

REINFORCING AMERICAN-MADE PRODUCTS ACT OF 2016

DECEMBER 13, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 5092]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 5092) to make exclusive the authority of the Federal Government to regulate the labeling of products made in the United States and introduced in interstate or foreign commerce, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The goal of H.R. 5092 is to preempt state laws related to labeling products as manufactured in the United States and to establish the Federal Trade Commission's (FTC) authority over and approach to such labeling as the single, national standard. The legislation accomplishes this goal by establishing that the statutory provisions authorizing the FTC to prohibit deceptive "Made in USA" labeling shall "supersede any provisions of the law" of any State relating to the "extent to which" a product is labeled as "Made in the USA" or its equivalent.

BACKGROUND AND NEED FOR LEGISLATION

The FTC currently allows manufacturers to label products as "Made in the USA" if they are "all or virtually all" manufactured in the U.S.¹ In order to determine whether this threshold is met, the FTC looks at a number of factors, including the site of final assembly or processing; the proportion of U.S. manufacturing costs attributable to U.S. sources; and the remoteness of foreign content.² In contrast, California maintains a separate standard, which consists of a statutory requirement that 95 percent of a product's wholesale value be attributable to U.S. sources.³ Under the California law, a manufacturer may attribute as little as 90 percent of a product's wholesale value to U.S. sources, but only if it can show that the product's foreign inputs were unavailable in the U.S.⁴

As a result of the differing FTC and California standards, U.S. manufacturers may not be able to comply with both standards simultaneously.⁵ Unfortunately, testimony before this Committee suggests that, as a result, some companies that might otherwise comply with the FTC standard decline to use a label at all.⁶ Prior to the 95 percent requirement, which went into effect at the beginning of 2016, California law required 100 percent of a product's wholesale value to be attributable to U.S. sources in order to bear a "Made in USA" label. A few lawsuits alleging noncompliance with this previous standard are still pending in California courts.⁷

The Committee's view is that this legislation should establish a single, national standard that should be enforced uniformly. This standard should be a strong benchmark, and should engender trust that the label truthfully conveys that a product was manufactured domestically, regardless of where an item is purchased or marketed

¹Fed. Trade Comm'n, Enforcement Policy Statement on U.S. Origin Claims, 62 Fed. Reg. 63756 (Dec. 2, 1997), available at <https://www.ftc.gov/public-statements/1997/12/enforcement-policy-statement-us-origin-claims>.

²See *id.*

³Cal. Bus. & Prof. Code § 17533.7.

⁴*Id.*

⁵*Legislative Hearing on 17 FTC Bills Before the Subcomm. on Commerce, Manufacturing, and Trade of the H. Comm. on Energy and Commerce*, 114th Cong. 2 (2016) (statement of Richard Hendrickson, President and CEO of Lifetime Products).

⁶*Id.*

⁷Rachel Adams, CA "Made in U.S.A." Law: Despite Amendment, Litigation Targets Cosmetic, Food, Beverage Industries, Natural Products Insider, Apr. 29, 2016, available at <http://www.naturalproductsinsider.com/blogs/insider-law/2016/04/ca-made-in-u-s-a-law-despite-amendment-litigation.aspx>.

within the U.S. The current FTC standard meets these objectives and should be the standard observed in any state in the U.S.

HEARINGS

The Subcommittee on Commerce, Manufacturing, and Trade held a hearing on H.R. 5092, along with several other bills, on May 24, 2016. The Subcommittee received testimony from:

