Country-of-Origin Marking: Review of Laws, Regulations, and Practices

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U.S. International Trade Commission

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EXECUTIVE SUMMARY

The House Committee on Ways and Means requested that the U.S. International Trade Commission review the laws, regulations, and practices applicable to country-of-origin markings, concentrating on the following:

- A legislative and administrative history of marking rules, including a comparison of the concepts and approaches for determining country of origin for foreign and domestic goods.
- An analysis of the administrative processes for determining origin and for appealing decisions on marking issues.
- An evaluation of the problems that country-of-origin marking rules create for industry, and the benefits of these rules to consumers. Information should be sought on the costs to government and industry of enforcement and compliance.

The Committee requested that the Commission focus its analysis of country-of-origin marking on five industries: electronics, steel, pharmaceuticals, hand tools, and frozen vegetables. In addition, the Commission was requested to provide available information on concerns of other U.S. industries relating to such marking issues. In this report, the views and concerns of industry, as well as consumer groups, are reflected in the discussion of methods for determining origin (chapter 2), industry perspectives (chapter 4), consumer perspectives (chapter 5), or the position of interested parties (appendix F). In addition to the five requested industries, the analyses of specific industry sectors (chapter 6) covers automobiles, light trucks, and automotive parts as well as textiles and apparel, because of the existence of specific laws pertaining to the marking of these items, and footwear because of significant "Made in USA" issues that have arisen recently in that industry.

The Commission undertook several efforts to ascertain the problems, costs, and benefits associated with country-of-origin marking. A public hearing was held on April 10, 1996, to accept testimony from interested parties, and the Commission also solicited and received written comments. In addition, the Commission conducted an extensive search of consumer literature, examined country-of-origin research as it relates to consumer preference, and contacted a number of consumer and labor groups to obtain information on the benefits of country-of-origin marking rules to consumers. Further, the Commission conducted a telephone survey to ascertain the extent of industry concerns with country of origin marking and to obtain data on the costs of complying with marking requirements. The Commission contacted 512 companies and received responses from 435 companies and trade associations. The Commission interviewed officials of the Federal agencies charged with administering and enforcing the major U.S. laws requiring marking—the U.S. Customs Service (Customs); the Federal Trade Commission (FTC); and the U.S. Department of Transportation, National Highway Traffic Safety Administration (NHTSA)—and formally requested data on their costs related to marking.

Historical and Global Perspective

- The first U.S. marking statute was enacted in 1890. The basic requirement, which has been in effect for more than one hundred years, is that virtually all imported products (or their containers) must be marked with a foreign country of origin. One purpose of the marking statute is to inform consumers; the statute also operates to "protect" domestic producers. If an imported product is subject to further, significant manufacturing in the United States, then the manufacturer is considered to be the "consumer" of the imported product, and the resulting product does not require a foreign country-of-origin mark.

- Country-of-origin determinations and related markings not only inform consumers of the origin of imported products but also help to enforce trade laws that are applied on a country-specific basis (e.g., application of tariff rates, quotas, antidumping and countervailing duties, embargoes, and qualification for government procurement programs). These laws generally require that each imported product be deemed to have one, and only one, country of origin.

- The country of origin is generally deemed to be the country where the product was last subject to an economically, commercially or technically significant manufacturing or assembly process (a "substantial transformation"), although the country of origin for textiles and apparel is determined under a new set of rules that was enacted in the Uruguay Round Agreements Act (URAA). While virtually all imported products (or their containers) must be marked at the time of importation, any imported product that is substantially transformed in the United States after importation is considered by Customs to be a domestic product that does not need to be marked.

- Origin determinations are susceptible to varying interpretations that may differ, depending on the character of the product, the circumstance of its manufacture, and the purpose for which the origin determination is being made. As a result, origin rules are being re-examined in a variety of venues. The Treasury Department is considering the adoption of uniform U.S. rules of origin that are intended to be more transparent, predictable, and consistent, but that initiative has not received widespread support in Congress or among industry groups. In the Uruguay Round, the contracting parties to the World Trade Organization (WTO) agreed to pursue multilateral harmonization of rules of origin, an initiative that could lead to the establishment of uniform international rules of origin. In addition, the FTC is conducting a comprehensive review of consumer perceptions of "Made in USA" claims in product advertising and labeling, with a view to determining whether to alter the current legal standard.

- The primary marking statute, which is administered by Customs, generally does not apply to products that are made in the United States, although there are marking requirements that apply specifically to domestic automobiles (and light trucks), wool products, and textile fiber products. Some U.S. manufacturers nonetheless choose to mark, label, market, or advertise a domestic product as "Made in USA." In order for such a claim to be valid and acceptable under the federal consumer protection law that is administered by the FTC, the manufacturer must use wholly domestic parts and labor.

- The standard for marking domestic products differs considerably from the standard that applies to imported products. As a result, an imported product may be marked "Made in Japan" as long as it is substantially transformed in Japan; the product does not have to be of wholly Japanese parts. However, an identical product that is made in the United States (i.e., substantially transformed) and sold in the U.S. market could not be marked "Made in USA," unless it is wholly of U.S. origin. On the other hand, if the same product is exported, then foreign marking laws may require that it be marked "Made in the United States."

- The United States is considered to have one of the more broad and complex marking regimes among industrialized nations. The European Union and Japan, by comparison, generally rely on consumer protection laws rather than marking requirements to prevent fraudulent or misleading claims about origin. Australia, Canada, and Mexico generally require only that imports for retail sale be marked. Since many countries have either no specific marking requirement or generally limit marking to goods for retail sale, using a change in tariff classification approach[1] for determining origin may not generate the concern in other countries that has been expressed by U.S. industry representatives.

Summary of Principal Findings

The ongoing globalization of production and procurement to achieve competitive advantage has contributed significantly to the growing concern in many domestic product sectors about country-of-origin marking. Globalization is creating new challenges for industry, government, and consumers. These challenges involve, respectively, a need to provide accurate consumer product information; a need to ensure that laws, regulations, and procedures reflect commercial and economic realities; and a recognition that more detailed

[1] The use of CTC in conjunction with the concept of substantial transformation as an approach to implement NAFTA Marking Rules and to harmonize rules of origin internationally is discussed in chapter 2.

information may serve to confuse consumers rather than to assist purchasing decisions, and could hinder U.S. competitive ability.

These issues, and the sometimes inconsistent requirements of various U.S. marking regimes, are some of the principal findings with respect to government and industry costs, and industry concerns associated with country-of-origin marking. Along with benefits that consumers attribute to origin markings, this summary also highlights suggestions of interested parties that may offer alternative approaches for further consideration.

Compliance Costs to Industry

- Industry officials underscored the difficulty many firms have in providing hard cost data. Nevertheless, of the 222 companies[2] that responded to the ITC survey with respect to marking-related compliance costs,[3] virtually all indicated that compliance costs associated with country-of-origin marking do not represent a major share of net sales.[4] However, many companies presenting testimony or submitting written statements noted that compliance costs could be a burden.

- Nearly all of the 109 companies that provided either qualitative or quantitative estimates of costs reported that such costs were less than 1 percent of total net sales, or were too small to quantify. Companies indicated that such costs, even if identifiable, could not be passed on to retail customers for competitive reasons. The remaining 113 companies addressing marking-related compliance costs indicated they were unable to provide an estimate, or that costs "are low"[5] and they do not track compliance costs because of the additional accounting and overhead costs that would be required.

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[2] Representing 51 percent of the 435 companies that responded to the Commission's survey.

[3] The major types of costs directly associated with compliance requirements included physical marking; administrative; warehouse, accounting, tracking, and inventory-carrying costs; startup costs (systems, machinery, labeling inventory); expenses for multiple production lines; and marketing/advertising. Also, see appendix F.

[4] There are notable exceptions. For example, see marking-related costs estimated by a home furnishings producer (Pillowtex Corp.) associated with implementation of the URAA rules of origin, transcript of hearing, p. 206, and chapter 6 (Textiles and Apparel). See added discussion on costs in chapter 4 and chapter 6.

[5] Although such responses could not be considered for purposes of estimating costs, the responses suggest that some cost, albeit "low" or unable to be estimated, may be incurred in their operations. In response to the ITC survey, virtually all of the companies that were unable to estimate costs nonetheless identified the major types of costs incurred in complying with country-of-origin marking requirements.

- For companies that must begin to track and mark imports,[6] new computer systems, inventory and warehouse requirements, new labels, and new labeling machinery can translate into reported startup costs ranging from $400,000 to several million dollars or more. Also, for companies with sizable total sales, costs that are a small percentage of net sales can translate into millions of dollars.[7] Companies expressed the concern that funds expended in this manner could be invested in other company activities.

- For the companies[8] and organizations representing about 700 firms that provided the Commission with estimates of annual operating costs in complying with country-of-origin marking requirements, an order of magnitude estimate of current and prospective annual operating costs could exceed $100 million (table 4-6, chapter 4).[9] Separate start-up costs to track and mark imports were estimated in a range totaling $37 million to $49 million.[10]

- Annual operating costs to comply with the American Automobile Labeling Act (AALA) are estimated to be $2 million in 1995 for 23 automobile producers, according to the National Highway Traffic Safety Administration (NHTSA). Separate start-up costs for these producers were estimated by NHTSA at $13 million. Combined start-up and first-year operating costs of

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[6] Companies may need to do this because of new origin regimes (e.g., NAFTA, URAA) or changes in the way Customs interprets substantial transformation or origin determinations. For example, Pillowtex Corp. estimates that implementation of the URAA rules of origin would cost nearly $1.5 million, post-hearing submission, Apr. 19, 1996; Taylor Made Golf Co. estimates marking costs under NAFTA Marking Rules at $1.7 million, with an added $6 million in inventory costs, post-hearing submission, Apr. 22, 1996; substantial transformation and tariff classification shift interpretations are estimated to initially cost food processors at least $8.6 million and a hand tool producer $9 million, see appendix F.

[7] For example, Intel Corp. estimates a $4 million annual cost to mark its semiconductors, circuit board assemblies and other products, transcript of hearing, p. 136; this cost represents 0.02 percent of Intel's annual net revenues in 1995 of $16.2 billion (annual 10K report).

[8] Individual company costs reported as a share of net sales range from an estimated low value of $5,000 to a high of $9 million, based on 1995 sales derived from company annual reports and ITC survey data.

[9] Cost estimates may be somewhat overstated, based on using a 1-percent figure to calculate costs as a percent of net sales when a response was "less than 1 percent." Costs may be understated due to an inability to quantify costs for qualitative assessments (such as minimal, minor, or low) and the difficulty in acquiring aggregate "industry-wide" cost estimates. The possible magnitude of such industry-wide costs is illustrated by estimates of compliance costs of $50 million per annum provided for one entire industry, for example, representing about 0.01 percent of total net industry sales of $55 billion; post-hearing brief of Semiconductor Industry Association, p. 5.

[10] It should be noted that, since response was voluntary and this survey was not a random sample, the survey results may not be representative of particular sectors. Views occasionally diverged between companies within the same industry. There were a number of cases where one company provided cost data while others indicated that they could not quantify the data or believed such costs to be minimal or negligible. Therefore, results from the survey cannot be extrapolated to generalize about a particular industry or the economy as a whole.

AALA labeling for 15,000 auto parts companies are estimated by NHTSA to range from $600 million to $1.2 billion, averaging $40,000 to $80,000 per firm.

- According to some companies, there are indirect costs associated with the uncertainty of marking requirements. For example, compliance with Customs regulations or decisions that involve "subjective" interpretations, or changes in interpretations of substantial transformation, may cause companies to consider a shift in investment or production to foreign operations. Companies would prefer, for commercial reasons, not to mark a foreign country of origin on certain finished products. Companies believe such markings are misleading to consumers when substantial value-added by their U.S. operations is deemed by Customs as not resulting in a substantial transformation, thus requiring a foreign origin mark. Such rulings, they assert, may diminish the value of existing investments and potentially cause a loss of production and employment for affected companies.

Costs to Government for Administering and Enforcing Marking Laws

- The cost to the U.S. Government to administer and enforce the major laws and regulations requiring country-of-origin marking, and preventing deceptive or unfair claims of origin, varied between an estimated $3.3 million to $3.6 million during fiscal years (FY) 1993-95. Administration includes activities such as issuing regulations and rulings. Enforcement includes investigation and court proceedings.

- Customs estimated certain expenditures for administering and enforcing marking requirements at between $1.6 million and $1.8 million during FY 1993-95.[11] These expenditures are primarily salary costs for issuing ruling letters, rulemaking, other legal costs, and investigations of country-of-origin marking violations. However, Customs was unable to provide an estimate of salary costs incurred in reviewing imports for marking sufficiency by personnel at the ports-of-entry, although Customs indicates that such costs are considerable. Based on consultations with Customs personnel costs for issuing marking violations and certifying proper remarking at ports-of-entry would add $850,000 to $1.2 million annually to Customs marking-related costs during FY 1993-95. In addition, Commission estimates of benefits associated with the salary costs related to ruling letters, rulemaking, other legal costs, and investigations of marking violations would add $319,000 to $377,000 to such costs during FY 1993-95.

- The FTC estimated an increase in annual costs from $156,000 to $416,000 during FY 1993-95 for administering and enforcing laws and regulations under the Wool Products Labeling Act of 1939, Textile Fiber Products

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[11] Includes a small share of cost data provided by Customs to the Commission on a calendar year basis.

Identification Act, and Fur Products Labeling Act, and preventing deceptive and unfair acts related to claims of country of origin under section 5 of the Federal Trade Commission Act. The increase in FY 1995 included expenditures for processing two cases alleging deceptive claims of U.S. origin under section 5 of the FTC Act; such cases appear sporadically before the FTC.

- NHTSA estimates that the cost of administering and enforcing the American Automobile Labeling Act (AALA) increased from $91,725 to $136,713 during FY 1993-95. Almost all of NHTSA costs under the Act have been for regulatory rulemaking since its enactment by Congress in November 1992; labeling became effective in August 1994. To date, enforcement has focused on assuring that automobile producers are generating the information required under the AALA.

Industry Concerns Regarding Country-of-Origin Marking

- Sixty-eight percent of the 435 companies responding to the ITC telephone survey stated they do not have concerns or problems with U.S. country-of-origin marking requirements. With regard to foreign country-of-origin marking requirements, 78 percent of 381 survey responses indicated that they do not have any problems or concerns.

- Major issues identified by companies and trade associations that expressed concerns about marking requirements are:

  - Technical or commercial difficulty of marking a product
  - Administrative burdens and overhead costs associated with tracking imported goods that are commingled when producing finished products
  - Uncertainty about the marking requirements
  - Conflict between the various marking laws and regulations issued by Customs, NHTSA, FTC, the Food and Drug Administration, and other Government agencies

- Marking concerns related to origin determinations include:

  - Changing interpretations of what constitutes substantial transformation and where it occurs
  - Changes resulting from universal application of the "change of tariff classification" principle embodied by NAFTA rules of origin
  - Anticipated problems due to changes in origin determination on a most favored nation basis

- Lack of harmonization between U.S. and foreign regulations, and among various foreign regulations, especially differences in the applied definitions of substantial transformation

- According to many companies, marking issues associated with globalization of production can include:

  - Multiple foreign origin markings on products that may misinform and perhaps mislead consumers, and do not clarify that the processing and manufacture of the final product is performed in the United States
  - A product with foreign content that can be sold in foreign markets (Mexico and Canada, for example) as "Made in USA" but either cannot be sold domestically as "Made in USA" or must be marked with a foreign origin
  - A disincentive to use North American content and an incentive to procure inputs on the basis of non-economic factors, in order to limit the marking burden and to avoid labeling that would mislead the consumer

- Opinions vary widely within and between industries with regard to the FTC standard for "Made in USA." The principal concerns expressed were: (1) both the strictness or the perceived weakening of the FTC threshold for unqualified marking of "Made in USA"; (2) inconsistency among the FTC standard, NAFTA or URAA rules of origin regimes, and Customs marking regulations and underlying origin determinations; and (3) inconsistency between the FTC standard and foreign customs' requirements. These inconsistencies can result in requirements to mark goods for export "Made in USA," when these goods cannot be so marked for domestic sale or must be marked with a foreign origin. Similarly, imports that contain components procured in multiple countries are marked based on where substantial transformation occurred; similar products manufactured in the United States are precluded from being marked "Made in USA."

- The current FTC standard for "Made in USA" claims requires that the product's materials and labor be of "wholly domestic" origin. The FTC has proposed in a recent consent agreement to alter the description of this standard to "all or virtually all" of domestic origin, but indicates that the standard itself has not changed; the consent agreement is on hold pending completion of a review of the standard by FTC. Many companies reportedly cannot meet this standard because they purchase components or materials from offshore either to remain cost competitive or because certain inputs are not produced in the United States. In other instances, some U.S. firms have expressed concern that products containing all U.S. components but exported for assembly and then shipped back to the United States cannot meet the threshold for "Made in USA" claims.

- Customs has proposed that the country-of-origin marking rules applied to NAFTA goods (19 CFR 102) be applied to all imports to the United States. This proposal, which uses a change in tariff classification (CTC or "tariff-shift" rules) for determining origin,[12] has raised concern among industries as to how or whether CTC will continue to recognize significant value-added from U.S. operations. Customs has stated that a shift would allow the United States to have a system of uniform rules of origin that could then be proposed to the WTO effort to harmonize rules of origin. A number of companies indicate that the NAFTA rules could represent a change from the current country-of-origin marking requirements and that WTO harmonization may change the requirements for a second time, resulting in an excessive compliance burden. In part as a result of Congressional concerns, Customs has decided that the proposal to extend Section 102 to all trade should not be adopted as a final rule at this time but rather should remain under consideration for implementation at a later date.[13]

- Many interested parties offered suggestions for changes to the existing marking regimes. The suggestions that were offered most often were: (1) to limit country-of-origin marking to imported goods for retail sale; (2) to pass legislation excepting certain additional imported products and their containers from country-of-origin marking; and (3) to harmonize the Customs rules of origin and the FTC standard for unqualified "Made in USA" claims. A summary of these suggestions is provided in table A, which appears at the end of this Executive Summary.

Consumer Benefits of Country of Origin

- Country-of-origin marking is perceived by many industry representatives and consumer groups[14] as an important tool that enables consumers to differentiate between domestic and imported products, and to make informed purchase decisions. However, one consumer group, Consumers for World Trade, believes such marking can be misleading and costly, given the complexities of globalized production.

- Country-of-origin is only one of many factors that consumers consider when making a purchasing decision. Often, country of origin is less important than other factors such as price, quality, warranty, product features, brand name, and the reputation of the seller; however, it can be the determining factor when making a purchase decision. Also, research suggests country-of-origin is more important to older than to younger Americans.

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[12] The CTC approach is generally based on the concept of substantial transformation.

[13] 61 F.R. 28933, June 6, 1996.

[14] Commission contacts or groups providing views included the Consumer Federation of America, Public Citizen, Consumers Digest, The Consumers Union, Consumers for World Trade, Made in USA Foundation, Crafted with Pride in U.S.A., International Brotherhood of Teamsters AFL-CIO, Union Label and Service Trades Department AFL-CIO, and the National Consumers League.

- The benefits of country-of-origin marking to consumers are not easily quantifiable. Some industrial consumers underscore the need for stronger enforcement for liability reasons. Research on whether consumers would pay to know the origin of products is limited, but several studies show that consumers are willing to pay more for products made in the United States.

- Consumer studies assessing the value of country-of-origin marking have yielded somewhat inconsistent results, although most domestic consumers indicate a preference for U.S. products over imported products. Consumers vary in their general opinions of how much domestic content a product marked "Made in USA" contains, and expectations of U.S. content vary based on the type of product in question. It also appears that brand names can mislead consumers regarding the perceived origin of a product.

- Country-of-origin marking is more important in certain product areas than others. Products most consistently identified in consumer surveys as being scrutinized for country of origin are automobiles, clothing, and electronics. Some surveys provide evidence that origin may be less important to consumers for certain products such as shoes, furniture, food, and toys.

Alternative Marking Approaches Suggested by Interested Parties for Further Consideration

During the course of the investigation, interested parties made numerous suggestions regarding alternative marking approaches (table A). Some of the major suggestions are highlighted below.

- While many companies have no concerns with marking requirements, some firms that do have concerns contend that their marking problems may be best addressed by exempting their products from current marking regulations, or by clarifying marking measures to ensure that inaccurate consumer information does not result from the requirement to label certain finished products with a foreign origin. In this regard, certain companies or industries believe that proposed legislation[15] in Congress may eliminate marking burdens that may be inconsistent with commercial realities, while enabling firms to remain internationally competitive and still provide accurate consumer information. Such legislation may increase the administrative burdens of Customs by expanding the number of regulations or exceptions.

- Some companies that use imported inputs suggest that limiting marking requirements to goods for retail sale could potentially remove much of the controversy arising from inconsistent interpretation of substantial transformation principles. This is especially true for firms where imported production inputs for U.S. operations that confer significant value-added to

[15] See chapter 3, table 3-7.

the final product still require a foreign country-of-origin designation. If production inputs and containers of industrial inputs were excluded, U.S. marking requirements would be more or less harmonized with existing practices of Canada and Mexico as well as the marking requirements of most other countries. U.S. retail consumers would still be informed as to country of origin. Some manufacturers, however, stated that country-of-origin markings provided a relatively inexpensive means of tracking imported components to differentiate product quality and liability, verifying foreign content for buy-domestic requirements, and enabling more effective enforcement by Customs.

- Industry officials note that many of the problems and uncertainties they face regarding substantial transformation determinations could perhaps be eliminated if procedures were codified into rules that are more predictable, consistent, and transparent. Many firms urge that Customs adopt measures to streamline rulings and protest procedures, whereby industry input might be sought in advance of rulings in order to avoid unnecessary litigation and administrative burden. This is especially important to firms in cases where a change in rules or interpretation of origin is envisioned in a pending Customs decision.

- If marking remains a requirement for many goods, particularly production inputs, U.S. producers of certain goods contend that they may be at a competitive disadvantage because of consumer preferences regarding different countries. This occurs under the existing requirement that U.S. producers label domestically-manufactured products with a foreign origin, while foreign producers may be able to label essentially the same product with a country having a more favorable reputation with U.S. consumers.

- With regard to international harmonization of rules of origin, many firms assert that delaying unilateral steps by the United States to establish new U.S. origin rules could avoid the potential requirement for certain industries to face multiple changes to comply with new rules. However, it appears that many of the issues that have developed with respect to country-of-origin marking in the United States may still remain even after WTO harmonization of rules of origin.

- Companies have noted that it may be possible, in some or many instances, to rely solely on consumer protection laws that forbid fraudulent or misleading labeling or that require labeling to inform the consumer of ingredients and other essential information. Such an approach may help to reduce conflicts or redundancies with the requirements for marking imports.

- As a result of a more globalized economy, many U.S. firms cannot meet the unqualified "Made in USA" standard and still remain competitive. The FTC's current review of the existing standard for "Made in USA" labeling has stimulated a number of proposals, including recommendations to align FTC standards with existing Customs rules of origin as a way to address many of the problems of industry.

Table A
Suggestions by interested parties concerning marking laws and regulations

Item	Suggestions	Supports this recommendation, except as noted
Section 304 of the Tariff Act of 1930	Maintain current marking requirements, including strong enforcement of the law.	**Agriculture:** Burnette Foods, Florists' Transworld Delivery (FTD) Association, International Brotherhood of Teamsters AFL-CIO, Mason Country Fruit Packers Co-op, Inc., Michigan Agricultural Cooperative Marking Association, Inc. (MACMA), Morrison Orchards, United Foods, Inc. **Textiles and apparel:** American Apparel Manufacturers Association (AAMA), American Textile Manufacturers Institute (ATMI), Crafted With Pride in U.S.A. Council, Inc. **Cutting tools:** Allied Machine & Engineering Corp., Cogsdill Tool Products, Inc., Criterion Machine Works, Jarvis Cutting Tools, Inc., Keo Cutters, Koncor Industries, Moon Cutter Co., Inc., Precision Twist Drill Co., SGS Tool Co., Talbot Holdings, Ltd., United States Cutting Tool Institute (USCTI) **Hand tools:** Component Specialty, Inc., Danaher Corp., Snap-on, Inc., Laclede Steel Co., Vaughan & Bushnell Manufacturing Co., Wright Tool Co. **Steel products:** American Pipe Fittings Association (APFA), Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, Committee on Pipe and Tube Imports (CPTI), Diamond Chain Co., Weldbend Corp., Wheatland Tube Co. **Others:** AFL-CIO Union Label & Service Trades Department, Eastman Kodak Co., Made in the USA Foundation, McPhillips Manufacturing Co., Inc., Municipal Castings Fair Trade Council, Oneida, Ltd., Torrington Co., United States Tuna Foundation
	o Limit marking to imports for retail sale (i.e., consumer goods); o Eliminate marking requirements on industrial products; o Limit marking to certain products.	American Wire Producers Association (AWPA), Digital Equipment Co., Eli Lilly and Co., Intel Corp., Joint Industry Group (JIG), National Council on International Trade Development (NCITD), Natural Feather & Textiles, Inc., Pharmaceutical Research and Manufacturers of America (PhRMA), law firm of Sonnenberg & Anderson, Kraft Foods, Inc., Xerox Corp.

Table continued on next page.

Item	Suggestions	Supports this recommendation, except as noted
Section 304 of the Tariff Act of 1930--continued	Exempt certain products from marking:	
	o semiconductors	Semiconductor Industry Association (SIA) and Intel Corp.; **In opposition**: Micron Technology Corp.
	o spare parts for repairs, including repair kits for photocopiers	Xerox Corp., Digital Equipment Corp.
	o parts, components, and subassemblies imported for repair and/or then reexported	Aerospace Industries Association (AIA), Digital Equipment Corp., Automotive Parts Rebuilders Association
	o metal forgings for hand tools	Rep. Nancy L. Johnson (R-6-CT), Sr. Member, House Ways and Mean Committee, The Stanley Works, Fleet Bank **In opposition:** Component Specialty, Inc., Danaher Corp., Snap-on, Inc., Vaughan & Bushnell Manufacturing Co., Wright Tool Co.
	o food products	Pillsbury Co., Joint Industry Group (JIG)
	o vinyl flooring	House Corp. (Canada, with U.S. subsidiary)
	o accessories and components packed for retail sale with finished electronics products	American Association of Exporters and Importers (AAEI)
	o golf clubs and parts thereof	Ajay Sports, Inc., Coastcast Corp., Daiwa Corp., Lamkin Leather & Rubber Co., Lynx Golf, Taylor Made Golf Co., Inc., Joint Industry Group (JIG)
	Require marking on certain products: o door hinges o perishable food items, including cut flowers	Hager Hinge Co. Floral Trade Council; **In opposition:** Florists' Transworld Delivery (FTD) Association
	Eliminate marking altogether.	Customs Advisory Services, Inc., Deloitte & Touche LLP, International Business-Government Counselors, Inc. (IBC)
	Eliminate marking of products with commingled ingredients or develop a workable rule for marking commingled goods.	American Frozen Food Institute (AFFI), Kraft Foods, Inc., National Food Processors Association, Pillsbury Co.
	Modify Customs interpretation of marking requirements under section 334 of the Uruguay Round Agreement Act with respect to textile home furnishings.	Paris Accessories, Inc., Pillowtex Corp.
	Allow more generic origin labels (e.g., "Made in Europe").	International Mass Retail Association (IRMA)

Table continued on next page.

Item	Suggestions	Supports this recommendation, except as noted
Section 304 of the Tariff Act of 1930--continued	Modify Customs regulation at 19 CFR 134.46 which is used to discriminate against footwear. Regulations should be modified to allow footwear to be treated in the manner of other merchandise and not require close proximity marking and equal size requirements when U.S. geographic name is used.	Footwear Distributors and Retailers of America (FDRA)
	Modify section 1304(c) to read "In any event, no item which is otherwise required by law or applicable industry standard or custom to be marked on the outside with technical or other product information shall be entitled to an exemption from marking."	Committee on Pipe and Tube Imports (CPTI)
	For certain pipe and fittings under 19 U.S.C. 1304(c), limit the application of exceptions under 19 U.S.C. 1304(a)(3) to only NAFTA parties.	Committee on Pipe and Tube Imports (CPTI)
	Reword 19 U.S.C. 1304a(3)(G) and reverse Customs' past rulings to except products that are significantly processed but not substantially transformed from marking requirements.	Cold Finished Steel Bar Institute
	Require stricter marking to show country of manufacture of materials and country of processing.	Newcomer Products, Inc. (cutting tools)
Section 102 NAFTA Marking Rules for NAFTA goods	These rules are adequate.	Eastman Kodak Co.
	Repeal these rules for NAFTA goods.	Fuji Vegetable Oil, Inc.
	Modify these rules for NAFTA goods to conform with section 304 and to clarify instances where a change in tariff classification principle does not consider significant value-added in a substantial transformation by operations in the United States.	American Frozen Food Institute (AFFI), Kraft Foods, Inc., Natural Feather & Textiles, Inc.
	Reinstate original tariff shift rule for marking golf clubs as of Jan. 3, 1994.	Hitchiner Manufacturing Co., Inc., Ajay Sports, Inc., Coastcast Corp., Daiwa Corp., Lamkin Leather & Rubber Co., Lynx Golf, Taylor Made Golf Co., Inc.
	Eliminate 19 CFR 102.14, regarding goods returned to the United States after being processed in other NAFTA countries. Customs is eliminating this regulation, effective August 5, 1996 (61 F.R. 28935, June 6, 1996).	**Golf clubs and parts:** Ajay Sports, Inc., Coastcast Corp., Daiwa Corp., Lamkin Leather & Rubber Co., Lynx Golf, Taylor Made Golf Co., Inc.

Table continued on next page.

Item	Suggestions	Supports this recommendation, except as noted
Extend section 102 NAFTA Marking Rules to **all imports**	Apply the section 102 NAFTA Marking Rules to all imports.	Copper & Brass Fabricators Council, Inc., P.B. Feller, McKenna & Cuneo, Specialty Steel Industry of North America (SSINA), Vaughan & Bushnell Manufacturing Co.
	Do not extend the section 102 NAFTA Marking Rules to all imports.	American Frozen Food Institute(AFFI), Eli Lilly and Co., Pharmaceutical Research and Manufacturers of America (PhRMA), The Stanley Works, Weldbend Corp., Xerox Corp. **Golf clubs:** Ajay Sports, Inc., Coastcast Corp., Daiwa Corp., Lamkin Leather & Rubber Co., Lynx Golf, Taylor Made Golf Co., Inc.
FTC standard for unqualified statements of "Made in USA" label	Maintain the FTC standard as is.	**Hand tools:** A distributor for Mac Tools, Component Specialty, Inc., Danaher Corp., Snap-on, Inc., Vaughan & Bushnell Manufacturing Co., Vulcan Forge and Machine Co. of San Jose, Inc., Wright Tool Co. **Other:** AFL-CIO Union Label & Service Trades Department, American Textile Manufacturers Institute (ATMI), Crafted with Pride in U.S.A. Council, Inc., Diamond Chain, Co., Eastman Kodak Co., National Association of Hosiery Manufacturers (NAHM), Welbend Corp.
	Harmonize the FTC standard with section 304, and base the FTC standard on the last substantial transformation test.	Digital Equipment Corp.
	Change the FTC standard to include consideration of significant value-added to products through U.S. operations.	**Hand tools:** Fleet Bank, The Stanley Works, **Other:** Bicycle Manufacturers Association of America, Inc., Brown & Williamson Tobacco Corporation, Electronic Industries Association, Brass Craft Manufacturing Co., Footwear Distributors and Retailers of America (FDRA), Made in the USA Foundation, law firm of Sonnenberg & Anderson
	Harmonize the FTC standard for labeling textile fiber products with section 334 of the URAA to allow proper marking of textile home furnishings.	Paris Accessories, Inc.
American Automobile Labeling Act (AALA)	Repeal, modify, or do not use the AALA.	American International Automobile Dealers Association (AIADA), Association of International Automobile Manufacturers, Inc. (AIAM)
Other laws or regulations	Harmonize hull identification numbers (HIN) in 33 CFR 181 with International Standards Organization standard.	National Marine Manufacturers Association (NMMA)

Table continued on next page.

