable agency shall require each
3 agent established pursuant to paragraph (1)
4 with respect to a foreign manufacturer or pro-
5 ducer to provide to the applicable agency a
6 written acceptance of such establishment that—

7 (i) is signed by the agent or, in the
8 case in which a domestic firm or domestic
9 corporation is designated as an agent, an
10 official or employee of the firm or corpora-
11 tion with authority to sign for the firm or
12 corporation;

13 (ii) contains the agent's full legal
14 name, physical address, mailing address,
15 and telephone number;

16 (iii) contains a statement that the
17 agent accepts such establishment and the
18 designation by the foreign manufacturer or
19 producer under subparagraph (A); and

20 (iv) contains a statement that the
21 agent acknowledges that the duties of the
22 agent—

23 (I) may not be assigned to an-
24 other person; and

1 (II) remain in effect until with-
2 drawn or replaced by the foreign man-
3 ufacturer or producer.

4 (4) MINIMUM SIZE.—This subsection shall only
5 apply to foreign manufacturers and producers that
6 manufacture or produce covered products in excess
7 of a minimum value or quantity the head of the ap-
8 plicable agency shall prescribe by rule for purposes
9 of this section. Such rules may include different
10 minimum values or quantities for different subcat-
11 egories of covered products prescribed by the head of
12 the applicable agency for purposes of this section.

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

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

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

22 (A) to the public through the Internet
23 website of the Department of Commerce; and

24 (B) to the Commissioner of U.S. Customs
25 and Border Protection.

1 (c) CONSENT TO JURISDICTION.—

2 (1) IN GENERAL.—A foreign manufacturer or
3 producer of a covered product that registers an
4 agent under this section thereby consents to the per-
5 sonal jurisdiction of the State or Federal courts of
6 the State in which the registered agent is located for
7 the purpose of any regulatory proceeding or civil ac-
8 tion relating to such covered product.

9 (2) RULE OF CONSTRUCTION.—Paragraph (1)
10 shall not be construed to apply to actions brought by
11 foreign plaintiffs in which the alleged injury or dam-
12 age occurred outside the United States.

13 (d) DECLARATIONS.—

14 (1) IN GENERAL.—Beginning on the date that
15 is 180 days after the date on which the regulations
16 are prescribed pursuant to subsection (e), any per-
17 son importing a covered product manufactured or
18 produced outside the United States shall provide to
19 U.S. Customs and Border Protection a declaration
20 that—

21 (A) the person has made appropriate in-
22 quiry as to whether the manufacturer or pro-
23 ducer of the covered product has complied with
24 the requirements of this section, including by
25 seeking appropriate documentation from the ex-

1 porter of the covered product and by consulting
2 the registry established pursuant to subsection
3 (b); and

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

9 (2) ELECTRONIC SUBMISSION.—Not later than
10 1 year after the date of the enactment of this Act,
11 the Commissioner of U.S. Customs and Border Pro-
12 tection shall establish a mechanism whereby declara-
13 tions made pursuant to paragraph (1) may be sub-
14 mitted electronically and maintained as an electronic
15 record within the data management systems of U.S.
16 Customs and Border Protection.

17 (3) REGULATIONS.—

18 (A) IN GENERAL.—Not later than 1 year
19 after the date of the enactment of this Act, the
20 Commissioner of U.S. Customs and Border
21 Protection shall prescribe regulations to carry
22 out this subsection.

23 (B) SUMMARY DECLARATION.—The regu-
24 lations required by subparagraph (A) shall re-
25 quire that each declaration of an importer made

1 pursuant to paragraph (1) with respect to a
2 covered product shall accompany the entry sum-
3 mary documentation for such product or, in the
4 case of repeated transactions, may be submitted
5 on an annual basis.

6 (4) PENALTIES.—Any person who fails to pro-
7 vide a declaration required under paragraph (1), or
8 files a false declaration, shall be subject to any ap-
9 propriate penalty under section 592 of the Tariff
10 Act of 1930 (19 U.S.C. 1592) or title 18, United
11 States Code, with respect to importation of a cov-
12 ered product.

13 (e) REGULATIONS.—

14 (1) IN GENERAL.—Not later than 1 year after
15 the date of the enactment of this Act, the Secretary
16 of Commerce, the Commissioner of U.S. Customs
17 and Border Protection, and each head of an applica-
18 ble agency shall prescribe regulations to carry out
19 this section, including the establishment of minimum
20 values and quantities under subsection (a)(4).

21 (2) INTERAGENCY COOPERATION.—The Sec-
22 retary of Commerce, the Commissioner responsible
23 for U.S. Customs and Border Protection, and each
24 head of an applicable agency shall cooperate and
25 consult with one another for the purpose of—

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

6 (B) establishing minimum values and
7 quantities under subsection (a)(4), and to the
8 extent advisable and practicable for the purpose
9 of establishing consistent minimum require-
10 ments.

11 **SEC. 6. STUDY ON REGISTRATION OF AGENTS OF FOREIGN**
12 **FOOD PRODUCERS AUTHORIZED TO ACCEPT**
13 **SERVICE OF PROCESS IN THE UNITED**
14 **STATES.**

15 Not later than 1 year after the date of the enactment
16 of this Act, the Secretary of Agriculture and the Commis-
17 sioner of Food and Drugs shall jointly—

18 (1) complete a study on the feasibility and ad-
19 visability of requiring foreign producers of food dis-
20 tributed in commerce to establish a registered agent
21 in the United States who is authorized to accept
22 service of process on behalf of such producers for
23 the purpose of all civil and regulatory actions in
24 State and Federal courts; and

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

3 **SEC. 7. STUDY ON REGISTRATION OF AGENTS OF FOREIGN**
4 **MANUFACTURERS AND PRODUCERS OF COM-**
5 **PONENT PARTS WITHIN COVERED PROD-**
6 **UCTS.**

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

10 (1) complete a study on determining feasible
11 and advisable methods of requiring manufacturers or
12 producers of component parts within covered prod-
13 ucts manufactured or produced outside the United
14 States and distributed in commerce to establish reg-
15 istered agents in the United States who are author-
16 ized to accept service of process on behalf of such
17 manufacturers or producers for the purpose of all
18 civil and regulatory actions in State and Federal
19 courts; and

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

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

24 Nothing in this Act shall affect the authority of any
25 State to establish or continue in effect a provision of State

1 law relating to service of process or personal jurisdiction,
2 except to the extent that such provision of law is incon-
3 sistent with the provisions of this Act, and then only to
4 the extent of such inconsistency.

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