

TO ESTABLISH A TOLL FREE NUMBER TO ASSIST CONSUMERS IN DETERMINING IF PRODUCTS ARE AMERICAN-MADE

OCTOBER 1, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce, submitted the following

R E P O R T

[To accompany H.R. 563]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 563) to establish a toll free number in the Department of Commerce to assist consumers in determining if products are American-made, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
The Amendment	1
Purpose and Summary	3
Background and Need for Legislation	3
Hearings	4
Committee Consideration	4
Rollcall Votes	4
Committee Oversight Findings	4
Committee on Government Reform and Oversight	4
New Budget Authority and Tax Expenditures	4
Committee Cost Estimate	5
Congressional Budget Office Estimate	5
Inflationary Impact Statement	7
Advisory Committee Statement	7
Constitutional Authority Statement	7
Applicability to the Legislative Branch	7
Section-by-Section Analysis of the Legislation	7
Changes in Existing Law Made by the Bill, as Reported	9

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. ESTABLISHMENT OF TOLL FREE NUMBER PILOT PROGRAM.

(a) ESTABLISHMENT.—If the Secretary of Commerce determines, on the basis of comments submitted in rulemaking under section 2, that—

(1) interest among manufacturers is sufficient to warrant the establishment of a 3-year toll free number pilot program, and

(2) manufacturers will provide fees under section 2(c) so that the program will operate without cost to the Federal Government,

the Secretary shall establish such program solely to help inform consumers whether a product is “Made in America”. The Secretary shall publish the toll-free number by notice in the Federal Register.

(b) CONTRACT.—The Secretary of Commerce shall enter into a contract for—

(1) the establishment and operation of the toll free number pilot program provided for in subsection (a), and

(2) the registration of products pursuant to regulations issued under section 2,

which shall be funded entirely from fees collected under section 2(c).

(c) USE.—The toll free number shall be used solely to inform consumers as to whether products are registered under section 2 as “Made in America”. Consumers shall also be informed that registration of a product does not mean—

(1) that the product is endorsed or approved by the Government,

(2) that the Secretary has conducted any investigation to confirm that the product is a product which meets the definition of “Made in America” in section 4 of this Act, or

(3) that the product contains 100 percent United States content.

SEC. 2. REGISTRATION.

(a) PROPOSED REGULATION.—The Secretary of Commerce shall propose a regulation—

(1) to establish a procedure under which the manufacturer of a product may voluntarily register such product as complying with the definition of “Made in America” in section 4 of this Act and have such product included in the information available through the toll free number established under section 1(a);

(2) to establish, assess, and collect a fee to cover all the costs (including start-up costs) of registering products and including registered products in information provided under the toll-free number;

(3) for the establishment under section 1(a) of the toll-free number pilot program; and

(4) to solicit views from the private sector concerning the level of interest of manufacturers in registering products under the terms and conditions of paragraph (1).

(b) PROMULGATION.—If the Secretary determines based on the comments on the regulation proposed under subsection (a) that the toll-free number pilot program and the registration of products is warranted, the Secretary shall promulgate such regulation.

(c) REGISTRATION FEE.—

(1) IN GENERAL.—Manufacturers of products included in information provided under section 1 shall be subject to a fee imposed by the Secretary of Commerce to pay the cost of registering products and including them in information provided under subsection (a).

(2) AMOUNT.—The amount of fees imposed under paragraph (1) shall—

(A) in the case of a manufacturer, not be greater than the cost of registering the manufacturer’s product and providing product information directly attributable to such manufacturer, and

(B) in the case of the total amount of fees, not be greater than the total amount appropriated to the Secretary of Commerce for salaries and expenses directly attributable to registration of manufacturers and having products included in the information provided under section 1(a).

(3) CREDITING AND AVAILABILITY OF FEES.—

(A) IN GENERAL.—Fees collected for a fiscal year pursuant to paragraph (1) shall be credited to the appropriation account for salaries and expenses of the Secretary of Commerce and shall be available in accordance with appropriation Acts until expended without fiscal year limitation.

(B) COLLECTIONS AND APPROPRIATION ACTS.—The fees imposed under paragraph (1)—

- (i) shall be collected in each fiscal year in an amount equal to the amount specified in appropriation Acts for such fiscal year, and
- (ii) shall only be collected and available for the costs described in paragraph (2).

SEC. 3. PENALTY.

Any manufacturer of a product who knowingly registers a product under section 2 which is not "Made in America"—

- (1) shall be subject to a civil penalty of not more than \$7500 which the Secretary of Commerce may assess and collect, and
- (2) shall not offer such product for purchase by the Federal Government.

SEC. 4. DEFINITION.

For purposes of this Act:

- (1) The term "Made in America" has the meaning given unqualified "Made in U.S.A." or "Made in America" claims for purposes of laws administered by the Federal Trade Commission.
- (2) The term "product" means a product with a retail value of at least \$250.

SEC. 5. RULE OF CONSTRUCTION.

