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## PRESS RELEASE

### Proposed Law Would Require Non-US Manufacturers To Appoint Agents For Service Of Process, Submit To Jurisdiction In US Courts

Beijing, China –Nov 5, 2010

The US Congress is currently considering a proposed law that would require foreign manufacturers of several types of products to appoint agents for service of process and submit to jurisdiction the United States, or have their products barred from importation.

The Foreign Manufacturers Legal Accountability Act (FMLAA) would require foreign manufacturers of a “minimum value or quantity” of “covered products” – such as consumer goods, drugs, devices, cosmetics, chemicals, biological products and pesticides – to appoint agents for service of process in a state with a “substantial connection” to the importation, distribution or sale of the products. The foreign manufacturer must also consent to personal jurisdiction in the state and federal courts for the state in which it has appointed its agent for service of process.

The FMLAA will prohibit the importation into the United States of any covered product or product components if the product – or any part of it – was manufactured or produced outside the United States by a manufacturer that has not appointed an agent for service of process or submitted to jurisdiction.

Exactly which foreign manufacturers will be affected by the FMLAA is hard to predict, given that the FMLAA will apply only to manufacturers of a “minimum value or quantity” – a threshold that has not yet been specified. In fact, there is considerable debate about the exact contours of the FMLAA and which industries it will cover. If the FMLAA ultimately becomes law, it will be up to certain federal agencies to determine the value or quantity that will trigger the obligations of the FMLAA.

The FMLAA could present a significant logistical hurdle for companies that sell products in the United States – particularly those that source components from numerous overseas suppliers. Depending on the “minimum value or quantity” threshold determined for the different types of products, foreign companies could see their products stopped at the border if they are unable to certify that all component manufacturers have appointed agents for service of process in the United States. Unfortunately, exactly how the FMLAA would be enforced is hard to predict, given that enforcement is

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left to the US Department of Homeland Security, which oversees US Customs and Border Protection.

Of course, the fact that a foreign manufacturer may be required to submit to personal jurisdiction in the United States may have little bearing on the ability of a US-based plaintiff to collect a judgment. For example, if a company has no assets in the United States, the plaintiff would still need to resort to foreign law to enforce any judgment the plaintiff obtains.

Whether the FMLAA will become law is hard to predict. On one hand, it seems to have considerable support in Congress, given a general perception in the United States that it is difficult to hold foreign companies legally accountable in the United States. In fact, this legislation appears to stem from difficulties experienced by plaintiffs serving process on China-based defendants that, they allege, sold defective drywall products in the United States.

Some trade experts believe that the FMLAA, as currently drafted, would violate the United States' World Trade Organization commitments, which prohibit import restrictions other than duties and charges outlined in the General Agreement on Tariffs and Trade Article XI. Accordingly, they believe that this bill may have difficulty getting past further hurdles in both the House of Representatives and the Senate.

Several revisions to the FMLAA appear to be in the works, including a compromise proposal that would require domestic importers to declare to US Customs that the foreign companies with which they do business have a registered agent in the United States and would subject importers to penalties for false declarations. Whether any further revisions will be incorporated into the FMLAA is yet to be seen.

Regardless of whether the FMLAA ultimately becomes law, it is clear that there is increasing frustration on the part of US plaintiffs' lawyers and their allies in Congress with the perceived inability to hold foreign companies accountable in US lawsuits. This should be of interest to any foreign manufacturers that expect to sell their products in the United States.

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