Item	Suggestions	Supports this recommendation, except as noted
Rules of origin	Base all origin determinations on a change in tariff classification.	National Council on International Trade Development (NCITD), Association of International Automobile Manufacturers, Inc. (AIAM)
	Harmonize section 304 of the Tariff Act of 1930 to conform with the Food and Drug Administration's definition of manufacturing processes for drugs.	Eli Lilly and Co., Pharmaceutical Research and Manufacturers of America (PhRMA)
	Modify, amend, or repeal section 334 of the Uruguay Round Agreements Act.	Natural Feather & Textiles, Inc.
	Harmonize all U.S. Government rules of origin.	American Association of Exporters and Importers (AAEI), Brass Craft Manufacturing Co., The Federation of the Swiss Watch Industry, W. D. Outman II, Baker & McKenzie, The Stanley Works
	Harmonization rules of origin through WTO.	International Mass Retail Association (IMRA), Specialty Steel Industry of North America (SSINA), The Federation of the Swiss Watch Industry, Vaughan & Bushnell Manufacturing Co.
Customs regulations and procedures	Streamline rulings procedures under 19 CFR 177.	Natural Feather & Textiles, Inc., Pillsbury Co., Xerox Corp.
	Do not modify/revoke rulings Customs previously issued to National Hand Tool Co.	Rep. Nancy L. Johnson (R-6-CT), Sr. Member, House Ways and Mean Committee, Consolidated Casting Corp., Lone Star Gas Co., Plymouth Tube Co., Rack Technology, Inc., The Stanley Works
	Review Customs' process for determining when a product undergoes a substantial transformation.	American Institute for International Steel, Inc., BGE Ltd., Brown & Williamson Tobacco Corporation

Source: Compiled by the staff of the U.S. International Trade Commission.

CHAPTER 1
Introduction

In July 1995, the Subcommittee on Trade of the House Committee on Ways and Means held hearings on rules of origin and country-of-origin marking for both foreign and domestic goods.[1] Views expressed at the hearings ranged widely, reflecting the commercial interests and competitive implications surrounding these issues. In an effort to gain a more thorough foundation for consideration of legislative initiatives, the House Committee on Ways and Means requested that the U.S. International Trade Commission initiate an investigation under section 332 of the Tariff Act of 1930 to review the laws, regulations, and practices applicable to country-of-origin marking.[2]

Following receipt of the Committee's request on January 11, 1996 (appendix A), the Commission instituted investigation No. 332-366, *Country-of-Origin Marking: Review of Laws, Regulations, and Practices*, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) on February 5, 1996. Notice of the investigation was published in the *Federal Register* (61 F.R. 5802-5803) on February 14, 1996 (appendix B).

Purpose and Scope

In its letter requesting the investigation, the House Committee on Ways and Means asked the Commission to review the laws, regulations, and practices applicable to country-of-origin markings. The Committee specifically requested that the Commission's report include the following:

- A legislative and administrative history of marking rules, including a comparison of the concepts and approaches for determining country of origin for foreign and domestic goods.
- An analysis of the administrative processes for determining origin and appealing decisions on marking issues.
- An evaluation of the problems which country-of-origin marking rules create for industry, and the benefits of these rules to consumers. Information was

[1] U.S. House of Representatives, Committee on Ways and Means, Subcommittee on Trade, *Rules of Origin: Hearing before the Subcommittee on Trade of the Committee on Ways and Means*, 104th Cong., 1st sess., Serial 104-27, July 11, 1995.

[2] Letter from House Committee on Ways and Means to the U.S. International Trade Commission requesting an investigation under section 332 of the Tariff Act of 1930, Dec. 22, 1995 (see appendix A).

also requested on the costs to government and industry of enforcement and compliance.[3]

The Committee requested that the Commission provide specific information on five industries: electronics, steel, pharmaceuticals, hand tools, and frozen vegetables. The Commission was also requested to provide available information on any other U.S. industry. The Commission has included specific analyses on the automobile and automotive parts industries, as well as on the textile and apparel industries because of the existence of specific laws pertaining to the marking of these items. In addition, the Commission has provided an analysis of the footwear industry because of significant "Made in USA"[4] issues currently pending at the Federal Trade Commission regarding athletic footwear.

Overview of Country-of-Origin Marking

Country-of-origin marking is the marking of products with a mark or label, usually spelling out the name of the country from which a good originated or where a good underwent its last substantial transformation.[5] Many justifications are cited for the use of country-of-origin marks. The one most frequently mentioned is the need to provide information to consumers to assist them in their purchasing decisions. Governments have required country-of-origin marks in order to help avoid false commercial designations on products, with the intended benefit of protecting domestic consumers from fraud and manufacturers from fraudulent look-alike products. Governments have also used marking as a method to verify certificates of origin for duty purposes, and to enforce import quotas and antidumping and countervailing duty laws. Interested parties that testified at the Commission's public hearing on April 10, 1996, provided differing perspectives on many of the uses and implications of country-of-origin marking requirements, as discussed in this report.

In the United States, several government agencies are involved in implementing and enforcing different laws that affect country-of-origin marking. Domestic businesses have sometimes complained that the laws and regulations governing such marking can give rise to problems regarding a variety of issues, including conflicts among these laws; the administration of the laws and regulations, and the associated burden of compliance; the rules of origin that underlie the marking of articles; and the value of these laws to consumers.

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[3] Ibid

[4] In this report, "Made in USA" refers to any message in which the terms, text, phrases, images, or other depictions refer solely to the United States as the country of origin, without disclosing the extent or fact of foreign components or labor. "Made in America," "U.S.-Made," and "All American" are examples of equivalent terms.

[5] The legal concept of substantial transformation is reviewed in chapter 2.

Global Perspective on Legal Regimes

Country-of-origin marking laws were first enacted in the 1880s[6] in various European countries to distinguish imported goods (particularly German goods) from domestic goods, and became mandatory in the United States in 1891 with the enactment of the Tariff Act of 1890. While a number of industrialized countries maintain country-of-origin marking regimes, the United States is considered to maintain the broadest and most stringent set of marking requirements. U.S. marking laws originally covered "all articles of foreign manufacture;"[7] however, certain classes or kinds of products have been excepted, such as crude substances and most steel products, either through legislative or regulatory amendments. Country-of-origin marking has been handled somewhat differently by various countries. Many countries rely extensively on laws that prohibit misrepresentations of origin, while other countries limit country-of-origin marking requirements for imports to certain products.[8] European Union (EU) member states are prohibited from requiring country-of-origin marking of domestically produced and imported products, as this would violate Article 30 of the Treaty of Rome that established the EU. Marking of products by EU companies is voluntary. The EU and member states maintain laws and regulations, usually related to consumer protection, that prohibit misleading and false claims of origin.[9] Germany, for example, applies through domestic legislation the Madrid Agreement on the Suppression of False or Misleading Declarations of Origin of 21 March 1925,[10] to the marking of imports or exports, and also has treaties with some countries regarding the geographic origin of goods.[11]

A number of countries with marking requirements limit them principally to finished articles for retail sale or to products where domestic production is quite sensitive to import penetration. Canada requires conspicuous country-of-origin marking, in English or French, for goods of personal or household use; certain hardware items (excluding hand tools, except

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[6] U.S. Tariff Commission, *Dictionary of Tariff Information* (Washington: GPO, 1924), pp. 206-207.

[7] Section 6 of the Tariff Act of 1890.

[8] In the GATT's early days, country-of-origin marking was recognized as a trade issue. A GATT Working Party was established to examine proposals by the International Chamber of Commerce for the basis of an international arrangement regarding marks of origin, though no arrangement resulted. GATT, *Basic Instruments and Selected Documents, Fifth Supplement: Decisions, Reports, etc. of the Eleventh Session* (Geneva: GATT, Jan. 1957), pp. 103-108.

[9] See European Court of Justice cases 113/80 *Commission vs. Ireland*, 1981, ECR 1625 and 207/83 *Commission v. United Kingdom*, 1985 ECR 1201. See also Nicholas A. Zaimis, *EC Rules of Origin*, (London: Chancery Law Publishing, 1992), pp. 86-88.

[10] This treaty is maintained by the United Nations World Intellectual Property Organization.

[11] Strobl, Killius & Vorbrugg, *Business Law Guide to Germany*, 2d ed., (CCH Editions, Ltd.: Bicester, Oxfordshire, 1988) pp. 103.

files and rasps); novelties and sporting goods; certain paper products; and wearing apparel.[12] Reportedly, Canadian Customs accepts different forms of marking for goods of North America Free Trade Agreement (NAFTA) parties, such as "Produced in USA", "Assembled in USA," or "Made in USA with foreign components."[13] Like Canada, Mexico requires labeling of imported products put up for retail sale.[14] Australia, under its Commerce (Retail Descriptions) Act of 1905, reportedly requires marking on imported goods put up for retail sale and certain other products.[15]

Questions on the value to consumers of country-of-origin information generate diverse viewpoints among and between researchers, industry, and consumer groups in the United States. There also appears to be more interest in country-of-origin marking by consumers in newly industrializing countries than those in developed countries. According to one study, Chileans rely more on the country-of-origin marking than do Belgians, who rely more on brand names.[16] Another study reported that Koreans attach greater importance to a product's country of origin than do European respondents.[17]

Approach

The Commission took a number of steps in order to provide the information requested by the Committee. It held a public hearing and solicited written statements; it sought information from relevant government agencies; and it conducted an extensive telephone survey of industry and consumer groups.

The Commission identified the various provisions of law that relate to country-of-origin marking on imported or domestic merchandise, or that directly affect marking or labeling claims. These include provisions in the Tariff Act of 1930, the North American Free Trade Agreement Implementation Act, the Federal Trade Commission Act, the Wool Products Labeling Act of 1939, the Textile Fiber Products Identification Act, the Lanham Trademark Act of 1946, and the American Automobile Labeling Act. To develop an understanding of

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[12] Revenue Canada, Customs and Excise, Memorandum D11-3-1, as reprinted in *McGoldrick's Canadian Customs Tariff "Harmonized Tariff"*, 101st ed., vol. 1 (Montreal: McMullin Publishers, Ltd., 1994), pp. 796-800.

[13] Stuart P. Seidel, Assistant Commissioner, Office of Regulations and Rulings, U.S. Customs Service, U.S. Department of the Treasury, written statement to the FTC, "Made in USA Policy Comment," FTC File No. P894219, Jan. 16, 1996, p. 5.

[14] See Mexico's Ley Federal Sobre Metrologia Y Normalizacion (Metrology and Standardization Federal Law); Ley de Comercio Exterior (Foreign Trade Law); and Nueva Ley Aduanera (New Customs Law), which form the basis for country-of-origin marking. To become law, country-of-origin marking requirements must be published in the *Diario Oficial de la Federacion*.

[15] Australia's Commerce (Retail Descriptions) Act of 1905.

[16] Sadrudin A. Ahmed and Alain d'Astous, "Country-of-Origin Effects in the Context of NAFTA: The Case of Chile," *Proceedings*, American Marketing Association, 1995.

[17] Johann P. Du Preez, Adamantios Diamantopoulos, and Bodo B.Schlegelmich, "Product Saliency and Attribute Saliency: A Three-Country Empirical Comparison," *Journal of International Marketing*, Aug. 1995.

the laws and regulations applicable to marking, as well as an understanding of the administrative processes, Commission staff met with officials of the U.S. Customs Service (Customs), the Federal Trade Commission (FTC), and the U.S. Department of Transportation (DOT). Commission staff also contacted trade lawyers and industry representatives to obtain their views of how the administrative processes work. The Commission sent letters to the relevant agencies formally requesting data on the costs to government of administration and enforcement of U.S. marking regulations.[18] Information was also collected by examining the public records of these and other U.S. Government agencies, the U.S. Courts, and the Congress. In addition, staff attended a public workshop sponsored by the FTC on "Made in USA" labeling on March 26-27, 1996. This workshop was conducted to assist the FTC in determining (1) whether the FTC should alter its legal standard regarding the use of unqualified "Made in USA" claims, and (2) how domestic content should be measured under any future standard.

Early in the investigation, staff of the Committee's Subcommittee on Trade indicated that it would be beneficial if the Commission could develop data on the costs to industry of complying with country-of-origin marking requirements, since such data were not provided in testimony presented during Committee hearings in July 1995 on rules of origin and marking issues. The Commission held a public hearing[19] in Washington, DC on April 10, 1996 to hear testimony on marking issues (see appendix C for a list of hearing participants). The Commission also specifically requested interested parties to provide estimates of the costs associated with marking requirements (see appendix D for the Commission's news release, a sample of the Commission's letter sent to 239 company and association executives and trade lawyers, and opening remarks at the Commission's public hearing). In addition, the Commission received written statements from 104 interested parties (see appendix E for a summary of written statements of interested parties). Commission staff also conducted limited fieldwork within the time constraints of the study, and contacted by telephone 512 companies and trade associations that resulted in 435 responses.

To develop information on the benefits to consumers, the Commission contacted consumer and labor groups that had interests in country-of-origin marking issues. A review of the literature on country-of-origin marking issues, including benefits to consumers and related consumer behavior, yielded a large number of studies, particularly by academicians, but also by industry and by Government agencies; the Commission contacted the authors of several studies. Certain major retailers of merchandise were also contacted and their views sought.

As noted, the Commission conducted a telephone survey[20] of a broad array of industries to ascertain the extent of problems associated with marking, and to request estimates of costs and benefits to both industry and consumers. Through this survey, the Commission obtained added information on the importance of marking to industry and consumers, compliance and other marking concerns, and some cost estimates associated with marking compliance that

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[18] Letters were sent to the FTC, Customs, and DOT.

[19] Copies of the transcript may be purchased from Capital Hill Reporting, Inc., tel. 202-466-9500.

[20] The Commission obtained approval from the Office of Management and Budget under the Paperwork Reduction Act of 1995 to conduct this telephone survey. See 61 F.R. 11221, Mar. 19, 1996.

the House Committee on Ways and Means had requested. A copy of the survey worksheet, which includes the questions asked and the framework for compiling responses, is provided in appendix E. The survey was based on analyst contacts with companies comprising the Commission's trade monitoring industry groups (about 250 principal groups based on product classification of the *Harmonized Tariff Schedule of the United States*), with some monitoring groups being aggregated because they encompass very similar products.[21]

Organization of the study

Chapter 2 describes the concepts and approaches for determining country of origin for foreign and domestic goods, and identifies certain industry concerns with these measures. Chapter 3 provides a review of the laws and regulations, and administrative processes for determining origin and appealing decisions on marking issues. Data and information on Government-related costs for administering and enforcing country-of-origin marking requirements are presented as well. Chapter 4 provides the general perspectives of U.S. producers on the problems, costs, and benefits of country-of-origin marking and their suggestions of possible government action to alleviate the problems and/or costs encountered. Chapter 5 examines the perspectives of consumers with regard to country-of-origin marking. Chapter 6 examines specific industry sectors, including the electronics, steel, pharmaceuticals, hand tools, frozen vegetables, automobiles and parts, textiles and apparel, and footwear industries.

[21] Some monitoring groups covering bulk raw materials that are exempted from marking requirements were excluded from the survey.

CHAPTER 2
Concepts and Approaches in Determining Country of Origin

In general, imported articles or their containers must be marked to show country of origin unless otherwise excepted. By comparison, most domestic articles generally are not required to be marked, although some manufacturers and retailers may choose to mark, label, market, or advertise such articles as made in the United States. This chapter describes the concepts and approaches that are used to establish the country of origin of imported articles, and identifies certain industry concerns with these measures. It also describes the standards that are applied to "Made in USA" claims regarding domestic articles that are sold in the United States.

Origin of Imported Articles

The U.S. Customs Service (Customs) is principally responsible for administering and enforcing the tariff, customs, and other laws that apply to imported articles, including many measures under the jurisdiction of other agencies. Customs must be able to determine the country of origin of imported articles in order to administer and enforce such laws properly. Importers must also be able to determine the country of origin in order to comply with such laws. The origin determination is used to establish whether an article: (1) may enter the United States, as imports from certain countries may be embargoed; (2) is eligible for a particular rate of duty, such as most-favored-nation rates of duty, or for tariff preferences, such as under the North American Free Trade Agreement (NAFTA), the Caribbean Basin Economic Recovery Act (CBERA), or the Generalized System of Preferences (GSP); (3) is subject to additional duties, such as antidumping and countervailing duties; (4) is subject to a quota or other quantitative limitation; and (5) qualifies for a government procurement program, such as those defined under the World Trade Organization (WTO) Government Procurement Code. Most importantly for the purpose of this investigation, the origin determination is used to establish the name of the country that must be marked on an imported article. In other words, Customs must determine the country of origin of an imported article, and then it must determine whether the imported article is properly marked.

In some cases, an imported article is further processed in the United States before being sold in the domestic market or exported. For such imports, Customs relies on country-of-origin principles to determine whether the further processing is sufficient to substantially transform the imported foreign article into a domestic article.[1] If the U.S. processing is not deemed to be substantial, then the processed article remains a foreign article that must be marked with

[1] For examples of imported articles that are further processed in the United States, see the discussion in chapter 6 regarding hand tool forgings and pharmaceuticals.

a foreign country of origin when it is sold in the domestic market. On the other hand, if the U.S. processing is deemed to be substantial, then the processed article becomes a domestic article for purposes of the marking law and no longer needs to be marked with a foreign country of origin when it is sold in the domestic market.[2] However, under the current standards that govern claims about the origin of domestic articles, such an article could not be marked with a "Made in USA" label as it would not be wholly of domestic origin. If the processed article is exported, however, foreign marking laws may require that the article be marked as a product of the United States.

In recent years, the standards and practices that are used to make country-of-origin determinations have become more important and in turn more closely scrutinized, particularly for certain products and sectors, due to an increased level of international trade, an increase in the number of different duty rates under which an article may enter (i.e., most-favored-nation rates and preferential rates under GSP, NAFTA), and the globalization of production (goods made in more than one country). At the same time, new origin regimes have been created, both in the United States and abroad, in conjunction with trade preference programs and regional trade agreements. The general standards used by countries may be comparable or similar, but the interpretation or application of the standard may differ depending on the product and the circumstances.

While there is considerable support for the current U.S. standards and practices that govern country of origin for domestic and imported articles, there is also considerable support for simplification and harmonization.[3] Some companies and industry groups suggest that the United States should adopt a single standard of origin that could be applied to all imported articles for all customs, statistical, and health and safety purposes. In addition, many companies and associations indicate support for the ongoing effort to harmonize rules of origin internationally.[4] Finally, some companies and trade associations suggest that comparable standards and practices should apply to imported, exported, and domestic articles.[5]

Any uncertainty about a country-of-origin determination will most likely result in uncertainty about marking. Moreover, changes to the rules of origin may have an unintended or unanticipated effect on how an imported article must be marked, and on

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[2] It should be noted that, even if the U.S. processing is deemed to be sufficiently substantial, at the time of importation the container of the imported foreign article must be marked with the country of origin. See 19 CFR 134.35.

[3] U.S. House of Representatives, Committee on Ways and Means, Subcommittee on Trade, *Rules of Origin: Hearing Before the Committee on Ways and Means, Subcommittee on Trade*, 104th Cong., 1st sess., July 11, 1995, Serial 104-27 and submissions to the Federal Trade Commission (FTC) "Made in USA Policy Comment," FTC File No. P894219 and to the U.S. International Trade Commission with respect to investigation Nos. 332-360, *International Harmonization of Customs Rules of Origin*, and 332-366, *Country-of-Origin Marking: Review of Laws, Regulations, and Practices*.

[4] See, for example, American Frozen Foods Institute and PPG Industries, Inc., written submissions to the USITC in regard to the ongoing investigation No. 332-360, *International Harmonization of Customs Rules of Origin*, instituted Apr. 6, 1995.

[5] See, for example, Compaq Computer Corp., written comments to the FTC, "Made in USA Policy Comment," FTC File No. P894219, Jan. 9, 1996.

whether an imported article that is processed in the United States must be marked. Some companies and industry groups have expressed particular concern about proposed changes to the standards and practices that govern country of origin determinations.[6]

It is necessary, therefore, to understand the concepts and approaches that currently are used to make country of origin determinations because such determinations underlie marking. As noted, origin rulings may dictate whether an imported article is marked properly, and whether an imported article that is further processed in the United States must be marked with a foreign country of origin when it is sold in the domestic market.

Concepts of Origin

An origin determination must be made for all imported articles whether the article is wholly obtained or produced in a single country, or whether it is made in more than one country. When an imported article is wholly obtained or produced in a single country (i.e., no material or processing is attributable to any other country), then that country is the country of origin. The concept of "wholly obtained or produced" is generally defined to include natural products raised, extracted, harvested, and so forth, in a country (e.g., animals, minerals, vegetables, and recyclable scrap or waste materials), and articles that are made in that country exclusively from such natural products, or combining natural products with domestic manufactured products.[7] When an article is made in more than one country--that is, the article incorporates material from, or is processed in, more than one foreign country--the country of origin generally is deemed to be the country where the article last underwent a "substantial transformation." The substantial transformation test is widely used to make origin determinations.

There are a number of concepts that can be used to define and interpret substantial transformation.[8] These concepts may be based on a single factor or a combination of factors, depending on the purpose for which the origin determination is being made.[9] Many definitions of substantial transformation are based on an evaluation of the nature, complexity, and commercial significance of the manufacturing or assembly processes and how that might change the name, character, or use of the imported parts, components, or

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[6] See, for example, statement of Dr. Allen W. Matthys, vice president, technical regulatory affairs, National Food Processors Association, transcript of hearing, pp. 234-236 and Ablondi, Foster, Sobin & Davidow, P.C., on behalf of The Stanley Works, written submission to the USITC, Apr. 25, 1996.

[7] NAFTA Article 415, 19 CFR 102.1(g) and Annex D.1 of the International Convention on the Simplification and Harmonization of Customs Procedures, S. Treaty Doc. No. 23, 97th Cong., 2d sess. (1982) [Kyoto Convention].

[8] See generally U.S. International Trade Commission, *Standardization of Rules of Origin* (investigation No. 332-239), USITC publication 1976, May 1987, and U.S. International Trade Commission, *The Impact of Rules of Origin on U.S. Imports and Exports* (investigation No. 332-185), USITC publication 1695, May 1985. See also E. Vermulst, P. Waer and J. Bourgeois, *Rules of Origin in International Trade* (Ann Arbor: University of Michigan Press, 1994).

[9] See, for example, *National Juice Products Association v. United States*, 10 CIT 48, 629 F. Supp. 978, at 988-89, n. 14 (1986), "[T]he results may differ where differences in statutory language and purpose are pertinent."

materials used to make the product in question. Some interpretations place greater emphasis on the amount of value added by the manufacturing or assembly process. Other interpretations consider whether the manufacturing or assembly process results in a change of tariff classification or the character of the imported parts, components, or materials that are used to make the article. In some of the definitions, the most important factor is the relative importance of the imported inputs.

Many U.S. trading partners define substantial transformation in terms of a change in tariff classification or in terms of the percentage of value that is added by the manufacturing or assembly process. In some cases, a two-part test is used to define substantial transformation, such as a change in tariff classification plus a value-added requirement. The value-added requirement may be expressed as a minimum threshold or as a ceiling that limits foreign value added. Origin schemes also commonly contain exceptions or special rules that define specific processes or operations that either will, or will not, be deemed to confer origin.

The U.S. Approach to Origin

This section describes the general approach that is currently used by Customs to define and interpret country of origin for marking and most other purposes. As of July 1, 1996, specific rules became effective to determine the origin of imported textiles and apparel, which are an exception to the general approach. In addition, specific rules are used to determine whether an imported article qualifies for preferential tariff treatment under a tariff-preference program, such as the GSP or NAFTA. Finally, this section describes the ongoing effort to harmonize U.S. rules of origin domestically and internationally.

Origin for Marking and Other General Purposes

In the United States, when an imported article incorporates material and/or processing that is attributable to two or more foreign countries, then the country of origin is deemed to be the last country where the article was subject to a manufacturing process that resulted in a new and different article of commerce, having a new name, character, or use. This test, or standard, is based on legal principles and precedents established in court rulings and prior Customs determinations.[10] Country-of-origin determinations using the substantial transformation test are made on a case-by-case basis.

Customs considers a variety of factors when determining whether a manufacturing process has changed the name, character, or use of an imported article. Customs may take into account one or more of the following factors: (1) the character of the imported article; (2) the nature of the article's manufacturing processes, as compared to the processes that are used

[10] See *Anheuser-Busch v. The United States*, 207 U.S. 556 (1907), "There must be transformation; a new and different article must emerge, having a distinctive name, character or use," citing *Hartranft v. Wiegmann*, 121 U.S. 609 (1887), "They had not been manufactured into a new and different article, having a distinctive name, character or use." See also *Tide Water Oil Company v. United States*, 171 U.S. 210 (1897), "Ordinarily, the article so manufactured takes a different form, or at least subserves a different purpose from the original materials; and usually it is given a different name."

to make the imported parts, components, or materials used to make the article; (3) the value that is added by the manufacturing processes (as well as the cost of production, the amount of capital investment and labor required) as compared to the value reflected by the imported parts, components, or materials; and (4) the essential character of the finished article, whether established by the manufacturing processes or by the essential character of the imported components or materials.[11]

Country-of-origin determinations tend to be very fact-specific, but also tend to involve a fair amount of subjectivity in the interpretation of the facts by Customs and the courts in applying the substantial transformation test.[12] Although Customs makes hundreds of origin determinations each year, there can be considerable uncertainty about what will be deemed to be a substantial transformation in a particular case. The general approach that is currently used to make origin determination for marking and other purposes has been criticized for its lack of clarity, predictability, and consistency.[13] Some U.S. companies and industry groups complain that specific origin determinations are either too strict or too lenient, depending on their particular commercial interests.[14] These complaints usually concern the results of a specific Customs determination, rather than the concept of substantial transformation. Although Customs determinations are subject to judicial review, the appeal process can be expensive and time-consuming, and there is no certainty about the outcome.[15] In order to respond to these concerns and to improve the standards and practices that are used to make country of origin determinations, the Treasury Department, which oversees Customs, has proposed a new approach that relies on changes in tariff classification to determine the country of origin for imported goods.[16]

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[11] For a description of some of the factors that have been considered by the Court of International Trade in reviewing country of origin determinations, see, for example, *Superior Wire v. United States*, 11 CIT 608 (1987); *National Hand Tool Corp. v. United States*, 16 CIT 308 (1992); *National Juice Products Association v. United States*, 10 CIT 48 (1986); and *Koru North America v. United States*, 12 CIT 1120 (1988).

[12] N. David Palmeter, "Rules of Origin in the United States" in E. Vermulst, P. Waer and J. Bourgeois, *Rules of Origin in International Trade* (Ann Arbor: University of Michigan Press, 1994), pp. 27-84.

[13] See U.S. House of Representatives, Committee on Ways and Means, Subcommittee on Trade, *Rules of Origin: Hearing before the Committee on Ways and Means, Subcommittee on Trade*, 104th Cong., 1st sess., July 11, 1995, Serial 104-27 and testimony before and written submissions to the U.S. International Trade Commission in investigation No. 332-366, *Country-of-Origin Marking: Review of Laws, Regulations, and Practices*.

[14] Ibid.

[15] See, for example, statements of Daniel R. Kral, president, Natural Feather & Textiles, Inc., transcript of hearing, p. 197 and Thomas E. Mahoney, vice president, The Stanley Works, transcript of hearing, p. 175.

[16] Testimony of John Simpson, Deputy Assistant Secretary of the Treasury for Regulatory, Tariff and Trade Enforcement, in U.S. House of Representatives, Committee on Ways and Means, Subcommittee on Trade, *Rules of Origin: Hearing Before the Subcommittee on Trade, Committee on Ways and Means*, 104th Cong., 1st sess., July 11, 1995, Serial 104-27, pp. 10-15. See discussion of Uniform U.S. Origin Rules in this chapter.

Statutory Rules of Origin for Textiles and Apparel

In section 334 of the Uruguay Round Agreements Act (URAA), Congress enacted specific country-of-origin standards for most textile and apparel articles that became effective on July 1, 1996.[17] For textile and apparel articles, these new statutory standards are used to determine origin, not the general, case-by-case approach that Customs uses to establish origin for marking and other purposes. However, the origin framework for textile and apparel articles is said to "conform in large part to existing Customs Service practice, which is based on a 'substantial transformation' test."[18] Under these rules, if a textile or apparel article is wholly assembled in a single country, then the article will be deemed to originate in that country. If a textile or apparel article is assembled in more than one country, then the article will be deemed to originate in the country where the most important assembly or manufacturing process occurred. Finally, if the origin of a textile or apparel article cannot be established under either of these two rules, then the article will be deemed to originate in the country in which the last important assembly or manufacturing process occurred. The previously applicable criterion used by Customs to determine origin for many such goods was instead the country where the fabric or components were cut.[19]

The statutory textile rules also contain a number of specific exceptions or special rules for certain articles or certain circumstances. For example, some articles, such as pillows and comforters, are effectively exempt from the final assembly rule described above.[20] These articles are instead subject to a "fabric forward" rule; that is, the origin of such articles is based on the origin of the fabric.[21] Other special exceptions are provided for: (1) articles that are knit to shape; (2) components that are cut to shape in the United States from U.S. or foreign fabric, exported for assembly and returned to the United States; and (3) articles from Israel.

Preferential Tariff Regimes

The United States has a number of laws that grant preferential tariff treatment to certain imported articles from certain beneficiary countries. Such laws contain specific, statutory rules that are used to establish whether an imported article qualifies for the tariff preference. In general, the rules require that an imported article originate in the beneficiary country, in accordance with the general substantial transformation principle, and that a minimum

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[17] Section 334 of the Uruguay Round Agreements Act (URAA) (Public Law 103-465, 108 Stat. 4809) (19 U.S.C. 3592) and the Statement of Administrative Action that accompanied the Uruguay Round bill.

[18] Statement of Administrative Action that accompanied the Uruguay Round bill, p. 113.

[19] 60 F.R. 27831, May 23, 1995, and 60 F.R. 46188-46204, Sept. 5, 1995.

[20] Section 334(b)(2)A) of the URAA (19 U.S.C. 3592(b)(2)(A)).

[21] Representatives of the U.S. textile home furnishings industry allege that the section 334 rules of the URAA (effective July 1, 1996) will confer origin to the country in which the fabric was formed, despite value added to the product in the United States that is several times greater than the foreign-content value. See, statements of Charles M. Hansen, Jr., chairman of the board, president, and CEO, Pillowtex Corp., transcript of hearing, pp. 187-190, and Daniel R. Kral, president, Natural Feather & Textiles, Inc., transcript of hearing, pp. 196-202.

percentage of value also be added in the beneficiary country. Under GSP,[22] CBERA[23] and the Andean Trade Preference Act,[24] for example, the minimum value requirement is 35 percent, though the value requirement is defined differently in each law. In other words, in order to qualify for the tariff preference, the imported article must be substantially transformed in the beneficiary country, and it must include at least 35 percent local value (in some cases a certain level of U.S. value may be counted). If an article is deemed to be substantially transformed in a beneficiary country but it does not satisfy the value-added requirement, then the article would not qualify for the tariff preference. However, for marking and other purposes, the article would be deemed to originate in the beneficiary country because it was last substantially transformed there.

NAFTA

By comparison, NAFTA relies on a set of enumerated changes in tariff classification (CTC) to establish whether an article qualifies for preferential treatment under the agreement. The first use of the CTC approach by the United States was in the United States-Canada Free-Trade Agreement (CFTA) implemented in January 1989.[25] Subsequently, the CTC rules that were used in the CFTA were refined and incorporated in the NAFTA.[26] The CTC approach (but not the same list of tariff shifts) is used by several major U.S. trading partners,[27] and it is the basis of the ongoing effort to harmonize rules of origin internationally, which was initiated in the Uruguay Round.[28]

Under the CTC approach, the concept of substantial transformation is expressed as a change in tariff classification. In effect, an article is deemed to "originate" in the country where the imported parts, components, or materials undergo an assembly or manufacturing process that results in a particular change in tariff classification. The mechanics of the CTC principle are to be relatively straightforward and objective in application: (1) materials of country A are classified for tariff purposes as they are imported into country B for processing; (2) the good processed in country B (which may contain components from country B) is then shipped to country C; and (3) country C classifies the fabricated good upon its importation. If the tariff heading applicable thereto differs from the one that had covered the country A materials, country B is the country of origin. As represented in the NAFTA Marking Rules, these tariff shifts are frequently written in terms of specified tariff categories, rather than in broad and general terms (such as "a change to a heading of this chapter from any other heading"). In part, because the various tariff provisions would seem logically to apply to different classes of goods, and in part because many countries have either no specific marking

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[22] Section 503(b) of the Trade Act of 1974, as amended (19 U.S.C. 2463(b)).

[23] Section 213(a) of the Caribbean Basin Economic Recovery Act, as amended (19 U.S.C. 2703(a)).

