

CPG Sec. 110.500 Food and Drug Guaranty - Imports

BACKGROUND:

A district compliance officer has inquired if a domestic distributor can take advantage of the immunity offered by 21 USC 333(c)(2) by obtaining from a foreign manufacturer, or his resident agent, a continuing guaranty.

POLICY:

21 USC 333(c)(2) provides immunity only if the person against whom action is contemplated establishes "a guaranty or undertaking signed by and containing the name and address of the persons residing in the U.S. from whom he received in good faith the article...". It is thus apparent from the law itself that the guarantor must be a U.S. resident to comply with the act.

There seems to be no reason, however, that the domestic agent of the foreign manufacturer, if he resides in the U.S., could not provide such a guaranty to the distributor. The law does not require that the guaranty be given by the manufacturer, wholesaler, packer or any other person in the direct line of distribution. All that is required is that the signer of the guaranty be a resident of the U.S. and be the person from whom the distributor received the article.

21 USC 333(c)(3) also provides immunity in case of adulteration caused by the presence of an guaranty so specifies.

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