- Edith Ramirez, Chairwoman, Federal Trade Commission;
- Joshua D. Wright, University Professor, Antonin Scalia Law School, George Mason University;
- Geoffrey Manne, Founder and Executive Director, International Center for Law and Economics;
- Daniel Castro, Vice President, Information Technology and Innovation Foundation;
- Abigail Slater, General Counsel, Internet Association;
- Michael Best, Senior Policy Advocate, Consumer Federation of America;
- David Vladeck, Professor of Law, Georgetown Law;
- Richard Hendrickson, President and CEO of Lifetime Products;
- Greg O'Shanick, President and Medical Director, Center for Neurorehabilitation Services;
- Stephen Shur, President, Travel Technology Association;
- Robert Arrington, President, National Funeral Directors Association;
- John Breyault, Vice President of Public Policy, Telecommunications and Fraud, National Consumers League;
- Gil Genn, Maryland Sports and Entertainment Industry Coalition; and
- Jamie Pena, Vice President, Revenue Strategy and Global Distribution, Omni Hotels and Resorts.

COMMITTEE CONSIDERATION

On June 8 and 9, 2016, the Subcommittee on Commerce, Manufacturing, and Trade met in open markup session and forwarded H.R. 5092 to the full Committee by a voice vote. On July 12, 13, and 14, 2016, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 5092, without amendment, favorably reported to the House by a vote of 29 to 21.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following reflects the record votes taken during the Committee consideration:

**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS
ROLL CALL VOTE # 73**

BILL: H.R. 5092, "Reinforcing American-Made Products Act of 2016"

AMENDMENT: An amendment offered by Mr. Kennedy, No. 1, to preempt any State standard or requirement relating to the extent to which a product is introduced, advertised, sold, or offered for sale in interstate or foreign commerce with a "Made in the U.S.A." or "Made in America" label, or the equivalent thereof, in order to represent that such product was in whole or in substantial part of domestic origin, unless such standard or requirement is identical to the standard established by the Federal Trade Commission (FTC); to provide that any person with a right to seek relief based on a superseded State standard or requirement may seek relief in the same manner and to the same extent based on the standard established by the FTC; and to authorize State attorneys general to bring a civil action for relief, subject to the conclusion of such an action brought by the FTC.

DISPOSITION: NOT AGREED TO, by a roll call vote of 22 yeas and 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Pallone	X		
Mr. Barton		X		Mr. Rush	X		
Mr. Whitfield		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel			
Mr. Pitts		X		Mr. Green	X		
Mr. Walden		X		Ms. DeGette	X		
Mr. Murphy		X		Ms. Capps	X		
Mr. Burgess		X		Mr. Doyle	X		
Mrs. Blackburn		X		Ms. Schakowsky	X		
Mr. Scalise		X		Mr. Butterfield	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers				Ms. Castor	X		
Mr. Harper		X		Mr. Sarbanes	X		
Mr. Lance		X		Mr. McNerney	X		
Mr. Guthrie		X		Mr. Welch	X		
Mr. Olson		X		Mr. Lujan	X		
Mr. McKinley		X		Mr. Tonko	X		
Mr. Pompeo				Mr. Yarmuth	X		
Mr. Kinzinger		X		Ms. Clarke	X		
Mr. Griffith		X		Mr. Loeb sack	X		
Mr. Bilirakis		X		Mr. Schrader	X		
Mr. Johnson		X		Mr. Kennedy	X		
Mr. Long		X		Mr. Cardenas	X		
Mrs. Ellmers		X					
Mr. Bueshon		X					
Mr. Flores		X					
Mrs. Brooks		X					
Mr. Mullin		X					
Mr. Hudson		X					
Mr. Collins		X					
Mr. Cramer		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS
ROLL CALL VOTE # 74**

BILL: H.R. 5092, "Reinforcing American-Made Products Act of 2016"

AMENDMENT: A motion by Mr. Upton to order H.R. 5092 favorably reported to the House, without amendment. (Final Passage)