[24] Section 204(a) of the Andean Trade Preference Act, as amended (19 U.S.C. 3203(a)).

[25] Chapter 3 and Annex 301.2 of the United States-Canada Free-Trade Agreement.

[26] Chapter 4 of the North American Free Trade Agreement.

[27] The European Union and Japan generally base country of origin determinations on a CTC approach. See USITC, *The Impact of Rules of Origin on U.S. Imports and Exports*, USITC publication 1695, pp. 39-67.

[28] Article 9(2)(c)(ii) of the WTO Agreement on Rules of Origin.

requirement[29]or generally limit marking to goods for retail sale,[30] using a CTC approach may not generate the concern in other countries that has been expressed by U.S. industry representatives in the course of this investigation.

The NAFTA rules of origin generally provide for which articles "originate" in North America, and therefore qualify for NAFTA preferences. NAFTA origin articles are those where the article (1) is wholly obtained or produced entirely in North America; (2) is made exclusively from North American inputs or material; or (3) incorporates imported parts, components, or materials (i.e., inputs that are not made in North America) that undergo a specified change in tariff classification.[31] The specific CTC rules are set forth in Annex 401 of the Agreement.[32] The NAFTA rules of origin are used to determine only whether North American trade qualifies for preferential NAFTA treatment.

In addition to the NAFTA rules of origin, NAFTA requires the parties to establish so-called "Marking Rules" for determining whether a good is a product of Canada, Mexico, or the United States.[33] Marking Rules were established because goods that qualify for NAFTA treatment under chapter 4 of NAFTA must be deemed to come from either Canada, Mexico, or the United States because of differences in the preferential tariff rates for NAFTA goods in trade between the parties.[34] In January 1994, Customs implemented the NAFTA Marking Rules, which also rely on a CTC approach,[35] as interim regulations set forth at 19 CFR 102. On June 6, 1996, Customs published in the *Federal Register* its final NAFTA Marking Rules, which will become effective on August 22, 1996.[36] The hundreds of CTC-based

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[29] Certain U.S. industry representatives have recommended that the universal marking requirement of section 304 of the Tariff Act of 1930 be repealed. See, for example, statement of James B. Clawson, executive vice president and treasurer, International Business-Government Counsellors, Inc., transcript of hearing, p. 85, and Marti Morfitt, vice president, Green Giant Brands, The Pillsbury Co., transcript of hearing, pp. 230-231.

[30] Certain U.S. industry representatives have recommended that section 304 of the Tariff Act be amended only to require marking of imported goods for retail sale (also noting impracticalities for some industries that may warrant exemption). See, for example, statements of Evelyn Suarez, chairperson, rules of origin committee, Joint Industry Group, transcript of hearing, p. 73; John Ryan, chairman, customs committee, National Council on International Trade Development, transcript of hearing, p. 84; David Rose, director of import/export affairs, Intel Corp., on behalf of the Semiconductor Industry Association, transcript of hearing, pp. 136-137 and 139. In contrast, suppliers of certain industrial consumers that face liability concerns emphasized the need to strengthen and enforce special marking provisions; see statement of Jeffrey Levin, Harris & Ellsworth, on behalf of the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, transcript of hearing, pp. 106-107 and 120-121, and Squire, Sanders & Dempsey, on behalf of the United States Cutting Tool Institute, written submission to the USITC, Apr. 25, 1996, p. 5

[31] NAFTA Article 401. See also 19 CFR 102.11(a) and general note 12(b) of the *Harmonized Tariff Schedule of the United States* (*HTS*).

[32] The NAFTA CTC rules of origin also are set forth in general note 12(t) of the *HTS*.

[33] The "Marking Rules" are used for Annex 311, Country of Origin Marking; Annex 300-B, Textiles and Apparel Goods; and Annex 302.2, Tariff Elimination.

[34] Article 311 and Annex 311 of the NAFTA.

[35] 59 F.R. 110, Jan. 3, 1994, and 60 F.R. 22312, May 5, 1995.

[36] 61 F.R. 28932-28980, June 6, 1996.

marking rules differ from those used to identify NAFTA origin (see HTS general note 12), because they were negotiated to focus on known trade and production in the three countries.

Similar to the NAFTA origin rules, the NAFTA Marking Rules provide that the country of origin of an imported article is (1) the country where the article was wholly obtained or produced; (2) the country where the article was produced exclusively from domestic materials; or (3) the country where each foreign material undergoes an enumerated change in tariff classification.[37] If an imported article does not satisfy one of these rules, then the origin of the article will be that of the single material[38] that imparts its essential character.[39] Special rules are also provided for mixtures, sets, composites, and commingled fungible articles.

Proposed Uniform U.S. Origin Rules

As noted, the current U.S. approach to origin is considered by many to lack predictability, consistency, and transparency. On the other hand, origin determinations under the CTC approach are often alleged to be more transparent, predictable, and consistent. Therefore, the Department of the Treasury has been considering the unilateral adoption of uniform U.S. rules of origin based on the CTC approach.

In this regard, in January 1994, Customs proposed regulations that would provide uniform rules of origin for all merchandise imported into the United States. These rules are based on the NAFTA Marking Rules set forth at 19 CFR 102. Under the proposal, the part 102 rules would be applied to all merchandise imported into the United States[40] for customs and other purposes, including country-of-origin marking, as well as to many duty preference programs (i.e., GSP, CBERA, and so forth). The stated intent of the proposal was to "codify" current administrative and judicial rulings on country of origin in a set of rules expressed as

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[37] 19 CFR 102.11(a).

[38] 19 CFR 102.11(b).

[39] Certain U.S. industry representatives indicate that an essential character analysis is not applicable to specific products. See, for example, statements of Leslie G. Sarasin, executive vice president and staff counsel, American Frozen Food Institute, transcript of hearing, pp. 218-220, and Scott E. Rosenow, Stein Shostak, Shostak, and O'Hara, on behalf of Ajay Sports, Inc., Daiwa Corp., Coastcast Corp., Lynx Golf, Inc., Lamkin Leather and Rubber Co., and Taylor Made Golf Co., transcript of hearing, pp. 266-272.

[40] Certain U.S. industry representatives have claimed that the proposed part 102 rules do not, in fact, conform with current practice regarding determinations of substantial transformation. They claim that the proposed part 102 rules would effectively change the country of origin for their respective products, resulting in some cases where their products (e.g., vegetable mixtures, golf clubs, hand tools) would have to be marked with a foreign country of origin. See, for example, statements of Leslie G. Sarasin, executive vice president and staff counsel, American Frozen Food Institute, transcript of hearing, p. 218, Marti Morfitt, vice president, Green Giant Brands, The Pillsbury Co., transcript of hearing, p. 230, Dr. Allen W. Matthys, vice president, technical regulatory affairs, National Food Processors Association, transcript of hearing, p. 234, Scott E. Rosenow, Stein, Shostak, Shostak, and O'Hara, on behalf of Ajay Sports, Inc., Daiwa Corp., Coastcast Corp., Lynx Golf, Inc., Lamkin Leather and Rubber Co., and Taylor Made Golf Co., transcript of hearing, pp. 267-270, and Bruce Shulman, Stein, Shostak, Shostak, and O'Hara, transcript of hearing, p. 295.

specified changes in tariff classification in an effort to provide greater clarity, predictability, and transparency.[41] In May 1995, Customs proposed modifying the part 102 rules for both NAFTA trade and uniform rules of origin development. Customs initially desired to apply the part 102 rules before the WTO completed its effort to harmonize rules of origin in the WTO (see following section). However, subsequent to concerns expressed by Congress and a number of industry groups,[42] this effort to apply the part 102 rules to imports from all countries is being held in abeyance.[43] On June 6, 1996, Customs announced its decision not to adopt its proposal to extend part 102 to all trade as a final rule at this time but that the proposal should remain under "consideration for implementation at a later date."[44]

The WTO Agreement on Rules of Origin

At the international level, origin rules also are considered to lack clarity, consistency, predictability, and transparency, and the disparity in these rules in some instances has been an obstacle to trade and foreign investment. Therefore, the Contracting Parties to the WTO in the Uruguay Round Agreement agreed to pursue the international harmonization of rules of origin[45] based on the substantial transformation standard.

The WTO Agreement on Rules of Origin (ARO) established a WTO Committee on Rules of Origin, and requested the World Customs Organization (WCO) to establish a Technical Committee on Rules of Origin (TRCO) in order to pursue international harmonization.[46] This initiative is scheduled to take 3 years from the date of its beginning in March 1995. The ARO expressed a preference for the use of a CTC approach as the basis for determining when a substantial transformation has occurred.[47]

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[41] 59 F.R. 141, Jan. 3, 1994 and 60 F.R. 22312, May 5, 1995. In 1991, the Department of the Treasury had proposed replacing the current method for making origin determinations with uniform rules of origin that were based on the CTC rules contained in the United States-Canada Free-Trade Agreement. These rules were intended to promote greater objectivity, transparency, certainty and predictability for the trade community and the Customs Service. See 56 F.R. 48448, Sept. 25, 1991.

[42] Certain U.S. industry representatives recommend that the unilateral steps by the United States to establish new U.S. origin rules be delayed pending the results of the WTO harmonization process in order to avoid the potential requirement for the industry to change twice to new rules within a short time frame. See, for example, statements of Matthew T. McGrath, Barnes, Richardson & Colburn, on behalf of the Pharmaceutical Research and Manufacturers of America, transcript of hearing, p. 244, and Leslie G. Sarasin, executive vice president, American Frozen Food Institute, transcript of hearing, p. 220.

[43] The initiative is "on hold." See letter from Deputy Treasury Secretary Summers to the Honorable Philip M. Crane, Chairman of the Subcommittee on Trade, House Ways and Means Committee (April 1996).

[44] 60 F.R. 28933, June 6, 1996.

[45] WTO Agreement on Rules of Origin (ARO), sections 101(d)(10) and 132 of the Uruguay Round Agreements Act (URAA) and the Statement of Administrative Action that accompanied the URAA.

[46] ARO Article 4.

[47] ARO Article 9(2)(c)(ii).

The U.S. Government has participated actively in this effort to develop uniform rules of origin. At the request of the United States Trade Representative, the Commission initiated investigation No. 332-360, *International Harmonization of Customs Rules of Origin* on April 6, 1995, to provide the basis for the U.S. proposal to TCRO of the WCO and future harmonization indicated in the ARO.[48]

Domestic Articles

The standard for products claiming to be made in the United States and bearing a mark such as "Made in USA" has been established by the Federal Trade Commission (FTC). Under section 5 of the Federal Trade Commission Act, the FTC is directed to prevent unfair and deceptive acts and practices. Claims, including those of origin, must be truthful and substantiated. Firms have four options for marking domestically produced goods: (1) an unqualified "Made in USA" label; (2) a qualified label, such as "Made in USA of foreign and domestic components"; (3) no marking as to the country of origin; and (4) a foreign country of origin if the good has substantial foreign content. The claims, or markings, applied to domestically produced goods may be evaluated against the FTC standard if questions arise about the U.S. origin of a product.

The FTC has developed its standard on a case-by-case basis, as cases regarding origin claims have been brought before it. The current FTC standard for an unqualified "Made in USA" label or advertising claim requires that the product be "wholly of domestic origin," where the product is composed wholly of domestic parts and assembled with U.S. labor.[49] In a recently proposed consent agreement, the FTC altered the description of this standard, stating that "all or virtually all" of the parts and labor used in the product must be of domestic origin. This standard is consistent with FTC case precedent and extrinsic evidence obtained by the FTC regarding consumer perceptions of "Made in USA" claims.[50] The FTC maintains that this standard allows for unqualified "Made in USA" claims where there is a de minimis amount of foreign content.[51] Qualified statements, such as "Made in USA of foreign components" or "Made in USA from US and foreign components," claiming materials or labor of either U.S. or foreign origin have not been challenged in cases before the FTC.

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[48] 60 F.R. 19605, Apr. 19, 1995.

[49] For a discussion of FTC policy regarding "Made in USA" claims, see 60 F.R. 53922-53930, Oct. 18, 1995.

[50] 59 F.R. 54462, Oct. 31, 1994, citing, for example, *Windsor Pen Corp.*, 64 F.T.C. 454 (1964), *Joseph H. Meyer Bros.*, 47 F.T.C. 49 (1950), *Vulcan Lamp Works, Inc.*, 32 F.T.C. 7 (1940), and FTC Advisory Opinion No. 215, *Misrepresenting Hoist as "Made in U.S.A.,"* 73 F.T.C. 1321 (1968).

[51] Certain U.S. industry representatives perceive the change in language describing the FTC's standard as a weakening of the standard and recommend that the FTC maintain the "wholly of domestic origin" characterization. See Danaher Corp. and Snap-on, Inc., posthearing submission to the USITC, Apr. 25, 1996, p. 1. In addition, one manufacturer raises a concern that both the change in tariff classification rules as defined in 19 CFR 102 and the FTC standard for unqualified "Made in USA" claims do not take into account what the company believes are significant value-added machining and finishing operations performed in the United States. See, Ablondi, Foster, Sobin & Davidow, P.C., on behalf of The Stanley Works, written submission to the USITC, Apr. 25, 1996, pp. 4-6.

Historically, goods that were not labeled with any country of origin were presumed by the FTC to be perceived by consumers as being produced in the United States.[52] This presumption was based on the fact that Customs generally required foreign goods to be marked and that most goods consumed in the United States were produced domestically. A product that is not wholly of U.S. origin, but with less than 50 percent of foreign content, may be unmarked. The FTC has required sellers to disclose foreign content when the content of the product is substantially of foreign origin.[53] The FTC has stated that a failure to disclose a substantial amount of foreign content would be deceiving consumers.

The standard for domestic articles does not use the standard of substantial transformation. This disparity may result in different origins for almost identical products. For example, a computer produced in Germany with parts from third countries may be labeled as made in Germany assuming the product underwent a substantial transformation in Germany. However, a computer produced in the United States from third country parts may not be labeled "Made in the USA" because the parts and labor were not wholly of domestic origin.[54]

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[52] Manco Watch Strap Co., 60 F.T.C. 495 514-515 (1962).

[53] The term substantial in this context has been cited as 50 percent or more of the value of a good in a previous FTC *Federal Register* notice (60 F.R. 53923, Oct. 18, 1995), however, FTC officials stated that the Commission has not formally endorsed this percentage and it has not yet been defined in FTC case law. FTC official, interview with USITC staff, July 1, 1996.

[54] This example was presented in Compaq Computer Corp., written comments to the FTC, "Made in USA Policy Comment," FTC File No. P894219, Jan. 9, 1996.

CHAPTER 3
Review of Applicable U.S. Laws, Regulations, and Practices Regarding Country-of-Origin Marking

The principal U.S. statute governing the marking of country of origin on imports, with certain exceptions, is section 304 of the Tariff Act of 1930 (19 U.S.C. 1304). Other major laws requiring the marking of imports are the Wool Products Labeling Act of 1939, the Textile Fiber Products Identification Act, and the American Automobile Labeling Act. These laws also require the marking of domestic products. Section 5 of the FTC Act, which is an unfair trade statute of broad application, is used to insure that claims related to U.S. origin, such as products bearing a "Made in USA" label, are accurate. In addition, administering agencies have issued numerous regulations to implement these laws. These and other laws and regulations that either require marking or address origin claims are listed in table 3-1.

These laws or regulations may require marking for the benefit of the consumer or ultimate purchaser, for maintaining trade sanctions, or for health and safety purposes. Some regulations clarify the use of geographic place names as related to product origin. For example, the regulations on labeling wine and distilled spirits require that the country of origin be clearly stated so as to mitigate possible confusion of the product name with its place of actual production.[1] Regulations administered by the Food and Drug Administration under 21 CFR 201 are designed to provide the consumer with information about the source of a drug product, but in some instances, may conflict with a Customs decision as to the country of origin (see analysis of marking pharmaceuticals in chapter 6).

There are also a number of state laws governing the labeling of imports. Most notable among these is the State of Florida's "Produce Labeling Act of 1979," under sections 504.011-504.014 of Florida's statutes. The act requires that

> any fresh fruit or vegetable, package of bee pollen, or package of honey, including any package containing foreign honey blended with domestic honey, produced in any country other than the United States and offered for retail sale in Florida shall be marked individually in a conspicuous place as legibly, indelibly, and permanently as the nature of the fruit or vegetable, package of bee pollen, or package of honey will permit, in such manner as to indicate to an ultimate purchaser the country of origin. Markings shall be done prior to delivery into Florida.[2]

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[1] For example, the word "Scotch," and other similar words indicating association with Scotland cannot be used to designate any product not wholly produced in Scotland. 27 CFR 5.22(k)(4).

[2] State of Florida, "Produce Labeling Act of 1979," ss. 504.012.

Table 3-1
Laws and regulations, their statutory and regulatory cites, major administering agency, and product coverage that either requires marking or addresses origin claims

Statute	Statutory cite	Regulatory cite	Administering agency	Coverage
Marking for the benefit of the ultimate purchaser				
Tariff Act of 1930	19 U.S.C. 1304	19 CFR 134	U.S. Customs Service (Customs)	Imports
Wool Products Labeling Act of 1939	15 U.S.C. 70	16 CFR 300.25a and 300.25b	Federal Trade Commission (FTC) and Customs	Imported and domestic wool products
Textile Fiber Products Identification Act	15 U.S.C. 68	16 CFR 303 .33 -.34	FTC and Customs	Imported and domestic textile fiber products
Fur Products Labeling Act	15 U.S.C. 69	16 CFR 301 .12-.18	FTC and Customs	Imported and domestic fur products
American Automobile Labeling Act	15 U.S.C. 1950	49 CFR 583	National Highway Traffic Safety Administration (NHTSA)	Automobiles, light trucks, their engines, and transmissions
Omnibus Trade and Competitiveness Act of 1988	Public Law 100-418, Aug. 23, 1988, 102 Stat. 1107, 1315[2]	19 CFR 134.43(c), 134.43(d)(1) and 134.43(d)(2)	Customs	Country-of-origin marking required on imported Native-American style jewelry, arts, and crafts
Omnibus Trade and Competitiveness Act of 1988	Public Law 100-418, Aug. 23, 1988, 102 Stat. 1107, 1315[2]	Not applicable	Customs	Imported containers of mushrooms
Prevention of deception or unfair acts				
Federal Trade Commission Act, section 5[1]	15 U.S.C. 45	16 CFR 2-3	FTC	Unfair or deceptive acts
Lanham Trademark Act of 1946[1]	15 U.S.C. 1125	Not applicable	The courts. This law allows private right of action	Unfair or deceptive acts
Tariff Act of 1930, section 337[1]	19 U.S.C. 1337	19 CFR 210-213	U.S. International Trade Commission and Customs	Unfair or deceptive acts regarding imports

Table continued on next page.

Statute	Statutory cite	Regulatory cite	Administering agency	Coverage
Control of foreign assets through import prohibition				
Foreign Assets Control Act[1]	50 U.S.C. App. 1-44	31 CFR 500.204 and 500.412	U.S. Department of the Treasury and Customs	To prohibit entry of products of North Korea. This prohibition includes products of this country that are processed in other countries and marked as originating in the latter.
Marking for health and safety purposes				
Egg Products Inspection Act	21 U.S.C. 1031-1056	7 CFR 59.905, 940, 950, .955	U.S. Department of Agriculture (USDA)	Imported eggs or egg products
Food Safety and Inspection Service (Meat and Poultry), USDA	21 U.S.C. 601-695	9 CFR 327.14, 327.15, 381.205 and 381.206	USDA	Containers of imported meat and poultry products
Agricultural Marketing Service, USDA	7 U.S.C. 1621-1627	7 CFR 54.5	USDA	Requirement by USDA to provide USDA meat inspection service on retail cuts of meat
Federal Alcohol Administration Act[1]	27 U.S.C. 205(e) and 27 U.S.C. 205(f)	27 CFR 4.35a and 4.38	Bureau of Alcohol, Tobacco, and Firearms (ATF)	Geographical location where wine was bottled or packed
Federal Alcohol Administration Act[1]	27 U.S.C. 205(e) and 27 U.S.C. 205(f) 26 U.S.C. 5412	27 CFR 7	ATF	Importer address or production site required on malt beverages; deception regarding geographic names
Federal Alcohol Administration Act[1]	27 U.S.C. 205(e) and 27 U.S.C. 205(f) 26 U.S.C. 5201 26 U.S.C. 7805	27 CFR 5.36 and 19.650	ATF	Domestic and imported distilled spirits--bottling location; country or origin of imported distilled spirts
Radio Act of 1927, as amended[1]	47 U.S. C. 154, 155, and 303	47 CFR 68.300	Federal Communica-tions Commission	Telecommunications equipment defined in 47 CFR 68.2

Table continued on next page.

Statute	Statutory cite	Regulatory cite	Administering agency	Coverage
Federal Food, Drug, and Cosmetic Act;[1] Public Health Service Act[1]	21 U.S.C. 321, 331, 352, 355, 356, 357, 358, 360, 360b, 360gg-360ss 42 U.S.C. 216, 241, 262, 264	21 CFR 201.1	Food and Drug Administration and Customs	Drugs or drug products as defined under 21 CFR 320.1 required to be marked with the address of the manufacturer, packer, or distributor.
Navigation and Navigation Waters Act	216 U.S.C. 4302	33 CFR 181	U.S. Coast Guard	Boat/ship hull identification

[1] Statute indicates no specific language to mark product with country of origin.
[2] Not incorporated in the United States
Source: Compiled by the staff of the U.S. International Trade Commission.

The penalty for violation of the Florida statute is a civil fine of not more than $500. California has a similar statute that is limited to the labeling of honey.[3]

States also maintain laws similar to section 5 of the Federal Trade Commission Act[4] to prevent unfair acts and deception of consumers, and many of these State laws are directly or indirectly linked to the FTC's interpretation of section 5 of that Act.[5] For example, section 17533.7 of the Business and Professions Code of the California Code prohibits the sale of a good in California that has been claimed to be made in the United States when in fact the good was not domestically produced. States also take actions to prevent deception of consumers. For example, the State of Missouri concluded a voluntary compliance agreement with Farberware in 1993, requiring that company to conspicuously reveal foreign components of products it claimed were made in the United States.

U.S. laws and regulations with respect to country-of-origin marking are considered to be in conformance with GATT. Country-of-origin marking is recognized under GATT 1994[6] as an exception to the general national treatment obligation, which generally provides that laws and regulations should apply equally to domestic and imported products.[7] GATT Article IX recognizes "the necessity of protecting consumers against fraudulent or misleading indications."[8] Article IX, which enumerates the disciplines to be applied to marking, stipulates that country-of-origin marking is subject to the most-favored-nation (MFN) obligation and may not be applied in a discriminatory manner as between third countries. The United States required country-of-origin marking for imported goods prior to the establishment of the GATT and has maintained this policy under the WTO.

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[3] State of California, Food and Agricultural Code, Division 13, Article 9, "Labeling of Honey as to Origin and Flavor."
[4] See a detailed discussion of this law later in this chapter.
[5] Attorneys General of the States of Connecticut, California, Florida, Hawaii, Iowa, Kansas, Maryland, Michigan, Missouri, Nevada, New Hampshire, New York, Ohio, Rhode Island, Washington, and West Virginia, written statement to the FTC, "Made in USA Policy Comment," FTC File No. P894219, Jan. 16, 1996, p. 2 and footnote 3.
[6] The GATT rules with regard to country-of-origin marking were not changed by the Uruguay Round Agreements.
[7] GATT 1994, Article III, which restates the national treatment obligations of Article III, GATT 1947.
[8] GATT 1994, Article IX.

Section 304 and the U.S. Customs Service

The first U.S. marking statute was enacted in 1890.[9] It provided that "all articles of foreign manufacture... shall be plainly marked, stamped, branded, or labeled in legible English words, so as to indicate the country of origin."[10] The Congressional intent was to protect consumers "...from the imposition of inferior goods..."[11] The statute was reenacted in the Tariff Act of 1894.[12] The Tariff Act of 1897[13] required that country-of-origin marking be in a conspicuous place. The marking statute was reenacted in the Tariff Act of 1909, [14] and authorized the Secretary of the Treasury to prescribe rules and regulations for persons convicted of fraudulently altering or concealing country-of-origin marks, and impose fines up to a maximum of $5,000 dollars, or imprisonment for a maximum of one year. The marking statute was reenacted in the Tariff Act of 1913.[15] A provision for the assessment of additional duties of 10 percent of the appraised value for failure to mark was added when the law was reenacted in section 304 of the Tariff Act of 1922.[16] The marking law was reenacted in 1930 as section 304 of the Tariff Act of 1930, now codified at 19 U.S.C. 1304. Much of the

The McKinley Report, 1890

"The admitted superiority of certain lines of American goods has induced the importation of foreign imitations of inferior quality, with American brands, to be put on our market as the superior goods of American manufacture. Inferior goods, the manufacture of one country, have also been imported and sold bearing the marks of superior manufactures of established reputation of another country. A practice has also grown up of importing goods under invoices authenticated in a country other, and in a currency of less value, than of the country of manufacture.

"Section 23 [later renumbered as section 6] forbids entry to merchandise not plainly marked, stamped, branded, or labeled with the name of the country in which it is manufactured, with the purpose of protecting both our own people from the imposition of inferior goods and the revenue from possible loss through undervaluation."

[9] Tariff Act of 1890, ch. 1244, 26 Stat. 567, 613, enacted Oct. 1, 1890. A precursor of the marking statute can be found in H.R. 4404, Jan. 10, 1888, a bill "To prohibit the importation of articles of foreign manufacture bearing a stamp, mark, or imprint conveying the impression that such articles are of American manufacture."

[10] Section 6 of the Tariff Act of 1890. Section 6 of the Tariff Act of 1890 became effective on Mar. 1, 1891, and the Treasury Department issued a circular on interpretation and implementation on Dec. 20, 1890.

[11] House Report No. 1466, 51st Cong., 1st sess. ("McKinley Report"), Apr. 16, 1890, p. 248.

[12] Tariff Act of 1894, ch. 349, 28 Stat. 509, 547, Aug. 27, 1894.

[13] Tariff Act of 1897, ch. 11, 30 Stat. 151, 205, July 24, 1897.

[14] Tariff Act of 1909, ch. 6, 36 Stat. 11, 85, Aug. 5, 1909.

[15] Tariff Act of 1913, ch. 16, 38 Stat. 114, 194, Oct. 3, 1913.

[16] Tariff Act of 1922, ch. 356, 42 Stat. 858, 936, Sept. 21, 1922. U.S. House of Representatives, Committee on Ways and Means, *Comparison of the Tariff Acts of 1913, 1922, and 1930* (Washington, DC: GPO, 1931), p. 185.

current language and structure of the present version of section 304 resulted from amendments in the Customs Administrative Act of 1938.[17] This amendment also codified into law many of the exceptions to marking found in Customs regulations.[18] The 1938 amendments also established that country-of-origin markings were for the benefit of the "ultimate purchaser." In 1953, another general exception to marking was added, section 304(a)(3)(K).[19] Amendments in 1984 added specific marking requirements for certain pipe and fittings, compressed gas cylinders, and certain manhole rings or frames, covers, and assemblies.[20] In 1986, amendments added specific language on methods of marking pipe and fittings, such as paint stenciling.[21] Amendments in the Omnibus Trade and Competitiveness Act of 1988 increased the penalties for violations of country-of-origin marking requirements from a maximum of $5,000 to $100,000 for the first violation, and specified penalties for the second and subsequent violations of not more than $250,000, or not more than one year in prison.[22] Although not amending section 304, the Omnibus Trade and Competitiveness Act of 1988 also requires that imported preserved mushrooms be marked with the country of origin where the mushrooms were grown in order to comply with section 304.[23] Section 304 was last amended in 1993, when provisions were added to modify the marking methods of imported pipe and fittings, and added a new section, 304(h), that specifies the treatment of goods of a NAFTA country for marking purposes.[24] Section 304(h) also specifies the petition rights of NAFTA exporters and producers regarding marking decisions.

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[17] Customs Administrative Act of 1938, ch. 679, 52 Stat. 1077-1080, June 25, 1938.

[18] U.S. Senate, Committee on Finance, *Customs Administrative Act: Hearings Before a Subcommittee of the Committee on Finance*, 75th Cong., 3rd sess., Jan. 25, 26, 27, and Feb. 9, 1938, pp. 11-12.

[19] Customs Simplification Act of 1953, Aug. 8, 1953, Public Law 243, ch. 397, 67 Stat. 507, 509.

[20] 19 U.S.C. 1304(c), 1304(d), and 1304(e). Trade and Tariff Act of 1984, Oct. 30, 1984, Public Law 98-573, 98 Stat. 2948, 2976.

[21] 19 U.S.C. 1304(c)(2). Tax Reform Act of 1986, Oct. 22, 1986, Public Law 99-514, 100 Stat. 2085, 2924.

[22] 19 U.S.C. 1304(h). Omnibus Trade and Competitiveness Act of 1988, Aug. 23, 1988. Public Law 100-418, 102 Stat. 1107, 1314.

[23] Public Law 100-418, 102 Stat. 1107, 1315.

[24] North American Free Trade Agreement Implementation Act., Dec. 8, 1993. Public Law 103-182, 107 Stat. 2057, 2096-2097.

Section 304 of the Tariff Act of 1930, as amended, provides that all imported articles, or their containers, unless excepted, must be marked at the time of importation so that the "ultimate purchaser" of the imported article in the United States can know the country where the imported product was made. Some consumers may prefer to purchase products that are manufactured in the United States, while other consumers may prefer to buy imported products, in which case they may prefer to purchase products that are manufactured in one foreign country rather than another. The marking requirement enables consumers to make an informed choice.[25] The marking statute also operates to protect domestic producers and to facilitate the enforcement of some Customs laws (e.g., quotas and antidumping duties) by helping to identify subject goods.

Imported articles, or their containers, must have a country-of-origin marking in a conspicuous place as legibly, indelibly, and permanently as possible, and it must be in English. The Secretary of Treasury is authorized to create regulations to determine whether the content, the method, and the location of the mark are acceptable.[26] The Secretary also is authorized to require additional words or symbols to prevent deception or mistake as to the origin of the article or any other article with which such imported article is combined subsequent to importation but prior to delivery to the ultimate purchaser.

Ultimate purchaser

"The 'ultimate purchaser' is generally the last person in the United States who will receive the article in the form in which it was imported" (19 CFR 134.1(d)). If the imported article is sold at retail in its imported form, then the purchaser at retail is the ultimate purchaser, and the imported article or its container must be marked so that the purchaser at retail can know the imported article's country of origin.

If the imported article is subjected to a minor manufacturing process in the United States after importation that leaves the identity of the imported article intact, then the consumer or user of the processed article will be regarded as the ultimate purchaser, and the imported article or its container must be marked so that the consumer or user of the processed article can know the imported article's country of origin.

If the imported article is used by a manufacturer in the United States and subjected to a process that results in a so-called **substantial transformation,** then the manufacturer may be the ultimate purchaser. In such a case, the imported article does not need to be marked with the country of origin (19 CFR 134.35(a)), but the container of the imported article must nevertheless be marked with the imported article's country of origin. Once the imported article is substantially transformed in the United States, then neither the resulting product nor its container needs to be marked to reflect that it was made from an imported article.

[25] "The evident purpose [of the marking statute] is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." See *United States v. Friedlaender & Co., Inc.*, 27 C.C.P.A. 297, at 302 (1940).

[26] 19 U.S.C. 1304(a)(1). The Customs marking regulations are set forth at 19 CFR 134 et seq.

