

United States Senate

WASHINGTON, DC 20510

September 10, 2020

The Honorable Joseph J. Simons
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

The Honorable Rebecca Kelly Slaughter
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

The Honorable Noah Joshua Phillips
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

The Honorable Christine S. Wilson
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

The Honorable Rohit Chopra
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Made in USA Labeling Rule (MUSA Rulemaking, Matter No. P074204)

Dear Commissioners:

We write in response to the Federal Trade Commission's (Commission) request for comments on the Notice of Proposed Rulemaking (NPRM) related to Made in USA product labels (MUSA Rulemaking, Matter No. P074204). We have long pushed the Commission to utilize all of its existing authority to establish and enforce Made in USA standards, and we strongly support the Commission's initiation of a NPRM process. We ask that any final rule and its implementation cover all online Made in USA claims, as well as physical labels, and emphasize the Commission's authority to apply civil penalties to violators. Further, we want to emphasize the importance of strong enforcement of Made in USA labeling standards throughout the regulatory process to protect American manufacturers and consumers from fraud.

As the Commission is aware, we have advocated for the issuance of regulations as an important component of Made in USA labeling enforcement. In October 2019, we sent a letter urging the promulgation of a rule to "codify the current Made in the USA standard and, more importantly, clarify when violators will face civil penalties." We ask the Commission to ensure the final rule accomplishes both of these goals.

First, we are pleased that the rule applies to physical and online labels. Section 323.3 of the rule explicitly requires online promotional materials that include a "seal, mark, tag, or stamp labeling a product Made in the United States" to comply with Made in USA labeling standards.

Unfortunately, to date, the Commission has narrowly interpreted the word “label,” which limits the Commission’s ability to enforce Made in USA requirements in e-commerce. Online sales have increased substantially during the COVID-19 pandemic, and internet shopping is expected to remain a significant percentage of consumer purchases in the future. Consumers purchasing goods online are given information about products in various forms on websites, including product filters, technical specifications, and other sources. In an online transaction, all of these details about the product’s origin may have the same impact on a consumer as a physical label attached to the product. Any deceptive claims that a product is Made in the USA, including those made in physical labels or in any online product description or marketing, should be considered a prohibited act under Section 323.2 of the proposed rule.

Second, we ask any finalized rule to restate the Commission’s authority and willingness to apply civil penalties in response to Made in USA infractions. We have been critical of “no fault, no money” settlements and “closing letters” because these enforcement actions do not penalize or deter violators. We understand that the Commission may want to preserve its discretion to seek appropriate enforcement measures in each case. We believe, however, that a finalized rule should make clear to Made in USA violators that they may face civil penalties, particularly in cases of repeat offenders or egregious deception. Doing so will send a clear signal to consumers and businesses that the Commission intends to fully enforce Made in USA labeling standards.

As you work to finalize the proposed rule, it is imperative that the Commission continue to strongly enforce Made in USA labeling requirements. We applaud the recent enforcement efforts against Williams Sonoma, which included a \$1 million judgment and court-enforceable provisions on the company’s claim that its products were Made in the USA. In contrast to the “no fault, no money” agreements, the Williams Sonoma settlement demonstrates that the FTC will take appropriate action to protect the integrity of the Made in the USA label and force violators to pay for defrauding American consumers and disadvantaging American producers.

Thank you for your consideration of this letter. We look forward to continuing to work with you to ensure the Made in USA label means just that.

Sincerely,



Sherrod Brown
United States Senator



Tammy Baldwin
United States Senator



Christopher Murphy
United States Senator



Richard Blumenthal
United States Senator