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Experts Predict Passage of the Foreign Manufacturers Legal Accountability Act of 2010: What Does This Law Mean to U.S. Importers and Exporters?

One of the more controversial bills brewing in Congress is the Foreign Manufacturers Legal Accountability Act of 2010. Although a variation of this bill was introduced in the Senate Finance Committee last year, it received little attention. Just last month, however, a House version of the bill passed the Subcommittee on Commerce, Trade, and Consumer Protection, and many trade experts are now predicting that the bill will pass.

The Act was developed in response to reports of defective Chinese drywall that damaged houses and sickened people, and the uproar that resulted upon finding that the Chinese manufacturers could not be held accountable under U.S. law for the defective products. It would require foreign manufacturers of “covered products” to designate a registered U.S. agent to receive service of process on behalf of the company. This, in essence, would allow foreign manufacturers to be sued in the United States for any civil action related to those covered products. The law would also prohibit any person from importing covered products from manufacturers who do not have registered agents in the United States.

The products that would be covered under the act consist of those that are regulated by the Food and Drug Administration, the Consumer Product Safety Commission, the Environmental Protection Agency and the National Highway Traffic Safety Administration. This includes—among other goods—consumer products, chemical substances, pesticides, cosmetics and motor vehicles. The law also extends to component parts of these products.

How would this bill affect U.S. importers of merchandise? On the surface, the bill would seem to relieve the importer of sole liability for distributing defective or unsafe products, since the foreign manufacturer could be sued. Supporters of the Act also note that it is designed to put foreign and domestic manufacturers on equal footing in the U.S. market, by making both equally subject to U.S. safety laws and civil lawsuits.

On the other hand, the current version of the Act contains several flaws pointed out by those opposed to the bill. The U.S. agent registration requirements will likely prove costly to foreign manufacturers, many of whom may choose to exit the U.S. market as a result. And while the Act requires foreign manufacturers to submit to U.S. jurisdiction, it does not discuss how U.S. courts or agencies would be able to enforce a judgment against the manufacturer, making the value of a judgment potentially hollow. Additionally, should other countries adopt reciprocal measures, U.S. exporters may quickly find themselves in a position where they must agree to submit to the jurisdiction of foreign courts to continue selling their goods in foreign markets.

Congress has clearly shown that it wants to take a tough stance against foreign producers of defective or unsafe merchandise. However, it is far from certain that the Foreign Manufacturers Legal Accountability Act is the appropriate response to address this concern. If your business involves importing or exporting merchandise, you may want to take the time to look at this important bill and make your opinions known to Congress.

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