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California To Loosen Its Restrictions on "Made in USA" Labeling

By Jay W. Connolly and Aaron Belzer

On September 1, 2015, California enacted *Senate Bill 633* ("SB 633"), loosening the state's restrictions on "Made in USA" labeling. Under existing law, codified at Cal. Bus. & Prof. Code § 17533.7, a product may not be sold or offered for sale in California as "Made in U.S.A" if the product, or any article, unit, or part of the product, has been entirely or substantially made, manufactured, or produced outside of the United States. In other words, Section 17533.7 requires that a product—including each of its individual components (no matter how small)—be entirely or substantially made, manufactured, or produced domestically to qualify for use of a "Made in U.S.A." or similar label.

SB 633, which goes into effect on January 1, 2016, amends Section 17533.7 to provide exemptions to the "Made in U.S.A." labeling prohibitions if: (1) all the foreign components of the product constitute no more than 5% of the final wholesale value of the manufactured product; or (2) all the foreign components of the product constitute no more than 10% of the final wholesale value of the manufactured product, *and* the manufacturer of the product shows that it can neither produce the components in the United States, nor obtain the components from a domestic source.

SB 633 should come as a welcome relief to many companies doing business in California. The bill more closely aligns California law with the less restrictive domestic content standards for use of the "Made in U.S.A." designation in all other states and under federal law. The amendment, therefore, should reduce the complications and costs faced by businesses selling products in California that are lawfully labeled as "Made in U.S.A." in the rest of the country.

Similarly, because SB 633 effectively repeals California's stricter—and unique—100% domestic sourcing requirements, companies may also be able to rely on the new law to dispose of pending lawsuits. Under the "statutory repeal" rule, when a pending action rests solely on a statutory basis, and a final judgment has not been entered, the amendment or repeal of that statute without a savings clause will terminate all pending actions based on that statute. *Younger v. Superior Court*, 21 Cal. 3d 102, 109 (1978); *Callet v. Alioto*, 210 Cal. 65, 67–68 (1930). Because a claim alleging violations of Section 17533.7 is wholly dependent on that statute, companies litigating "Made in U.S.A." claims may be able to argue that the enactment of SB 633 terminates those actions in which a final judgment has not been entered.

Regardless, the enactment of SB 633 should reduce the number of lawsuits brought in California against manufacturers or retailers over their "Made in U.S.A." labeling of products containing negligible foreign content. And for many companies doing business in California, such a prospect should elicit a sigh of relief.

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