

Calendar No. 289

118TH CONGRESS
1ST SESSION

S. 1421

To require origin and location disclosure for new products of foreign origin offered for sale on the internet.

IN THE SENATE OF THE UNITED STATES

MAY 3, 2023

Ms. BALDWIN (for herself, Mr. VANCE, Mr. SCOTT of Florida, Mr. HAWLEY, Mr. BRAUN, and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

DECEMBER 13, 2023

Reported by Ms. CANTWELL, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To require origin and location disclosure for new products of foreign origin offered for sale on the internet.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Country Of Origin La-
5 beling Online Act” or the “COOL Online Act”.

1 **SEC. 2. MANDATORY ORIGIN AND LOCATION DISCLOSURE**
2 **FOR NEW PRODUCTS OF FOREIGN ORIGIN**
3 **OFFERED FOR SALE ON THE INTERNET.**

4 (a) **MANDATORY DISCLOSURE.**—

5 (1) **IN GENERAL.**—

6 (A) **DISCLOSURE.**—Subject to subpara-
7 graph (B), it shall be unlawful for a product
8 that is marked or required to be marked under
9 section 304 of the Tariff Act of 1930 (19
10 U.S.C. 1304) to be introduced, sold, advertised,
11 or offered for sale in commerce on an internet
12 website unless the internet website description
13 of the product indicates in a conspicuous
14 place—

15 (i) the country of origin of the prod-
16 uct (or, in the case of a multi-sourced
17 product, the countries of origin); in a man-
18 ner consistent with the regulations pre-
19 scribed under such section 304; and

20 (ii) the country in which the seller of
21 the product has its principal place of busi-
22 ness.

23 (B) **EXCLUSIONS.**—

24 (i) **AGRICULTURAL PRODUCTS.**—The
25 disclosure requirements under clauses (i)

1 and (ii) of subparagraph (A) shall not
2 apply to—

3 (I) a covered commodity (as de-
4 fined in section 281 of the Agricul-
5 tural Marketing Act of 1946 (7
6 U.S.C. 1638));

7 (II) a meat or meat food product
8 subject to inspection under the Fed-
9 eral Meat Inspection Act (21 U.S.C.
10 601 et seq.);

11 (III) a poultry or poultry product
12 subject to inspection under the Poul-
13 try Products Inspection Act (21
14 U.S.C. 451 et seq.); or

15 (IV) an egg product subject to
16 regulation under the Egg Products
17 Inspection Act (21 U.S.C. 1031 et
18 seq.);

19 (ii) FOOD AND DRUGS.—The disclo-
20 sure requirements under clauses (i) and
21 (ii) of subparagraph (A) shall not apply to
22 a food or drug (as those terms are defined
23 in paragraphs (f) and (g), respectively, of
24 section 201 of the Federal Food, Drug,
25 and Cosmetic Act (21 U.S.C. 321) that is

1 subject to the jurisdiction of the Food and
2 Drug Administration.

3 (iii) USED OR PREVIOUSLY OWNED
4 ARTICLES.—The disclosure requirements
5 under clauses (i) and (ii) of subparagraph
6 (A) shall not apply to any used or pre-
7 viously owned article sold by an internet
8 website marketplace or a seller on an inter-
9 net website marketplace. For the purposes
10 of the preceding sentence, the term “used
11 or previously owned article” means an arti-
12 cle that was previously sold or offered for
13 sale at retail.

14 (iv) SMALL SELLER.—The disclosure
15 requirements under clauses (i) and (ii) of
16 subparagraph (A) shall not apply to goods
17 listed by a small seller. For the purposes
18 of the preceding sentence, the term “small
19 seller” means a seller with annual sales of
20 less than \$20,000 and fewer than 200 dis-
21 crete sales.

22 (C) MULTI-SOURCED PRODUCTS.—For
23 purposes of subparagraph (A)(i), a product
24 shall be considered to be a “multi-sourced prod-
25 uct” if a seller offers for sale a finished prod-

1 act, identical versions of which are produced in
2 multiple countries.

