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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 SENATE OF THE UNITED STATES

DECEMBER 5, 2011

Mr. WHITEHOUSE (for himself, Mr. SESSIONS, Mr. DURBIN, Mr. GRAHAM, Mr. LEAHY, Mrs. FEINSTEIN, Mr. NELSON of Florida, Mr. BENNET, Mrs. MCCASKILL, and Mr. PRYOR) introduced the following bill; which was read twice and referred to the Committee on Finance

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,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

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

5 (2) Both consumers and businesses in the
6 United States have been harmed by injuries to peo-
7 ple in the United States caused by defective prod-
8 ucts manufactured or produced by foreign entities.

9 (3) People in the United States injured by de-
10 fective products manufactured or produced by for-
11 eign entities often have difficulty recovering damages
12 from the foreign manufacturers and producers re-
13 sponsible for such injuries.

14 (4) The difficulty described in paragraph (3) is
15 caused by the obstacles in bringing a foreign manu-
16 facturer or producer into a United States court and
17 subsequently enforcing a judgment against that
18 manufacturer or producer.

19 (5) Obstacles to holding a responsible foreign
20 manufacturer or producer liable for an injury to a
21 person in the United States undermine the purpose
22 of the tort laws of the United States.

23 (6) The difficulty of applying the tort laws of
24 the United States to foreign manufacturers and pro-
25 ducers puts United States manufacturers and pro-

1 ducers at a competitive disadvantage because United
2 States manufacturers and producers must—

3 (A) abide by common law and statutory
4 safety standards; and

5 (B) invest substantial resources to ensure
6 that they do so.

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

11 (8) Businesses in the United States undertake
12 numerous commercial relationships with foreign
13 manufacturers, exposing the businesses to additional
14 tort liability when foreign manufacturers or pro-
15 ducers evade United States courts.

16 (9) Businesses in the United States engaged in
17 commercial relationships with foreign manufacturers
18 or producers often cannot vindicate their contractual
19 rights if such manufacturers or producers seek to
20 avoid responsibility in United States courts.

21 (10) One of the major obstacles facing busi-
22 nesses and individuals in the United States who are
23 injured and who seek compensation for economic or
24 personal injuries caused by foreign manufacturers

1 and producers is the challenge of serving process on
2 such manufacturers and producers.

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

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

18 (13) The procedures described in paragraphs
19 (11) and (12) add time and expense to litigation in
20 the United States, thereby discouraging or frus-
21 trating meritorious lawsuits brought by persons in-
22 jured in the United States against foreign manufac-
23 turers and producers.

24 (14) Foreign manufacturers and producers
25 often seek to avoid judicial consideration of their ac-

1 tions by asserting that United States courts lack
2 personal jurisdiction over them.

3 (15) The due process clauses of the fifth
4 amendment to and section 1 of the fourteenth
5 amendment to the Constitution govern United States
6 courts' personal jurisdiction over defendants.

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

10 (17) United States markets present many op-
11 portunities for foreign manufacturers.

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

19 **SEC. 3. SENSE OF CONGRESS.**

20 It is the sense of Congress that—

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

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

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

12 (4) those who benefit from exporting products
13 to United States markets should expect to be subject
14 to the jurisdiction of at least one court within the
15 United States;

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

21 (6) exporters recognize the scope of opportuni-
22 ties presented to them by United States markets but
23 also should recognize that products imported into
24 the United States must satisfy Federal and State

1 safety standards established by statute, regulation,
2 and common law;

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

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

10 (9) United States laws and the laws of United
11 States trading partners should not put burdens on
12 foreign manufacturers and producers that do not
13 apply to domestic companies;

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

21 (11) it should be understood that, by reg-
22 istering an agent for service of process in the United
23 States, the foreign manufacturer or producer ac-
24 knowledges consent to the jurisdiction of the State
25 in which the registered agent is located.

1 **SEC. 4. DEFINITIONS.**

2 In this Act:

3 (1) APPLICABLE AGENCY.—The term “applica-
4 ble agency” means, with respect to covered prod-
5 ucts—

6 (A) described in subparagraphs (A) and
7 (B) of paragraph (4), the Food and Drug Ad-
8 ministration;

9 (B) described in paragraph (4)(C), the
10 Consumer Product Safety Commission;

11 (C) described in subparagraphs (D) and
12 (E) of paragraph (4), the Environmental Pro-
13 tection Agency; and

14 (D) described in subparagraph (F) of
15 paragraph (4)—

16 (i) the Food and Drug Administra-
17 tion, if the item is intended to be a compo-
18 nent part of a product described in sub-
19 subparagraphs (A) and (B) of paragraph (4);

20 (ii) the Consumer Product Safety
21 Commission, if the item is intended to be
22 a component part of a product described in
23 paragraph (4)(C); and

24 (iii) the Environmental Protection
25 Agency, if the item is intended to be a
26 component part of a product described in

1 subparagraphs (D) and (E) of paragraph
2 (4).