DISPOSITION: AGREED TO, by a roll call vote of 29 yeas and 21 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Pallone		X	
Mr. Barton	X			Mr. Rush		X	
Mr. Whitfield	X			Ms. Eshoo		X	
Mr. Shimkus	X			Mr. Engel			
Mr. Pitts	X			Mr. Green		X	
Mr. Walden	X			Ms. DeGette		X	
Mr. Murphy	X			Ms. Capps		X	
Mr. Burgess	X			Mr. Doyle		X	
Mrs. Blackburn	X			Ms. Schakowsky		X	
Mr. Scalise				Mr. Butterfield		X	
Mr. Latta	X			Ms. Matsui		X	
Mrs. McMorris Rodgers				Ms. Castor		X	
Mr. Harper	X			Mr. Sarbanes		X	
Mr. Lance	X			Mr. McNerney		X	
Mr. Guthrie	X			Mr. Welch		X	
Mr. Olson	X			Mr. Lujan		X	
Mr. McKinley	X			Mr. Tonko		X	
Mr. Pompeo				Mr. Yarmuth		X	
Mr. Kinzinger	X			Ms. Clarke		X	
Mr. Griffith	X			Mr. Loeb sack		X	
Mr. Bilirakis	X			Mr. Schrader	X		
Mr. Johnson	X			Mr. Kennedy		X	
Mr. Long	X			Mr. Cardenas		X	
Mrs. Ellmers	X						
Mr. Bucshon	X						
Mr. Flores	X						
Mrs. Brooks	X						
Mr. Mullin	X						
Mr. Hudson	X						
Mr. Collins	X						
Mr. Cramer	X						

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COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 5092 is to preempt state laws related to labeling products as manufactured in the United States and to establish the FTC's authority over and approach to such labeling as the single, national standard.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 5092 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 5092 contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

H.R. 5092—Reinforcing American-Made Products Act of 2016

H.R. 5092 would preempt state laws that establish standards under which a “Made in America” or “Made in the U.S.A.” label may be affixed to a product. The bill would reiterate that the Federal Trade Commission (FTC) is solely responsible for developing and enforcing those standards.

Based on information from the FTC, CBO estimates that there would be no significant cost to implement H.R. 5092 as it would not affect the workload or enforcement activities of the agency.

Enacting H.R. 5092 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting the bill would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 5092 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by preempting state laws related to certain product labelling. At least one

state, California, currently has a state law setting its own standard for such labels. The costs, if any, to the state of complying with the mandate would not exceed the annual threshold established in UMRA (\$77 million in 2016, as adjusted annually for inflation.)

H.R. 5092 contains no private-sector mandates as defined in UMRA.

On January 15, 2016, CBO transmitted a cost estimate for S. 1518, the Reinforcing American-Made Products Act of 2015, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on November 18, 2015. The two pieces of legislation are similar and CBO's estimate of their budgetary effects are the same.

The CBO staff contacts for this estimate are Stephen Rabent (for federal costs) and Rachel Austin (for intergovernmental mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 5092 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 5092 specifically directs to be completed no rulemakings within the meaning of 5 U.S.C. 551.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 provides that the Act may be cited as the “Reinforcing American-Made Products Act.”

Section 2. Exclusivity of federal authority to regulate labeling of products made in the United States and introduced in interstate or foreign commerce

This section establishes that the provisions of the Federal Trade Commission Act that authorize the Commission to regulate the extent to which a product may be labeled “Made in the U.S.A.” or “Made in America,” or the equivalent thereof, in order to represent that such product was in whole or substantial part of domestic origin, supersede any provision of state law that regulates the extent to which a product may be labeled “Made in the U.S.A.” or “Made in America,” or the equivalent thereof.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**VIOLENT CRIME CONTROL AND LAW ENFORCEMENT
ACT OF 1994**

* * * * *

TITLE XXXII—MISCELLANEOUS

* * * * *

Subtitle I—Other Provisions

* * * * *

SEC. 320933. LABELS ON PRODUCTS.