3 ~~(2) CERTAIN DRUG PRODUCTS.—It shall be un-~~
4 lawful for a drug that is not subject to section
5 ~~503(b)(1)~~ of the Federal Food, Drug, and Cosmetic
6 Act ~~(21 U.S.C. 353(b)(1))~~ and that is required to be
7 marked under section 304 of the Tariff Act of 1930
8 ~~(19 U.S.C. 1304)~~ to be offered for sale in commerce
9 to consumers on an internet website unless the inter-
10 net website description of the drug indicates in a
11 conspicuous place the name and place of business of
12 the manufacturer, packer, or distributor that is re-
13 quired to appear on the label of the drug in accord-
14 ance with section 502(b) of the Federal Food, Drug,
15 and Cosmetic Act ~~(21 U.S.C. 352(b))~~.

16 ~~(3) OBLIGATION TO PROVIDE.—A manufac-~~
17 turer, importer, distributor, seller, supplier, or pri-
18 vate labeler seeking to have a product introduced,
19 sold, advertised, or offered for sale in commerce
20 shall provide the information identified clauses (i)
21 and (ii) of paragraph ~~(1)(A)~~ or paragraph ~~(2)~~, as
22 applicable, to the relevant retailer.

23 ~~(4) SAFE HARBOR.—A retailer or a seller on an~~
24 internet website marketplace satisfies the disclosure
25 requirements under clauses (i) and (ii) of paragraph

1 (1)(A) or paragraph (2), as applicable, if the diselo-
2 sure includes the country of origin and seller infor-
3 mation provided by a third-party manufacturer, im-
4 porter, distributor, seller, supplier, or private labeler
5 of the product.

6 (b) ENFORCEMENT BY THE COMMISSION.—

7 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
8 TICES.—A violation of subsection (a) shall be treated
9 as a violation of a rule prescribed under section
10 18(a)(1)(B) of the Federal Trade Commission Act
11 (15 U.S.C. 57a(a)(1)(B)).

12 (2) POWERS OF THE COMMISSION.—

13 (A) IN GENERAL.—The Commission shall
14 enforce this section in the same manner, by the
15 same means, and with the same jurisdiction,
16 powers, and duties as though all applicable
17 terms and provisions of the Federal Trade
18 Commission Act (15 U.S.C. 41 et seq.) were in-
19 corporated into and made a part of this section.

20 (B) PRIVILEGES AND IMMUNITIES.—Any
21 person that violates subsection (a) shall be sub-
22 ject to the penalties and entitled to the privi-
23 leges and immunities provided in the Federal
24 Trade Commission Act (15 U.S.C. 41 et seq.)
25 as though all applicable terms and provisions of

1 that Act were incorporated and made part of
2 this section.

3 (C) ~~AUTHORITY PRESERVED.~~—Nothing in
4 this section may be construed to limit the au-
5 thority of the Commission under any other pro-
6 vision of law.

7 ~~(3) INTERAGENCY AGREEMENT.~~—Not later
8 than 6 months after the date of enactment of this
9 section, the Commission, the U.S. Customs and Bor-
10 der Protection, and the Department of Agriculture
11 shall—

12 (A) enter into a Memorandum of Under-
13 standing or other appropriate agreement for the
14 purpose of providing consistent implementation
15 of this section; and

16 (B) publish such agreement to provide
17 public guidance.

18 ~~(4) DEFINITION OF COMMISSION.~~—In this sub-
19 section, the term “Commission” means the Federal
20 Trade Commission.

21 ~~(c) LIMITATION OF LIABILITY.~~—A retailer or seller
22 is not in violation of subsection (a) if—

23 (1) a third-party manufacturer, distributor, sell-
24 er, supplier, or private labeler provided the retailer
25 or seller with a false or deceptive representation as

1 to the country of origin of a product or its parts or
2 processing; and

3 ~~(2) the retailer or seller—~~

4 ~~(A) relied in good faith on that representa-~~
5 ~~tion; and~~

6 ~~(B) took immediate action to remove any~~
7 ~~such false or deceptive representations upon no-~~
8 ~~tice.~~

9 ~~(d) AUTHORITY PRESERVED.—Nothing in this sec-~~
10 ~~tion may be construed to limit the authority of the Depart-~~
11 ~~ment of Agriculture, the Food and Drug Administration,~~
12 ~~or U.S. Customs and Border Protection under any other~~
13 ~~provision of law.~~

14 ~~(e) EFFECTIVE DATE.—This section shall take effect~~
15 ~~12 months after the date of the publication of the Memo-~~
16 ~~randum of Understanding or agreement under subsection~~
17 ~~(b)(3).~~