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

5 (A) between a place in a State and any
6 place outside of the State; or

7 (B) which affects trade, traffic, commerce,
8 or transportation described in subparagraph
9 (A).

10 (3) COMMISSIONER OF U.S. CUSTOMS AND BOR-
11 DER PROTECTION.—The term “Commissioner of
12 U.S. Customs and Border Protection” means the
13 Commissioner responsible for U.S. Customs and
14 Border Protection of the Department of Homeland
15 Security.

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

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

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

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

4 (D) A chemical substance or new chemical
5 substance, as such terms are defined in section
6 3 of the Toxic Substances Control Act (15
7 U.S.C. 2602).

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

11 (F) An item intended to be a component
12 part of a product described in subparagraph
13 (A), (B), (C), (D), or (E) but is not yet a com-
14 ponent part of such product.

15 (5) DISTRIBUTE IN COMMERCE.—The term
16 “distribute in commerce” means to sell in commerce,
17 to introduce or deliver for introduction into com-
18 merce, or to hold for sale or distribution after intro-
19 duction into commerce.

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

23 (a) REGISTRATION.—

24 (1) IN GENERAL.—Beginning on the date that
25 is 180 days after the date on which the regulations

1 are prescribed pursuant to subsection (e)(1) and ex-
2 cept as otherwise provided in this subsection, the
3 head of each applicable agency shall require foreign
4 manufacturers and producers of covered products
5 distributed in commerce to establish a registered
6 agent in the United States who is authorized to ac-
7 cept service of process on behalf of such manufac-
8 turer or producer for the purpose of any State or
9 Federal regulatory proceeding or any civil action in
10 any State or Federal court relating to such covered
11 product, if such service is made in accord with the
12 State or Federal rules for service of process in the
13 State in which the regulatory action or case is
14 brought.

15 (2) LOCATION.—The head of each applicable
16 agency shall require that an agent of a foreign man-
17 ufacturer or producer registered under this sub-
18 section with respect to a covered product be located
19 in a State with a substantial connection to the im-
20 portation, distribution, or sale of the covered prod-
21 uct.

22 (3) DESIGNATION AND ACCEPTANCE.—

23 (A) DESIGNATION BY FOREIGN MANUFAC-
24 TURERS AND PRODUCERS.—The head of each
25 applicable agency shall require each foreign

1 manufacturer and producer described in para-
2 graph (1) to provide to the applicable agency a
3 written designation of the agent established by
4 the foreign manufacturer or producer pursuant
5 to paragraph (1) that—

6 (i) is signed by an official or employee
7 of the foreign manufacturer or producer
8 who has authority to appoint an agent;

9 (ii) contains the full legal name, prin-
10 cipal place of business, and mailing ad-
11 dress of the foreign manufacturer or pro-
12 ducer; and

13 (iii) contains a statement that the
14 designation is valid and binding on the for-
15 eign manufacturer or producer for the pur-
16 poses of this section.

17 (B) ACCEPTANCE BY AGENTS.—The head
18 of each applicable agency shall require each
19 agent established pursuant to paragraph (1)
20 with respect to a foreign manufacturer or pro-
21 ducer to provide to the applicable agency a
22 written acceptance of such establishment that—

23 (i) is signed by the agent or, in the
24 case in which a domestic firm or domestic
25 corporation is designated as an agent, an

1 official or employee of the firm or corpora-
2 tion with authority to sign for the firm or
3 corporation;

4 (ii) contains the agent's full legal
5 name, physical address, mailing address,
6 and telephone number;

7 (iii) contains a statement that the
8 agent accepts such establishment and the
9 designation by the foreign manufacturer or
10 producer under subparagraph (A); and

11 (iv) contains a statement that the
12 agent acknowledges that the duties of the
13 agent—

14 (I) may not be assigned to an-
15 other person; and

16 (II) remain in effect until with-
17 drawn or replaced by the foreign man-
18 ufacturer or producer.

19 (4) MINIMUM SIZE.—This subsection shall only
20 apply to foreign manufacturers and producers that
21 manufacture or produce covered products in excess
22 of a minimum value or quantity the head of the ap-
23 plicable agency shall prescribe by rule for purposes
24 of this section. Such rules may include different
25 minimum values or quantities for different subcat-

1 egories of covered products prescribed by the head of
2 the applicable agency for purposes of this section.

3 (b) REGISTRY OF AGENTS OF FOREIGN MANUFAC-
4 TURERS.—

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

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

12 (A) to the public through the Internet
13 website of the Department of Commerce; and

14 (B) to the Commissioner of U.S. Customs
15 and Border Protection.