Section 304 also provides for certain exceptions to the marking requirement and authorizes the Secretary of Treasury to exempt imported goods from the marking requirements under certain specific circumstances.[27] However, whenever an article is excepted from the marking requirements, the immediate container still must be marked with the article's country of origin. If an imported article that is marked with the country of origin is packaged when it is sold to the ultimate purchaser in the United States, then the package, too, must be marked with the country of origin of the contents. If an imported article is exempt from the marking requirements, but the article is not in a container when it reaches the ultimate purchaser (e.g., some bulk articles such as agricultural commodities), the article and its container are effectively exempt from the requirements of the marking statute. Section 304 provides that containers are not required to be marked for certain excepted articles--those imported for use by the importer, section 304(a)(3)(F); those to be processed by the importer, section 304(a)(3)(G); and articles where the ultimate purchaser must necessarily know the country of origin, section 304(a)(3)(H). However, articles excepted in section 304(a)(3)(G) must be marked if the marking will not obliterated, destroyed, or permanently concealed by the processing.[28]

Exceptions in section 304(a)(3)

(A) such article is incapable of being marked;
(B) such article cannot be marked prior to shipment to the United States without injury;
(C) such article cannot be marked prior to shipment to the United States, except at an expense economically prohibitive of its importation;
(D) the marking of a container of such article will reasonably indicate the origin of such article;
(E) such article is a crude substance;
(F) such article is imported for use by the importer and not intended for sale in its imported or any other form;
(G) such article is to be processed in the United States by the importer or for his account otherwise than for the purpose of concealing the origin of such article and in such manner that any mark contemplated by this section would necessarily be obliterated, destroyed, or permanently concealed;
(H) an ultimate purchaser, by reason of the character of such article or by reason of the circumstances of its importation, must necessarily know the country of origin of such article even though it is not marked to indicate its origin;
(I) such article was produced more than twenty years prior to its importation into the United States;
(J) such article is of a class or kind with respect to which the Secretary of the Treasury has given notice by publication in the weekly Treasury Decisions within two years after July 1, 1937, that articles of such class or kind were imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin: Provided, That this subdivision shall not apply after September 1, 1938, to sawed lumber and timbers, telephone, trolley, electric-light, and telegraph poles of wood, and bundles of shingles; but the President is authorized to suspend the effectiveness of this provision if he finds such action required to carry out any trade agreement entered into under the authority of sections 1351, 1352, 1353, 1354 of this title, as extended; or
(K) such article cannot be marked after importation except at an expense which is economically prohibitive, and the failure to mark the article before importation was not due to any purpose of the importer, producer, seller, or shipper to avoid compliance with this section.

In addition, section 304 contains specific marking requirements for certain articles. For example, it has provided that pipes and fittings, compressed gas cylinders, and manhole rings may not be excepted from the marking requirements.[29] The marking statute also specifies the method by which such articles must be marked (e.g., die stamping, etching) and, in the case of manhole rings, it specifies that the mark be on top of the surface.

For NAFTA goods, section 304 refers to rules-of-origin set forth at 19 CFR 102, known as NAFTA Marking Rules, which rely on a change in tariff classification (see discussion on

[27] Section 304(a)(3) of the Tariff Act of 1930 (19 U.S.C. 1304(a)(3)).

[28] 19 CFR 134.36.

[29] Section 304(c) of the Tariff Act of 1930 (19 U.S.C. 1304(c)), as added by section 207(2) of the Trade and Tariff Act of 1984 (Public Law 98-573, 98 Stat. 2976).

NAFTA in chapter 2). On June 6, 1996, Customs announced that rules of origin in part 102 will become final rules, effective August 5, 1996.[30] With respect to NAFTA goods, section 304 also contains several "exemptions"[31] from marking requirements and sets forth petition rights of NAFTA exporters and products regarding marking decisions by Customs. NAFTA goods exempted from marking include original works of art, ceramic tiles classified under Harmonized System (HS) subheading 6904.10, and semiconductor devices and integrated circuits classified under HS headings 8541 and 8542. In addition, marking of containers for these articles is also exempted, as are containers of crude substances,[32] if from a NAFTA party.

Section 304 also provides for methods of enforcing country-of-origin marking. A 10 percent ad valorem duty shall be levied on any article or its container that is not legally marked at the time of importation unless exported, destroyed, or marked under customs supervision after importation in accordance with the requirements of the marking statute.[33] The importer must reimburse the Government for the cost of supervising the exportation, destruction, or marking of such articles or their containers. The additional duty also is assessable for failure to include words or symbols that are required to prevent deception or mistake.[34] Section 304 also provides that delivery of imported articles not legally marked shall be withheld until such articles are correctly marked in accordance with the requirements of section 304, or until the 10 percent ad valorem duty has been deposited. Penalties are provided in section 304 for any person who removes, alters, or covers the country of origin mark with the intent to conceal. For a first offense, the penalty is a maximum fine of $100,000 and/or imprisonment for a year and for subsequent offenses, a maximum fine of $250,000 and/or a year in prison.[35]

Regulations

Customs regulations governing marking under section 304, as well as certain marking provisions of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) are set forth in the Customs regulations at 19 CFR 134. These regulations specify the language used to identify the country of origin, methods of marking, location, and words or symbols to prevent deception or mistake as to origin. Aside from general methods of marking, certain methods are required for watch and clock movements and parts,[36] certain other manufactured products,[37] and imported Native-American style jewelry, arts, and crafts.[38]

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[30] 61 F.R. 28932-28980, June 6, 1996.

[31] 19 U.S.C. 1304 uses the term exception, however, 1304(h) uses the term exemption.

[32] 19 U.S.C. 1304(h)(C).

[33] Section 304(f) of the Tariff Act of 1930 (19 U.S.C. 1304(f)).

[34] Ibid. See also 19 CFR 134.2.

[35] 19 CFR 11.13(c). Customs regulations at 19 CFR 11.13 set forth the consequences and procedures to be followed when articles are falsely marked.

[36] This includes watch movements, clock movements, watch cases, and clock cases, as specified in Chapter 91, Additional U.S. Note 4, *Harmonized Tariff Schedule of the United States* (19 U.S.C. 1202), and 19 CFR 134.43(b)..

[37] These include knives, clippers, shears, safety razors, surgical instruments, scientific and laboratory instruments, pliers, pincers, vacuum containers, and other articles. 19 CFR 134.43(a).

[38] Section 1907, Omnibus Trade and Competitiveness Act of 1988 (Public Law 100-418, Aug. 23, 1988; 102 Stat. 1107, 1315).

Customs regulations also require that if the name of a place other than the country of origin appears on an imported article or its container, then the actual country of origin must appear "in close proximity" to such other place, in order to avoid misleading the ultimate consumer as to the country of origin of the article.[39] This rule would also apply in cases where the words "United States," "American," "U.S.A.," the U.S. flag, or the like appear on the article or its container.

Customs regulations provide further detail on the exceptions to marking listed in section 304(a)(3), particularly those in section 304(a)(3)(J) (19 CFR 134.33). This enumeration of exceptions of subsection (J) in the regulations is known as the "J-List." The list includes, for example, articles such as "natural products, such as vegetables, fruits, nuts, berries, and live or dead animals, fish and birds; all the foregoing which are in their natural state or not advanced in any manner further than is necessary for their safe transportation," many wood and steel products, and drugs and similar substances imported in pill or tablet or other similar forms. Although products on the J-List are excepted from marking, their containers are generally required to be marked.

Customs regulations in part 134 and part 102 implement the NAFTA Marking Rules found in NAFTA Annex 311. An example of such a regulation is 19 CFR 134.45, which permits a good of a NAFTA country to be marked with the name of the country of origin in English, French, or Spanish. Many of the marking regulations implementing the NAFTA are less stringent than those for non-NAFTA goods, particularly as they pertain to marking methods and the marking of containers.

The Customs regulations also provide definitions of both the ultimate purchaser and the country of origin. In September 1972, Customs adopted and incorporated into its regulations the appellate court's decision in *United States v. Gibson-Thomsen Co., Inc.*, 27 C.C.P.A. 267 (C.A.D. 98) (1970) at 19 CFR 134.35. Under this decision, the person "who converts or combines the imported article into the different article will be considered the 'ultimate purchaser' of the imported article within the contemplation of section 304(a)..."[40] For such articles, however, the outermost container will still be required to be marked unless otherwise excepted. In August 1985, Customs began applying its interpretation of the principles embodied in *Uniroyal v. United States*, 3 CIT 220 (1982), as required by 19 CFR 152.16(b), to all country-of-origin determinations for all Customs purposes, including marking.[41] In Treasury Decision 90-17, Customs stated its "view that the decision in *Uniroyal* requires Customs to look at the significance of manufacturing or processing operations performed on an article, as well as the change in the article as a result of those operations."[42] Customs states that it has often characterized the substantial transformation test as requiring a "new name, character *or* use," but notes that the courts and Customs have in fact required a change in "the name, character *and* use of an imported article for a finding of substantial transformation into a new and different article of commerce."[43] In Customs' view, the courts have deemphasized the significance of a change in name and use, but have placed significance on a change in the imported article's character when determining whether a substantial transformation occurred. Customs states that it has administered the

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[39] 19 CFR 134.46 and U.S. Customs ruling HQ 729096, Jan. 2, 1986.

[40] 19 CFR 134.35(a).

[41] 50 F.R. 31392-31394, Aug. 2, 1985.

[42] 24 *Cust. B. & Dec.*, (T.D. 90-17), "Country of Origin Rules Regarding Imported Textiles and Textile Products," Mar. 14, 1990, p. 34.

[43] 61 F.R. 28938, June 6, 1996.

Gibson-Thomsen Co. decision as "requiring a change in the name, character and use of the articles and has placed more emphasis on a change in the character of the article than on any change in its name or use."[44] According to Customs, the substantial transformation test is most often used for country-of-origin marking determinations.[45]

Although Customs recently announced that it would undertake a complete revision of regulations in 19 CFR 134, this process has no schedule for completion.[46] Customs has already announced proposed rulemaking that would ease the strictness of certain regulations, such as those covering wearing apparel[47] and the proximity of a country-of-origin marking to a mentioned geographic location (19 CFR 134.46).[48] Customs also is proposing rulemaking with regard to watches,[49] frozen produce packages,[50] and several other products to clarify marking issues. On June 6, 1996, Customs published a *Federal Register* notice, effective August 5, 1996, that makes final the rules for determining the country of origin of a good for purposes of NAFTA Annex 311.[51] This final rule modified the marking regulation for articles returned to the United States after having been advanced in value or improved in condition outside the United States, 19 CFR 134.43(e). The modified regulation will cover only assembled articles, and will allow markings such as "Assembled in (country of final assembly) from components of (name of country or countries of origin of all components)." A number of golf club component producers had reported that the prior version of 19 CFR 134.43(e) required them to mark golf club heads, cast in the United States and finished in Mexico, as products of Mexico. Prior to NAFTA, such a marking was not required. However, if the club head was processed outside of a NAFTA partner, the head would not be required to be marked with a country of origin.[52] Customs has also provided a 4-month period of adjustment, from July to November 1996, to allow firms to exhaust their inventory of old country-of-origin labels for certain textile and apparel products because of the economic hardship of converting to labels that reflect the new country-of-origin rules implemented under section 334 of the Uruguay Round Agreement Act.[53] This adjustment period applies to labels stating "Assembled in X country from U.S. components" or to a similar phrase for goods that were assembled from components cut to shape in the United States.

Customs practices regarding the marking of various products may not necessarily be published as regulations, but are also found in Treasury Decisions (T.D.s), Customs Service Decisions, or in binding ruling letters issued by Customs. An example of such a practice in

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[44] Ibid.

[45] 60 F.R. 22314, May 5, 1996. In this notice, Customs discusses court decisions on substantial transformation, and continues this discussion in another notice, 61 F.R. 28938, June 6, 1996.

[46] 30 *Cust. B. & Dec.*, "Modification of Customs Ruling Relating to Country of Origin Marking of Wire Rod,", Apr. 3, 1996, p. 25, and Sandra L. Gethers, chief, Special Classification and Marking Branch, U.S. Customs Service, telephone interview with USITC staff, May 28, 1996.

[47] 60 F.R. 57621-57622, Nov. 16, 1995.

[48] 60 F.R. 57559-57560, Nov. 16, 1995, and 60 F.R. 66952-66953, Dec. 27, 1995.

[49] 60 F.R. 14705-14707, Mar. 20, 1995.

[50] 60 F.R. 6464-6466, Feb. 2, 1995.

[51] 61 F.R. 28932-28980, June 6, 1996.

[52] Stein, Shostak, Shostak & O'Hara, on behalf of Ajay Sports, Inc., Coastcast Corp., Daiwa Corp., Lamkin Leather & Rubber Co., Lynx Golf, and Taylor Made Golf Co., Inc., posthearing submission to the USITC, Apr. 24, 1996.

[53] 61 F.R. 32924-32925, June 26, 1996.

a Treasury Decision is the Customs "major supplier marking" rule, published in T.D. 89-66, "Country of Origin Marking of Imported Fruit Juice Concentrate." This rule allows a product to be labeled on a lot-by-lot basis, identifying on the package received by the ultimate purchaser those countries (up to 10) accounting for 75 percent of the source of material in a specified lot.[54]

Administrative Processes

Customs uses a number of tools and strategies to enforce the marking statute. If merchandise is excepted from marking, in order to use that exception, the importer must generally apply for a waiver[55] from the Customs import specialist at the port, usually prior to importation. However, an importer may apply for a waiver at the time of importation in certain circumstances, such as hardship. For example, Customs might grant a hardship waiver where an importer would incur an apparent marking violation, but it would be uneconomical for the importer to mark the goods (e.g., the cost of marking would exceed the value of the goods), and this was the first importation by this importer. Waivers are kept on file by the Customs import specialist responsible for that product at the port of entry.

For merchandise and/or containers that do not qualify for exceptions, Customs may examine merchandise at the port of entry. A typical sequence of events at a port of entry is shown in figure 3-1. If the merchandise is not legally marked, Customs issues a Notice of Redelivery/Marking (Customs Form (CF) 4647), that indicates there is a marking violation. Through the CF 4647, Customs notifies the importer that the merchandise must be either redelivered to Customs to be properly marked, exported, or destroyed under Customs supervision, or that the importer must properly mark the merchandise with the country of origin and that the importer must certify to Customs that the merchandise is in fact properly marked and available for Customs inspection.

Under the certification procedure, the importer may properly mark the merchandise outside of Customs supervision and custody.[56] While Customs may accept certification that the marking has been accomplished, it may also demand samples of the remarked merchandise, and/or may conduct a spot check to ensure that the merchandise is properly marked. If an importer files a certificate but fails to properly mark the merchandise, then Customs may seize the merchandise and seek monetary penalties.[57] The importer may, however, petition for the release of the articles so that the false marking may be corrected, or so that the articles may be exported or destroyed under Customs supervision and at no cost to the U.S. Government.[58] In cases of willful deceit, the importer could be subject to a criminal action.[59]

Customs also has the discretion to demand redelivery (i.e., Customs recalls merchandise that previously has been released from Customs custody) so that the merchandise may be

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[54] 54 F.R. 29540-29543, July 13, 1994.

[55] Waivers take the form of letters that use standard language suggested by Customs.

[56] 19 CFR 134.52.

[57] Monetary penalties may be assessed and seizures may occur under section 592 of the Tariff Act of 1930 (19 U.S.C. 1592). Seizures of merchandise may also occur under section 595a(c) of the Tariff Act of 1930 (19 U.S.C. 1595a(c)).

[58] 19 CFR 11.13(a).

[59] Section 1001 Title 18.

marked, exported, or destroyed under Customs supervision. The importer must reimburse the Government for the cost of supervising the exportation, destruction, or marking of such articles or their containers. After 30 days, if merchandise that was not legally marked has not since been marked, destroyed, or exported, Customs will send it to a Customs warehouse.

If, within 30 days of the date of the marking violation notice, the importer fails to redeliver the improperly marked merchandise to Customs custody or to certify that the merchandise has been properly marked and is available for Customs inspection, Customs will demand the payment of "liquidated damages," or penalties. These penalties will be assessed in the amount equal to the entered value of the goods not properly marked or redelivered and in accordance with bond[60] posted by the importer, plus any estimated duty due at the time of entry.

Frequently, merchandise will be released from Customs custody fairly quickly and may go into distribution channels and appear on store shelves, although the process of liquidation[61] of the entry may continue, taking several weeks or months. Once the penalties have been assessed, the importer may request administrative review and mitigation of the liquidated damages through Customs administrative review procedures set forth at 19 CFR 172.

Customs may also assess additional duties of 10 percent ad valorem.[62] This duty is assessed if the merchandise was not legally marked at the time of importation and the merchandise was not subsequently exported, destroyed, or marked under Customs supervision prior to liquidation.[63] Once duties have been assessed, the importer may request an administrative review (i.e., protest), of the assessment under Customs procedures set forth at 19 CFR 174 assessable for failure to include words or symbols that are required to prevent deception or mistake.[64]

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[60] Customs generally requires that importers post a bond, which is a contract between Customs and the importer whereby the importer agrees to pay any and all duties, taxes, charges, and to make or complete the entry of if the goods are released before liquidation. 19 CFR 113.62.

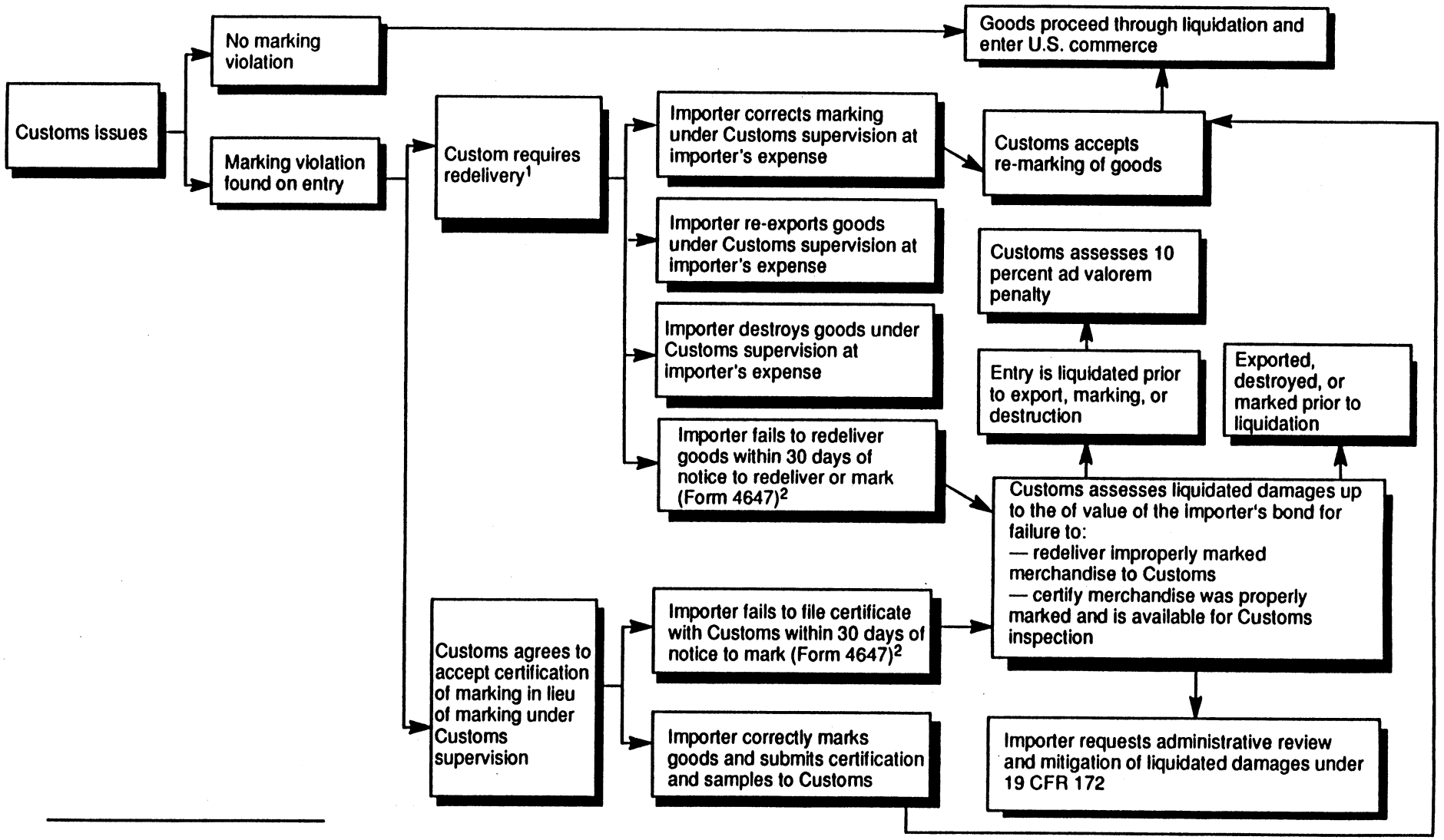
[61] Liquidation is the "final computation or ascertainment of the duties or drawback accruing on an entry." 19 CFR 159.1.

[62] Section 304(f) of the Tariff Act of 1930 (19 U.S.C. 1304(f)).

[63] U.S. Customs ruling HQ 731775, Nov. 13, 1988.

[64] 19 CFR 134.2.

Figure 3-1
Major customs procedures governing marking at port of entry and importer response



[1] Redelivery means delivery of goods to Customs' possession; alternatively, Customs may allow the importer to certify marking violations outside of Customs supervision.

[2] The goods may have been released by Customs to the importer prior to liquidation of the entry by Customs and may be in distribution channels where the importer cannot retrieve the goods for correcting country-of-origin marking. Liquidation, the final computation or ascertainment of the duties or drawback accruing on an entry, may take several weeks to several months.

Source: Compiled by the staff of the U.S. International Trade Commission.

The Administrative Processes for Determining Origin and Appealing Decisions on Marking Issues

The administrative processes used by Customs for determining origin and appealing decisions on marking are complex and can be quite lengthy, depending upon circumstances. Marking determinations usually occur through binding ruling letters issued in response to an importer's request prior to importation.[65] Customs determinations at the port of entry upon importation, or through the appeals process are shown in figure 3-2. In response to such a request from an importer, Customs can issue either an information letter or a binding ruling letter. An information letter will state either that (1) general information is actually being sought by the importer and is being provided; (2) the request is incomplete or does not meet the requirements set forth in subpart A, 19 CFR 177; or (3) the ruling cannot be issued for some other reason.[66] If the ruling request is straightforward, it will be answered by the Office of Regulations and Rulings (ORR), National Commodity Specialist Division at the New York Seaport, usually within 30 days; otherwise it will be answered by ORR's Tariff Classification Appeals Division, Special Classification and Marking Branch at Customs Headquarters, usually within 120 days. However, Customs does not always adhere to such a schedule.

Binding ruling letters are generally issued for future or prospective Customs transactions.[67] These letters represent the official position of Customs and are binding on Customs Service personnel with "respect to the particular transaction or issue described therein... until modified or revoked."[68] The binding ruling letter may be cited as authority in transactions involving the same circumstances, unless modified or revoked by either a change of circumstances or change of practice by Customs. Nevertheless, binding rulings are specific to the party to whom the ruling letter is addressed, and Customs regulations state that other parties should not rely on rulings addressed to third parties. Binding ruling letters found to be in error or not in accordance with the current views of the Customs Service may be modified or revoked. Ruling letters are generally effective on the date they are issued, including ruling letters that revoke or modify past rulings. However, Customs may delay the effective date of a ruling letter that modifies or revokes past rulings, so that effected parties have adequate time to appeal the prospective change.[69] If an adverse binding ruling

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[65] "...An importer or exporter of merchandise, or otherwise, [that] has a direct and demonstrable interest in the question or questions presented in the ruling request, or by an authorized agent of such a person." 19 CFR 177.1(c). This can be an individual, corporation, partnership, association, or other entity or group.

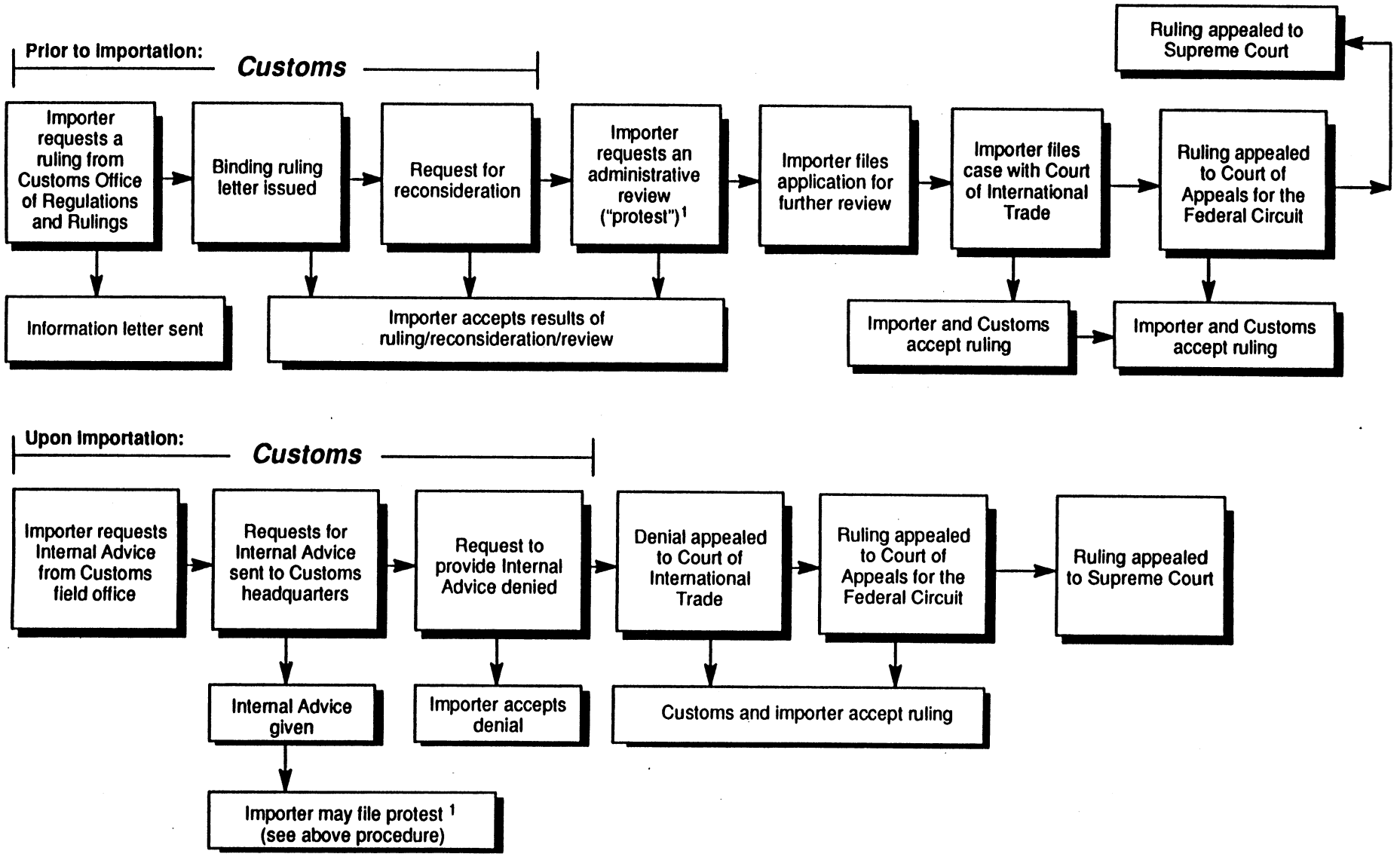
[66] 19 CFR 177.7(b). The issue may be pending before the U.S. Court of International Trade, the U.S. Court of Appeals for the Federal Circuit, or any court of appeal therefrom.

[67] "A 'prospective' Customs transaction is one that is contemplated or is currently being undertaken and has not yet resulted in any arrival or the filing of any entry or other document, or in any other act to bring the transaction, or any part of it, under the jurisdiction of any Customs Service office." 19 CFR 177.1(d)(3).

[68] 19 CFR 177.9(a).

[69] 19 CFR 177.9.

Figure 3-2
Primary processes for country of origin and marking determinations and appeals



[1] Before filing a protest, there has to be an actual importation and the entry must be liquidated.

Source: Compiled by the staff of the U.S. International Trade Commission.

is issued, the importer may ask Customs for reconsideration of the ruling, in which case the ruling will be reviewed by ORR at Customs Headquarters.

Importers can also request that Customs field offices seek advice, known as a request for "internal advice," from ORR at Customs Headquarters. This procedure applies to goods that have been imported, but the entry has not yet been liquidated. Therefore, pending issues can be addressed, provided they have not previously been the subject of a prior prospective binding ruling. The importer asks Customs at the port to delay liquidating the entry, and the issue is forwarded to Headquarters. Once internal advice has been issued, Customs personnel at the port then liquidate the entry in accordance with the internal advice decision. If the internal advice decision is adverse to the importer, the importer may file for an administrative review, or protest, with Customs upon liquidation of the entry, and follow the appeals process outlined below. In some instances, ORR may refuse to consider the request for internal advice because (1) the time required to give the request adequate consideration may unduly delay action on a Customs transaction, or (2) the questions posed are more appropriately answered through response to an administrative review request from the interested parties. In the event that an importer's request for internal advice is refused by Headquarters, the importer may appeal to the Court for International Trade (CIT) if the importer demonstrates to the Court that irreparable harm[70] would result unless the importer were given an opportunity to obtain judicial review prior to the importation of merchandise.[71] Inconsistent decisions by Customs officials at different field locations regarding substantially similar merchandise or repeated decisions to conduct intensified inspections may be brought to Headquarters attention through a petition filed by the importer.[72]

Importers may also protest Customs binding ruling letters, but only upon liquidation of the merchandise at issue at the port of entry.[73] The Customs port director must make a determination within 2 years. However, the importer may attempt to limit the process to 120 days by filing for an acceleration of review within 90 days after filing a protest, and Customs then has 30 days to make a determination.[74] If the importer believes the protest will be denied (or if the protest actually is denied), the importer may file an "application for further review." The application for further review of a protest is conducted by either the Commissioner of Customs or the Regional Commissioner of Customs, usually through the

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[70] Irreparable harm within the purview of 28 U.S.C. 1581(h) "is harm that cannot be redressed in a court of law." Irreparable harm "may take, among others, the following forms: an importer's inability to immediately acquire new labels or packaging that comply with a ruling effective immediately; due to unavailability of labels or packaging complying with the ruling, the importer's inability to timely ship customer orders with consequential damage to customer confidence and relationships; expenses of redesigning new labels or packaging complying with the ruling; expenses of affixing new labels; loss and expense incident to storage or destruction of noncomplying labels and packaging in inventory; costs and expenditures for reengineering production methods or inventory control and tracking systems." 29 *Cust. B. & Dec.* No. 33, (Slip. Op. 95-132), *CPC International, Inc., Plaintiff v. United States, Defendant*, pp. 25-26.

[71] 19 CFR 177.11(b)(8).

[72] 19 CFR 177.12.

[73] The procedures for protests are found in 19 CFR 174.

[74] Pursuant to provisions pertaining to Customs Modernization in Title VI of the North American Free Trade Agreement Implementation Act (Public Law 103-182, 107 Stat. 2057, Dec. 8, 1993), in Jan.1996, Customs began a 6-month test regarding the electronic filing of protests. 61 F.R. 3086, Jan. 30, 1996.

Headquarters ORR. If the protest is denied, the importer is informed of the right of civil action and may appeal the determination before the CIT. The importer must file for action within 180 days from the date the protest denial was mailed or the date that the protest was deemed to have been denied.

At the CIT, the issues in the case are subject to de novo review (the CIT decides all issues anew and Customs' previous positions are not given any deference by the Court). It is not uncommon for either the importer or Customs to appeal adverse decisions to the Court of Appeals for the Federal Circuit (CAFC), and then to the Supreme Court.

Domestic interested parties[75] may challenge a Customs decision regarding the proper application of the marking statute through a petition under section 516 of the Tariff Act of 1930.[76] If the petitioner is dissatisfied with the decision of the Commissioner of Customs, the petitioner may protest the decision. In this procedure, the petitioner files notice with the Commissioner of Customs, and designates the port or ports of entry at which the merchandise at issue is being imported and at which the petitioner will protest. The port directors of the designated ports issue notices of liquidation to the petitioner of the merchandise in question so the petitioner then may present to Customs the marking issues desired. The petitioner also may seek judicial review of the Customs ruling on the petition before the CIT. In many rulings, Customs is challenged in the courts by both the importer and the domestic petitioner on the same issue.

For NAFTA goods, the procedures for obtaining and protesting Customs rulings are similar to those for non-NAFTA goods and are set forth at 19 CFR subparts I-J, or parts 181.91-181.122. Importers may seek an advance ruling letter with respect to both prospective, and (unlike for non-NAFTA trade), current or ongoing NAFTA transactions. Customs will issue the ruling within 120 days. Under these NAFTA procedures, a marking violation, notice to redeliver, or assessment of marking duties is known as an "adverse marking decision."[77] In accordance with section 304, Customs must inform the importer of the basis of the adverse marking decision, if requested by the importer within 30 days of the request. If the importer protests, the exporter or producer of the merchandise which is subject to the adverse marking decision may intervene in the importer's protest on behalf of the importer. If the importer does not protest the adverse marking decision, the exporter or producer of the subject merchandise may file a petition with Customs protesting the adverse marking decision.[78] If the petition is denied, the importer may appeal the Customs decision by filing a civil action before the CIT.

