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Senator Daniel Inouye  
Chairman  
Committee on Appropriations  
United States Senate  
S-128 Capitol  
Washington, DC 20510

Senator Thad Cochran  
Ranking Member  
Committee on Appropriations  
United States Senate  
S-146A Capitol  
Washington, DC 20510

Dear Chairman Inouye and Ranking Member Cochran:

As your Committee marks up the FY2012 Financial Services and General Government Appropriations bill, our groups write to you in support of language that, if included, would help consumers harmed by unsafe products to obtain redress for their injuries from the appropriate entity.

Consumers Union and Consumer Federation of America have long fought for legislation and regulations that will result in safer products on our store shelves and ensure accountability for recalls and defective products. In the event that an unsafe product enters the marketplace, however, consumers should be able to pursue all remedies for the harm they suffer, whether the manufacturer of the unsafe product is a foreign company or a domestic one. This may be accomplished by language in the Appropriations bill that, if included, would help consumers to pursue remedies against foreign manufacturers and producers of unsafe products.

More and more consumer products are being made abroad. Whether the products are toys, drywall, dog food, pharmaceuticals or toothpaste, the consumer products that Americans use everyday are increasingly being manufactured overseas. For example, according to the Toy Industry Association, in 2007, toys made in China made up 70 to 80 percent of the toys sold in the United States.<sup>1</sup> Add to that the statistics about consumer product recalls: in 2009, the U.S. Consumer Product Safety Commission (CPSC) recalled 465 products; 563 products in 2008; 472 in 2007; and 467 in 2006. In 2006, of products recalled, 24% were manufactured in the United States; in 2007, 18 % were manufactured in the United States; in 2008, 17%; and in 2009, 22% were made in the United States.<sup>2</sup> This means that more than 75 percent of products recalled since 2006 were manufactured outside of the United States.

The CPSC has previously expressed their support for this concept. In 2010 testimony before the House Committee on Energy and Commerce Subcommittee on Commerce, Trade and Consumer Protection, Jeremy Baskin of CPSC's Import Surveillance Division of the Office of Compliance stated that additional authority allowing the CPSC to require foreign manufacturers to designate a U.S. registered agent for service of process would be "helpful" and noted that Chairman

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<sup>1</sup> "As More Toys Are Recalled, Trail Ends in China," by Eric S. Lipton and David Barboza, *NY Times*, June 19, 2007.

<sup>2</sup> This information was provided by the U.S. Consumer Product Safety Commission. It is on file with CU and CFA.

Tenenbaum had included changes to “service of process requirements for foreign manufacturers so the agency can more easily pursue recalls,” in a statement to Congress regarding helpful changes to existing statutes.<sup>3</sup>

Some concerns have been raised about whether expanding service of process to include foreign manufacturers and producers violates other international agreements. World Trade Organization (WTO) violations occur when foreign entities are treated differently than domestic ones under U.S. laws. This language would do the opposite. It actually creates an equal playing field by holding all manufacturers, no matter where they are based, responsible for the safety of the products they sell in the United States. Manufacturers as well as the products produced and sold in the U.S. would be treated equally under this language.

Finally, as we understand it, the language would be permissive, and simply allow – but not require – CPSC to ask foreign manufacturers selling product in the U.S. to register an agent for service of process here. This provision, as we understand it, is different from existing National Highway Transportation Safety Administration law which requires registration of process for motor vehicles and motor vehicle equipment.

If foreign entities have the benefit of selling products and making profits from sales in the U.S., they should be accountable if the product causes harm.

If language is included in the FY12 Financial Services and General Government Appropriations bill to address this issue, we urge your support and urge you to oppose any amendment that might be offered to strike it. Thank you for your consideration.

Sincerely,



Ami V. Gadhia  
Senior Policy Counsel  
Consumers Union



Rachel Weintraub  
Director of Product Safety & Senior Counsel  
Consumer Federation of America

CC: Members of the Senate Appropriations Committee

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<sup>3</sup> <http://www.cpsc.gov/pr/baskinjune2010.pdf>