16 (c) CONSENT TO JURISDICTION.—

17 (1) IN GENERAL.—A foreign manufacturer or
18 producer of a covered product that registers an
19 agent under this section thereby consents to the per-
20 sonal jurisdiction of the State or Federal courts of
21 the State in which the registered agent is located for
22 the purpose of any regulatory proceeding or civil ac-
23 tion relating to such covered product.

24 (2) RULE OF CONSTRUCTION.—Paragraph (1)
25 shall not be construed to apply to actions brought by

1 foreign plaintiffs in which the alleged injury or dam-
2 age occurred outside the United States.

3 (d) DECLARATIONS.—

4 (1) IN GENERAL.—Beginning on the date that
5 is 180 days after the date on which the regulations
6 are prescribed pursuant to subsection (e), any per-
7 son importing a covered product manufactured or
8 produced outside the United States shall provide to
9 U.S. Customs and Border Protection a declaration
10 that—

11 (A) the person has made appropriate in-
12 quiry as to whether the manufacturer or pro-
13 ducer of the covered product has complied with
14 the requirements of this section, including by
15 seeking appropriate documentation from the ex-
16 porter of the covered product and by consulting
17 the registry established pursuant to subsection
18 (b); and

19 (B) to the best of the person's knowledge,
20 with respect to each importation of a covered
21 product, the foreign manufacturer or producer
22 of the product has registered an agent in the
23 United States as required under subsection (a).

24 (2) ELECTRONIC SUBMISSION.—Not later than
25 1 year after the date of the enactment of this Act,

1 the Commissioner of U.S. Customs and Border Pro-
2 tection shall establish a mechanism whereby declara-
3 tions made pursuant to paragraph (1) may be sub-
4 mitted electronically and maintained as an electronic
5 record within the data management systems of U.S.
6 Customs and Border Protection.

7 (3) REGULATIONS.—

8 (A) IN GENERAL.—Not later than 1 year
9 after the date of the enactment of this Act, the
10 Commissioner of U.S. Customs and Border
11 Protection shall prescribe regulations to carry
12 out this subsection.

13 (B) SUMMARY DECLARATION.—The regu-
14 lations required by subparagraph (A) shall re-
15 quire that each declaration of an importer made
16 pursuant to paragraph (1) with respect to a
17 covered product shall accompany the entry sum-
18 mary documentation for such product or, in the
19 case of repeated transactions, may be submitted
20 on an annual basis.

21 (4) PENALTIES.—Any person who fails to pro-
22 vide a declaration required under paragraph (1), or
23 files a false declaration, shall be subject to any ap-
24 propriate penalty under section 592 of the Tariff
25 Act of 1930 (19 U.S.C. 1592) or title 18, United

1 States Code, with respect to importation of a cov-
2 ered product.

3 (e) REGULATIONS.—

4 (1) IN GENERAL.—Not later than 1 year after
5 the date of the enactment of this Act, the Secretary
6 of Commerce, the Commissioner of U.S. Customs
7 and Border Protection, and each head of an applica-
8 ble agency shall prescribe regulations to carry out
9 this section, including the establishment of minimum
10 values and quantities under subsection (a)(4).

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

16 (A) prescribing consistent regulations to
17 the extent necessary for the effective and effi-
18 cient sharing of information and establishment
19 of systems and procedures necessary to carry
20 out this section; and

21 (B) establishing minimum values and
22 quantities under subsection (a)(4), and to the
23 extent advisable and practicable for the purpose
24 of establishing consistent minimum require-
25 ments.

1 **SEC. 6. STUDY ON REGISTRATION OF AGENTS OF FOREIGN**
2 **FOOD PRODUCERS AUTHORIZED TO ACCEPT**
3 **SERVICE OF PROCESS IN THE UNITED**
4 **STATES.**

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

8 (1) complete a study on the feasibility and ad-
9 visability of requiring foreign producers of food dis-
10 tributed in commerce to establish a registered agent
11 in the United States who is authorized to accept
12 service of process on behalf of such producers for
13 the purpose of all civil and regulatory actions in
14 State and Federal courts; and

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

17 **SEC. 7. STUDY ON REGISTRATION OF AGENTS OF FOREIGN**
18 **MANUFACTURERS AND PRODUCERS OF COM-**
19 **PONENT PARTS WITHIN COVERED PROD-**
20 **UCTS.**

21 Not later than 2 years after the date of the enact-
22 ment of this Act, the head of each applicable agency
23 shall—

24 (1) complete a study on determining feasible
25 and advisable methods of requiring manufacturers or
26 producers of component parts within covered prod-

1 ucts manufactured or produced outside the United
2 States and distributed in commerce to establish reg-
3 istered agents in the United States who are author-
4 ized to accept service of process on behalf of such
5 manufacturers or producers for the purpose of all
6 civil and regulatory actions in State and Federal
7 courts; and

8 (2) submit to Congress a report on the findings
9 of the head of the applicable agency with respect to
10 the study.

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

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

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