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[75] A domestic interested party is a manufacturer, producer, wholesaler, union or recognized labor group, or trade or business association, whose members engage in the manufacture, production, or wholesale, of like products. 19 CFR 175.21

[76] 19 U.S.C. 1516 and 19 CFR 175 et seq. Petitions under 516 are also used by domestic parties to clarify tariff classifications. Notice of the petition is published in the *Federal Register* and public comment is sought by Customs. If the marking on the entry is found to be incorrect, Customs publishes notice in the *Federal Register*.

[77] A decision by Customs which an exporter or producer of merchandise believes to be contrary to NAFTA Annex 311 and which may be protested pursuant to section 514 of the Tariff Act of 1930 (19 U.S.C. 1514).

[78] 19 CFR 181.116.

Customs Activities

During 1993-95, Customs had a total of 1,229 cases involving marking.[79] Approximately 98 percent were for ruling letters, requests for internal advice, protests, and issuing rules. The remaining 2 percent were miscellaneous projects related to marking. Approximately 5 percent of total were protests subject to further administrative review, and about 1 percent were subject to judicial review.

These data include 4 petitions under section 516. Since 1980 to the present, only 4 petitions under section 516 concerning country-of-origin marking have been filed with Customs. Domestic producers filed petitions on the marking of hinges in September 1995,[80] safety glasses in July 1995,[81] cast iron soil pipe in March 1994,[82] and frozen produce in September 1993.[83] Customs made a decision only on the petition for cast iron soil pipe, as the petition on frozen produce is being held in abeyance pending proposed rulemaking.[84] No decision has been made on the petition on safety glasses, which was filed in 1995. Customs denied the petition on hinges, stating that it did not have the statutory language to propose the rules desired by the petitioner.[85]

A significant portion of rulings and internal advice requests, and all protests, requests for further review, rulemaking, and 516 petitions, are conducted by the Special Classification and Marking Branch in the ORR at Customs Headquarters in Washington, DC. This branch has approximately 8 to 9 attorneys, including one attorney manager. In some instances, legal advice will be sought from Customs' Office of the Chief Counsel. Many rulings are also issued by national import specialists at the New York Seaport.

Imported goods are subject to inspection at the 301 ports of entry in the United States. As of May 1996, the processing and handling of imported goods was principally carried out by 6,449 Customs inspectors and 1,130 import specialists. In fiscal year (FY) 1995, approximately 2 to 3 percent of the approximately 13 million entries and of the 26 million cargo lines were inspected.[86] Primarily through such inspections, Customs issued 29,981 marking violations in FY 1995, compared with 42,111 issued in FY 1993 (table 3-2).[87] In FY 1995, Customs estimates that the rate of compliance with the marking laws was approximately 96 percent, however marking violations as a share of total entries was only approximately a quarter of 1 percent.

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[79] Letter from the Honorable George J. Weise, Commissioner of Customs, June 14, 1996.

[80] 60 F.R. 49970-49971, Sept. 27, 1995.

[81] 60 F.R. 35792-35793, July 11, 1995.

[82] 59 F.R. 10764, Mar. 8, 1994.

[83] 58 F.R. 47413-47414, Sept. 9, 1993.

[84] Prior rules were overturned by the Court of Appeals for the Federal Circuit in 1994. See 60 F.R. 6464-6466, Feb. 2, 1995. Pillsbury Co. alleges that Customs applied procedures with respect to a section 516 petition that furthered the interests of other domestic producers to the detriment of Pillsbury. Hogan & Hartson, on behalf of the Pillsbury Co., prehearing submission, Mar. 28, 1996, p. 27.

[85] Robert G. Hayes & Irene Ringwood, on behalf of Hager Hinge Co., submission to the USITC, p. 12.

[86] Official of the U.S. Customs Service, Office of Strategic Trade, telephone interview with USITC staff, June 18, 1996.

[87] Letter from the Honorable George J. Weise, Commissioner of Customs, June 14, 1996.

Customs was unable to estimate the number of violations that resulted in merchandise being re-exported, destroyed, or marked under Customs supervision.[88] Customs was also unable to provide information on the number of violations that were subject to the additional 10 percent ad valorem duties provided for under section 304(f). However, Customs cited the example of one company that was assessed almost $5.2 million in marking duties.[89]

Convictions have been relatively few, as have been the number of penalty cases (table 3-2). Seizures of goods for mismarking have declined, however the assessment of monetary penalties for marking violations has risen. The large difference in the annual figures for FY

Table 3-2
Customs activities related to country-of-origin marking violations, FY 1993-95, except as noted.

Item	FY 1993 (Oct. 92-Oct. 93)	FY 1994 (Oct. 93-Oct. 94)	FY 1995 (Oct. 94-Oct. 95)	Year to date FY 1996 (Oct. 95-May 96)
Marking violations [2]	42,111	36,256	29,981	([3])
Total number of entries (in millions)[2]	10.5	11.8	13.0	([3])
Violations as a share of total entries (in percent) [2]	0.4	0.31	0.23	([3])
Convictions under section 304(l) of the Tariff Act of 1930	([3])	21	19	11
Seizures under section 595a(c) of the Tariff Act of 1930	([3])	437	261	127
Penalty cases	([3])	20	25	51
Penalties assessed under section 592 of the Tariff Act of 1930 for marking violations	([3])	$2,948	$6,140,224	$30,059,189

[1] These primarily include salary, overhead, and benefits.
[2] Calendar year.
[3] Not available.

Source: Compiled by the staff of the U.S. International Trade Commission from data from the U.S. Customs Service.

1993-96 relate to the way Customs maintains its records; however, the increase in assessed penalties is attributable to greater emphasis by Customs on pursuing violations under section 592 of the Tariff Act of 1930, including those related to marking. Penalty cases are typically handled by Office of the Chief Counsel at Customs Headquarters; cases involving penalties over $500,000 are handled by ORR's Penalties Branch.

Since 1980, there have been approximately 44 cases involving marking issues decided before the CIT and 16 cases before the CAFC. About 27 of those cases decided by the CIT have

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[88] Ibid.

[89] *Pentax Corp. et al., v. United States*, Slip No. 96-64 (CIT, Apr. 15, 1996). In order to obtain the benefits of prior disclosure, Pentax was required to pay almost $5.2 million in marking duties for mismarking goods imported under approximately 300 entries between July 1987 and Mar. 1991.

occurred since 1990, but only 3 cases before the CAFC. In several cases the same company appeared as the plaintiff. Cases before the CIT and CAFC are tried by the International Trade Litigation Staff of Customs Office of Chief Counsel at the New York Seaport in conjunction with lawyers from the Commercial Litigation Branch, Civil Division, United States Department of Justice. Support for these cases is often provided by ORR.

Costs to Government

Customs estimated its expenditures for certain activities related to administering and enforcing marking requirements at between $1.6 million to $1.8 million during FY 1993-1995[90] (table 3-3). These expenditures are primarily salary costs for issuing rulings, rulemaking, other legal costs, and investigations of country-of-origin marking violations. However, Customs was unable to provide an estimate of salary costs incurred in reviewing imports for marking sufficiency, issuing marking violation notices, assessing duties and penalties, and other day-to-day functions related to administration and enforcement by personnel at the ports of entry, although Customs indicates that such costs are probably considerable. Based on consultations with Customs, personnel costs for issuing marking violation notices and certifying proper remarking at ports of entry would add an estimated $885,000 to $1.2 million annually to Customs marking-related costs during FY 1993-95. In addition, Commission estimates for benefits associated with the salary costs related to rulings, rulemaking, other legal costs, and investigations of marking violations would add another $319,000 to $377,000 annually to such costs during 1993-95. Total estimated costs for Customs administration and enforcement of country-of-origin marking were $3.2 million in FY 1993, $3.3 million in FY 1994, and $2.8 million in FY 1995.

[90] Although some cost data were provided on a calendar year basis, Customs stated that these data could be used as good estimates for fiscal year purposes.

Table 3-3
Customs costs related to administering and enforcing country-of-origin marking requirements

Item	FY 1993 (Oct. 92-Oct. 93)	FY 1994 (Oct. 93-Oct. 94)	FY 1995 (Oct. 94-Oct. 95)
Issuance of country-of-origin marking rulings, including protests and rulemaking[1 2 3]	$177,000	$223,000	$188,000
Other legal costs[1 2 3 4]	212,000	320,000	232,000
Investigation of country-of-origin marking violations[1 2 5]	1,257,500[6]	1,342,000	1,173.000
Subtotal[2]	1,646,500	1,885,000	1,593,000
Estimated benefits and overhead for above activities[7]	329,300	377,000	318,600
Marking violations issued and reviewed at ports of entry[3 8]	1,180,000	1,043,000	885,000
Subtotal	1,509,300	1,420,000	1,203,600
Total	3,155,800	3,305,000	2,796,600

[1] Estimated salary costs only.
[2] Data submitted by Customs, except as noted.
[3] Calendar year basis.
[4] Estimated salary costs for affected staff in the Office of Regulations and Rulings, Penalties Branch, and for attorneys in the Office of the Chief Counsel for reviewing penalty cases and providing legal opinions on marking issues.
[5] Investigations conducted by the Office of Investigations into marking violations and other marking activities.
[6] Data estimated by USITC staff based as average of data supplied by Customs for FY 1994 and FY1995. [7] Estimated by USITC staff at 20 percent of salary costs.
[8] Although Customs supplied these data on a calendar year basis, Customs officials stated to USITC staff that these data would be suitable as estimates for fiscal year data. Estimated by the staff of the USITC based on the number of marking violations issued, allocations made regarding the number of violations by type of handling method assuming certain processing times, and a representative hourly salary and benefits cost. Estimate developed based on data and information from Customs.

Source: Compiled by the staff of the U.S. International Trade Commission from data provided by the U.S. Customs Service, except as noted.

Section 5 of the Federal Trade Commission Act, Other Acts, and the Federal Trade Commission

Laws governing country-of-origin marking of wool, textile fiber, and fur products, as well as laws regulating domestic country-of-origin marking claims and advertising within the United States, are administered and enforced by the Federal Trade Commission.[91] The principle underlying these laws is that the purchaser should be protected from misbranding and false advertising, including in specific product areas.[92] Both the Wool Products Labeling Act of 1939 and Textile Fiber Products Identification Act were amended in 1984, changing country-of-origin marking requirements. The various laws and their administration and enforcement are discussed below.

Wool Products Labeling Act of 1939

The Wool Products Labeling Act of 1939 (Wool Act) (15 U.S.C. 68),[93] enacted on October 14, 1940, was passed by Congress for the express purpose of protecting producers, manufacturers, distributors, and consumers from the unrevealed presence of substitutes and mixtures (i.e., wool and man-made fiber blends) in spun, woven, knitted, felted, or other manufactured wool products.[94] The Wool Act requires that each product containing wool have a stamp, tag, or label showing the fiber content and the name of the manufacturer or the name of someone in the line of distribution of that product. Country-of-origin marking, although not explicitly enumerated in the Wool Act at the time of its enactment, was required by FTC regulation.[95] In 1984, Congress enacted conforming legislation in the Wool Act (see section below).

Textile Fiber Products Identification Act

The Textile Fiber Products Identification Act (Textile Act) (15 U.S.C. 70),[96] enacted September 2, 1958,[97] was passed by Congress with the express purpose of protecting producers and consumers against misbranding and false advertising of the fiber content of

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[91] The FTC is an independent agency which was created in 1915 pursuant to the Federal Trade Commission Act of 1914 (38 Stat. 717; 15 U.S.C. 41-58).

[92] *U.S. Code Congressional and Administrative News*, 85th Cong., 2d sess., 1958, p. 5165.

[93] The term "wool" means the fiber from the fleece of the sheep or lamb or hair of the Angora or Cashmere goat (and may include the so-called specialty fibers from the hair of the camel, alpaca, llama, and vicuna) which has never been reclaimed from any woven or felted wool product (15 U.S.C. 68).

[94] Public Law 850, 76th Cong., 54 Stat. 1128, 15 U.S.C. 66. Regulations under the Wool Act were first issued effective July 15, 1941, 6 F.R. 3426 (1941). Also see 16 CFR 300.

[95] See 16 CFR 300.25(c) (1984), 50 F.R. 15101, Apr. 17, 1985.

[96] Public Law 85-897, 72 Stat. 1717 (1958), 15 U.S.C. 70.

[97] Regulations under the Textile Act were made effective Mar. 3, 1960, 24 F.R. 4480 (1959). Also see 16 CFR 300.

textile fiber products.[98] Protection of the consumer was deemed necessary because of the difficulty in determining the fiber content in modern fabrics. Proper identification of fibers was intended to give the consumer the basic identity of the fabric and increase the consumer's confidence in the marketing of textiles.[99]

Like the Wool Act, the Textile Act requires each textile product to contain a stamp, tag, or label showing fiber content and the name of the manufacturer or someone in the line of distribution of the product. Indeed, the Textile Act was enacted because Congress believed "it is now essential that other natural fibers and the synthetics receive the same consideration" as wool products under the Wool Act.[100] The cotton industry, which allegedly was suffering as a result of increased competition from manmade fiber manufacturers, was the chief supporter of the legislation.[101] [102] However, unlike the Wool Act, the Textile Act explicitly stated in the statute that the label contain the "name of the country where processed or manufactured."[103]

Amendments to the Wool Act and the Textile Act, 1984

In 1984, domestic textile manufacturers and textile unions supported enactment of a bill introduced by Sen. Strom Thurmond, S. 1816, to amend both the Wool Act and the Textile Act. These amendments, enacted by Congress, and effective December 24, 1984,[104] require that wool and textile fiber products be labeled with the name of the country where processed or manufactured. For the first time, domestic wool and textile products either wholly made in the United States or made in the United States of imported components or materials were required to be labeled as such. The stated purpose of the Wool and Textile Act amendments was to clarify and improve existing country-of-origin labeling requirements and increase consumer awareness at the time of purchase of the products' country of origin. Interested parties expressed concern that without a law requiring domestically manufactured products to be labeled with the country of origin, foreign articles would be easily mistaken for U.S.-made goods.[105]

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[98] The term "fiber" or "textile fiber" means a unit of matter which is capable of being spun into a yarn or made into a fabric by bonding or by interlacing in a variety of methods including weaving, knitting, braiding, felting, twisting, or webbing, and which is the basic structural element of textile products (15 U.S.C. 70).

[99] *U.S. Code Congressional and Administrative News*, 85th Cong., 2d sess., 1958, pp. 5166-5167.

[100] Ibid., p. 5167.

[101] Ibid.

[102] The inclusion of the country-of-origin marking requirement in the Textile Act was undertaken despite comments from various agencies, including the FTC, that such a provision "does not appear to add anything more than is presently required under section 304 of the Tariff Act of 1930, as amended, and as supplemented by regulations of the Bureau of Customs concerning the marking of imported articles." *U.S. Code Congressional and Administrative News*, 85th Cong., 2d sess., 1958, p. 5181.

[103] 15 U.S.C. 70b(b)4.

[104] Public Law 98-417; 98 Stat. 1585, 1603. This law came from S. 1538, which incorporated S. 1816.

[105] *U.S. Code Congressional and Administrative News*, 98th Cong., 2d sess., 1984, p. 2722.

In addition, the amendments in Public Law 98-417 codified a requirement not explicitly stated in the Wool Act that imported wool products be marked with the country of origin. The amendment ensured the act conformed with the then current FTC country-of-origin labeling regulations for wool products and provisions of the Textile Act requiring country-of-origin marking,[106] as well as with Customs regulations.[107]

The 1984 legislation amended the Wool Act and Textile Act in additional ways. First, it amended the acts to require that the country-of-origin disclosure must be placed in the neck of garments, or for those without necks, on a conspicuous spot on the inside or outside of the product. Second, all products must be separately labeled, except hosiery packaged individually for retail sale. Third, all product packages must be labeled unless the packaging is transparent and the individual product label can be seen through the package; and fourth, mail order catalogs and mail order promotional materials must disclose in the description of each textile and wool product whether the product is made in the United States, imported, or both.[108]

Fur Products Labeling Act

The Fur Products Labeling Act (Fur Act) (15 U.S.C. 69), enacted August 8, 1951, requires the labeling of furs and fur products with information to protect consumers against false advertising and invoicing of fur products.[109] Furs and fur products are required to show the name or names of the animal or animals that produced the fur, certain facts about the fur (whether the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur or if waste fur is used), and the name or other identification issued and registered by the FTC, of the manufacturer, seller, advertiser, or distributor. In addition, the fur or fur products must be labeled with the country of origin of any imported furs used in the fur product.[110]

Enforcement of the Wool Act, Textile Act, and Fur Act, and Regulatory Review

The Wool Act, Textile Act, and Fur Act authorize the Federal Trade Commission to enforce these Acts under the FTC's rules, regulations, and procedures provided for in the FTC Act,[111] which is discussed in the section below. U.S. manufacturers of wool products are required to maintain proper records, and neglect or refusal to maintain such records is subject to a fine of $100 per day, and is recoverable by the FTC through civil action.[112] Imported wool and textile fiber products may be excluded from entry if they are mislabeled or their invoices fail

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[106] Ibid, p. 2726-2727.

[107] Ibid.

[108] 15 U.S.C. 70b(e), (I), and (j), and Public Law 98-417, sections 301-303. The FTC regulations on country of origin marking and mail order advertising are found in 16 CFR 300.25 and 300.26, respectively.

[109] 15 U.S.C. 69c.

[110] 15 U.S.C. 69b.

[111] See 15 U.S.C. 68d, 15 U.S.C. 70e, and 15 U.S.C. 69f, respectively.

[112] 15 U.S.C. 68d(b).

to have the required information.[113] Customs Service is responsible for enforcing the Wool Act, Textile Act, and Fur Act with respect to imported wool, textile fiber, and fur products.[114]

In May 1994, the FTC solicited public comment on its rules for wool, textile fiber, and fur products, as part of its overall review of FTC rules and guides.[115] Much of that comment focused on trade with NAFTA partners, Canada and Mexico. Suggestions were made to simplify the procedures, including the use of both abbreviations and symbols (such as flags) for country-of-origin names.[116] In February 1996, the FTC proposed for public comment amendments to harmonize its textile content and origin labeling rules with NAFTA countries.[117] The FTC is also seeking comment on how to resolve a potential conflict between the FTC rules, section 334 of the Uruguay Round Agreements Act, and Customs implementing regulations that will be effective July 1, 1996, regarding country-of-origin marking for certain textile goods, such as scarves and handkerchiefs.[118] The issue here is whether the country of origin for these products is defined by where the fabric was produced or where the textile item was finished (often merely by hemming).[119]

Section 5 of the Federal Trade Commission Act

Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), enacted September 26, 1914, implicitly provides the authority for FTC regulation of "Made in USA" product labeling and advertising. While the act authorizes the FTC to take action to prevent "deceptive acts and practices" that include the advertising and labeling of goods sold in the marketplace, the act does not require that domestic manufacturers mark domestically produced items with the country of origin. Although marking goods produced within U.S. borders is strictly voluntary--except for automobiles; light trucks; and wool, textile fiber, and fur products--any product that carries the "Made in USA" label must conform to the FTC standard for "Made in the USA" claims and must be truthful. The FTC considers a deceptive act or practice as one that is likely to mislead consumers otherwise acting reasonably under the circumstances.[120] A claim is considered deceptive if even a "significant minority" of consumers are misled.[121]

To bolster the FTC's mandate, Congress has recently addressed the importance of domestic country-of-origin labeling requirements by adding a provision to the Violent Crime Control and Law Enforcement Act of 1994.[122] Section 320933 of the act requires that

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[113] See 15 U.S.C. 68f and 15 U.S.C. 70g.

[114] 19 CFR 11.12, 11.12(a), and 11.12(b).

[115] 59 F.R. 23645-23646, May 6, 1994.

[116] Currently, to comply with NAFTA rules, labeling requirements must be fulfilled in English, French, or Spanish. 19 CFR 134.45(a)(2). See also 61 F.R. 5340-5348, Feb. 12, 1996.

[117] 61 F.R. 5340-5348, Feb. 12, 1996. See also, FTC Press Release, "FTC Proposes to Harmonize Textile Regs With Canada, Mexico: Effort to Reach More Goals of NAFTA," Feb. 12, 1996 [http://www.ftc.gov/opa/9602/textil.htm]).

[118] 61 F.R. 5343, Feb. 12, 1996.

[119] Ibid.

[120] See *Cliffdale Associates, Inc.*, 103 F.T.C. 110 (1984), reprinting as an appendix letter dated Oct. 14, 1983, from the FTC to the Honorable John D. Dingell, chairman, Committee on Energy and Commerce, U.S. House of Representatives ("Deception Statement").

[121] See *Kraft, Inc.* 114 F.T.C. 40, 122 (1991), *aff'd* 970 F.2d 311 (7th Cir. 1992), *cert. denied*, 507 U.S. 909 (1993).

[122] Public Law 103-322, 108 Stat. 2135.

> to the extent any person introduces, delivers for introduction, sells, advertises, or offers for sale in commerce a product with a 'Made in the USA' or 'Made in America' label, or the equivalent thereof, in order to represent that such product was in whole or substantial part of domestic origin, such label shall be consistent with such decisions and orders of the Federal Trade Commission issued pursuant to section 5 of the Federal Trade Commission Act.

The section notes that the FTC may maintain flexibility in its legal standard as circumstances warrant.[123]

In addition, the FTC has issued three industry-specific guides[124] that set out country-of-origin marking requirements for the jewelry industry as a whole, metallic watches specifically, and household furniture. These guides state that it is an unfair trade practice to misrepresent the place of origin, production, or manufacture of industry products or their components.[125]

Administrative Process

The FTC's Bureau of Consumer Protection is responsible for enforcing consumer protection laws that fall within the jurisdiction of the FTC and all trade regulation rules issued by the agency. It is also the unit responsible for conducting individual company and industry wide investigations when deceptive or fraudulent practices are alleged, including those concerning domestic country-of-origin markings.[126] However, administration and enforcement of country-of-origin marking regulations represent only a very small part of the Bureau's activities.[127]

The two divisions of the FTC's Bureau of Consumer Protection that are involved with country-of-origin marking issues are the Advertising Practices Division and the Enforcement Division.[128] The former is responsible for ensuring that advertising is truthful and non-deceptive through law enforcement and oversight activities in a number of areas.[129] The Enforcement Division monitors compliance with Commission orders and enforces trade regulations and specific laws, including the Textile Act, Wool Act, and Fur Act, which

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[123] Ibid.

[124] Industry guides are administrative interpretations of laws administered by the FTC to guide the public in conducting its affairs in conformity with requirements. They provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of the industry. 16 CFR 17.

[125] 16 CFR 19.4, 16 CFR 23.3, and 16 CFR 250.7 (a) and (b).

[126] Other duties of the Bureau include administrative and federal court litigation, rulemaking proceedings, and consumer business education.

[127] FTC officials, interview with USITC staff, Feb. 13, 1996.

[128] The other units within the Bureau are the Divisions of Credit Practices, Marketing Practices, and Service Industry Practices.

[129] Areas of responsibility include food and drug safety, tobacco and alcohol advertising, environmental performance claims, weight loss claims for dietary products, infomercials and energy savings claims.

specifically require country-of-origin markings.[130] In conjunction with the regional offices,[131] which act as investigatory arms of the FTC, the Enforcement Division also monitors claims about the country of origin of articles, such as "Made in USA."

The FTC may initiate an investigation into alleged unfair or deceptive trading practices on the basis of a complaint from consumers or businesses, at the request of its Congressional oversight Committees, or on its own motion if it finds evidence that it warrants an investigation. Generally, the investigative process and report are nonpublic so as not to disclose company operations.

If the FTC believes a violation of the law has occurred, it first will seek voluntary compliance of the alleged violator by entering into a "consent order." If the company signs a consent order, it need not admit the violation, but is required to cease the practice as outlined in an accompanying complaint. However, if agreement on the consent order cannot be reached, the FTC may issue an "administrative complaint." This requires a formal proceeding before an administrative law judge, in which evidence is submitted, testimony is presented, and witnesses may be examined and cross-examined by opposing sides. If the judge finds against the respondent, then a "cease and desist order" may be issued. Initial decisions by administrative law judges may be appealed to the full Commission of the FTC. Final decisions issued by the FTC may be appealed to the U.S. Court of Appeals, and ultimately, to the U.S. Supreme Court. If its position is upheld, the FTC, in certain circumstances, may then seek consumer redress in court.[132] If the company violates the order, the FTC also may seek civil penalties or an injunction.[133]

If the FTC staff finds evidence of unfair or deceptive practices in an entire industry, it can recommend that the Commission initiate a rulemaking proceeding to issue a "trade regulation rule." During this process, the public will be offered opportunities to attend hearings and file written comments. The Commission is required to consider these comments along with the entire rulemaking record before making a final decision on the proposed rule. Once issued, these rules have the force of law.[134] An FTC rule may be challenged in any of the U.S. Courts of Appeal.

FTC cases in the 1940s through the 1960s[135] laid the foundation for the current standard of unqualified "Made in USA" claims, which require that the product be composed of wholly domestic parts and labor. Consistent with the "wholly domestic" standard established by case law, in the late 1960s and early 1970s the FTC issued more than 100 public advisory

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[130] Others include, but are not limited to, the Appliance Labeling Rule, the Automotive Fuel Ratings, the Care Labeling Rule, the Mail or Telephone Order Rule, the Negative Option Rules, the Used Car Rule, the Fair Packaging and Labeling Act, and the Unordered Merchandise Statute.

[131] The FTC maintains regional offices in Atlanta, Boston, Chicago, Cleveland, Dallas, Denver, Los Angeles, New York, San Francisco, and Seattle.

[132] 16 CFR 3.81. The FTC, under The Equal Access to Justice Act (5 U.S.C. 504), may seek the award of attorney fees and other expenses to eligible individuals and entities who are parties to adjudicative proceedings under part 3 of 16 CFR.

[133] U.S. Federal Trade Commission, *A Guide to the Federal Trade Commission*, 1995, pp. 20-21.

[134] Ibid, p. 21.

[135] See *Vulcan Lamp Works, Inc.*, 32 F.T.C. 7 (1940), *Joseph H. Meyer Bros.*, 47 F.T.C. 49 (1950), and *Windsor Pen Corp.*, 64 F.T.C. 454 (1964).

opinions in response to inquiries about proper marking procedures and requirements. These advisory opinions consistently stated that a manufacturer could only claim that a product was "Made in USA" if the subject product was comprised wholly of domestic parts and labor.[136]

In the early 1990s, the FTC brought actions against several firms accused of deceiving consumers by concealing the fact that their products were made in foreign countries. In *Richard B. Pallack, Inc.* (No. C-333 (1991)) and *Nikki Fashions, Ltd.* (No. C-3404 (1992)), the FTC brought enforcement action against firms which allegedly removed foreign origin labels. In *Manzella Productions, Inc.* (No. C-3503 (1994)), the FTC brought action against the company for allegedly substituting "Made in USA" labels for foreign origin labels.[137]

In the mid-1990s, the FTC, for the first time, brought two cases against firms making "Made in USA" claims for products assembled in the United States. These cases have sparked a debate as to the practicality of the "wholly domestic" standard. In its discussion of the case, the FTC used new language to refer to its standard of earning the "Made in USA" label -- the "all or virtually all" standard. In *Hyde Athletic Industries, Inc.*, the FTC alleged that Hyde made false advertising claims that all of its Saucony brand footwear was made in the United States, "that is, that all or virtually all of the component parts of the footwear are made in the United States, and all or virtually all of the labor in assembling the footwear is performed in the United States."[138] The FTC alleged that this claim was false and misleading because a substantial amount of Saucony footwear was assembled in foreign countries of foreign component parts, and a substantial amount of Saucony footwear assembled in the United States consisted largely of foreign component parts. A proposed consent agreement with Hyde was published on September 23, 1994, in the *Federal Register*, subject to final approval by the FTC.[139]

On the same day the proposed consent agreement with Hyde Athletic Industries, Inc., was published, the FTC filed a complaint against New Balance Athletic Shoes containing similar allegations.[140] In light of considerable public comment on the cases, the FTC decided to review the standard for domestic content claims, and rejected a proposed staff settlement with Hyde Athletic Industries. Instead, FTC staff was directed to renegotiate a modified consent agreement based on a revised complaint.[141] The revised complaint deletes the previous FTC allegations that a substantial amount of the Saucony footwear assembled in the U.S. consists largely of foreign component parts. The revised complaint also deletes language interpreting "Made in USA" to mean that "all or virtually all" of the parts and labor are domestic.[142] In July 1995, the FTC issued an order staying the administrative proceeding that was set to begin against New Balance. The order requires both the FTC complaint

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[136] 60 F.R. 53928, Oct. 18, 1995. For a summary of these rulings, see CFR, Commercial Practices, Chapter 16, parts 0 to 149, revised as of Jan. 1, 1989, pp. 147-352.

[137] 60 F.R. 53928, Oct. 18, 1995.

[138] 59 F.R. 48894, Sept. 23, 1994.

[139] 59 F.R. 48892-48894, Sept. 23, 1994. A corrected version of the proposed consent agreement was published in the *Federal Register* on Oct. 31, 1994. 59 F.R. 54461, Oct. 31, 1994.

[140] FTC Press Release, "FTC Stays Proceedings Against New Balance; Orders Parties to Show Cause Why Complaint Should Not Be Amended or Dismissed," July 11, 1995.

[141] Ibid.

[142] FTC Press Release, "FTC To Conduct Comprehensive Review of Consumer Perception of 'Made in USA' Claims; FTC Staff to Renegotiate Proposed Settlement with Hyde Athletic Industries," July 11, 1995.

counsel and New Balance to show cause why the FTC's complaint and notice orders (outlining the relief the FTC would seek if the allegations were upheld) should not be amended or dismissed.[143] The case against New Balance was withdrawn from adjudication on May 14, 1996, for FTC Commission consideration of a settlement proposal.

Much of the public comment in response to the two footwear cases expressed concern that the current marking standard is too stringent, given the increased globalization of production and a presumption that most consumers do not assume that "Made in USA" means "all or virtually all" U.S. parts and labor. In addition, many interested parties contended that the FTC regulations are inconsistent with Customs regulations for establishing origin, making compliance difficult. As a result of the expressed public interest in country-of-origin marking issues, in July 1995, the FTC initiated a comprehensive review of consumers' perceptions of "Made in USA" advertising claims to determine whether the FTC should alter its legal standard regarding the use of unqualified "Made in USA" claims, and how domestic content claims should be measured under any future standard.[144] Accordingly, the FTC held a public workshop on the issue on March 26 and 27, 1996, and intends to issue a final report once the inquiry is complete.[145]

Costs to Government

According to FTC staff, the marking issue represents a relatively small part of the FTC's total responsibilities and operating budget. FTC expenditures for activities related to country-of-origin marking for FY 1996 to the present are not available. However, FTC officials estimate that at least $60,000 was spent on portions of the FTC's "Made in USA" policy review, including $45,000 for a recent study on consumer perceptions of the "Made in USA" labeling standard and $15,000 for conducting the "Made in USA" workshop.[146] Other costs will likely be incurred because the policy review is still ongoing. However, these are not costs incurred annually but rather nonrecurring costs unique to activities occurring in FY 1996.[147]

Annually recurring costs include addressing requests for guidance from the public on marking requirements (as related to the Wool Act, Textile Act, and Fur Act). Marking questions are only a small part of the total inquiries received. FTC staff estimates that expenditures on these ongoing activities totaled approximately $78,000 annually in FY 1993-95 (table 3-4).[148] In addition, expenditures on separate but related enforcement activities were estimated to be about $78,000 annually during FY 1992-94. In FY 1995, the expenditure on enforcement activity increased significantly, largely due to the New Balance

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[143] FTC Press Release, "FTC Stays Proceedings Against New Balance; Orders Parties to Show Cause Why Complaint Should Not Be Amended or Dismissed," July 11, 1995.

[144] "FTC to Conduct Comprehensive Review of Consumer Perception of 'Made in USA' Claims; FTC Staff to Renegotiate Proposed Settlement with Hyde Athletic Industries," *FTC News*, July 11, 1995.

[145] 60 F.R. 53923, Oct. 18, 1995.

[146] FTC staff, interview with USITC staff, Feb. 13, 1996.

[147] For FY 1996, the Bureau of Consumer Protection was allocated $55.9 million out of a total FTC budget of $108.4 million. Office of Management and Budget, *Budget of the United States Government*, Appendix, Fiscal Year 1996, p. 998.

