



September 29, 2021

The Honorable Jerrold Nadler  
House Committee on the Judiciary  
2138 Rayburn House Office Building  
Washington, DC 20515

The Honorable Jim Jordan  
House Committee on the Judiciary  
2138 Rayburn House Office Building  
Washington, DC 20515

**Re: Significant Concerns with H.R. 5374, the SHOP SAFE Act**

Dear Chair Nadler and Ranking Member Jordan:

The National Retail Federation has significant concerns with H.R. 5374, the Stopping Harmful Offers on Platforms by Screening Against Fakes in E-commerce Act (or “SHOP SAFE Act”) scheduled for markup in the House Judiciary Committee on Wednesday, September 29, 2021. We strongly urge the Committee to give due consideration to the issues outlined below.

NRF, the world’s largest retail trade association, passionately advocates for the people, brands, policies and ideas that help retail thrive. From its headquarters in Washington, D.C., NRF empowers the industry that powers the economy. Retail is the nation’s largest private-sector employer, contributing \$3.9 trillion to annual GDP and supporting one in four U.S. jobs — 52 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating, inspiring and communicating the powerful impact retail has on local communities and global economies.

Determining the country of origin is an extremely complex issue that is regulated through U.S. trade laws and enforced by U.S. Customs and Border Protection. The COOL provision in H.R. 5374 would create a new liability for retailers and sellers to not only post the information online but to certify the accuracy of the information provided by product vendors. This is not required for products sold in brick & mortar stores. Country-of-origin information may be affixed to the product by the manufacturer, which the consumer can see on the box or product label, or made available at point of sale for unpackaged produce. Requiring a platform or seller to ensure this information is posted and accurate creates an additional liability for the platform operator or seller. Notably, there are significant differences between simply requiring a manufacturer to include the information on a package/label that is sold in a brick-and-mortar store versus the data that must be collected and surfaced for millions of products sold by millions of vendors online.

Additionally, except for automobiles and products covered by the Textile and Wool Acts, only products imported into the U.S. are currently required to be labeled with a country of origin. Aside from textile and wool products, products that are fully made in the U.S., as well as products that are made/assembled in the U.S. from domestic and/or imported parts, are not required to bear a statement about their country of origin. Moreover, textile and wool products described in mail order or internet advertising must currently only include a disclosure that the

product was “made in U.S.A.,” “imported” or “made in U.S.A. and [or] imported” rather than a statement about the product’s country of origin.

We are also concerned about how the COOL requirements in H.R. 5374 would be verified and enforced. For example, if a product is labeled incorrectly by a platform or seller, that entity could be subject to allegations of unfair and deceptive practices under the Federal Trade Commission. Additionally, we have concerns with how enforcement authority would work between the Federal Trade Commission, U.S. Department of Agriculture, and U.S. Customs and Border Protection with respect to food products sold online.

We ask the Committee in this markup to strike from H.R. 5374 the country-of-origin-labeling (COOL) requirements, which we have consistently opposed in the Senate and House when such provisions have been included in other legislation, such as the Endless Frontiers Act (H.R. 2731) and the U.S. Innovation and Competition Act (S. 1260).

Finally, we wish to bring to the Committee’s attention that the remainder of the legislation includes important issues regarding counterfeit goods that deserve more careful consideration and deliberation before legislation is approved and reported to the House floor. We would like to work with the Committee in order to get the balance right in federal legislation. Within the NRF membership, there is a significant divergence of opinions on these issues, and the breadth of the legislation before the Committee makes it difficult to support these provisions, as drafted, at this time.

It would be helpful for the Committee to provide more time for significant rights holders and online platforms to further review the provisions addressing counterfeit goods in this legislation and help craft federal legislation to drive illegal counterfeiters from the marketplace. The best way to effectively address the Committee’s public policy concerns over counterfeit goods is to ensure all actors appropriately target enforcement efforts against the counterfeiters.

We appreciate your consideration of our views above, particularly with respect to our request to strike the COOL requirements and address our concerns regarding the balance of anti-counterfeiting legislation before reporting the bill from the Committee to ensure that the legislation effectively meets its intended purposes.

Sincerely,



David French  
Senior Vice President  
Government Relations

cc: Members of the House Judiciary Committee