

Statement of

# **The Honorable Sheldon Whitehouse**

United States Senator  
Rhode Island  
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Opening Statement of Sheldon Whitehouse  
Chairman, Subcommittee on Administrative Oversight and the Courts  
Hearing on "Leveling the Playing Field and Protecting Americans: Holding Foreign  
Manufacturers Accountable"  
As Prepared for Delivery

Every day, Americans in all walks of life are injured by defective products that are manufactured outside the United States. These products hurt consumers - they lead to serious injuries, and even death - and they hurt the American businesses that sell these products, and that must deal with angry customers, product recalls, and unusable inventory.

The list of recent examples of Americans injured by products made in China and other countries is shocking. Last year, a contaminated blood thinner caused severe medical reactions and contributed to numerous deaths. In 2006, a lead-tainted charm bracelet claimed the life of a 4-year-old. The autopsy demonstrated that the charm was 99 percent lead, 1,650 times more than the 0.06 percent lead limit specified in CPSC enforcement guidelines for children's jewelry.

Food products from seafood to honey have been contaminated with unthinkable chemicals, including veterinary drugs banned in domestic production, potentially harmful antibiotics, and unapproved food additives. 60 million packages of pet food contaminated with tainted wheat gluten have been recalled in the last two years. Substandard tires have failed, leading to fatalities.

Most recently, defective drywall imported from China has been found to contain excessively high levels of sulfur, causing houses to smell like rotten eggs, corroding copper wiring, and making expensive appliances fail. Thousands of homes may be affected. A subcommittee of the Commerce Committee will hold a hearing on Thursday to consider the consequences of these defective products. I commend them for their leadership on what rapidly is emerging as a major problem for home owners and businesses.

We all know American manufacturers must comply with regulations that ensure the safety of American consumers. When they fail to do so, they must answer to regulators and are held accountable through the American system of justice. Unfortunately, however, foreign manufacturers are not being held to the same standards - this puts at risk American consumers and businesses, and puts American manufacturers at a competitive disadvantage.

A major cause of this disparity is that Americans injured by foreign products face unnecessary and inappropriate procedural hurdles if they seek to hold foreign manufacturers accountable.

First, they must identify the manufacturer of the product that injured them - often not an easy task since many foreign products do no more than indicate their country of origin.

Second, an injured American must serve process on the foreign manufacturer. This means the injured American has to deliver legal papers to the company directly or through a registered agent explaining that he or she is bringing a legal action against it. But this simple step often requires enormous time and expense - lawsuits even can fail over it - as the injured American attempts to comply with various complicated international treaties.

Third, an injured American must overcome the technical defense that, even though a foreign manufacturer's product was used by an American consumer, the courts of that consumer's home state do not have jurisdiction over that company.

Finally, even after an injured American has overcome these hurdles and prevailed in court, a foreign manufacturer can avoid collection on the judgment - often simply cutting off communications or shutting up its business and starting up again with a different name.

Americans harmed by defective foreign products need justice, and they do not get it when foreign manufacturers use technical legal defenses to avoid paying damages to the people they have injured.

Today's hearing will help us learn more about these failures of justice and what we can do to fix them. If we do nothing, Americans will continue to be injured by foreign products and denied a meaningful remedy American businesses will continue to be left on the hook for foreign defective products they import, use or resell; and foreign manufacturers will maintain a competitive advantage over American manufacturers who must follow the rules and are subject to the American tort system.

This hearing will consider the range of legal impediments standing between an injured American and an enforceable, collectible judgment against the foreign manufacturer. It also will demonstrate that these impediments result in enormous harm to American consumers, as well as damage to American businesses that transact business with the foreign entity. The assembled panel of experts will explain the legal hurdles facing Americans injured by foreign products and also put those injuries into real-world context by describing the harm they cause our families and our businesses.

I am very grateful to all the witnesses for taking the time to come before the committee today. I am especially delighted to have Louise Ellen Teitz here to testify. She is a distinguished professor at Rogers Williams University Law School in my home state of Rhode Island. Her expertise will make a great contribution to this hearing as it has to that wonderful law school of which she was one of the very first professors.

I look forward to continuing to work with Professor Teitz and the other witnesses as I will soon introduce legislation that addresses the difficulty in serving process on foreign manufacturers. My legislation will require that a manufacturer who imports goods into the United States must designate an agent for service of process who will accept the legal papers required to initiate a lawsuit. It will require the development of a register of these agents so that an injured American

can inform the manufacturer defendant of a lawsuit quickly and cheaply. I look forward to working with Ranking Member Sessions and other Senators on this legislation. Similarly, I look forward to hearing the witnesses' perspectives on the approach I've proposed.

Protecting Americans and holding foreign manufacturers accountable when their products harm consumers is not a partisan issue. Everyone agrees that we should do what we can to keep Americans safe from defective products. So too, I think, we all agree that American companies should not be at a competitive disadvantage to their foreign counterparts. With these fundamental agreements, I look forward to finding legislative solutions that will level the competitive playing field and protect Americans.

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