[148] Letter from Elaine D. Kolish, Associate Director, Division of Enforcement, Bureau of Consumer Protection, FTC, May 6, 1996.

and Hyde cases. FTC staff estimates that $234,000 was spent in FY 1995. Also in FY 1995, an additional $104,000 was spent on the "Made in USA" policy review.

Table 3-4
FTC costs [1] related to administering and enforcing country-of-origin marking

Item	FY 1993 (Oct. 92-Sept. 93)	FY 1994 (Oct. 93-Sept. 94)	FY 1995 (Oct. 94-Sept. 95)
Ongoing activities	$78,000	$78,000	$78,000
Enforcement activities	$78,000	$78,000	$234,000
"Made in USA" policy review	([2])	([2])	$104,000
Total	$156,000	$156,000	$416,000

[1] These primarily include salary, overhead, and benefits.
[2] Not applicable.

Source: Compiled by the staff of the U.S. International Trade Commission from data provided by the Federal Trade Commission.

The American Automobile Labeling Act and the Department of Transportation

The U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) is responsible for administering the country-of-origin law specific to motor vehicles. This law, the American Automobile Labeling Act (AALA), now codified at 49 U.S.C. 32304, Passenger Motor Vehicle Country of Origin Labeling, was enacted by Congress as part of the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1993.[149] Before this act, there were no specific country-of-origin marking requirements for motor vehicles.[150]

The Act requires that passenger cars and other light vehicles[151] manufactured on or after October 1, 1994, be labeled with their domestic and foreign content. The statute required the Secretary of Transportation to propose regulations implementing the content labeling requirements. On July 21, 1994, a final rule, 49 CFR 583, Motor Vehicle Content Labeling,

[149] The AALA (15 U.S.C. 1950) was passed as section 210 of the Motor Vehicle Information and Cost Savings Act, Oct. 6, 1992, Public Law 102-388, 106 Stat. 1520, 1556. Public Law 103-272, July 5, 1994, 108 Stat. 745, 1036, repealed 15 U.S.C. 1950, and reenacted the AALA as 49 U.S.C. 32304.

[150] NHTSA officials, interview with USITC staff, Mar. 21, 1996.

[151] The term "passenger motor vehicle,"defined in 49 U.S.C. 32101 as a motor vehicle with motive power designed to carry not more than 12 individuals, is amended for purposes of section 32304 to include any "multipurpose vehicle" and "light duty truck" that is rated at not more than 8,500 pounds gross vehicle weight. Thus, the motor vehicle content labeling requirements apply to passenger cars, light trucks, multipurpose passenger vehicles, and certain small buses. Motorcycles are excluded.

was published in the *Federal Register*, and on August 22, 1994, went into effect to implement the Labeling Act.[152]

NHTSA received considerable response from motor vehicle manufacturers, suppliers, and dealers to its request for public comment about the July 1994 final rule. Much of the comment sought reevaluation of certain provisions of the final rule. Subsequently, a second final rule was published on September 15, 1995, taking into account some of the expressed concerns. The final rule set the specific requirements for motor vehicle manufacturers, suppliers[153] of motor vehicle equipment, and dealers (table 3-5).[154] In April 1996, NHTSA denied a petition by the American Automobile Manufacturers Association to reconsider provisions regarding situations in which suppliers neglect to provide the necessary information to manufacturers.[155]

Administrative Process

NHTSA principally administers the AALA from its headquarters in Washington, DC, and conducts certain activities through DOT's 10 regional offices. During the first year that the AALA was in effect, NHTSA's enforcement effort consisted of monitoring the several kinds of data required under the AALA that were being generated by vehicle manufacturers and monitoring that vehicles were being labeled.[156] Thus far, officials report that compliance with the labeling requirements has been adequate as vehicle manufacturers have complied with the requirements of the AALA.[157] Currently, the agency is conducting a survey of dealerships across the country to determine if manufacturers are in compliance with the act. The survey began in early 1996, and through this survey, NHTSA is attempting to verify that the automobiles and light trucks at vehicle dealerships are in fact labeled; however, this effort will not involve an attempt to evaluate the accuracy of the labels affixed to the vehicles.[158] The agency anticipates a verification procedure will be established in the future as the statute requires.[159]

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[152] 59 F.R. 37294-37336, July 21, 1994.

[153] The "supplier" refers to either an "outside supplier" (a supplier not wholly owned by the vehicle manufacturer), an "allied supplier" (a supplier wholly owned by the vehicle manufacturer), or a supplier that is wholly owned by one member of a joint venture vehicle assembly arrangement.

[154] 61 F.R. 17253-17256, Apr. 19, 1996.

[155] NHTSA officials, interview with USITC staff, Mar. 21, 1996.

[156] Letter from Ricardo Martinez, M.D., Administrator, NHTSA, June 10, 1996.

[157] Ibid.

[158] The American International Automobile Dealers Association claimed that the AALA has not been enforced during its two year existence. See statement of Walter Huizenga, president, American International Automobile Dealers Association, transcript of hearing, p. 130.

[159] NHTSA officials, interview with USITC staff, Mar. 21, 1996.

Table 3-5
Marking requirements under the American Automobile Labeling Act

Player	Label requirements[1]
Manufacturers	Required to label passenger motor vehicles with the following: 1) the percentage of U.S./Canadian equipment (parts) content 2) the names of any countries other than the U.S. and Canada which individually contribute 15 percent or more of the equipment content, and the percentage content for each such country[2] 3) the final assembly place by city, state (where appropriate), and country 4) the country of origin of the engine 5) the country of origin of the transmission.[3]
Outside Suppliers[4]	Required to provide the following information to manufacturer or allied supplier upon request: 1) the equipment price 2) whether the equipment has at least 70 percent of its value added in the United States and/or Canada 3) the country of origin for any equipment with less than 70 percent U.S./Canadian content 4) the country of origin for engine or transmission equipment.[5]
Allied Suppliers[6]	Required to provide the following information to manufacturer upon request: 1) the equipment price 2) the percentage U.S./Canadian content of the equipment 3) the equipment's country of origin 4) the country of origin for engine or transmission equipment (separating the U.S. and Canadian content).
Dealers	Required to maintain the label on each vehicle until the vehicle is sold to the consumer.

[1] The United States and Canada are treated together, unless otherwise noted.

[2] If there are more than two such countries, only the names of the two countries providing the greatest amount of content need be listed.

[3] Section 32304(b) specifies that the first two items of information, the equipment content percentages for the U.S./Canada and foreign countries, are calculated on a "carline" basis rather than for each individual vehicle. The term "carline" refers to a name of a group of vehicles which has a degree of commonality in construction such as body and chassis.

[4] An outside supplier is a supplier not wholly owned by the vehicle manufacturer.

[5] In addition to the above requirements, a supplier of engines and/or transmissions is required to provide, at the request of the vehicle manufacturer, the country of origin for each engine or transmission it supplies to the manufacturer. Country of origin is determined as follows: the country in which the greatest percentage, by value (using the total cost of equipment to the engine or transmission supplier, but excluding the cost of final assembly labor), was added to the engine or transmission. The country of origin for groups of engines and transmissions is determined once per model year.

[6] An allied supplier is a supplier that is wholly owned by the vehicle manufacturer.

Source: Compiled by the staff of the U.S. International Trade Commission.

Costs to Government

The administration and enforcement of the AALA represents a small share of NHTSA's annual budget for operations and research of $79.0 million in FY 1995.[160] Since the implementation of the AALA, the principal cost has been for rulemaking (table 3-6). NHTSA estimates that costs for rulemaking in FY 1996 (October-June) were about $28,000. Costs for enforcing the AALA have been negligible.

The Lanham Act

Disputes over country-of-origin claims, although not a significant number, have also been addressed in Federal court using Section 43(a) of the Lanham Trademark Act of 1946 (15 U.S.C. 1125), which prohibits false designations of origin and false descriptions on goods or services. The purpose of the act is to protect consumers against deceptive designations of the origin of goods and, conversely, to enable producers to differentiate their products.[161] Section 1125(a)(1) provides

> Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—
>
> (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or
>
> (B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,
>
> shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.[162]

This section of the Lanham Act has been cited in several cases involving country-of-origin marking issues. In *Tube Forgings of America Inc. v. Weldbend Corp.* (788 F. Supp. 1150 (D. Or., Mar. 12, 1992)), a U.S. manufacturer of carbon steel pipe fittings alleged unfair practices by a competitor to recover damages for falsely advertising the fittings as

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[160] Office of Management and Budget, *Budget of the United States Government*, Appendix, Fiscal Year 1996, p. 998.

[161] Public Law 79-489, ch. 540, 60 Stat. 427, 441, July 5, 1946. 15 U.S.C.A. 1125, Note 3.

[162] 15 U.S.C.A. 1125.

Table 3-6
NHTSA costs [1] related to administering and enforcing the AALA

Item	FY 1993 (Oct. 92-Sept. 93)	FY 1994 (Oct. 93-Sept. 94)	FY 1995 (Oct. 94-Sept. 95)
Enforcement activities	([2])	([2])	$40,000
Rulemaking for AALA	$91,725	$136,713	$91,900
Total	$91,725	$136,713	$131,900

[1] These primarily include salary, overhead, and benefits.
[2] Not applicable.

Source: Compiled by the staff of the U.S. International Trade Commission from data provided by the Federal Trade Commission.

domestically produced.[163] In *Alto Products Inc. v. Tri Component Corp.*(1994 WL 689418 (S.D.N.Y., Dec. 8, 1994)), a U.S. manufacturer of brake shoes sued a competitor who allegedly neglected to mark its products with the country of origin, which was Israel.

Pending litigation in Massachusetts specifically involves the "Made in USA" debate. In a complaint filed in November 1995,[164] Dynacraft Industries, Inc., which sells bicycles at wholesale to mass merchandisers and discount retailers throughout the United States,[165] alleges that three of its competitors, Huffy Bicycle Corp., Murray Ohio Manufacturing Co., and Roadmaster Corp., have falsely represented the origin of their bicycles that have been advertised, promoted, and sold in the U.S. market and therefore violated section 43(a) of the Lanham Act, 15 U.S.C. 1125 (a)(1)(B).[166] Dynacraft alleges that while certain components of the bicycles sold by the three defendants may be made in the United States, significant components are produced abroad. The complaint notes the FTC standard that requires a manufacturer can only make an unqualified "Made in USA" claim if the product is composed wholly of domestic parts.[167] Dynacraft is asking for damage liability of $100 million.

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[163] In this case, the plaintiff also argued the defendant falsely certified that its product satisfied the Buy American Act.

[164] *Dynacraft Industries, Inc., v. Huffy Bicycle Company, A Division of Huffy Corporation, the Murray Ohio Manufacturing Company, and Roadmaster Corporation*, Civil Action No. 95-12532 (D.C. Mass. 1995).

[165] Dynacraft has been in the bicycle business since 1984. The majority of Dynacraft's bicycles are produced in China and imported into the United States by Dynacraft. They are sold under the trademark MAGNA. Dynacraft sells principally from its Ashland, Massachusetts location.

[166] Dynacraft also brought action against the three defendants under Massachusetts law, Mass. Gen. L. Ch. 93A Section 1 et seq.

[167] Complaint at 6.

Section 337 of the Tariff Act of 1930

Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), authorizes the U.S. International Trade Commission to investigate allegations of unfair methods of competition and unfair acts in the importation of articles into the United States. Most complaints filed under this statute allege patent infringement and/or trademark violations. However, a small number of complaints[168] have contained allegations that the subject imports either were not marked with the country of origin or had false designations of origin. In one such investigation, No. 337-TA-229, *Nut Jewelry and Parts*, based on a complaint filed by Kukui Nuts of Hawaii, Inc. in October 1985, the Commission found that the failure to mark the nut jewelry confused consumers as to whether they were purchasing authentic Hawaiian nut jewelry and thereby allowed imports to unfairly compete with U.S. product. The Commission issued cease and desist orders and consent orders.[169] Several of the investigations involving marking issues were settled by agreement between the parties without a Commission finding. Because marking issues typically represent only a small part of the allegations in these cases, it is not possible to attribute a cost associated specifically to marking.

Pending Legislative Initiatives

A number of bills or sections of bills that would either exempt or require country-of-origin marking of various goods have been introduced in the 104th Congress of the United States (table 3-7). Several of the pending bills or similar versions thereof were introduced in previous Congresses. Two of these were the subject of hearings in the late 1980s. Bills similar to H.R. 2833 were the subject of a hearing before the House Committee on Agriculture in 1987[170], and a bill similar to H.R. 2475 on the labeling of meat and meat products, was, in part, the subject of a hearing in 1988.[171]

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[168] USITC staff estimates up to 32 complaints have allegations of false country of origin or failure to mark since the first petition was filed under section 337.

[169] 51 F.R. 40207, Nov. 5, 1986. See also U.S. International Trade Commission, *Certain Nut Jewelry and Parts Thereof* (investigation No. 337-TA-229), USITC publication 1929, Nov. 1986.

[170] See 100th Cong., 1st sess., H.R. 692, H.R. 1176, and H.R. 1246 and U.S. House of Representatives, Committee on Agriculture, Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition, *Country-of-Origin Labeling on Imported Perishable Agricultural Commodities: Hearing before the Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition, Committee on Agriculture*, 100th Cong., 1st sess., Mar. 30, 1987, Serial No. 100-14.

[171] See 100th Cong., 2d. sess., H.R. 2920 and U.S. House of Representatives, Committee on Ways and Means, Subcommittee on Trade, *Country-of-Origin Labeling Requirements for Imported Meat and Other Food Products: Hearing before the Subcommittee on Trade, Committee on Ways and Means*, 100th Cong., 2d. sess., Sept. 27, 1988, Serial No. 100-88.

Table 3-7
Pending legislation in the 104th Congress either requiring or excepting products from country-of-origin marking

Legislation (Sponsor)	Title	Action and product coverage	Bill status
H.R. 2833 (Rep. Nancy Kaptur, Rep. Karen Thurman)	To amend the Perishable Agricultural Commodities Act, 1930, to require that perishable agricultural products be labeled or marked as to their country of origin.	To require marking of perishable produce (or bins, display cases, or other containers), including similar products now excepted from marking on the J-list (19 CFR 134, part D).	Referred to the House Committee on Resources, Dec. 12, 1995, and to the House Committee on Agriculture, Dec. 22, 1995.
H.R. 2475 (Rep. Tim Johnson)	To amend the Federal Meat Inspection Act to require that imported meat and meat food products containing imported meat be labeled imported, and to require that certain eating establishments....	To require marking or labeling of meat and to require advertising to reflect that imported meat is being used.	Referred to House Committee on Agriculture, Oct. 12, 1995.
H.R. 2426 (Rep. Richard Gephardt, Rep. James Talent)	To amend the Tariff Act of 1930 with respect to the marking of door hinges.	To require marking of metal door hinges on the side visible to the person passing through a doorway.	Referred to House Committee on Ways and Means, Sept. 9, 1995.
H.R. 2129 (Rep. Benjamin Cardin)	To amend the Tariff Act of 1930 to provide that the requirement of marking of imported articles and containers not apply to spice products.	To exempt spices, as classified in certain HTS subheadings, and their containers from country-of-origin marking requirements.	Referred to House Ways and Means Committee, Subcommittee on Trade, Aug. 1, 1995.
H.R. 947 (Rep. Bill Archer)	To exempt semiconductors from the country-of-origin marking requirements under the Tariff Act of 1930.	To exempt semiconductors and their containers from marking.	Referred to House Committee on Ways and Means, Feb. 15, 1995.
S. 1793 (Sen. Judd Gregg)	To amend the Tariff Act of 1930 to provide that the requirements relating to marking imported articles and containers apply to fresh cut flowers.	To require that fresh cut flowers, now excepted from marking, are marked with country of origin and that such flowers are clearly identified as such at the retail level.	Referred to Senate Committee on Finance, May 22, 1996.
S. 1747 (Sen. Phil Gramm, Sen. Carol Moseley-Braun)	To correct the marking requirements for American-made feather and down-filled products.	To except from marking certain textile products by codifying into a change of tariff classification that substantial transformation occurs and therefore the finished product will not be required to be marked with the country of origin of the fabric.	Referred to Senate Committee on Finance, May 13, 1996.
S. 1746 (Sen. Phil Gramm)	To correct the marking requirements for American-made hand tools.	To exempt metal forgings used in hand tools from marking.	Referred to Senate Committee on Finance, May 13, 1996.

Table continued on next page.

Legislation (Sponsor)	Title	Action and product coverage	Bill status
S. 1502 (Sen. Kay Bailey Hutchison, Sen. John Breaux)	To amend the Tariff Act of 1930 to provide that the requirements relating to marking imported articles and containers not apply to spice products, coffee, or tea.	To exempt spice products, coffee, or tea (and their containers) from marking.	Referred to Senate Committee on Finance, Dec. 22, 1995.
S. 1468 (Sen. Howell Heflin)	Peanut Program Improvement Act.	To require that (1) peanut products be labeled to indicate the origin of peanuts in the product and (2) no peanut product may contain both imported and domestically produced peanuts.	Referred to Senate Committee on Agriculture, Nutrition, and Forestry, Dec. 12, 1995.

Source: Compiled by the staff of the U.S. International Trade Commission.

CHAPTER 4
U.S. Industry Perspectives

This chapter provides an overview of costs, benefits, concerns, and recommendations of U.S. companies regarding U.S. country-of-origin marking requirements. Company concerns with country-of-origin marking issues relate to both mandatory requirements as well as rules governing voluntary marking. Some U.S. companies contend that the existence of, and changes to, marking requirements may impose costs without providing commensurate benefits to the company involved or to consumers.

To determine the importance of country-of-origin marking to U.S. companies, the Commission conducted a telephone survey[1] of U.S. companies (some of which may use foreign-made components in their operations) that produce a broad range of products in the agriculture; chemicals; minerals, metals, and miscellaneous manufactures; machinery; and textiles, apparel, and footwear sectors.[2] A total of 512 companies were contacted and 435 companies responded, either in whole or in part, to the Commission's telephone survey.[3] Companies and trade associations also provided written submissions to the Commission that included recommendations on changes to U.S. marking requirements and regulations.[4]

Globalization of Production Affects Country-of-Origin Marking

Globalization of production, whether to reduce costs, penetrate new markets, or for other reasons, has spurred increased global purchasing of commodities and components. As a result, many products are no longer wholly produced within a single national boundary. In many industries, product research, design, and engineering take place in one country, the production of components and parts occurs in other countries, and valued-added capital- or labor-intensive manufacturing or assembly occur in yet another country. Therefore, a

[1] It should be noted that, since response was voluntary and this survey was not a random sample, the survey results may not be representative of particular sectors. Views occasionally diverged between companies within the same industry. There were a number of cases where one company provided cost data while others indicated they could not quantify the data or believed such costs to be minimal or negligible. Therefore, results from the survey cannot be extrapolated to generalize about a particular industry or the economy as a whole.

[2] See appendix E for a copy of the survey.

[3] Not all companies responded to all parts of the Commission's telephone survey; the number of company responses (provided in the "Overall" column of the tables presenting survey results) is used to calculate the percentage of responses to each question.

[4] The Commission held a public hearing on Apr. 10, 1996. A summary of industry concerns, costs, and benefits drawn from company submissions appears in appendix F.

product cannot always be distinguished as being the manufacture of just one or two countries, as it may represent an amalgam of inputs and processes performed in many countries. This trend is especially true for products that are mixed or assembled, with the implication that the final processing or assembly operation required to impart unique product attributes (e.g., quality, tolerances, or metallurgical content) may not appear to change the product's character, essence, and use, although it adds significant value to the product. Therefore, origin appears even more difficult to attribute to one country.

The emergence of more widespread global procurement and production creates new challenges for industry, government, and consumers. These challenges involve, respectively, a need to provide accurate product information to consumers; to tailor laws, regulations, and procedures to meet both government objectives and commercial and economic realities; and to recognize the limitations that more detailed information may have in assisting buying decisions. For the consumer, the globalization of production and the associated increase of products within given price and performance ranges may result in increasingly complex purchasing decisions. In addition to seeking information on quality, reliability, safety, price, and other product attributes, many consumers will continue to seek products that are made domestically or by domestic companies to the extent such information is available. In this context, a company gains a competitive advantage if it can mark its products "Made in USA," or if it does not have to mark its products with a foreign country of origin. However, the growing use of foreign inputs or manufacturing facilities by companies with brand names perceived by consumers as representing domestic firms increasingly blurs distinctions based on country of origin.[5]

U.S. Company Concerns Related to Country-of-Origin Marking

U.S. companies contacted by, or submitting comments to, the Commission in the course of this investigation identified a wide range of specific concerns or general problems of compliance related to country-of-origin marking. Many of these issues transcend the matter of compliance costs identified by industry in meeting marking requirements. These concerns can be differentiated by whether marking of the pertinent good is required[6] or voluntary

[5] In this regard, certain U.S. consumer representatives state that place names, such as Florida Orange Juice or Idaho potatoes help to define essential character for the consumer; they indicated that the European Commission recently proposed that certain food products were so closely associated with geographical locations that names would be protected and that no one outside that nation or region could use the name. See, for example, statement of Joel Joseph, chairman, Made in the USA Foundation, transcript of hearing, p. 20.

[6] As has been indicated in earlier chapters, U.S. laws and regulations require that imported goods or their containers (with certain exceptions, such as commodities in bulk) be marked conspicuously with the name in English of the country of origin of the article, unless specifically exempted.

("Made in USA" labeling, for example).[7] For those products where marking is required, problems or concerns are related essentially to marking compliance requirements or to Customs determinations of origin and the use of differing rules of origin (table 4-1).

Required marking can involve tracking of inputs and products,[8] generating administrative costs. For some manufacturers, problems may arise when marking rules administered by different agencies conflict. Marking requirements also pose problems when it is difficult to mark a product because of its size, composition, or intended use.

Where compliance concerns are origin-related, uncertainty is often caused by changes in how origin is determined. Such determinations may change because of court decisions, bilateral

Table 4-1
Country-of-origin marking: Major types of problems or concerns reported by U.S. firms

Marking Problem	Compliance Issue
Required Marking	**Essentially a Marking Concern:** • Administrative burdens and overhead costs associated with tracking imported inputs and products; may include changes in interpretation of who constitutes ultimate purchaser and required marking as a result of that decision. • Conflict between required marking laws and regulations (as between regulations issued by Customs, FTC, DOT, FDA, and others). • Uncertainty about the marking requirements. • Technical or commercial difficulty of marking a product. **Marking Concern Related to U.S. Rules of Origin:** • Changing interpretations of what constitutes substantial transformation and where substantial transformation occurs. • Changes resulting from universal application of "change of tariff classification" principle embodied by NAFTA rules of origin. • Anticipated problems due to changes in origin determination on an MFN basis. • Lack of harmonization between U.S. and foreign regulations, and among foreign regulations, especially relating to differences in the applied definitions of substantial transformation.
Voluntary Marking	• Strictness of the FTC threshold. • Conflict between the FTC standard and Customs' marking regulations. • Conflict between the FTC standard and foreign customs requirements.

Source: Compiled by Commission staff.

[7] For most textile and apparel products made in the United States, FTC regulations require that such products be marked as "Made in USA" if they meet the FTC "wholly domestic" standard. See section on textiles and apparel in chapter 6 of this report for further detail.

[8] In this regard, industry representatives stated that it may not be possible to track repairs or spare parts used on warranty repairs of various machines (and the consumer may have little or no interest in the country of origin so long as his machine works). See, for example, statement of John Ryan, chairman, customs committee, National Council on International Trade Development, transcript of hearing, p. 82.

or multilateral trade agreements, a switch to a different regime of origin rules,[9] or a change in Customs' interpretation of substantial transformation.[10] Concerns about applying the CTC rules developed for NAFTA trade to imports from all countries have been voiced, for example, by producers of soluble coffee and pharmaceuticals.[11]

Companies have expressed concern about the requirement that products made with imported inputs must be marked with a foreign country of origin despite what the companies perceive as extensive processing in the United States. This concern, that a product with considerable or most of its value added in the United States must be labeled with a foreign origin, results from the Customs origin rule to which the imported good is subject.[12] Some firms also believe it should not be necessary to label certain imported finished products (e.g., coffee or certain spices) with a foreign origin if they are not produced in the United States.[13]

With respect to voluntary marking, companies manufacturing in the United States state a preference to mark their products with "Made in USA" labeling. However, some companies that desire to use "Made in USA" labeling claim that for certain products manufactured in the United States, it is commercially or technically infeasible for firms to use virtually all U.S.-origin inputs and labor.[14] Many such situations result from the globalization of

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[9] Some importers prefer the part 102 Marking Rules for NAFTA-based products (based on CTC) because these rules are deemed to be more transparent, precise, and predictable than determinations on a case-by-case basis under current Customs practice. However, other producers and importers prefer the traditional regulations or Customs rulings because CTC, as represented in current NAFTA rules, often does not adequately encompass all processes that companies believe substantially transform imported inputs.

[10] See, for example, statements of Marti Morfitt, vice president, Green Giant Brands, The Pillsbury Co., transcript of hearing, p. 225, Thomas Mahoney, vice president, The Stanley Works, transcript of hearing, pp. 154-155, and Tony Helf, production manager, Taylor Made Golf Co., transcript of hearing, pp. 274-276.

[11] Customs does not consider the dilution of bulk pharmaceutical active ingredients with other inert ingredients (converting a bulk pharmaceutical into dosage form) to be a substantial transformation because no change in the fundamental character of the active ingredient has occurred. Moreover, a change in tariff classification of the imported bulk pharmaceutical for example, from Chapter 29 to Chapter 30 of the *Harmonized Tariff Schedule of the United States*, also is not considered to lead to a change in country of origin. See discussion in chapter 6.

[12] In this instance the manufacturer must mark the product with the foreign country of origin because of Customs' decision on substantial transformation or CTC and the manufacturer's status as the "ultimate purchaser."

[13] See, for example, letters from Glenn Roberts, director government relations, American Spice Trade Association, to Philip M. Crane, member of Congress, Aug. 1, 1995, and U.S. Customs Service, June 30, 1995; letter from Thomas Burns, executive vice president, American Spice Trade Association to U.S. Customs Service, Aug. 11, 1987; and submission by Vincent Bowen, attorney at White & Case on behalf of McCormick & Co., Inc. to U.S. Customs Service, June 30, 1995.

[14] Some manufacturers have argued that the FTC rule is outdated, given the globalization of industry production generally and the multi-country acquisition of components and production sharing that occurs.

production,[15] while others arise because certain products are indigenous to a specific country or region.

Some domestic manufacturers contacted during the Commission's survey also indicated a possible conflict between the FTC standard and foreign customs' and/or consumer protection regulations. For example, a domestic manufacturer may be required to mark identical products differently if the products are to be sold in both domestic market and foreign markets. In the domestic market, the U.S. manufacturer may be unable to mark the goods "Made in USA" because they do not meet the FTC standard. In some foreign markets, however, the U.S. manufacturer/exporter must mark the goods as "Made in USA" in order to abide by foreign marking requirements. This inconsistency between U.S. and foreign marking rules, according to U.S. companies, may force U.S. manufacturers to segregate inputs from multiple sources, or to establish multiple assembly or labeling lines and/or multiple inventory systems in order to serve these different markets.[16]

To ascertain the degree of industry concern with marking problems across a broad spectrum of industry sectors, Commission staff conducting the survey initially asked each company whether it has concerns or problems with U.S. or foreign country-of-origin marking requirements, and how important such origin markings are to the company's customers (i.e., are customers' purchasing preferences influenced by the product's country of origin, as indicated by the marking). Companies representing 68 percent of survey respondents stated they do not have concerns or problems with U.S. country-of-origin marking requirements. One plausible reason for this apparent lack of concern by many companies about U.S. marking requirements is that many U.S. imports are bulk commodities that are exempt from marking, or for which only the container is required to be marked. In addition, Commission survey responses indicate that many U.S. companies tend to base their purchasing decisions on quality (including pre-purchase qualification and supplier certification)[17] and price, rather than on country of origin per se.

Companies representing 32 percent of survey respondents indicated that they do have concerns with U.S. marking requirements.[18] Included in this group of companies are domestic manufacturers that process, further manufacture, or assemble finished products from imported raw material inputs, components, and subassemblies.

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[15] Some components or products are no longer produced in the United States as certain industries have shifted some, or all production operations offshore. Prior to last year, for example, there were no U.S. producers of bicycle derailleurs. Examples of this situation can be found in many other industries.

[16] See, for example, Neville Peterson & Williams and International Business-Government Counsellors, Inc., on behalf of Xerox Corp., prehearing submission to the USITC, Mar. 27, 1996, pp. 18-19.

[17] In instances of supplier certification, most companies that purchase inputs for their manufacturing operations know the country of origin in any event, and some U.S. processors purchase intermediate goods from suppliers designated by their customers, in which case the country of origin is known by both processor and ultimate consumer. For a discussion of customers specifying the origin of the intermediate product to their U.S. producer or processor, see American Wire Producers Association, posthearing submission to the USITC, Apr. 25, 1996, p. 2.

[18] U.S. company concerns with foreign marking regulations are discussed later in this chapter.

According to responses to the Commission's survey, U.S. companies were most concerned with the difficulty of tracking the origin of goods because of varying sources of supply and the increased cost of marking goods with a country of origin. These two concerns accounted for 17 percent and 16 percent, respectively, of the 354 responses to the question asking companies to list their concerns by type (table 4-2). Regulations that require a country-of-origin mark on products that use inputs or components from various countries, such as electronic devices or mixed/commingled products (soluble coffee,[19] spices, frozen vegetables, and golf club sets, for example) often pose administrative burdens and add to overhead costs for producers that must maintain extensive tracking or inventory systems. Concerns were expressed over the real or potential additional costs incurred because of marking rulings by Customs, although some of these companies reported concerns about uncertainty over country-of-origin determinations that may be unrelated to marking. Increased costs can derive from a number of other sources and are examined in greater detail below.

Areas of somewhat lesser concern were the lack of harmonized marking regulations among Federal agencies, inconsistent application of marking regulations, and the technical or commercial difficulty of marking goods with a country of origin. Differing goals for origin marking lead to disparities between marking regulations and requirements of various Federal agencies. For example, regulations of the FDA and Customs may cause certain drugs to be marked with two different geographical origins.[20] Examples of problems that may result from technical or commercial difficulties of marking a product include marking very small items such as semiconductors, locating country-of-origin information on the front of frozen food packages,[21] and complying with proposed rules on the use of tags and labels that may impose new marking costs on certain industries.[22] Overall, few companies surveyed cited the difficulty of meeting the FTC "Made in USA" labeling standard and the implications

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[19] The makers of instant coffee generally combine bulk instant coffee powders from several countries in one package. Because Customs does not find the agglomeration process to represent substantial transformation, each production run could potentially be marked with a different country or countries of origin. Producers claim that these administrative and logistics costs may lead to higher capital and variable costs, and could limit their competitiveness in the United States.

[20] As dispensed in blister packs, pharmaceuticals are generally marked with the country of origin of the active ingredient (Customs ruling) and the name and address of the U.S. manufacturer (FDA ruling). Also see discussion in chapter 6.

[21] A particular concern of the frozen vegetables industry is the decision by the Court of International Trade that marking should be located on the front panel in order to be "conspicuous," and with Customs' interpretation of that decision to specify font sizes, boldness, and other graphics related to country-of-origin marking. The industry's position is that specific rules on marking are unnecessary and inconsistent with section 304 of the Tariff Act of 1930.

[22] For example, in a recent change, Customs proposed that carbon steel wire rod (from which steel wire is drawn) now be marked on the strapping used to secure the bundle; however, most of the strapping is itself composed of wire rod and not suitable to marking. This new Customs requirement represents a change from the prior practice of allowing bundles of wire rod to be tagged with the country of origin.

Table 4-2
Specific problems or concerns regarding compliance with U.S. country-of-origin marking requirements: U.S. companies' assessment by types of concern and by sectors

Concern	Sector[1]						
	Agriculture	Chemicals	Metals & metal products	Machinery	Electronics	Textiles	Overall
	Percent of responses						
Difficulty in tracking origins due to varying sources of supply	28	8	13	13	14	14	17
Increased costs	22	17	9	25	21	14	16
Lack of harmonization in U.S. regulations	5	17	17	25	14	16	13
Technical or commercial suitability for marking products	18	17	7	13	13	11	12
Inconsistent application of marking regulations	6	8	17	13	7	14	12
Lack of transparency in U.S. regulations	5	8	10	0	5	11	8
Difficulty in meeting FTC "Made in USA" labeling standard	3	0	6	0	5	6	5
Implications of Customs' rules of origin proposals	7	8	3	0	4	9	5
Other[2]	7	17	18	13	16	5	12
	Number of responses						
Survey	88	12	126	8	56	64	354

[1] Agriculture includes agricultural products (live animals and meat, including fish, shellfish and poultry), live plants, seeds, fruits and vegetables, edible preparations, hides, skins, lumber, and wood products;

Chemicals includes organic and inorganic chemicals, and their downstream products, and rubber products (including tires and hose);

Metals and metal products includes ores, concentrates, nonferrous and ferrous metals and products, ceramics and glass, and miscellaneous manufactures;

Machinery includes pumps and valves, heating and air conditioning machinery, and transportation equipment;

Electronics includes navigation devices, capacitors, semiconductors, watches, measuring and analyzing instruments, and arms and ammunition;

Textiles includes yarns, fabrics, home furnishings, apparel, and footwear.

