

AUTOMOTIVE

BUSINESS GROUP

BULLETIN

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THE TREAD ACT – US REPORTING REQUIREMENTS FOR CANADIAN COMPANIES

1. BACKGROUND ON THE TREAD ACT

By the time Bridgestone/Firestone announced its US recall of tires installed on Ford Explorers due to sudden tread separation, it had recorded 193 personal injury claims, 2,288 property damage claims and was a defendant in 66 law suits relating to the tires. Ford had already issued recalls in the Persian Gulf region, Malaysia, Thailand and Venezuela. However, neither Bridgestone/Firestone nor Ford reported any of this information to the US National Highway Traffic Safety Administration (the "NHTSA"). They were under no legal obligation to do so. To close the information gap, the US government reached its long arm into the business of automotive parts manufacturers worldwide by enacting the *Transportation Recall Enhancement, Accountability, and Documentation Act* (the "*TREAD Act*").

Under the *TREAD Act*, a Canadian automotive parts manufacturer whose products are sold in the US now has to report more information more frequently to the US government than to its own. This article will briefly outline two of the *TREAD Act's* major components, "Early Warning Reporting Requirements" and "Reporting of Foreign Recall and Safety Campaigns". It is intended as a basic overview only and, as the devil is in the details, it is imperative that all of those caught within the *TREAD Act's* scope get intimately familiar with this legislation.

2. DO THE TREAD ACT'S REPORTING REQUIREMENTS APPLY TO YOUR BUSINESS?

The *TREAD Act* applies to, among others, all Canadian manufacturers, together with their subsidiaries and affiliates, of motor vehicles or motor vehicle equipment who manufacture automotive products that are offered for sale, sold or leased in the United States. For the remainder of this article, we will focus on the implications of the legislation for Canadian automotive parts manufacturers.

3. THE FOREIGN RECALL AND SAFETY CAMPAIGN REPORTING REQUIREMENTS IN A NUT SHELL

Since November 1, 2000, automotive parts manufacturers within the *TREAD Act's* scope have been required to report to the NHTSA all decisions to conduct a safety recall or other safety campaign, in any country, on motor vehicle equipment that is identical or "substantially similar" to motor vehicle equipment offered for sale in the United States. With the exception of tires, which have their own specifications, a piece of equipment is "substantially similar" to a US product if the equipment subject to the recall or campaign contains one or more component or system that is also contained in the US product and the component or system serves the same function in both products.

Under the *TREAD Act*, any offer to customers to provide remedial action to address a defect relating to safety or a failure to comply with an applicable safety standard or guideline is a recall. The definition of a safety campaign is much broader and includes any communication with product owners and/or dealers with respect to the conditions under which a vehicle or equipment should be operated, repaired or replaced. Some examples of a safety campaign would be the provision of an extended warranty or a warning to customers or dealers of a potential problem. To qualify as a reportable safety campaign, the communication need not specifically reference safety but must have consumer safety implications. Further, while the definition of a safety campaign is broad, it does not include such things as ad hoc goodwill repairs or replacements, promotional materials, customer surveys or operating/owner's manuals. Recalls and campaigns mandated or suggested by Transport Canada or other governmental agencies are included within the reporting requirements.

The above addresses what must be reported. The next question is when must it be reported? Manufacturers must report each recall and safety campaign in a specified format within 5 working days of the manufacturer's decision to take action or of the government's request that it do so. A recall or campaign need be reported only once, however. Therefore, if the exact same campaign is conducted and reported by a US company or the part is original equipment and the vehicle manufacturer reports the campaign, it need not be reported again by the parts manufacturer.

4. THE EARLY WARNING REPORTING REQUIREMENTS IN A NUT SHELL

Although not caught by their full force, Canadian manufacturers of original and replacement automotive parts are subject to the *TREAD Act*'s early warning reporting requirements. With the exception of manufacturers of tires and child restraint systems, a manufacturer of automotive parts used in the US must report specified information on each (a) claim (*e.g.* a civil action or written demand for relief) it receives involving a death in the US relating to its product's failure and (b) incident report, other than a media report, it receives alleging or proving that a death occurred in the US as a result of a possible defect in its product. Further, foreign manufacturers, together with their subsidiaries and affiliates, must also report each claim received involving a

death occurring outside the US and involving one of the manufacturer's products that is identical or "substantially similar" to a product on the US market. With some exceptions, vehicle manufacturers and manufacturers of tires and child safety restraints must also report personal injury claims, property damage claims, consumer complaints, warranty claims information, field reports and production numbers. Rather than having to report each incident within five days of receiving notice, the early warning reporting requirements create quarterly reporting periods based on the calendar year. For the first three reporting periods, manufacturers have been given 60 days after quarter's end to report. After the first three reporting periods, the reports will be due 30 days after quarter's end. The quarterly reporting began in 2003 and on January 15, 2004 manufacturers are to make a one-time historical report of all reportable information received between July 1, 2000 and June 30, 2003. The *TREAD Act* also requires manufacturers to retain all documents relating to a reportable incident for a minimum of five years.

5. THE CONSEQUENCES OF NON-COMPLIANCE

In addition to placing somewhat onerous reporting obligations on manufacturers, the *TREAD Act* also established prohibitive penalties for breach of these obligations. A manufacturer who violates a reporting requirement is liable for \$5,000 (USD) for each violation per day. The maximum penalty for any related series of daily violations is \$15,000,000 (USD). The *TREAD Act* also increased the \$800,000 (USD) ceiling on civil penalties for breaches of the US motor vehicle safety statute to \$15,000,000 (USD).

6. CONCLUSION

The cost of doing business in North America's largest market has certainly been increased by the introduction of the *TREAD Act*. The question is, has public safety been correspondingly improved? Only time will tell. It is important to understand how this legislation affects your business. If the *TREAD Act* applies to your business, and you have not already done so, you may wish to consider (a) which of your products might generate reporting requirements, (b) designating an employee to be familiar with the *TREAD Act*, and (c) ensuring that all relevant product problems are brought to that employee's attention in a timely fashion.

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

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