[To the extent] *(a) IN GENERAL.—To the extent* any person introduces, delivers for introduction, sells, advertises, or offers for sale in commerce a product with a “Made in the U.S.A.” or “Made in America” label, or the equivalent thereof, in order to represent that such product was in whole or substantial part of domestic origin, such label shall be consistent with decisions and orders of the Federal Trade Commission issued pursuant to section 5 of the Federal Trade Commission Act. This section only applies to such labels. **[Nothing in this section]** *Except as provided in subsection (b), nothing in this section* shall preclude the application of other provisions of law relating to labeling. The Commission may periodically consider an appropriate percentage of imported components which may be included in the product and still be reasonably consistent with such decisions and orders. Nothing in this section shall preclude use of such labels for products that contain imported components under the label when the label also discloses such information in a clear and conspicuous manner. The Commission shall administer this section pursuant to section 5 of the Federal Trade Commission Act and may from time to time issue rules pursuant to section 553 of title 5, United States Code, for such purpose. If

a rule is issued, such violation shall be treated by the Commission as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices. This section shall be effective upon publication in the Federal Register of a Notice of the provisions of this section. The Commission shall publish such notice within six months after the enactment of this section.

(b) *EFFECT ON STATE LAW.*—*The provisions of this section shall supersede any provisions of the law of any State relating to the extent to which a product is introduced, delivered for introduction, sold, advertised, or offered for sale in interstate or foreign commerce with a “Made in the U.S.A.” or “Made in America” label, or the equivalent thereof, in order to represent that such product was in whole or substantial part of domestic origin.*

* * * * *

DISSENTING VIEWS

We cannot support H.R. 5092, Reinforcing American-Made Products Act, as reported by the Committee on Energy and Commerce on July 14, 2016. While we are sympathetic to the problem for manufacturers that is caused by multiple standards for using the Made in America label as part of marketing practices, this bill should have included provisions that would have preserved state enforcement tools.

I. H.R. 5092, AS REPORTED

This bill would preempt state laws affecting how products having “Made in the U.S.A.,” “Made in America,” or some equivalent labeling are introduced, sold, advertised, or offered for sale in interstate or foreign commerce. This bill would ease burdens on manufacturers by ensuring a single national standard for “Made in America” advertising.

Currently, California is the only state that has such law. The California law may be interpreted in some cases to conflict with the federal standard enforced by the Federal Trade Commission. California’s law allows enforcement by the California Attorney General and allows citizens who have been misled by noncompliant advertising to bring cases against the manufacturers. The broad preemption of the underlying bill would stop these avenues of recourse.

II. COMMITTEE CONSIDERATION

A. AMENDMENTS OFFERED IN SUBCOMMITTEE

The Subcommittee on Commerce, Manufacturing, and Trade held a markup of H.R. 5092 on June 8–9, 2016, at which the bill was favorably forwarded by voice vote. At the markup, Rep. Kennedy (D–MA) offered and withdrew an amendment that would have created a single federal standard, but allowed states to pass state laws with standards identical to the federal standard. It would have also allowed for enforcement of the federal standard by state attorneys general. In addition, the amendment would have preserved the right of California, currently the only state with its own law on Made in America labeling, to use its current enforcement tools to enforce the standard established by FTC.

B. AMENDMENTS OFFERED IN FULL COMMITTEE

On July 12–14, 2016, the full Committee on Energy and Commerce considered H.R. 5092. Representative Kennedy again offered the same amendment he offered at Subcommittee to allow states to pass state laws. Under the amendment, consumers who were deceived by noncompliant advertising would still have recourse, but companies acting in good faith would not be subjected to undue

burdens. The amendment was rejected along party lines by a vote of 29–22.

Ultimately, the bill was favorably reported out of the committee by a vote of 29–21, with no Democratic members supporting final passage.

For the reasons stated above, we dissent from the views contained in the Committee's report.

FRANK PALLONE, JR.,

Ranking Member.

JAN SCHAKOWSKY,

*Ranking Member, Sub-
committee on Commerce,
Manufacturing, and
Trade.*

