



**Statement of
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**Before the
House Committee on Energy and Commerce
Subcommittee on Commerce, Trade, and
Consumer Protection**

**Legislative Hearing on H.R. 4678, the
“Foreign Manufacturers Legal Accountability
Act”**

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Good morning, Chairman Rush, Ranking Member Whitfield, and Members of the Subcommittee on Commerce, Trade and Consumer Protection. My name is Jeremy Baskin, and I am a general attorney who works with the Import Surveillance Division of the Office of Compliance at the U.S. Consumer Product Safety Commission (CPSC).

I am pleased to be here today to discuss the U.S. Consumer Product Safety Commission's efforts in the area of import surveillance and H.R. 4678, the "Foreign Manufacturers Legal Accountability Act." The testimony that I will give this morning is mine, and has not been reviewed or approved by the Commission and may not necessarily represent the views of the Commission.

I. CPSC Efforts to Increase Oversight of Imported Products

From 1998 to 2007, the value of consumer products imported into the United States increased over 100 percent. During that time period, imports from China nearly quadrupled – and now constitute over 40 percent of all imported consumer goods. The shift in specific product areas has been more pronounced. In 2002, approximately 60 percent of toys purchased in the U.S. were imported from China and Hong Kong. By 2008, that number had risen to almost 80 percent of the U.S. market.

In response to the rapid increase in consumer product imports, the CPSC has taken several steps to inspect products entering this country to ensure that they comply with applicable product safety standards. In 2008, the Commission announced its Import Safety Initiative and established a new Import Surveillance Division within the Office of Compliance. The establishment of this new Division allowed the CPSC to co-locate permanent, full-time compliance investigators at key ports of entry into the United States. In 2009, the Division had ten full time employees (FTEs) dedicated to port surveillance; that number is scheduled to rise to fourteen FTEs by the end of fiscal year (FY) 2010, and nineteen FTEs in FY 2011. In addition, the Division can call on the resources of the entire Office of Compliance, which has over one hundred other FTEs, when necessary.

The CPSC has also sought to enhance its relationships with larger agency partners, such as the Department of Homeland Security. Through the Operation Guardian program, CPSC partners with U.S. Customs and Border Protection (CBP) staff in order to leverage joint resources. In addition, CPSC recently assigned two FTEs to CBP's new Commercial Targeting and Analysis Center (CTAC) and executed a Memorandum of Understanding with CBP that allows the agency direct access to pre-arrival cargo data. This allows CPSC inspectors to target suspect shipments before they arrive and – most importantly – before potentially dangerous goods can enter the U.S. stream of commerce. We have also conducted training programs with CBP to educate both government personnel and the importing community on CPSC and CBP product detention and seizure authorities.

So far, the results of these initiatives are encouraging. In FY 2007, the CPSC collected approximately 750 samples of suspect products entering our country. In FY 2009, that number more than doubled to almost 1600. At the same time, we started to see a commensurate decrease in the number of voluntary recalls from 563 in FY 2008 to 466 in FY 2009.

II. Working with Foreign Manufacturers

In most cases, CPSC has been able to work with domestic partners of foreign manufacturers, such as importers or retailers, on enforcement activities to obtain relief for consumers without resorting to adjudicative proceedings. One example of this is a \$50,000 settlement with a Hong Kong corporation with offices in the United States that imported toys manufactured in China that violated the Commission's lead paint ban.

In a few cases, however, the lack of a registered agent for service of process has hindered the Commission's ability to develop information that would help us to provide relief to consumers. One example of this is the CPSC's efforts to provide relief to U.S. homeowners impacted by problem drywall imported from China. In a number of cases, CPSC staff has attempted to send requests for information to Chinese drywall manufacturers, only to have these requested returned to the Commission – refused and unopened.

The lack of a registered agent for service of process has also been recognized by Chinese industry groups, and some local lawyers in China have provided legal advice seeking to exploit this situation. In fact, the Chinese Building Material Industry website, in discussing U.S. court judgments, recently featured the following advice from a local attorney:

How shall these building materials companies face the litigation and sentence of the U.S. court? If these companies don't have any business operation in the United States, and refuse to pay the compensation, then it's impossible to implement the sentence by the federal court.¹

This type of sentiment appears rare. However, it is foreseeable that additional attempts to stymie or obstruct Commission efforts to obtain information voluntarily from manufacturers outside of U.S. legal jurisdiction could occur in the future. Any such recalcitrance could impede Commission efforts to assist consumers with potentially defective consumer products.

¹ <http://www.jiancai.com/info/detail/56-84591.html> (translated on June 7, 2010).

III. H.R. 4678, the Foreign Manufacturers Legal Accountability Act

Additional authority allowing the CPSC to require foreign manufacturers designate a U.S. registered agent for service of process could be helpful in some cases – particularly those involving administrative requests for documents or information. On January 15, 2010, CPSC Chairman Inez M. Tenenbaum noted in a statement accompanying a report to Congress on the progress of implementing the Consumer Product Safety Improvement Act of 2008 that helpful changes to existing statutes might include “service of process requirements for foreign manufacturers so the agency can more easily pursue recalls.” Currently, any action against an identifiable foreign manufacturer would require service of process using the Hague Convention.

As the Subcommittee moves forward, however, some additional direction would be helpful with regard to the range and size of manufacturers that would be subject to the registration process. In addition, it might also be helpful to involve the Import Safety Working Group in this process to ensure that appropriate jurisdictional and operational details are addressed.

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Mr. Chairman, thank you again for the opportunity to testify on H.R. 4678 and the Commission’s overall efforts to increase oversight of imported consumer products. I would be happy to answer any questions at this time.