[2] Concerns that fell within the "other" category include inadequate space on the good to allow marking, the requirement to mark subassemblies with their individual country of origin, and possible consumer confusion resulting from multiple countries of origin being listed. Companies also are concerned over the extent to which marking rules for imported products are enforced. Some companies claim that certain imported products are not being marked, are being mis-marked, are not being marked in a conspicuous manner, are mis-using "Made in USA" labeling, or that origin markings are being removed prior to sale to the ultimate consumer.

Source: Compiled from telephone surveys conducted by Commission staff.

of Customs' proposed uniform rules of origin, although these topics have generated substantial concern elsewhere.[23]

Concerns varied somewhat among the six sectors covered by the survey. Producers of chemicals, metals and metal products, and machinery reported relatively greater concern about inconsistent application of marking regulations within certain Federal agencies and whether various Federal agencies administer their marking regulations in a consistent manner.[24] Several agricultural processors, including importers of food or other goods not produced in the United States, and a few companies producing electronics products, contended that the marking requirement poses a burden on U.S. processors of imported ingredients and components.[25]

Costs to Industry of Country-of-Origin Marking

U.S. companies surveyed were asked to identify the major types of costs that they incur in complying with country-of-origin marking requirements.[26] These companies also were asked to estimate the total cost of such compliance in terms of a percentage of company net sales, as well as to estimate how much marking compliance costs on average add to the retail purchase price of their typical product.[27] Only a few of the companies contacted by, or submitting comments to, the Commission were able to provide qualitative or quantitative marking-related cost estimates; and, where they did, the majority stated that marking-related costs represent well less than 1 percent of company net sales (see discussion later in this

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[23] See, U.S. House of Representatives, Committee on Ways and Means, Subcommittee on Trade, *Rules of Origin: Hearing before the Committee on Ways and Means, Subcommittee on Trade*, 104th Cong. 1st sess., July 11, 1995, Serial 104-27, and FTC, "Made in USA Policy Comment," FTC File No. P894219; and, submissions to, and testimony before the U.S. International Trade Commission with respect to investigation No. 332-366, *Country-of-Origin Marking: Review of Laws, Regulations, and Practices*.

[24] In this regard, several producers of metals and metal products also voiced concern about consistency of application of marking regulations and enforcement issues. See, for example, Harris & Ellsworth, on behalf of the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, posthearing submission to the USITC, Apr. 25, 1996, pp. 3-6; Diamond Chain Co., written submission to the USITC, Mar. 18, 1996, p. 2; American Pipe Fittings Manufacturers, written submission to the USITC, Apr. 24, 1996, pp. 2-3; Hayes & Ringwood, on behalf of the Hager Hinge Co., written submission to the USITC, Apr. 25, 1996, pp. 6-7; and, National Council on International Trade Development, written submission to the USITC, Mar. 25, 1996, p. 3.

[25] In this regard, see Hogan & Hartson, on behalf of the Pillsbury Co., written submission to the USITC, Apr. 25, 1996, pp. 2-3; Kraft Foods, Inc., written submission to the USITC, Apr. 25, 1996, p. 2; American Frozen Food Institute, written submission to the USITC, Apr. 25, 1996, pp. 1-2; Digital Equipment Corp., written submission to the USITC, Mar. 20, 1996, p. 2; Neville Peterson & Williams and International Business-Government Counsellors, Inc., on behalf of Xerox Corp., prehearing submission to the USITC, Mar. 27, 1996, pp. 8-9; and, Semiconductor Industry Association, written submission to the USITC, Apr. 25, 1996, p. 5.

[26] Domestic producers were requested not to include costs incurred in voluntarily marking the company's product(s) for competitive reasons or marketing strategy.

[27] Companies indicated that such costs, even if identifiable, could not be directly passed on to retail consumers for competitive reasons.

chapter). In absolute terms, however, such costs ranged up to several million dollars annually for some firms.[28]

Companies surveyed that were able to provide information on the general nature of costs cited physical marking costs and administrative costs of complying with regulations most often (table 4-3). Of somewhat less importance were warehousing and accounting costs or added production costs required for multiple production or marking lines, although there was some variation in responses among industry sectors (the low number of responses within the chemical and machinery sectors may skew the percentage responses).

Only about one-quarter (109) of the total survey respondents were able to provide qualitative or quantitative information regarding the level of marking-related compliance costs (table 4-4). An additional 113 companies indicated they did incur some costs, but were unable to provide a qualitative or quantitative estimate. Companies providing a qualitative estimate indicated that the cost of complying with country-of-origin marking requirements is nominal.[29] One reason for this apparent lack of hard cost information may be that most companies already mark their products (or could do so) with country-of-origin markings in conjunction with other markings or product coding, and this marking represents no additional costs.[30] Another reason stated by companies surveyed is that the country-of-origin marking costs are low and they do not wish to incur additional accounting and overhead costs in attempting routinely to track compliance costs.

A total of fifty companies surveyed provided quantitative estimates of country-of-origin marking costs as a percentage of net sales (table 4-4). Of these companies, 23 stated that their marking costs are zero. The majority of the remaining 27 companies estimated that their marking-related compliance costs as a percentage of net sales are less than 1 percent (table 4-5).[31]

Although marking costs appear to represent a relatively small share of net sales, such costs represent substantial totals when expressed in dollar terms. Estimated marking-related compliance costs for these 27 domestic manufacturers would exceed $21 million altogether and range between $5,000 and $9 million per company, based on reported 1995 net sales for these companies.[32] These companies also reported their prospective costs, including startup

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[28] Certain companies have stated their belief that the marking-related costs of country-of-origin requirements are high relative to the perceived benefit to the ultimate consumer.

[29] Companies providing a qualitative estimate most often used descriptive words such as minimal or de minimis, insignificant, negligible, minor additional cost to other required labeling, not measurable or too small to track, or do not calculate (considered low and a cost of doing business).

[30] See, for example, statements of Dan Craighead, vice president, international, Snap-on Inc., transcript of hearing, p. 174, Thomas Mahoney, vice president, The Stanley Works, transcript of hearing, p. 175, and George Sherman, president and CEO, Danaher Corp., transcript of hearing, p. 176; also see, Hale and Dorr, on behalf of Micron Technology, Inc., written submission to the USITC, Apr. 25, 1996, p. 4.

[31] Company estimates of costs below 1 percent of net sales ranged as low as 0.01 percent.

[32] Compiled by USITC staff based on company annual reports and survey data. The Commission also received some information on a per-unit basis that could not be projected to an

(continued...)

Table 4-3
Types of costs companies incur in complying with U.S. country-of-origin marking requirements: U.S. companies' identification of costs by major types of costs[1] and by industry sectors

Types of costs	Sector[2]						
	Agriculture	Chemicals	Metals & metal products	Machinery	Electronics	Textiles	Overall
	Percent of responses						
Physical marking costs	35	30	26	30	38	27	32
Administrative costs of complying with regulatory agencies	30	40	12	20	24	29	24
Warehousing, accounting, and tracking costs for foreign components	15	20	14	20	18	22	16
Added production costs required for multiple production lines or marking lines	8	10	18	20	12	15	12
Added marketing or advertising costs	6	0	8	0	0	5	5
Other[3]	6	0	22	10	8	2	10
	Number of responses						
Survey	114	10	73	10	50	41	298

[1] Some companies provided multiple responses. Not all companies who identified types of costs were able to characterize the level of costs.

[2] See footnote 1 in table 4-2 for description of sector products.

[3] Within the "other" category, domestic producers, including manufacturers of metals and metal products and electronics, stated that marking requirements result in added internal compliance procedures, specialized tooling and design work, increased manufacturing cycle time, inability to place more useful information on the product or packaging, occasional product damage, delays in inventory turnover, and increased personnel costs.

Source: Compiled from telephone surveys conducted by Commission staff.

costs and other costs that might be incurred based on anticipated marking regulations and marking-related rulemaking changes.[33] Such additional annual operating costs range from

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[32](...continued)
annual cost.

[33] For example, one company that currently does not have to mark its products estimated its country-of-origin marking start-up costs at between 1 and 2 percent ($2 million to $4 million) of net sales; another domestic producer estimated it would incur $3 million to $13 million initially to start-up its packaging line (thereafter incurring $7.5 million in annual operating costs, equivalent to about 0.6 percent of net sales).

Table 4-4
Number of companies responding with cost information, indicating marking costs are not quantifiable, and providing qualitative and quantitative data on compliance costs as a percentage of company net sales, by industry sectors

Sector[1]	*Number of companies*			
	Indicating some cost is incurred	Unable to provide an estimate	Providing compliance costs as a percent of net sales	
			Qualitative data	**Quantitative** data
Agriculture	50	29	10	11
Chemicals	8	7	1	0
Metals and metal products	80	39	25	16
Machinery	11	4	4	3
Electronics	37	21	6	10
Textiles	36	13	13	10
Total	222[2]	113	59	50

[1] See footnote 1 in table 4-2 for a description of sector products.

[2] Although 435 companies responded to the Commission survey, and 298 companies responded to the Commission's survey question to characterize types of marking-related costs, only 222 companies responded to this survey question and indicated that there were costs associated with country-of-origin marking.

Source: Compiled from telephone surveys conducted by Commission staff.

$20 million to $22 million with start-up costs ranging from $15 million to $26 million (table 4-6).

Written submissions also indicated that small shares of costs relative to net sales can translate into millions of dollars, which some company officials believe could be better spent on capital or other investments. For example, the Semiconductor Industry Association (SIA) estimated that total compliance costs for the industry manufacturing semiconductors are on the order of $50 million per year, representing approximately 0.01 percent of total net industry sales of $55 billion.[34] One SIA member, Intel, claims to spend $4 million per year marking its products, a figure which represented 0.02 percent of the company's net revenues

[33](...continued)
equivalent to about 0.6 percent of net sales).

[34] Semiconductor Industry Association, posthearing submission to the USITC, Apr. 25, 1996, p. 5.

Table 4-5
Number of companies providing qualitative and quantitative data on country-of-origin compliance costs as a percentage of company net sales, by level of compliance cost as a percentage of net sales, and by sectors

Compliance costs as a percentage of company net sales	Sector[1]						
	Agriculture	Chemicals	Metals and metal products	Machinery	Electronics	Textiles	Total
Negligible, minimal, or nominal	10	1	25	4	6	13	59
Zero	6	0	9	1	5	2	23
Less than 1 percent[2]	4	0	2	2	5	8	21
Between 1 percent and 2 percent	0	0	3	0	0	0	3
Greater than 2 percent	1	0	2	0	0	0	3
Total	21	1	41	7	16	23	109

[1] See note 1 in table 4-2 for a description of sector products.

[2] Several responses at the 1-percent level were from company executives who reportedly chose the lowest whole number in order to provide a quantitative estimate and 1 percent represents an upper bound.

Source: Based on telephone surveys conducted by Commission staff.

during 1995.[35] The companies that have expressed the most concern about these costs (including certain frozen vegetable producers, food processors, and manufacturers of semiconductors and consumer electronics) also contend that the benefit of origin marking to consumers is negligible, in part because many products are the result of commingling of products from many countries.[36] Data taken from written submissions to the Commission (but not included in the survey), covering 672 companies represented individually or through trade associations, indicate that estimated marking-related compliance costs range from $60 million to $63 million per year, with start-up costs ranging from $22 million to $23 million.[37]

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[35] Calculated from testimony of David Rose, director of import/export affairs, Intel, transcript of hearing, p. 136, and Intel form 10-K report for 1995.

[36] In this regard, see Joint Industry Group, prehearing submission to the USITC, Mar. 27, 1996, pp. 6-7; American Frozen Food Institute, posthearing submission to the USITC, Apr. 25, 1996, p. 1; National Food Processors Association, submission to the USITC for investigation No. 332-360, *International Harmonization of Customs Rules of Origin,* June 15, 1995, p. 2.; and Processed Apples Institute, Inc., written submission to the USITC, Apr. 25, 1996, p. 2.

[37] The Commission received data from individual companies and trade associations reporting for their membership.

Table 4-6
Country-of-origin marking costs identified during the Commission's investigation, No. 332-366

Item	Range of cost estimates (million dollars, except as noted)	Number of companies[1]
ITC Survey		
Current costs:		
Annual operating costs	21 to 22	27[2]
Unit costs[3]	2 to 10 cents per garment, 25 cents to $1 per garment, if remarking or relabeling is required. Marking of commemorative plates, $3 per plate.	7
Start-up costs	(4)	1
Prospective costs:[5]		
Annual operating costs	20 to 22	4
Start-up costs	15 to 26	4
Subtotal estimated costs:		
Annual operating costs	41 to 44	
Start-up costs	15 to 26	
Testimony and submissions:[6]		
Current costs:		
Annual operating costs	59 to 62	672
Start-up costs	13 to 14	23
Prospective costs:[5]		
Annual operating costs	1	540
Start-up costs	9	540
Subtotal estimated costs		
Annual operating costs	60 to 63	
Start-up costs	22 to 23	
All organizations reporting costs:		
Total estimated annual operating costs	101 to 107	
Total estimated start-up costs	37 to 49	
AALA marking costs[7]		
Current costs:		
Annual operating costs	2	23
Start-up costs	13	23
Start-up and first year operating costs	600 to 1,200	15,000

[1] The number of companies reporting cost estimates for 1995 (except start-up costs in some instances) includes responses from individual companies and trade associations reporting for their membership.
[2] Represents firms reporting costs greater than zero. An additional 23 firms reported zero costs.
[3] Several companies provided only unit cost data.
[4] Estimated at $400,000, representing retooling costs.
[5] Prospective costs are those not incurred by the company currently, but may be incurred in the future because of a change in country-of-origin marking requirements.
[6] Includes testimony at the USITC hearing on Apr. 10, 1996, and written submissions to the USITC from companies and industry associations representing 672 firms; data have been adjusted to eliminate double-counting with company survey data.
[7] AALA marking costs are estimated by the National Highway Traffic Safety Administration for companies producing automobiles and auto parts.

Source: Compiled by the staff of the U.S. International Trade Commission.

In addition, costs related to the American Automotive Labeling Act (AALA) have been estimated[38] for automakers and auto parts producers. These estimates, made prior to the implementation of AALA regulations, indicate that the 23 firms producing automobiles and light trucks in the United States would together incur approximately $13 million in start-up costs and $2 million in annual recurring costs. Estimated costs per company range from $500,000 to $1 million for start-up costs and $75,000 to $150,000 for annual costs. Estimates for auto-parts manufacturers, including both start-up costs and first year (1996) operating costs, range from $40,000 to $80,000 per company for each of the 15,000 U.S. manufacturers of auto parts for a total of $600 million to $1.2 billion (table 4-6).

The costs of country-of-origin marking may often include factors that are less tangible than the physical application of a marking to a finished article. For example, producers of frozen vegetables have stated that ink-jet printing of country-of-origin markings on plastic bags, as desired by Customs, is not possible for technical reasons. Companies reportedly must consider the option of creating an inventory of packaging materials marked with the country of origin of each of the possible commingled ingredients, and changing the package with each change in ingredient; such changes reportedly would result in a packaging logistics dilemma.[39] The variations would ultimately result in such packaging decisions impeding flexibility in commodity purchasing decisions and possibly resulting in higher costs to the consumer.[40] Also, the inability to obtain preprinted labels may force a producer to inventory a product (incurring additional storage costs), to purchase new labeling equipment, or to purchase additional inputs from a particular country simply to meet labeling requirements.[41]

Intangible costs may also arise in other situations. A company may desire to put a "Made in USA" label on a product for commercial or marketing reasons but to comply with the standard may have to refrain from using lower cost imported inputs. Many domestic manufacturers processing imported inputs prefer not to mark a foreign country of origin on their product. While a company may add substantial value to the imported inputs in its U.S. finishing operations, consumer confusion may result from the juxtaposition of a U.S.-union label with a foreign origin marking.[42] Some companies may prefer to not mark a foreign

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[38] Estimated by the National Highway Traffic Safety Administration, U.S. Department of Transportation.

[39] See, for example, statements of Allen Matthys, vice president, technical regulatory affairs, National Food Processors Association, transcript of hearing, pp. 236-237, and Marti Morfitt, vice president, Green Giant Brands, The Pillsbury Co., transcript of hearing, pp. 254-255.

[40] Ibid.

[41] Several companies stated labels must be ordered in advance of actual processing; therefore changes in origin for commercial reasons are limited by label inventories. See, for example, statements of Tom Butler, manager, processing apple division, Michigan Agricultural Cooperative Marketing Association, transcript of hearing, pp. 207-214, and Marti Morfitt, vice president, Green Giant Brands, The Pillsbury Co., transcript of hearing, p. 230. Also see Processed Apples Institute, Inc., written submission to the USITC, Apr. 25, 1996, p. 2.

[42] In this regard, country-of-origin marking also would not reflect the true value of domestic manufacture. For example, see, statements of Charles Hansen, chairman of the board, president and CEO, Pillowtex Corp., transcript of hearing, pp. 187-188; Frank Schapiro, senior partner, Demand Factors, Inc., on behalf of Crafted with Pride in U.S.A. Council, Inc., transcript of hearing, p. 195; and Daniel Kral, president, Natural Feathers & Textiles, Inc., transcript of

(continued...)

country of origin[43] as it may diminish the value of a brand name associated with a U.S. manufacturer by purchasers who prefer domestic products. A few companies cited the conflict between the need to mark "Made in USA" for export and the inability to do so for domestic sales, which may force a domestic producer to maintain and incur the cost of duplicate product inventories and packaging—one for domestic sales and one for export sales. One company estimated the cost of maintaining separate inventories, packaging changes, and additional bookkeeping (overhead) at $9 million in the first year and then more than $4.5 million annually.[44] At the same time, the company may be placed at a competitive disadvantage vis-a-vis foreign producers who do not incur such costs. Finally, several other companies stated that their marking-related compliance costs increase only when the marking rules change and longstanding practices have to be adjusted.[45]

Industry Concerns Regarding Foreign Country-of-Origin Marking

Companies representing 78 percent[46] of survey respondents indicated they have no problems or concerns with country-of-origin marking requirements of other nations. Of the 22 percent of survey respondents that did indicate problems, the lack of harmonization between U.S. and foreign regulations, the lack of harmonization among various foreign regulations, and delays at the border were most often cited as affecting their company's exporting operations (table 4-7). Most of the concerns regarding lack of harmonization between U.S. and foreign rules of origin focused on the corresponding need to establish separate production or marking lines for exports to different countries, or to repackage and relabel goods when selling in certain foreign markets (e.g., Canada or Mexico). One reason for the lack of harmonization stems from differences among nations in determinations of substantial transformation. A U.S. company with offshore manufacturing operations might mark one way for purposes of importing into the United States, but be forced to mark the same goods with a different country of origin for shipment to a third country.

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[42](...continued)
hearing, p. 200.

[43] In this regard, see statements of Charles Mercer, secretary-treasurer, Union Label & Service Trades Department, AFL-CIO, transcript of hearing, pp. 27-28, and Robin Lanier, vice president, international trade & environment, International Mass Retail Association, transcript of hearing, pp. 28 and 52. Also see Ablondi, Foster, Sobin & Davidow, P.C. on behalf of The Stanley Works, posthearing submission to the USITC, Apr. 25, 1996, pp. 5-7.

[44] Ablondi, Foster, Sobin & Davidow, P.C. on behalf of The Stanley Works, posthearing brief to the USITC, Apr. 25, 1996, pp. 18. These annual costs of $4.5 million would represent approximately 0.6 percent of 1995 annual net sales for the company's consumer tools segment as calculated from the company's 1995 annual report.

[45] See, for example, Weldbend Corp., written submission to the USITC, Apr. 25, 1996, p. 2. Also see American Institute for International Steel, written submission to the USITC, Apr. 24, 1996, p. 2

[46] 320 of 410 responses to this question.

Table 4-7
Specific problems U.S. companies have encountered with foreign country-of-origin marking, by type of problems and by sectors

Problem encountered	Sector[1]						
	Agriculture	Chemicals	Metals & metal products	Machinery	Electronics	Textiles	Overall
	Percent of responses						
Lack of harmonization: Between U.S. and foreign regulations	29	42	14	25	34	30	25
Among various foreign regulations	13	17	15	17	13	17	15
Delays at the border	4	17	18	25	6	26	14
Market access difficulties	13	8	8	8	6	17	10
Lack of transparency in foreign regulations for products exported from the United States	18	17	7	8	3	0	9
Remarking of goods	11	0	10	8	6	4	8
Extra duties	7	0	11	8	3	4	7
Other	4	0	17	0	28	0	12
	Number of responses						
Survey	45	12	84	12	32	23	208

[1] See footnote 1 in table 4-2 for description of sector products.

Source: Based on telephone surveys conducted by Commission staff.

Benefits to Industry of Country-of-Origin Marking

Companies identified a variety of benefits they gain from country-of-origin marking. When a company purchases goods, country-of-origin markings may enhance its ability to verify both the imported goods and the paperwork related to supplier accountability and liability at a relatively insignificant cost. Where there is no direct link between the U.S. purchaser and the foreign manufacturer, origin markings may provide greater information on quality and safety to the U.S. buyer and assist in business decision-making.[47] About 10 companies that responded to the survey stated that country-of-origin markings improved their ability to track imported components and enables them to track foreign content so they may comply with their customers' buy-domestic requirements.[48] These companies also claimed that country-of-origin markings allow Customs to track and report U.S. imports more accurately, thereby providing more accurate commercial intelligence to the business community, enabling Customs to better enforce the country's trade laws.[49] A few domestic manufacturers responding to the Commission's telephone survey indicated that although country-of-origin markings on inputs are not important for them directly, "Made in USA" marking may provide indirect benefits by transmitting information to the company's labor union that the company is supporting the domestic economy and preserving domestic jobs.

In contrast, certain companies have suggested a marking requirement may be inappropriate or unnecessary for at least some types of intermediate products.[50] Many manufacturing companies purchase raw material inputs on the basis of industry specifications that were

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[47] One executive stated that markings help distinguish between high quality and lower quality products which may be out of tolerance, exhibit variations in tolerances, have a shorter useful life, and fail more easily; such markings also have product liability implications because they help a purchaser identify the manufacturer of a defective product, allowing that purchaser to differentiate among suppliers. In opposing changes to the current marking regulations, some companies contend that marking is becoming more important given the trends toward globalized procurement and the liberalization of international trade, because consumers can no longer make assumptions regarding a product's origin, and must rely on appropriate non-deceptive origin disclosure for determining quality of a good. See, for example, Harris & Ellsworth, on behalf of the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, posthearing submission to the USITC, Apr. 25, 1996, pp. 2-3, and Squire, Sanders & Dempsey, on behalf of the United States Cutting Tool Institute, written submission to the USITC, Apr. 25, 1996, pp. 3-5.

[48] "Buy-America" provisions are included in many procurement regulations of agencies of the Federal and State governments, and local municipalities.

[49] Several companies stated that the marking law assists Customs by providing a valuable tool for inspection purposes and enhancing that agency's ability to track unfairly-traded imports, enforcing existing antidumping and countervailing duty orders, and collecting the duties owed. See for example, Micron Technology Inc., written submission to the USITC, Apr. 25, 1996, p. 3.

[50] For example, fungible commodities in bulk, including fertilizers, some bulk chemicals, and petroleum do not require country-of-origin markings. The Semiconductor Industry Association and several others stated their consumers (manufacturing companies) generally know where the devices are manufactured before they purchase and such devices together with the manufacturer's production process control systems are pre-qualified. See Semiconductor Industry Association, posthearing submission to the USITC, Apr. 25, 1996, p. 3.

developed over time in conjunction with standards testing bodies; the specifications and designated end-use are more important as indicators of quality than a country-of-origin marking. Other companies have developed longstanding relationships with their foreign suppliers, including "just-in-time" supply relationships. In this instance, the customer comes to rely on the supplier's quality assurance program and the supplier's ability of timely delivery at the agreed price, and country-of-origin markings may impart little or no useful information to such an industrial consumer. One company has also stated that the United States has implemented consumer protection measures that are more efficient than country-of-origin marking requirements.[51]

Respondents to the Commission's survey were fairly evenly split in their opinions as to whether a good's origin had any influence on the purchasing decisions of their customers. Of the 410 responses to this question in the Commission telephone survey, 54 percent stated that the country of origin is "not important" in their customers purchasing decisions. This includes products for which there is limited or no U.S. production, or for which the price, company name, brand name, or trademark may be considered more important than the country of origin.[52] The share of respondents indicating that the country of origin did have some influence on customer behavior was equally split in their responses, with 23 percent stating that country-of-origin marks are "very important" and another 23 percent categorizing country-of-origin markings as "somewhat important."

Customers, including domestic manufacturers, note that country-of-origin marking conveys useful information about the product regarding product liability issues or conditions of the product's production. In general, marking also allows consumers to choose whether or not to purchase the product because they may disagree with the policies of the foreign government, or they may wish to support U.S. production and/or domestic labor.

U.S. manufacturers perceiving benefits indicated that most of the value they derive from country-of-origin markings flows from the ability of their consumers to choose between the U.S. products and imported products,[53] and that markings provide a basis for determining the quality of materials, workmanship, or service (table 4-8).

Most companies who mark their goods "Made in USA" do so because of customer perceived preferences for domestic products, although such value cannot be readily measured (see

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[51] Neville Peterson & Williams and International Business-Government Counsellors, Inc., on behalf of Xerox Corp., written submission to the USITC, Mar. 27, 1996, p. 9.

[52] These product attributes are cited by about three-quarters of the companies responding that customer purchasing preferences are not influenced by the origin of the good.

[53] For a discussion of company reliance on country-of-origin marking rules to enable its customers to distinguish between its products and imported products, see Mayer, Brown & Platt on behalf of Vaughan & Bushnell, posthearing submission to the USITC, Apr. 25, 1996, pp. 2-3. For a discussion of brand loyalty, see, for example, Hitchiner Manufacturing Co., Inc., posthearing submission to the USITC, Apr. 22, 1996, pp. 2-3.

Table 4-8
Types of benefits companies report they receive from country-of-origin marking requirements: U.S. companies' identification of benefits, by major type of benefits and by sectors

Benefit	Sector[1]						
	Agriculture	Chemicals	Metals & metal products	Machinery	Electronics	Textiles	Overall
	Percent of responses						
Allows consumers to choose between the U.S. product and imported product	28	50	22	23	36	30	26
Basis for: Determining quality of materials, workmanship, or service	25	0	19	23	16	20	21
Establishing information on conditions of production	12	0	6	10	0	7	8
Price comparisons	15	17	16	17	0	9	14
Preserves domestic jobs	8	0	16	13	4	18	12
Supports local economy	5	0	15	10	0	14	10
Other	6	33	7	3	44	2	8
	Number of responses						
Survey	156	6	174	30	25	56	447

[1] See footnote 1 in table 4-2 for description of sector products.

Source: Compiled from data from telephone interviews conducted by Commission staff.

related discussion in chapter 5).[54] When asked if they mark their products with "Made in USA" labeling, 93 percent[55] of the U.S. companies responding affirmatively indicated that they benefited from doing so. These companies indicated most often that they are responding to preferences by their retail and wholesale customers to distinguish their goods'

[54] In response to industry concerns, the FTC is examining its threshold for allowing the use of "Made in USA" marking to determine whether to alter its current standard. Although differing views were expressed in the Commission's public hearing regarding customer awareness of the origin of a good and associated consumer welfare of such markings, the fact remains that companies mark "Made in USA" when possible, an implicit signal that it has value.

[55] 128 of the 153 companies that responded to this question.

superior quality of materials, workmanship, or service from imported products, and are responding to customers' brand loyalty for a company's product or for domestic products in general.[56] Also, some companies indicated that voluntary marking of "Made in USA" makes it easier to meet "buy domestic" preferences of retailers and governmental bodies; country-of-origin markings assist in tracking and excluding foreign supplied components when they participate in these programs (table 4-9).

However, "Made in USA" marking does not always allow the U.S. company to achieve a greater sales volume or higher prices. Only a small share of companies stated they could achieve an increase in unit sales (9 percent) and achieve higher unit sales prices (5 percent) by using "Made in USA" labeling (table 4-9). Several groups pointed out that costs associated with country-of-origin marking are not always returned to the manufacturer in the form of higher profits; other factors are more important in setting prices. Similarly, consumers are not thought to pay a penalty in the form of higher prices[57] because of the small share such costs represent.

Suggestions By Industry and Consumers For Modifying Existing Practices

Parties that testified or submitted written statements to the Commission expressed a wide variety of views on marking. The views expressed vary widely among companies and consumers; however, they may be generalized as follows:

With regard to section 304 of the Tariff Act of 1930 (the principal U.S. statute governing the marking of country of origin on imports):

- Keep section 304 of the Tariff Act of 1930 as it is.[58]
- Repeal section 304 of the Tariff Act of 1930, or limit the scope of section 304 of the Tariff Act of 1930 to imports put up for retail sale (i.e., consumer goods), or limit the scope of section 304 of the Tariff Act of 1930 to specific import-sensitive industries.

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[56] In this regard, several industry executives stated that domestic purchasers of hand tools and golf clubs have a preference for the U.S.-made product. For example, see, statements of Thomas Mahoney, vice president, The Stanley Works, transcript of hearing, p. 158; Dan Craighead, vice president international, Snap-on Inc., transcript of hearing, p. 161; George Sherman, president and CEO, Danaher Corp., transcript of hearing, p. 168; and Mark King, vice president of sales, Taylor Made Golf Co., transcript of hearing, p. 270. For a discussion of why companies advertise "Made in USA," see, for example, Mayer, Brown & Platt, on behalf of Vaughan & Bushnell, posthearing submission to the USITC, Apr. 25, 1996, pp. 12-14.

[57] See, for example, Robert Swift, executive director, Crafted with Pride in USA Council, Inc. "Additional Information for USITC: 4-10-96 Hearings," submission to the USITC., pp. 1-2.

[58] This may result from benefits the company derives from the way in which substantial transformation affects its imports, the current administration of the program by Customs, or both.

Table 4-9
Benefits companies identified they receive from marking with "Made in USA" labeling: U.S. companies' identification of benefits, by type of benefits and by sectors

Benefit	Sector[1]						
	Agriculture	Chemicals	Metals & metal products	Machinery	Electronics	Textiles	Overall
	Percent of responses						
Preference by retail customer	21	0	17	25	31	25	21
Preference by wholesale customer	13	0	17	29	25	20	18
Brand loyalty for domestic products	13	0	17	17	3	16	14
Designates superior quality of material, work-manship, or service	10	33	14	4	14	5	11
Increased unit sales	13	0	10	8	6	4	9
Easier to meet "Buy America" preferences of government agencies	2	0	11	13	0	7	8
Increased unit prices	4	0	6	4	6	4	5
Other benefits	8	67	3	0	6	15	6
None -- no benefits	17	0	6	0	0	4	8
	Number of responses						
Survey	48	3	175	24	36	55	341

[1] See footnote 1 in table 4-2 for description of sector products.

Source: Compiled from data from telephone interviews conducted by Commission staff.

- ❑ Modify 19 CFR 102 Marking Rules for NAFTA goods to conform with section 304 and to clarify instances where the change-in-tariff classification (CTC) principle, as reflected therein, does not consider significant value-added (substantial transformation) by operations in the United States.
- ❑ Repeal 19 CFR 102 Marking Rules for NAFTA goods.
- ❑ Improve Customs regulations and practices.
- ❑ Strengthen Customs enforcement of marking laws (reflecting the view that there are too many violations).
- ❑ Do not implement 19 CFR 102 Marking Rules for all imports before WTO harmonization of rules of origin exercise is completed.
- ❑ Harmonize section 304 with FDA marking provisions.