18 **SECTION 1. SHORT TITLE.**

19 *This Act may be cited as the “Country Of Origin La-*
20 *beling Online Act” or the “COOL Online Act”.*

21 **SEC. 2. MANDATORY ORIGIN DISCLOSURE FOR NEW PROD-**
22 **UCTS OF FOREIGN ORIGIN OFFERED FOR**
23 **SALE ON THE INTERNET.**

24 *(a) MANDATORY DISCLOSURE.—*

25 *(1) IN GENERAL.—*

1 (A) *DISCLOSURE.*—Subject to the suc-
2 ceeding provisions of this paragraph, it shall be
3 unlawful for an online store, an online market-
4 place, or a seller to introduce, sell, or offer for
5 sale on an internet website a product that is
6 marked or required to be marked under section
7 304 of the Tariff Act of 1930 (19 U.S.C. 1304)
8 unless the country of origin is disclosed in a con-
9 spicuous manner on the online store or online
10 marketplace’s online description of the product
11 and in a manner consistent with the regulations
12 prescribed under such section 304 at the time of
13 the product’s importation, or anticipated impor-
14 tation, into the customs territory of the United
15 States.

16 (B) *EXCLUSIONS.*—

17 (i) *AGRICULTURAL PRODUCTS.*—The
18 disclosure requirements under subparagraph
19 (A) shall not apply to—

20 (I) a covered commodity (as de-
21 fined in section 281 of the Agricultural
22 Marketing Act of 1946 (7 U.S.C.
23 1638));

24 (II) a meat or meat food product
25 subject to inspection under the Federal

1 *Meat Inspection Act (21 U.S.C. 601 et*
2 *seq.);*

3 *(III) a poultry or poultry product*
4 *subject to inspection under the Poultry*
5 *Products Inspection Act (21 U.S.C.*
6 *451 et seq.); or*

7 *(IV) an egg product subject to reg-*
8 *ulation under the Egg Products Inspec-*
9 *tion Act (21 U.S.C. 1031 et seq.).*

10 *(ii) FOOD AND DRUGS.—The disclosure*
11 *requirements under subparagraph (A) shall*
12 *not apply to a food or drug (as those terms*
13 *are defined in paragraphs (f) and (g), re-*
14 *spectively, of section 201 of the Federal*
15 *Food, Drug, and Cosmetic Act (21 U.S.C.*
16 *321)) that is subject to the jurisdiction of*
17 *the Food and Drug Administration.*

18 *(iii) USED OR PREVIOUSLY OWNED*
19 *PRODUCTS.—The disclosure requirements*
20 *under subparagraph (A) shall not apply to*
21 *any used or previously owned products sold*
22 *in interstate commerce.*

23 *(iv) SMALL SELLER.—The disclosure*
24 *requirements under subparagraph (A) shall*
25 *not apply to goods listed by a small seller.*

1 (C) *LIMITATION OF LIABILITY.*—

2 (i) *ONLINE STORE.*—*An online store is*
3 *not in violation of the requirements under*
4 *subparagraph (A) if the online store pro-*
5 *vided its third party manufacturer, dis-*
6 *tributor, supplier, or private labeler with—*

7 (I) *a notice of their obligation to*
8 *provide the country of origin to the*
9 *store, if applicable; and*

10 (II) *the means to list directly, or*
11 *provide to the online store for listing,*
12 *the country of origin of the product.*

13 (ii) *ONLINE MARKETPLACE.*—

14 (I) *IN GENERAL.*—*Subject to sub-*
15 *clause (II), an online marketplace is*
16 *not in violation of the requirements*
17 *under subparagraph (A) if the online*
18 *marketplace provided its sellers with—*

19 (aa) *a notice of the seller's*
20 *obligation to provide country of*
21 *origin information when selling a*
22 *product; and*

23 (bb) *the means to list the*
24 *country of origin in the product's*
25 *description.*

1 (II) *EXCEPTION.*—Subclause (I)
2 shall not apply when the online mar-
3 ketplace is selling the product itself,
4 rather than only facilitating a sale by
5 a seller and relying on a seller for that
6 product’s information.

7 (iii) *SELLER.*—A seller is not in viola-
8 tion of the requirements under subpara-
9 graph (A) if the online marketplace did not
10 provide the seller with—

11 (I) the notice described in clause
12 (ii)(I)(aa); or

13 (II) the means to list the county
14 of origin in the product’s description
15 as described in clause (ii)(I)(bb).

