

## CLIENT ALERT

### California Changes Its 'Made in the USA' Labeling Standard

September 2015

Last week California Governor Jerry Brown signed into law a bill that changes the landscape of California's "Made in America" labeling requirements by allowing a product to carry a "Made in America" label even if a small percentage of the product is foreign-made.

Before this change in law, California applied a stringent standard that prohibited use of a "Made in America" label "if any article, unit, or part thereof" was imported. The FTC, however, applied an "all or virtually all" standard that viewed a product in its totality and evaluated the role of each component in the finished product, which meant that a product might qualify for a "Made in America" label even if some of its components were imported. In practice, this meant that, for example, a product with tiny foreign-made screws would have likely met the FTC's "Made in America" labeling standards, but not California's. This inconsistency led to confusion, class actions, and the sense among American manufacturers that "Made in America" labeling was virtually impossible. For more on the challenges of using "Made in America" labels, see our [June article](#).

Under the revised California standard, a product can now be labeled as "Made in America" even if foreign components account for up to 5 percent of the final wholesale value of the product, and that limit increases to 10 percent for products containing components that cannot be sourced or manufactured in the U.S. On this second point, however, the law is explicit that cost cannot be the basis in determining whether a component can be sourced or manufactured in the U.S.

California's revised "Made in America" labeling standard is now more closely aligned with the FTC standard, a much-needed change that will likely bring some relief for many American manufacturers who have long struggled with conflicting and confusing labeling regulations.

Hopefully, this new legislation will change "Made in America" labeling and enforcement for the better. The challenge going forward under the revised California standard will, of course, be calculating what percentage of a product's wholesale value is foreign components. In a world of simple widgets with a few pre-fabricated components, this calculation could be straightforward. But, when dealing with a complex, interconnected international supply chain for products with dozens of individual and highly-engineered elements, determining whether a "Made in America" label can be applied will still require a thorough analysis.

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