

## § 570.105

within 30 days prior to the removal of such goods therefrom any oppressive child labor has been employed: *Provided*, That any such shipment or delivery for shipment of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of this section, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited by this subsection: *And provided further*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

In determining the applicability of this provision, consideration of the meaning of the terms used is necessary. These terms are discussed in §§ 570.105 to 570.111, inclusive.

### § 570.105 “Producer, manufacturer, or dealer”.

It will be observed that the prohibition of section 12(a) with respect to certain shipments or deliveries for shipment is confined to those made by producers, manufacturers, and dealers. The terms “producer, manufacturer, or dealer” used in this provision are not expressly defined by the statute. However, in view of the definition of “produced” in section 3(j), for purposes of this section a “producer” is considered to be one who engages in producing, manufacturing, handling or in any other manner working on goods in any State.<sup>5</sup> Since manufacturing is considered a specialized form of production, the word “manufacturer” does not have as broad an application as the word “producer.” Manufacturing generally involves the transformation of raw materials or semifinished goods into new or different articles. A person may be considered a “manufacturer” even though his goods are made by hand, as is often true of products made by homeworkers. Moreover, it is immaterial whether manufacturing is his sole or main business. Thus, the term includes retailers who, in addition to

<sup>5</sup>For a discussion of the definition of “produced” as it relates to section 12(a), see § 570.108.

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retail selling, engage in such manufacturing activities as the making of slip-covers or curtains, the baking of bread, the making of candy, or the making of window frames. The word “dealer” refers to anyone who deals in goods (as defined in section 3(i) of the Act),<sup>6</sup> including persons engaged in buying, selling, trading, distributing, delivering, etc. It includes middlemen, factors, brokers, commission merchants, wholesalers, retailers and the like.

### § 570.106 “Ship or deliver for shipment in commerce”.

(a) Section 12(a) forbids producers, manufacturers, and dealers to “ship or deliver for shipment in commerce” the goods referred to therein. A producer, manufacturer, or dealer may “ship” goods in commerce either by moving them himself in interstate or foreign commerce or by causing them to so move, as by delivery to a carrier.<sup>7</sup> Thus, a baker “ships” his bread in commerce whether he carries it in his own truck across State lines or sends it by contract or common carrier to his customers in other States. The word “ship” must be applied in its ordinary meaning. For example, it does not apply to the transmission of telegraphic messages.<sup>8</sup>

(b) To “deliver for shipment in commerce” means to surrender the custody of goods to another under such circumstances that the person surrendering the goods knows or has reason to believe that the goods will later be shipped in commerce.<sup>9</sup> Typical is the

<sup>6</sup>See § 570.107.

<sup>7</sup>Section 3(b) of the Act defines “commerce” to mean “trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.”

<sup>8</sup>*Western Union Telegraph Co. v. Lenroot*, 323 U.S. 490.

<sup>9</sup>*Tobin v. Grant*, N. D. Calif., 79 Sup. 975 which was a suit for injunction by the Secretary of Labor against a manufacturer of books and book covers employing oppressive child labor. The facts showed that the manufactured articles sold by defendant to purchasers in the same State had an ultimate out-of-State destination which was manifest to defendant. The court construed the words “deliver for shipment in commerce” as sufficiently broad to cover this situation even