Nothing in this Act or in any regulation promulgated under section 2 shall be construed to alter, amend, modify, or otherwise affect in any way, the Federal Trade Commission Act or the opinions, decisions, rules, or any guidance issued by the Federal Trade Commission regarding the use of unqualified "Made in U.S.A." or "Made in America" claims in labels on products introduced, delivered for introduction, sold, advertised, or offered for sale in commerce.

PURPOSE AND SUMMARY

The purpose of H.R. 563 is to provide for the establishment and operation of a three-year, toll free number pilot program to assist consumers in determining what products are "Made in America." The reported bill provides that all costs of the program be paid with fees collected from manufacturers who voluntarily choose to register their products under this program.

The reported bill requires the Secretary of Commerce to issue regulations establishing the program, as well as procedures for manufacturers to register products that are made in America. If there is sufficient interest in providing private sector funding, the Secretary is directed to enter into a contract for the establishment and operation of the program.

BACKGROUND AND NEED FOR LEGISLATION

In today's global economy, it is increasingly difficult for consumers to determine which products are "Made in America." Whether shopping for cars, computers, industrial equipment, or hand tools, the "Made in America" designation still represents quality and value to consumers, and is something that consumers, when adequately informed, factor into purchasing decisions. Currently, there is no central repository for lists of American-made products.

The issue of the appropriate definition of when a product is "Made in America" was recently reviewed by the Federal Trade Commission (FTC). The FTC's long-standing decisions have held that, for purposes of enforcement against "unfair and deceptive trade practices," all or virtually all of a product must be made in the United States in order to make that claim. In an effort to understand the sentiment among both consumers and manufacturers better, the Commission undertook a comprehensive series of workshops, an extensive public comment period generating more than 300 comments, and consumer surveys. On December 1, 1997, the Commission issued an enforcement policy statement on U.S. origin

claims rejecting an earlier effort to change the standard used by the Commission and announcing its intent to continue enforcing the Commission's "all or virtually all" content standard.

The Committee considered, and the House passed, nearly identical legislation in the 103rd and 104th Congresses. The Committee's report on H.R. 3342 on the 103rd Congress (H. Rpt. 103-660) contains additional background information on the subject of "Made in America." (See also H.R. 447 in the 104th Congress; H. Rpt. 104-753).

HEARINGS

In the 104th Congress, the Subcommittee on Commerce, Trade, and Hazardous Materials held a hearing on virtually identical legislation, H.R. 447, a bill to establish a toll-free number in the Department of Commerce to assist consumers in determining if products are American-made, on July 11, 1996. The Subcommittee received testimony from The Honorable James A. Traficant, U.S. House of Representatives, Seventeenth District, State of Ohio, who testified in favor of the legislation. The Committee held no additional hearings during the 105th Congress.

COMMITTEE CONSIDERATION

On September 24, 1998, the Committee on Commerce met in open markup session and ordered H.R. 563 reported to the House, amended, by a voice vote, a quorum being present.

ROLLCALL VOTES

Clause 2(1)(2)(B) of rule XI of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. There were no recorded votes taken in connection with ordering H.R. 563 reported. A motion by Mr. Bliley to order H.R. 563 reported to the House, amended, was agreed to by a voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 563 would result in no new or increased budget authority or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974 with the following clarification: The Committee notes that the Congressional Budget Office estimates that there may be some minimal cost to the Federal government to conduct the rulemaking by the Secretary. However, since these costs are minimal, the Committee believes and intends that this program should, and can, be operated within existing appropriations levels and that no additional funding is required.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 29, 1998.

Hon. TOM BLILEY,
*Chairman, Committee on Commerce,
U.S. House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 563, a bill to establish a toll free number in the Department of Commerce to assist consumers in determining if products are American-made.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Hadley.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 563—A bill to establish a toll free number in the Department of Commerce to assist consumers in determining if products are American-made

Summary: H.R. 563 would require the Department of Commerce to conduct a rulemaking proceeding to determine if sufficient interest exists among manufacturers to establish a consumer hotline listing products that are made in America. If sufficient interest is found, the bill would require the department to enter into a contract to establish a three-year pilot program and to charge fees to pay for the cost of the contract.

CBO estimates that enacting H.R. 563 would not result in any significant net cost to the federal government because the bill would authorize Commerce to establish fees to offset the costs of the toll-free line, subject to approval in appropriations acts. H.R. 563 could increase governmental receipts because the bill would establish a civil penalty for anyone who knowingly registers a product for the toll-free hotline that is not made in America, as defined by the bill. Because the bill could affect receipts, pay-as-you-go procedures would apply, but CBO estimates that any such receipts would not be significant in any year.

This bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reforms Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 563 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

[By fiscal year, in millions of dollars]

	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION ¹					
Estimated Authorization Level:					
Funding for the Department of Commerce	12	0	0	0	0
Less: Estimated Collections of Fees	-2	-4	-5	-1	0
Estimated Net Authorization	10	-4	-5	-1	0
Outlays:					
Estimated Gross Outlays	2	4	5	1	0
Less: Estimated Collections of Fees	-2	-4	-5	-1	0
Estimated Net Outlays	0	0	0	0	0

¹ H.R. 563 also could increase government receipts, but CBO estimates that any such change would be less than \$500,000 a year.