16 (D) *FUNGIBLE GOODS OR MATERIALS.*—For
17 the purposes of subparagraph (A) and in accord-
18 ance with section 102.12(f) of title 19, Code of
19 Federal Regulations, an online store, an online
20 marketplace, or a seller is in compliance with
21 the disclosure requirements under subparagraph
22 (A) if it lists multiple countries of origin for
23 products that are fungible goods or materials.
24 Products shall be considered to be “fungible goods
25 or materials” if the goods or materials, as the

1 *case may be, are interchangeable for commercial*
2 *purposes and have properties which are essen-*
3 *tially identical.*

4 (E) *SAFE HARBOR.*—*An online store, an*
5 *online marketplace, or a seller satisfies the dis-*
6 *closure requirements under subparagraph (A) if*
7 *the online store, online marketplace, or seller re-*
8 *lies on the country of origin representation pro-*
9 *vided by a third party manufacturer, importer,*
10 *distributor, supplier, or private labeler of the*
11 *product.*

12 (2) *CERTAIN DRUG PRODUCTS.*—*It shall be un-*
13 *lawful for an online store, an online marketplace, or*
14 *a seller to offer for sale in commerce to consumers on*
15 *an internet website a drug that is not subject to sec-*
16 *tion 503(b)(1) of the Federal Food, Drug, and Cos-*
17 *metic Act (21 U.S.C. 353(b)(1)) and that is required*
18 *to be marked under section 304 of the Tariff Act of*
19 *1930 (19 U.S.C. 1304) unless the internet website de-*
20 *scription of the drug indicates in a conspicuous place*
21 *the name and place of business of the manufacturer,*
22 *packer, or distributor that is required to appear on*
23 *the label of the drug in accordance with section 502(b)*
24 *of the Federal Food, Drug, and Cosmetic Act (21*
25 *U.S.C. 352(b)).*

1 (3) *OBLIGATION TO PROVIDE.*—A manufacturer,
2 importer, distributor, supplier, or private labeler seek-
3 ing to have a product introduced, sold, advertised, or
4 offered for sale in commerce shall provide the marking
5 information required by section 304 of the Tariff Act
6 of 1930 (19 U.S.C. 1304) to the relevant online store,
7 an online marketplace, or a seller who wishes to offer
8 the product for sale on an internet website.

9 (b) *ENFORCEMENT BY THE COMMISSION.*—

10 (1) *UNFAIR OR DECEPTIVE ACTS OR PRAC-*
11 *TICES.*—A violation of subsection (a) or a regulation
12 promulgated thereunder shall be treated as a violation
13 of a rule defining an unfair or deceptive act or prac-
14 tice under section 18(a)(1)(B) of the Federal Trade
15 Commission Act (15 U.S.C. 57a(a)(1)(B)).

16 (2) *POWERS OF THE COMMISSION.*—

17 (A) *IN GENERAL.*—The Commission shall
18 enforce this section in the same manner, by the
19 same means, and with the same jurisdiction,
20 powers, and duties as though all applicable
21 terms and provisions of the Federal Trade Com-
22 mission Act (15 U.S.C. 41 et seq.) were incor-
23 porated into and made a part of this section.

24 (B) *PRIVILEGES AND IMMUNITIES.*—Any
25 person that violates subsection (a) shall be sub-

1 *ject to the penalties and entitled to the privileges*
2 *and immunities provided in the Federal Trade*
3 *Commission Act (15 U.S.C. 41 et seq.) as though*
4 *all applicable terms and provisions of that Act*
5 *were incorporated and made part of this section.*

6 (C) *AUTHORITY PRESERVED.—Nothing in*
7 *this section may be construed to limit the au-*
8 *thority of the Commission under any other pro-*
9 *vision of law.*

10 (D) *RULEMAKING.—*

11 (i) *IN GENERAL.—The Commission*
12 *shall promulgate in accordance with section*
13 *553 of title 5, United States Code, such*
14 *rules as may be necessary to carry out this*
15 *section.*

16 (ii) *CONSULTATION.—In promulgating*
17 *any regulations under clause (i), the Com-*
18 *mission shall consult with U.S. Customs*
19 *and Border Protection.*

20 (3) *INTERAGENCY AGREEMENT.—Not later than*
21 *6 months after the date of enactment of this section,*
22 *the Commission, the Commissioner for U.S. Customs*
23 *and Border Protection, the Commissioner of Food and*
24 *Drugs, the United States Trade Representative, and*
25 *the Secretary of Agriculture shall—*

1 (A) enter into a Memorandum of Under-
2 standing or other appropriate agreement for the
3 purpose of providing consistent implementation
4 of this section; and

5 (B) publish such Memorandum of Under-
6 standing or other agreement in order to provide
7 public guidance.

