



EUROPEAN UNION
DELEGATION TO THE UNITED STATES OF AMERICA

The Head of Delegation

Washington, 23 July 2010
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The Honorable
Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, D.C. 20515

Fax 202 225 4188

Dear Madame Speaker,

I am writing to you in reference to the Foreign Manufacturers Legal Accountability Act of 2010 (FMLA, H.R.4678 and S.1606, now an amendment to H.R.5297), currently under consideration in the US Congress. Let me first stress that the European Union (EU) is fully supportive of the objective of enhanced consumer protection with regard to defective products placed on the US market. Indeed, the EU itself takes great care in ensuring that its own consumers enjoy the highest degree of protection in this area. Against this background, I would like, however, to express the EU's concerns about certain elements of the Congressional drafts, which appear to be problematic and could hamper transatlantic trade.

Notably, the EU is concerned that the draft bill will introduce an additional layer of burden on European and other foreign enterprises exporting a very wide range of products and components to the U.S. Establishing a registered agent in the U.S. for any *potential* damage claim of a U.S. consumer seems disproportionate in terms of costs, in particular for small and medium-sized enterprises.

The obligations regarding the U.S. importer's liability have recently been strengthened by the Consumer Product Safety Improvement Act, whereby the importer is obliged to certify, on the basis of results of tests provided by the foreign manufacturer, that the imported products are in conformity with the U.S. safety norms *prior* to their placement on the U.S. market. The Foreign Manufacturers Legal Accountability Act further extends these requirements by widening the product range and adding an additional layer of administrative burden imposed on foreign manufacturers. These additional requirements may lead some companies, notably small and medium-sized enterprises, to stop their exports to the U.S., not on the basis of insufficient product safety, but on the basis of the costs of such compliance.

Furthermore, it is important to note that the inclusion of component manufacturers in the scope of the bill is likely to have a direct negative impact also on U.S. manufacturers,

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who form part of the global supply chains and use foreign-made components in their production.

In addition, the version of the FMLA passed by the House Energy and Commerce Committee (H.R. 4678) is questionable with regard to its compatibility with the WTO GATT Agreement, notably Article XI. In this version, the bill would prohibit imports from those foreign manufacturers who did not register an agent in the U.S.

Lastly, the EU has concerns about the compatibility of the envisaged provisions on service of judicial documents, in case of liability litigation, with the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. The EU also considers problematic the very wide application of jurisdiction foreseen in the draft bill.

The EU and the U.S. remain each other's most important trading partners. In the context of the ongoing economic recovery and the intense efforts to preserve and create jobs, it is important to ensure that the provisions of this bill do not unduly hamper trade and in particular do not create additional burdens for small and medium-sized business on both sides of the Atlantic. Open and undistorted trade remains a key vehicle to recovery, of course without prejudice to the legitimate interests of consumers for safe products. We remain convinced that the legitimate objective of consumer protection could be pursued by less burdensome and trade-restrictive measures.

Sincerely,



João Vale de Almeida
Appointed Ambassador

cc: The Honorable Gary Locke, Secretary of Commerce
The Honorable Ron Kirk, United States Trade Representative
The Honorable Robert Hormats, Under Secretary of State

In addition, this letter has been sent to:

The Honorable Steny Hoyer

The Honorable John Boehner

The Honorable Mitch McConnell

The Honorable David Camp

The Honorable Kevin Brady

The Honorable Charles Grassley

The Honorable Joe Barton

The Honorable George Radonovich

The Honorable Sheldon Whitehouse

The Honorable Frank Lucas

The Honorable Jean Schmidt

The Honorable Harry Reid

The Honorable Sander Levin

The Honorable John Tanner

The Honorable Max Baucus

The Honorable Henry Waxman

The Honorable Bobby Rush

The Honorable Betty Sutton

The Honorable Collin Peterson

The Honorable Dennis Cardoza