



Senate passes online country of origin labeling requirements under the USICA

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On 8 June 2021, the Senate passed the U.S. Innovation and Competition Act (USICA), which contains a wide range of provisions aimed at improving the United States' global economic competitiveness, particularly toward China.[1] The bill next passes to the House of Representatives for consideration and is not yet law.

Section 2510 of the USICA would create mandatory online country of origin declarations for internet sales of a variety of imported products, including foods, and would charge the Federal Trade Commission (FTC) with enforcing its provisions. Section 2510 could raise potential logistical and practical considerations for segments of the food industry, including how to handle mixed-origin lots and multisource distribution models.

Summary of Section 2510: Online country of origin labeling

Section 2510 would require country of origin labeling for online sales of a wide array of imported products. Section 2510 does this by requiring that all products subject to Customs and Border Protection (CBP) origin marking under the Tariff Act of 1930 (which broadly encompasses all foreign “articles” not exempted by Customs regulations) also be accompanied by online origin disclosures when sold online.

Required disclosures

Section 2510 would require that websites indicate “in a conspicuous place”:

1. The country of origin for the product, consistent with CBP marking requirements; and
2. The country in which the seller of the product is located (and the location of any parent corporation of the seller, if there is one).

Section 2510 also identifies several product categories for which existing federal law requires specialized origin labeling, including covered commodities subject to the USDA's Agricultural Marketing Service's Country of Origin Labeling (AMS COOL) under the Agricultural Marketing Act of 1946. For products with more specialized origin labeling identified in Section 2510 (including those subject to AMS COOL), that more specialized origin information would also have to be included in the online disclosure(s).

Covered products

Section 2510 applies broadly to all products requiring origin marking under the Tariff Act of 1930, which generally encompasses all foreign articles imported into the U.S. Within this broad category of products, Section 2510 identifies several product categories for which specialized labeling requirements already exist. For these products, Section 2510 would require that the online origin disclosure also include the information required for these products under their more specialized labeling regimes:

- Products already subject to AMS COOL (perishable agricultural commodities (fresh and frozen fruits and vegetables, and cherries in brine), peanuts, ginseng, pecans, macadamia nuts, fish and shellfish, muscle cuts and ground lamb and venison, goat meat, and chicken)
- Prescription and non-prescription drugs
- Motor vehicles
- Textile and fiber products
- Wool products
- Fur products

For example, for an imported muscle cut of lamb, which is subject to AMS COOL, the disclosure would also have to identify the country where the animal was born, raised, and slaughtered, as required under AMS COOL.

Enforcement

Section 2510 also makes it unlawful to misrepresent that a product is of U.S. origin and clarifies that U.S. origin claims not consistent with Section 5 of the FTC Act (which prohibits unfair or deceptive acts or practices) violate Section 2510.

Section 2510 gives FTC authority to enforce the new disclosure provisions using existing FTC enforcement authorities and procedures.

Interagency agreement

Section 2510 requires the FTC and CBP, within six months, to enter into a Memorandum of Understanding for providing consistent implementation of Section 2510's provisions. It must be published to provide guidance to the public.

Effective date

Section 2510 would become effective nine months after the date of enactment.

Next steps

Now that it has passed the Senate, the USICA moves to the House of Representatives for consideration. Before becoming law, it must first also pass the House of Representatives and be signed into law by the President. Therefore, the USICA is not yet law. However, companies potentially affected by the Section 2510 online origin disclosure requirements may wish to begin considering now how the bill might affect their operations and consider whether to engage with the legislative process.

We will closely monitor the USICA as it moves through the House of Representatives. Please contact us with any questions.

References

1 U.S. Innovation and Competition Act, S. 1260, 117th Cong. (2021),
<https://www.democrats.senate.gov/imo/media/doc/DAV21A48.pdf>.

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