8 (c) *AUTHORITY PRESERVED.*—Nothing in this section
9 may be construed to—

10 (1) limit the authority of the Department of Ag-
11 riculture, the Food and Drug Administration, or U.S.
12 Customs and Border Protection under any other pro-
13 vision of law; or

14 (2) require the Commission to interpret, modify,
15 or enforce regulations promulgated by such agencies
16 unless as provided by the Memorandum of Under-
17 standing or other agreement entered into under sub-
18 section (b)(3)(A).

19 (d) *EFFECTIVE DATE.*—This section shall take effect
20 1 year after the date of the publication of the Memorandum
21 of Understanding or other agreement under subsection
22 (b)(3)(B).

23 (e) *RULE OF CONSTRUCTION.*—Nothing in this Act
24 shall be construed to require an online store, an online mar-
25 ketplace, or a seller to include a description of a product

1 *introduced, sold, or offered for sale in interstate commerce*
2 *other than a notice of the country of origin as required by*
3 *subsection (a).*

4 (f) *DEFINITIONS.—In this section:*

5 (1) *COMMISSION.—The term “Commission”*
6 *means the Federal Trade Commission.*

7 (2) *ONLINE MARKETPLACE.—The term “online*
8 *marketplace” has the meaning given such term in sec-*
9 *tion 301(f) of the Consolidated Appropriations Act,*
10 *2023 (15 U.S.C. 45f(f)).*

11 (3) *ONLINE STORE.—The term “online store”*
12 *means a person or entity that operates a consumer-*
13 *directed, electronically based or accessed website that*
14 *sells products to consumers over the internet for itself*
15 *or on behalf of third party sellers.*

16 (4) *PRODUCT.—The term “product” has the*
17 *meaning given the term “article of foreign origin” in*
18 *section 304 of the Tariff Act of 1930 (19 U.S.C.*
19 *1304).*

20 (5) *SELLER.—The term “seller” has the meaning*
21 *given such term in section 301(f) of the Consolidated*
22 *Appropriations Act, 2023 (15 U.S.C. 45f(f)).*

23 (6) *SMALL SELLER.—*

24 (A) *IN GENERAL.—The term “small seller”*
25 *means a seller on an online marketplace that, in*

1 any consecutive 12-month period during the pre-
2 vious 24 months, has—

3 (i) annual sales of less than an aggre-
4 gate total of \$20,000 in gross revenues; and

5 (ii) fewer than 200 discrete sales or
6 transactions (excluding sales of used or pre-
7 viously owned products).

8 (B) CLARIFICATION.—For the purposes of
9 calculating the number of discrete sales or trans-
10 actions or the aggregate gross revenues under
11 subparagraph (A), a seller shall only be required
12 to count sales or transactions made through the
13 online marketplace and for which payment was
14 processed by the online marketplace, either di-
15 rectly or through its payment processor.

16 (7) USED OR PREVIOUSLY OWNED PRODUCT.—

17 The term “used or previously owned product” means
18 a product that was previously sold or offered for sale
19 in interstate commerce.

20 **SEC. 3. COUNTRY OF ORIGIN LABELING FOR COOKED KING**
21 **CRAB AND TANNER CRAB AND COOKED AND**
22 **CANNED SALMON.**

23 Section 281(7)(B) of the Agricultural Marketing Act
24 of 1946 (7 U.S.C. 1638(7)(B)) is amended—

1 (1) *by striking the period at the end and insert-*
2 *ing a semicolon;*

3 (2) *by striking “includes a fillet” and inserting*
4 *the following: “includes—*

5 *“(i) a fillet”; and*

6 (3) *by adding at the end the following:*

7 *“(ii) whole cooked king crab and tan-*
8 *ner crab and cooked king crab and tanner*
9 *crab sections; and*

10 *“(iii) cooked and canned salmon.”.*

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S. 1421

A BILL

To require origin and location disclosure for new products of foreign origin offered for sale on the internet.

DECEMBER 13, 2023

Reported with an amendment