

Online Labeling Laws—the Time is Now

By Catherine Tassin de Montaigu

It's undeniable that COVID-19 has changed almost every aspect of our lives, including whether and how often we shop online. With social distancing requirements, long lines, and store closures, many consumers unsurprisingly shifted a lot of their spending to online retailers to buy their favorite goods. However, unlike shopping in person where consumers are able to quickly glance at the tag hanging from a dress on the hanger, online shoppers often are kept in the dark about where their goods are made. With the growing favoritism for American-made goods and mounting evidence of a link between human rights abuses and various industries (for example, Uighur population and fashion), consumers should have the right to make educated decisions when they pull their wallet out.

Under Chapter 4 of the Tariff Act of 1940 ([19 U.S. Code § 1304](#)), “every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article will permit [...] to indicate to an ultimate *purchaser* in the United States the English name of the country of origin of the article.” The emphasis on conspicuous and permanent labeling of all *foreign* items tends to imply that the purpose is to allow consumers to easily discern whether they are buying American-made or imported goods. Without showing online shoppers either a photo of the label or conspicuously listing where an item is made on the product page, online retailers are arguably in violation of the spirit and letter of current U.S. labeling laws.

President Biden could issue an executive order requesting that U.S. Customs and Border Protection interpret current labeling laws to include the online setting, particularly given that consumers do not have access to the labeled physical goods *before* they place their order. Merely offering the origin information *after* the good has reached the buyer puts the burden on the wrong party and contradicts the purpose of current labeling laws, ultimately requiring the *consumer* to go through the complicated, time consuming, and sometimes costly process of returning an unwanted foreign-made item. Although maybe more removed from the labeling laws, the Federal Trade Commission could under [FTC Act Sec. 6\(a\)](#), [15 U.S.C. Sec. 46\(a\)](#), initiate an investigation to establish whether the practice of listing no origin information or merely stating “imported” constitutes an enforceable “unfair” trade practice. “Unfair or deceptive acts or practices” in Section 5(a) of the Safe Web Act includes conduct involving foreign commerce that causes or is likely to cause reasonably foreseeable injury within the United States. The practice of stating goods were “designed in America” and failing to provide full origin information arguably both cause reasonable and foreseeable injury either due to confusion, the resulting inability to avoid buying certain goods from countries that have quality control issues, and the other costs associated with lack of information. Either change has the potential to satisfy the spirit of the Tariff Act—to give consumers the information and power to choose whether and when to buy foreign-made goods.

Alternatively, there are two proposed bills that seek to codify (or expand) U.S. labeling laws in the online setting: Senator Rick Scott's (R-FL) PRIME Act (Promoting Responsibility in Markets and E-Retailers Act of 2019) and the bipartisan COOL Online Act by U.S. Senators Tammy Baldwin (D-WI) and Rick Scott (R-FL). Emboldened by the controversial Russian FaceApp, [the PRIME Act](#) would require "any internet website or other online platform through which products are sold" to list the country of origin "in a conspicuous manner and in the same language that is used on the rest of the platform." The [COOL \(Country of Origin Labeling\) Online Act](#) would, among other things, "require clear disclosure of seller location and country-of-origin labeling for products advertised for sale on the internet and [...] prohibit false and misleading representation of United States origin on products." It also goes as far as to require disclosure of where the parent company is located if different from where the item is made. Ultimately, both bills seek to give American consumers the opportunity to avoid purchasing foreign-made goods.

Though there is some [push-back from online retailers](#), perhaps due to the extra effort to list more accurate origin information or the unwillingness to show their favoritism for foreign sourcing, those concerns should be ignored. Retailers often already list whether an item is imported in their product descriptions so merely listing more accurate information should not be viewed as too cumbersome a task, particularly given that retailers often provide item-specific information such as dimensions or content percentages. According to [speeches and legislative history](#) of U.S. labeling laws, another purpose of our labeling laws was to not only promote American manufacturing but to also give consumers the opportunity to choose between other trading partners. By merely telling consumers that an item is "imported" a consumer would not be able to decide whether to purchase a dress from, for example, Vietnam or Bangladesh (two countries with varied labor laws). Ultimately, there is nothing preventing online sellers from providing consumers with more specific product origin information. For example, if online retailers sell goods from China but want to distance themselves from the human rights violations of the Uighur population—where they can verify the supply chain—they are free to offer more specific sourcing information like *Made in China, X province(s)/region(s)*. The goal is to provide consumers with the choice to either reward American manufacturing or buy foreign goods (sometimes) at a lower cost.

With the rise of online shopping exacerbated by COVID-19, consumers' growing desire to buy American-made goods, and the arguable link between human rights abuses and some imported goods, now is the time to enact legislation requiring online retailers to disclose where their products are made. Again, without conspicuously listing where an item is made on the online product page, retailers are arguably in violation of the spirit and letter of *current* U.S. labeling laws. Either the Biden Administration should do what it can to direct agencies under its control to mirror the spirit of our labeling laws or Congress should modify them to make the law abundantly clear. Consumers favoring American-made products could not only help counterbalance the negative effects COVID-19 has had on our economy but the increased awareness of how many foreign products we regularly buy could become the catalyst for reinvestment in domestic manufacturing. The time is now, before back to school or holiday

shopping begins and our trading competitors like China and India benefit yet again from the U.S.'s large purchasing power.