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Customs, Trade and Transport Law e-alert

Proposed new US legislation will impose new liabilities on exporters to the US

According to press reports, the US Congress is moving ahead with the Foreign Manufactured Legal Accountability Act ("**Act**") and the Act is likely to be approved by the full Senate.

If passed, the Act would require foreign manufacturers of consumer goods imported into the United States to establish registered agents in the US who are authorised to accept service of any documents regarding civil and regulatory actions ("**Actions**") in the US against such manufacturers. Consequently, the Act requires that the US state where the registered agent is located to have a substantial connection to the importation, distribution, or sale of the relevant goods. A publicly accessible register of such agents would also be established.

In effect, the Act would require all foreign manufacturers of consumer goods to register US agents or face a ban on the import of their goods to the US.

Registering a US agent is not without its repercussions. It would compel the foreign manufacturer to consent to the jurisdiction of the State or Federal Courts of the US state in which its agent is located in the case of any Actions. Therefore, the Act would make it easier for foreign manufacturers of consumer goods to be sued. This can be contrasted to the current situation where the US 'importer of record', as the owner of the goods, is the usual entity over whom the US exercises legal jurisdiction.

The implementation of the Act would also require US Customs and Border Protection to develop ways to determine who the actual manufacturer is for purposes of appointing a registered agent. These determinations may be complex and can depend heavily on the manufacturing processes used to make the goods or the variety of commercial relationships in place.

The Act will also require the US Department of Agriculture and Food and Drug Administration to conduct a joint study into the suitability and desirability of imposing similar requirements on foreign food producers.

If the Act is passed, it will no doubt have significant impact on all imports into the US and increase the potential exposure to liability for exporters to the US. We will keep you updated.

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