Basis of estimate: For purposes of this estimate, CBO assumes H.R. 563 will be enacted near October 1, 1998—the start of fiscal year 1999—and that the necessary amount will be appropriated in that year for the full cost of the three-year contract for a consumer hotline.

Based on information from the Department of Commerce, CBO estimates that the rulemaking proceeding required by the bill would cost less than \$500,000, primarily for personnel costs. Assuming the department finds sufficient interest among manufacturers, CBO estimates that establishing a hotline and database, and operating the program over a three-year period would cost the federal government approximately \$12 million beginning in fiscal year 1999 and ending during fiscal year 2002. This estimate assumes that all costs of the three-year contract for the consumer hotline would be covered by fees, as specified in the bill.

The authorization to enter into a contract for operation of the hotline would not constitute direct spending because the bill would require that the contract be paid solely through fee collections, and that those fees be collected only to the extent allowed in appropriations acts.

Pay-as-you-go-considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. H.R. 563 would affect receipts because the bill would establish a civil penalty for anyone who knowingly registers a product for the toll-free hotline that is not made in America, as defined by the bill. Collections of fines would count as governmental receipts and would be deposited in the general fund of the Treasury. CBO expects that any additional collections would be less than \$500,000 in any year.

Intergovernmental and private-sector impact: The bill contains no intergovernmental or private-sector mandates as defined in

UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Mark Hadley.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the bill would have no inflationary impact.

ADVISORY COMMITTEE STATEMENT

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

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

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

Sec. 1. Establishment of Toll Free Number Pilot Program

This section provides that if, pursuant to comments received during rulemaking under section 2 of the bill, the Secretary of Commerce (the Secretary) determines there is sufficient interest among manufacturers in the private sector to operate the program established under this section without Federal funding, the Secretary shall provide for the establishment of a toll free number which may be used by consumers to determine if a product is made in America. Under this section, the Secretary has responsibility to publish the toll free number in the Federal Register.

This section also provides that the Secretary shall contract out the establishment and operation of the toll free number pilot program and the registration of products pursuant to regulations issued under section 2.

This section further provides that consumers shall be informed: as to whether products about which inquiry is being made are registered as being "made in America" or an equivalent label; that registration of a product does not mean that the product is endorsed or approved by the Government; that registration of a product does not mean that the Secretary has conducted any investigation to confirm that the product is a product which meets the definition of "Made in America"; and that registration of a product does not mean that the product contains 100 percent U.S. content.

Sec. 2. Registration

This section provides that the Secretary shall propose a regulation:

- (1) to establish procedures under which manufacturers may voluntarily register products which are made in America and have such products included in the information available through the toll free number;
- (2) to establish, assess, and collect fees for the costs of having products included in information available through the toll free number established under section 1;
- (3) to establish a toll free number pilot program; and
- (4) to solicit views from the private sector concerning the level of interest of manufacturers in registering products under the terms and conditions of the toll free number pilot program described in the proposed regulations and the level of interest of consumers.

This section also states that manufacturers who register products as being “Made in America” for purposes of this Act shall be subject to a fee to cover all costs of operating the toll free number pilot program established in section 1.

Sec. 3. Penalty

This section provides that if a manufacturer knowingly registers a product with the Secretary under section 2 which is not made in America, the manufacturer may not offer such product for purchase to the Federal government and shall be subject to a civil penalty of not more than \$7500, which the Secretary of Commerce may impose.

Sec. 4. Definition

This section provides that the term “Made in America” has the same meaning given unqualified “Made in the U.S.A.” or “Made in America” claims, for purposes of the laws administered by the Federal Trade Commission. Under the Federal Trade Commission Act, as historically applied and recently reaffirmed by the FTC, that agency has treated unqualified “Made in America” or “Made in U.S.A.” claims as having to meet a standard of all or virtually all domestic content. The bill’s definition adopts the standard used by the FTC in order to ensure that “Made in America” claims made pursuant to this legislation meet the standard for unqualified “Made in U.S.A.” or “Made in America” claims that the FTC uses to enforce section 5 of the Federal Trade Commission Act’s (15 U.S.C. § 45) prohibition against deceptive acts or practices.

This section also states that the term “product,” as used in the reported bill, means a product with a retail value of at least \$250.

Sec. 5. Rule of Construction

This section states that nothing in this Act shall be deemed to alter, amend, modify, or otherwise affect in any way, the Federal Trade Commission Act or the opinions, decisions, rules, or any guidance issued by the Federal Trade Commission regarding the use of unqualified “Made in the U.S.A.” or “Made in America” claims in labels on products introduced, delivered for introduction, sold, advertised, or offered for sale in commerce.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