With regard to the FTC:

- ❑ Harmonize the FTC standard for "Made in USA" with section 304, and base the FTC standard on last substantial transformation test.
- ❑ Maintain the FTC standard for unqualified "Made in USA"claims as is.
- ❑ Change the FTC standard for "Made in USA" to include consideration of significant value-added to products through U.S. operations.
- ❑ Harmonize the FTC standard for "Made in USA" with section 334[59] of the URAA.

Other laws:

- ❑ Repeal the American Automobile Labeling Act or modify the methodology used to determine origin shares under this law.

Aside from the categories listed above, interested parties have suggested several areas where changes to country-of-origin laws would affect select industries or require modification of Customs regulations. At the same time, proposed changes would not appear to adversely affect the ultimate purchaser. (Areas of recommendation, as well as proposals for minimizing commercial burdens, are listed in appendix F.) Changing existing laws or regulations after firms have implemented compliance measures, however, will sometimes result in some companies being disadvantaged, while others may gain an advantage. For example, different companies in the hand tool[60] industry contend that U.S. jobs and investment could be moved offshore if current Customs decisions are changed and also if they are not changed. The problems confronting the textile home furnishings industry due to changes in the rules of origin contained in section 334 of the URAA (effective July 1, 1996)[61] and issues of concern to various industries regarding 19 CFR 102 Marking Rules for NAFTA pose similar implications.

With regard to rules of origin, several interested parties argued that delaying unilateral steps by the United States to establish new U.S. origin rules could avoid the potential requirement for industries to face multiple near-term changes to new rules pending the results of the WTO/WCO harmonization effort.[62] Another interested party asserted that many of the issues

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[59] Pursuant to section 334 of the URAA, Customs has determined that the country of origin of certain textile articles, such as comforters, handkerchiefs, bed linens, scarves, and bandannas, will be where the fabric was made, not where these articles are assembled. Previously, assembly (i.e., sewing the pieces together with or without adding trim) of these items in the United States allowed these items to be marked as made in the United States, but now they must be marked as a product of the foreign country in which the fabric was formed. See section on Textiles and Apparel in chapter 6 of this report for further detail.

[60] See section on Hand Tools in chapter 6.

[61] See section on Textiles and Apparel in chapter 6.

[62] Statement of Matthew McGrath, Barnes, Richardson & Colburn, on behalf of the Pharmaceutical Research and Manufacturers of America, transcript of hearing, pp. 237-245, and statement of Lesile G. Sarasin, executive vice president and staff counsel, American Frozen Food

(continued...)

that have developed with country-of-origin marking in the United States may still remain even after WTO harmonization of rules of origin.[63] Even if substantial transformation issues are codified into rules that are predictable and transparent, as long as marking remains a requirement for many goods, particularly inputs, marking issues will not be eliminated.

Some industries argue that marking issues may be best addressed by exempting their products from marking. In this regard, some of the proposed legislation before Congress may alleviate certain industries from marking burdens and aid their international competitiveness. The disadvantage to such an approach is that such legislation may create more administrative burdens by expanding the number of Customs regulations. Also, because companies possess different cost structures, a change in regulations may act to alter the cost-competitiveness of firms within domestic industries.

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[62](...continued)
Institute, transcript of hearing, pp. 214-221.

[63] Hogan & Hartson, on behalf of The Pillsbury Corp. posthearing submission to the USITC, Apr. 25, 1996, p. 16.

CHAPTER 5
Consumer Perspectives

Existing U.S. country-of-origin marking requirements were enacted for the purpose of providing information to the consumer. Therefore, it is important to understand consumer perceptions and associated purchasing behavior related to the origin of products when considering the benefit of marking regulations. Unfortunately, the psychology of such perceptions and behavior varies greatly among consumers and does not lend itself to simple quantification. This chapter contains a review of research and studies conducted with respect to consumer attitudes toward country-of-origin marking, and identifies some common themes that emerge from such research.

Review of Research

Since 1965, more than 150 authors[1] have contributed to the field of country-of-origin research as it relates to consumer preference.[2] Most of this work has been conducted by academic and industry researchers, with some contributions by government and consumer groups.

The central hypothesis of most academic research on the subject is that the country of manufacture of a product can have an effect on consumer purchase decisions. Indeed, most published studies find that country stereotypes do exist and may have an impact on product evaluations and purchase decisions. However, the majority of studies are descriptive rather than quantitative in nature. A number of authors have emphasized the need for empirical research on the combined effects of country of origin and brand name.[3] The specific role that country of origin plays in the consumer decision-making process is not well understood. Researchers have yet to arrive at any consensus regarding this role; for example, whether it is a product attribute in and of itself, or a proxy variable which actively influences consumer decision-making only when other information is lacking.[4]

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[1] As reported in Gerald Haübl and Dr. Gunter Schweiger, "The Effects of Country of Origin and Brand Name on Consumers' Evaluations of a New Automobile: A Structural Model," unpublished paper, University of Alberta, Faculty of Business, Edmonton, Canada, Apr. 30, 1996, p. 2.

[2] A list of references is found in appendix G.

[3] Haübl and Schweiger, pp. 2-4.

[4] L. Jean Harrison-Walker, "The Relative Effects of National Stereotype and Advertising Information on the Selection of a Service Provider: An Empirical Study," *Journal of Services Marketing*, vol. 9, No. 1, 1995, p. 48.

Some studies consider country of origin an "extrinsic cue," a piece of information that accompanies, but is not really part of the product, similar to price, warranty, and brand.[5] Specifying the country of origin allows the consumer to infer quality, thus simplifying the consumer's decision-making process, and often is used when product attributes are not readily apparent, or because product attributes may be hidden by packaging, design, or other factors.[6]

Both country of origin and brand names are associated with numerous product attributes by most consumers.[7] Such information leads to increased confidence in purchasing decisions and reduces the amount of time spent reaching a decision.[8] While the product attributes of country of origin and brand names each have separate effects on consumers' decision processes, consumers may use them interactively when making a purchasing decision.[9] In almost every situation, the consumer will make inferences based on personal preconceptions. Research indicates that most U.S. consumers prefer to buy U.S.-made versions of a product rather than imports, when important features such as price and quality are comparable. In a widely cited study by the International Mass Retailers Association (IMRA), 84 percent of respondents within the United States indicated a preference for U.S. products over foreign products. Indeed, it appears that a significant number of consumers consider country of origin to some degree when making purchasing decisions. The same study showed that a total of 78 percent of respondents claimed they always (34 percent) or sometimes (44 percent) try to determine in what country a product was made before purchasing it.[10]

However, consumers often believe that certain cues, such as brand name, are indicative of other product characteristics, such as the country of origin, or vice versa. For example, Ford may suggest "American-made," while Honda may suggest "Japanese-made." A problem arises in the situation of hybrid or bi-national products (one that is manufactured in one country and branded by a firm headquartered in another) that are becoming increasingly prevalent in the global marketplace, because the country of origin can no longer be accurately inferred from brand name. Research indicates that consumers are likely to incorrectly ascribe country of origin, based on perceptions associated with brand names.[11]

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[5] Donald F. Cox, "The Measurement of Information Value: A Study in Consumer Decision Making," *Emerging Concepts in Marketing*, American Marketing Association, Chicago, 1962; Jerry C. Olsen and Jacob Jacoby, "Cue Utilization in the Quality Perception Process," in *Proceedings of the Third Annual Conference of the Association for Consumer Research*, Association for Consumer Research, Iowa City, 1972.

[6] Gerald Haübl, Professor of Marketing, University of Alberta, Faculty of Business, Edmonton, Canada, telephone interview with USITC staff, May 14, 1996.

[7] Brand names are developed through heavy advertising. As such, strong images are built around them and they are usually product specific. Haübl, telephone interview with USITC staff, May 14, 1996.

[8] Haübl, telephone interview with USITC staff, May 14, 1996.

[9] Richard Ettenson and Gary Gaeth. "Consumer Perceptions of Hybrid (Bi-National) Products," *The Journal of Consumer Marketing*, vol. 8, No. 4, (Fall 1991), p. 14.

[10] International Mass Retail Association and the Gallup Organization, "Consumer Attitudes Towards Product Sourcing," May 1994.

[11] Ettenson and Gaeth, p. 14.

In addition to the academic research, a number of industry groups have explored consumer perception and behavior in relation to country-of-origin marking. Most of these studies have been industry specific, and many were conducted just in advance of the FTC's "Made in USA" workshop held in March 1996; therefore, these studies tend to focus on country-of-origin marking for domestically produced goods. It is difficult to draw firm conclusions from these studies about the value that country-of-origin markings provide for consumers, because the goals, questions asked, audiences reached, and survey models used vary greatly. These surveys often pose similar questions to respondents, but the responses can vary widely depending on the structure of the question, and whether possible answers are offered.[12]

Of the industries focused on in this study, only the frozen vegetables, hand tools, and textiles and apparel industries have conducted or commissioned formal surveys about country of origin and consumer preference. Formal research by consumer groups is limited, the sole exception being the National Consumer League, which conducted its study in response to the FTC's plans to review "Made in USA" marking requirements. Many groups, including Made in USA Foundation, the AFL-CIO, and the Crafted with Pride in U.S.A. Council, use survey results of other studies such as the IMRA study to support their positions.[13] In some cases, the same study, especially the IMRA survey, has been cited to support opposing views regarding the importance of country-of-origin marking to consumers.[14] A synopsis of the major surveys conducted by industry trade associations, companies, and consumer groups to test consumer perception and habits in relation to country of origin is presented in table 5-1.

Commission Survey Results

Commission staff contacted a number of consumer groups for this investigation, including the Consumer Federation of America (Washington, DC), Public Citizen (Washington, DC), Consumers Digest (Chicago, IL), and The Consumers Union (Yonkers, NY).[15] Conversations with representatives indicated that country-of-origin marking issues related to consumer behavior are not followed closely by their organizations. Staff has also contacted Consumers for World Trade, the Made in USA Foundation, and the National Consumers League, although little information was obtained beyond testimony and submissions that are already part of the record. With the exception of the National Consumers League, the Commission is unaware of any consumer group that has conducted independent research about country-of-origin marking issues and consumer preferences. Absent formal survey data, the Commission reviewed the general positions of these consumer and labor groups on the effects of country-of-origin markings to consumers. A summary of these groups' positions is presented in table 5-2.

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[12] Some argue that the FTC would be ill-advised to alter its current policies on country-of-origin marking, which have been designed to protect and inform the consumer, because the existing consumer perception data on this issue are so inconclusive. The Dynacraft bicycle representative made this point during the "Made in USA" workshop at the FTC, Mar. 26, 1996.

[13] The Crafted with Pride in the USA Council has also initiated studies of their own.

[14] Charles Mercer, Joel D. Joseph, and Robin W. Lanier, transcript of hearing, pp. 29, 35-37, and 48-51.

[15] The Consumers Union (Yonkers, NY) did not reply.

Table 5-1
Summary of major studies on country of origin and consumer preferences

Sponsor	Study	Target audience	Study goals	Methodology	Highlights of study results[1]
Industry: General					
International Mass Retailers Association (Gallup)	*Consumer Attitudes Toward Product Sourcing Study* (May 1994)	Consumers who identified themselves as the primary purchaser of clothing and household goods	Assist membership in understanding how the consumer views imported products, U.S. laws and regulations, and how these views influence purchase decisions	Phone interviews with a national random sample of 1,003 U.S. adults	Respondents indicate a preference for U.S.-made products over foreign products, but in practice they often pay minimal attention to where the product was produced. When asked to rate the importance of five factors that influence purchasing decisions, the least important factor was country of origin (27 percent considered it the most important factor); quality, product features, price, and warranty were deemed more important. Sixty-four percent of respondents say they will buy a U.S. product over a comparable foreign product even if it is 10 percent more expensive, 19 percent strongly agree they will spend the extra amount in order to buy U.S.-made goods, and another 45 percent agree moderately. For 70 percent of the respondents, country of origin is important for some products and not for others. Cars and clothing receive the most scrutiny for country of origin. Younger people look for country of origin much less frequently than older people.
Chain Store Age (Leo J. Shapiro & Associates)	*General Merchandise Trends* (Jan. 1988)	Consumers who identified themselves as head of household	To determine what average U.S. consumers believe about country of origin and purchasing preferences -- U.S. made or imports. How advertising affects purchasing habits.	Nationwide random telephone survey with 902 people during June and September 1987.	Of those that looked for country of origin when purchasing (68.7 percent), the main reason cited is to determine quality. Ten percent checked country of origin to make sure they were buying U.S.-made products. Apparel is the product area most scrutinized for country of origin (40 percent), followed by electronics and cars. The main advantage cited for purchasing U.S.-made goods (47 percent) was that it meant more jobs for U.S. workers.

Table continued on next page.

Sponsor	Study	Target audience	Study goals	Methodology	Highlights of study results[1]
Industry: Specific					
Collectible plates: BGE Ltd.	*"Made in USA" Opinion Study* (Feb. 1996)	Collectible plate consumers	To determine consumer opinion about country-of-origin marking of collectible plates.	Phone interviews with randomly selected BGE customers.	Sixty-two percent of respondents said that they make their decisions about whether to buy a car based on the country of origin, 49 percent said they make their decision about clothing purchases based on country of origin. Only 26 percent of respondents buy collectible plates based on country of origin.
Footwear: Goodwin, Proctor, and Hoar/Wind Assoc./Data Development Corp.	*Consumer Perceptions and Understanding of "Made in USA" in the Context of New Balance Athletic Shoes* (1995)	Adult buyers or potential buyers of athletic shoes for running, walking or court sports such as tennis, racquetball, and handball	To reveal consumer perception of "Made in USA," assess whether they believe it means 100 percent domestic, and determine relative importance of country of origin in buying athletic shoes.	Random sample of 207 respondents selected in malls of three cities in each of the four census regions.	Factors that ranked most important in athletic shoe purchasing decisions were comfort and fit, durability, design and style, and price. Country of origin ranked much lower. Majority of respondents believe that the "Made in USA" label does not connote that the raw materials or components are made in USA, but that assembly of the athletic shoe does occur in the U.S., and that this has positive effects for the U.S. economy and labor force.
Frozen Vegetables: Field Research Corporation	*Frozen Vegetable Mixtures Study* (Feb. 1995)	Purchasers of frozen vegetables	To determine why consumers purchase frozen vegetable products.	Random phone survey of 601 frozen vegetable consumers in California.	While multiple reasons were often cited to explain frozen vegetable purchasing decisions country of origin was rarely mentioned. Less than 1 percent (only 2 of the 601 grocery shoppers surveyed) mentioned anything about where vegetables were grown or processed. Other reasons that emerged more important to shoppers were brand name (26.6 percent); taste, freshness (16 percent); experience or familiarity (12.8 percent); or what the packages/vegetables look like (11 percent).

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Sponsor	Study	Target audience	Study goals	Methodology	Highlights of study results[1]
Hand Tools: Danaher Tool Group	*Made in USA Hand Tool Opinion Survey* (Feb. 1996)	Persons involved in the mechanics hand tool market who identified themselves as either a professional, a serious "do-it yourselfer," or a casual "do it yourselfer"	To determine hand tool consumers' perceptions of the "Made in USA" label and the importance of being able to select U.S.-made hand tools.	National telephone survey conducted with 600 people.	The main reason cited for buying certain brands was warranty. When asked for the important factors when buying hand tools in general, warranty still ranked as the main reason, followed closely by country of origin, price, reputation of store, and brand name. Among the 443 respondents who said that a majority of their hand tools are U.S.-made, 41 percent said they buy American to support the U.S. economy and American labor. Other key reasons for buying American hand tools are quality, strength and durability, and warranty. When asked what percentage of a hand tool they assume is made in the U.S. when they see a "Made In USA" label, 53 percent said 100 percent. Twenty-seven percent said 50-99 percent domestic content. Survey results show that the "Made in USA" label is more important to these respondents when buying hand tools than when buying other products, such as cars, clothing or home electronics.
Apparel/ Textiles: Crafted with Pride in U.S.A. Council	*Impact of Country of Origin Information: A Review of A Consumer Tracing Survey of Attitudes and Behavior Associated with Clothing and Textile Products* (1985-1993)	67percent women, 33 percent men, 18 years and older	To examine consumers views of apparel and home textiles over a time span of 8 years.	Series of 31 national random phone surveys; (1,000 persons each time) during major shopping seasons.	Just under half of respondents reported having looked for the "Made in USA" label while shopping for clothing, and the majority of those reported buying U.S.-made clothing. Most consumers 35 years and older (54 percent) look actively for U.S. made clothing. Shoppers between 18 and 24 years old actively seek U.S.-made clothing less frequently (36 percent).

Table continued on next page.

Sponsor	Study	Target audience	Study goals	Methodology	Highlights of study results[1]
Apparel: Good Housekeeping Institute	*Clothing for the Way Women Live* (1988)	Women between ages 18 and 65	To help *Good Housekeeping* editors and advertisers understand perceptions of apparel products.	500 telephone interviews using a national random sample.	This study found that women rate U.S.-made clothing as being of higher quality than clothing from Europe or the Far East.
Consumer groups					
National Consumers League (NCL)	*Made in USA: What Does It Mean to You?* (Dec. 1995)	Consumers: NCL membership of 4,997	To explore consumer perception of the Made in USA label, its definition, and activity in relation to the term.	Survey distributed via quarterly newsletter; 115 responses, or return of 2.3 percent.	Asked what percentage of U.S. parts they assumed when they see "Made in USA" labels, 45 percent of respondents said 100 percent and 54 percent stated a minimum ranging between 90 and 100 percent. Asked what percentage of U.S. labor they assumed when they see a "Made in USA" label, 58 percent said a minimum of 100 percent. 66 percent said a minimum between 90 and 100 percent. Consumers are sometimes confused by the meaning of the "Made in USA" label, and often doubt its validity. A majority of respondents said that the "Made in USA" identifier does not offer sufficient information. However, a vast majority said they thought the identifier should be retained. Survey results suggest confidence levels in the reliability of the "Made in USA" label vary according to the complexity and type of product.
Government					
Food and Drug Administration	*1978 Consumer Food Labeling Survey* (Oct. 1979)	Food consumers	To determine what information consumers look for on food labels.	In person interviews conducted with 1,374 food shoppers.	Country of origin is not among the factors consumers consider when making food purchasing decisions. About 75 percent of respondents said they pay any attention to food product labeling, but usually for ingredient information; and less frequently for nutritional information.

Table continued on next page.

Sponsor	Study	Target audience	Study goals	Methodology	Highlights of study results[1]
Federal Trade Commission	*Print Advertising Study* (1991)	Consumers	To explore consumer perceptions about "Made in USA" product labeling in a specific print ad.	In person interviews with 400 people using a mall-intercept survey method.	Survey showed that many consumers view "Made in USA" claims as representing products with high domestic content.
Federal Trade Commission	*Made in USA Study* (1996)	Consumers	Investigate consumer perceptions of the "Made in USA" label.	In person interviews with 1,500 men and women involved in a Copy Test and an Attitude Survey.	Asked what the "Made in USA" label means, 61 percent claimed it meant made in the United States, with no elaboration. Just 6 percent said this identifier meant the product was all made in the United States.
International Trade Commission	*Country-of-origin Markings Survey* (1996)	Industry representatives, trade associations, and resellers	Determine the costs and benefits country-of-origin markings present to industry and consumers.	Telephone survey soliciting industry views of the benefits accruing to their customers from origin marking.	Primary benefit of country-of-origin markings to customers is the ability to choose between domestic goods and imported goods. Such marking also provides a basis for determining the quality, workmanship, or service associated with a product.

[1] All studies had numerous findings. Those findings that pertain most closely to the issues examined in this investigation have been highlighted.

Source: Compiled by the staff of the U.S. International Trade Commission.

Table 5-2
Summary of other consumer and union groups' positions on country-of-origin marking

Organization	Position
	Consumer Groups
Consumers for World Trade (CWT)	Opposed to domestic-content measurements, country-of-origin rules, and Buy American laws, as they are trade distorting, misleading, and costly to consumers. Given the complexities in world trade and the globalization of production, it is virtually impossible for country-of-origin labels to inform consumers accurately about where a good was produced. Labeling products with a country of origin encourages a "Buy American" mind-set in consumers that places imports in a negative light, which contradicts U.S. commitments to trade expansion and liberalization.
Made in USA Foundation	Claims that American consumers have a strong preference for buying U.S.-made products, and is concerned that importers are exploiting this preference through misleading labeling and advertising; maintains that consumers seek to buy U.S. products to help the U.S. economy and protect U.S. jobs; says it is in the consumer's best interest to buy U.S. products for safety reasons and they are a better long-run value; higher prices may include the costs of consumer protection; environmental protection; safe, humane working conditions; and decent worker wages. Believes that the FTC's "all or virtually all" standard for "Made in USA" labeling should be diluted to allow products with a majority of domestic content to carry the "Made in USA" label.
	Labor Groups
AFL-CIO Union Label & Services Trades Department	Believes the "Made in USA" label has great value. In order to preserve the value of "Made in USA" labeling there must not be any dilution of the existing "all or virtually all" standard as upheld by the FTC. Buying U.S.-made products preserves U.S. jobs.
International Brotherhood of Teamsters	Current standard should be retained. The consumer appeal of the "Made in USA" label reflects support for U.S. jobs and industry, and also a belief that such a product is manufactured under domestic health and safety regulations and wage and hour standards. People avoid purchasing goods that could have been made by slave labor, child labor, or other types of oppressed labor.
United Auto Workers Union (UAW)	Globalization of production has not improved the working and living conditions in the U.S. or abroad. The UAW seeks to prevent the "Made in USA" claim from being associated with products that do not uphold the standards for U.S. production or the standard of living of U.S. workers.

Source: Compiled by the staff of the U.S. International Trade Commission from submissions to the ITC, FTC, and hearing testimony.

In the Commission's telephone survey for this investigation, firms, trade associations, and resellers were queried about their perceptions of the value that country-of-origin markings provide for consumers. Responses overall and within each broad industry sector (table 5-3), including agriculture, chemicals, minerals and metals, machinery, technological goods, and textiles and apparel, indicate that the principal perceived benefit is that country-of-origin marking allows consumers to choose between a U.S. product and an imported product. These respondents reported that the second most important benefit to consumers is that marking provides a basis for determining the quality of materials, workmanship, or service associated with a product.

Table 5-3
Benefits to retail consumers from U.S. country-of-origin marking requirements: U.S. companies' assessment, by sector, 1996

Benefit	Sector[1]						
	Agriculture	Chemicals	Metals & metal products	Machinery	Electronics	Textiles	Overall
	Percent of responses						
Allows choice between U.S. and imported product	29	38	18	23	27	33	24
Demonstrates material quality, workmanship or service	20	13	17	23	12	33	19
Basis for price comparison	13	0	13	9	5	0	11
Preserves domestic jobs	9	13	13	11	10	0	10
Supports local economy	7	13	13	11	7	0	10
Provides information on work conditions	11	13	8	9	5	11	9
Identifies likely source of product availability and replacement parts	5	0	11	11	7	22	8
Enhances labor's bargaining position	1	13	5	3	0	0	3
Other	5	0	3	0	27	0	5
	Number of responses						
Survey	174	8	190	35	41	9	457

[1] See footnote 1 in table 4-2 for description of sector products.

Source: Data compiled based on telephone interviews conducted by USITC staff.

Research Themes

While quantitative data about the consumer benefits of country-of-origin markings are limited, several themes do emerge from the existing research: (1) country-of-origin marking is perceived by many consumer groups and industry representatives as an important tool that enables consumers to make more educated purchasing decisions in line with their personal priorities and values; (2) country-of-origin marking is one of many factors, such as price, quality, and warranty, that consumers consider when making a purchasing decision; and (3) country-of-origin marking is more important in certain product areas than others.

Markings Provide Information For Educated Purchasing Decisions

Many groups claim that without clear, precise country-of-origin marking, consumers would be at a disadvantage because they would be unable to make informed choices. Moral and nationalistic reasons influence some consumers in their decisions to purchase products from one country or another. Industry representatives and consumer groups report that consumers sometimes base their purchase decision partly or wholly on country of origin, depending on perceptions of the country's international standing. Some consumers clearly decline to purchase foreign-made goods; others accept certain countries' offerings while rejecting others. Basically, purchasing decisions may correspond to noneconomic values, such as patriotism, human rights, and environmental preservation.[16]

Consumers may prefer to buy U.S. products on nationalistic grounds, for example, under the assumption that buying U.S.-made products helps support the U.S. labor force and in turn, helps the U.S. economy by keeping money and jobs at home. This argument is widely cited by unions[17] and also by the Made in USA Foundation.[18] In a study of hand tool purchasers conducted for the Danaher Corporation, supporting the U.S. economy and labor force was the main reason cited for purchasing U.S.-made hand tools (41 percent of respondents), followed by the belief that U.S.-made tools are better made in terms of materials (25 percent), and strength/durability (16 percent). Vaughan & Bushnell Manufacturing Company, a hand tools producer, cites the Danaher study in maintaining that country-of-origin markings play a critical role in hand tool purchasing decisions, because the markings enable consumers to identify imported products that are considered of lower quality.[19] The company notes that the use of flags or other images that symbolize the United States are potentially misleading to consumers, who might associate domestic brand names and American symbolism with domestic manufacturing. Vaughan & Bushnell contend that benefits of country-of-origin markings far outweigh the minimal costs to consumers and industry.[20]

Consumers reportedly may reject products from countries that are perceived to harbor values that are contrary to their beliefs. For example, some consumers may choose to boycott products from countries that host companies that are believed to use child or prison labor, pay employees unfairly low wages, or permit unsafe working conditions. A study conducted in November 1995 by Marymount University's Center for Ethical Concerns and the University's Department of Fashion Design and Merchandising, showed that consumers would avoid stores that sell goods known to be made in "sweatshops" and be more inclined to shop at stores working actively to prevent garment worker abuses. A majority of

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[16] For more information, see written submissions to the USITC by Squire, Sanders and Dempsey on behalf of the United States Cutting Tool Institute, Apr. 25, 1996, pp. 3-4; Hugh Rushing, executive vice president, Cookware Manufacturers Association, Apr. 29, 1996, p. 1; and Harris & Ellsworth on behalf of the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, Apr. 25, 1996, p. 2.

[17] Charles Mercer, secretary-treasurer, AFL-CIO Union Label and Services Department, transcript of hearing, pp. 27-33.

[18] Joel D. Joseph, chairman, Made in the USA Foundation, transcript of hearing, pp. 19-26.

[19] Mayer, Brown & Platt, on behalf of Vaughan & Bushnell Manufacturing Co., written submission to the USITC, Apr. 25, 1996, pp. 7-8.

[20] Ibid.

consumers (84 percent) said they would be willing to pay up to an extra $1 on a $20 garment (5 percent) if it were guaranteed to be made in a legitimate shop. In similar fashion, some consumers boycott products from countries that are reported to have poor human rights conditions or poor environmental records.[21]

Another issue that reportedly affects consumer choice is concern over health and safety; for example, some consumers seek to avoid fruit and vegetables imported from certain countries that may have been treated with harmful pesticides. The Natural Resources Defense Council urges U.S. consumers to buy domestically-grown rather than Latin American-grown produce, on the premise that the latter contains higher levels of pesticide residues.[22]

Country-of-origin marking issues have occasionally become politicized at the state level. For example, Florida has its own country-of-origin labeling law for produce[23] that requires stores to label produce bins with the country of origin. Representative Sonny Bono (R-44-CA) recently introduced national legislation called the "Imported Food Labeling Act" (H.R. 2602) that would require the country of origin to be disclosed on the bin or display where produce is sold. This bill has support among some organized farm groups in Florida, such as the Florida Fruit and Vegetable Association, who are concerned about the increased competition local farmers face from imported produce.[24]

Country of Origin is One of Many Factors Considered In Purchasing Decisions

Despite evidence suggesting that consumers often attach significant importance to country-of-origin marking, other studies suggest this factor is of lesser importance,[25] and is only one of many factors consumers consider when making purchasing decisions. Research indicates there are a wide variety of issues other than country of origin that affect consumer choice in retail purchases, including price, quality, warranty, product features, brand name, and the

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[21] A Scottish company decided to begin marking its products with the country of origin in an attempt to offer environmentally concerned customers a guarantee that certified wood products come from well-managed forests. *Scotland on Sunday*, "A Model for Sustainable Forestry," Aug. 21, 1994.

[22] Tests by the U.S. FDA show that residues of U.S. banned pesticides contaminate 5 percent of imported produce. In the early 1980s, 15 percent of beans and 13 percent of peppers imported from Mexico exceeded FDA thresholds for pesticide residues, roughly half the green coffee beans imported from Latin America contained residues of U.S. banned pesticides, and meat imported from Central America frequently contained excessive pesticide residues. Richard R. Tansey, Michael Hyman, Richard S. Jacobs, and Lynn Merrill, "Eradicating the Pesticide Problem in Latin America," *Business and Society Review* (Jan. 1995), p. 55.

[23] State of Florida, *Produce Labeling Act of 1979*, ss. 504.012.

[24] Paul Power, "Produce Labeling Law May Not Change Buyers' Habits," *Tampa Tribune*, Apr. 7, 1996, p. 6.

[25] Some survey results also indicate that country-of-origin marking is more important to older than to younger Americans. The series of surveys conducted by the Crafted With Pride in U.S.A. Council showed that 54 percent of Americans 35 years and older actively look for U.S.-made clothing when shopping, whereas 36 percent of those ages 18-34 reported doing so. The IMRA study arrived at a similar conclusion. Asked whether country of origin is an important factor in their purchasing decisions, only 19 percent of younger people (18-30 years old) say they "always" try to determine a product's country of origin. Fifty percent of people over 60 years of age, however, say they are "always" concerned about origin.

reputation of a company or store. For example, the IMRA study (table 5-1) found that while Americans indicate a preference for American products, in practice they often do not pay much attention (with a few exceptions noted later) to where the article was produced. When asked to rate the importance of five factors that influence their purchasing decisions, the least important factor among the five was the country of origin. Eighty-two percent rated the factor of "quality" as a "5," or as the most important; 57 percent gave the highest rating to "product features," and 53 percent gave that rating to each of the factors of "warranty" and "price." Just 27 percent assigned a rating of "5" to country of origin. It should be noted, however, that for certain products, the country of origin can be the determining factor in a purchasing decision.

The findings of a 1988 study[26] are consistent with the results of the 1994 IMRA study, concluding that consumers often use the country-of-origin label as an indicator of quality. Just 10 percent of the 1988 study respondents said they look for the product origin specially so they can "Buy American." The research also showed that in virtually every instance, consumers would prefer to buy American-made products in almost every product category, if the product meets their other standards, including quality and price.[27]

The survey by the National Consumers League (table 5-1) also seems to support the idea that other factors, such as price and quality, are more important considerations than country of origin. The respondents indicated that country-of-origin considerations come into play only after other factors are considered. When all other considerations (such as price and quality) are equal between a domestically produced and an imported product, the study says 87 percent of respondents would be inclined to purchase the product marked "Made in USA."

The survey conducted by the Crafted with Pride in U.S.A. Council, Inc., found that when consumers were asked for ratings as to what is important in clothing, factors such as fit, styling, and price rank at the top whereas country of origin and brand name rank much lower.[28] Nevertheless, the organization's literature cites research tests by two retailers[29] as indicating the positive perception Americans have of U.S.-made apparel; the research showed sales increases of 26 percent and 50 percent, respectively, for merchandise identified as U.S.-made over similarly styled and comparably priced imported products. Although style, fit and quality are the first factors considered when making clothing purchases, if these elements meet the customers' requirements, then country of origin may be used to make a final purchasing decision.

A study by Wind Associates/Data Development Corp. for New Balance concluded that country of origin (United States or other country) of raw materials and components, such as the sole or upper, is of no importance in consumers' decisions to buy any particular athletic

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[26] *Chain Store Age*, General Merchandise Trends, "East vs. West: What Americans Really Think About Imports," Jan. 1988, pp. 14-15.

[27] Ibid.

[28] Statement of Frank Schapiro, Demand Factors, on behalf of the Crafted With Pride in U.S.A. Council, Inc., transcript of hearing, p. 194.

[29] McAlpin's in Cincinnati, OH and Castner Knott in Nashville, TN.

shoe. The tests show that consumers were more concerned about comfort and fit, durability, design and style, price, and previous experience with the product.[30]

Representatives of the frozen vegetable industry also report that country of origin is one of the last things customers look for when purchasing frozen vegetables. Manufacturers claim that consumers are primarily interested in taste, price, nutritional information and ease of preparation; whether or not the contents match the picture on the label; and the consistency of the product from purchase to purchase. Consumers reportedly have not expressed an interest in receiving country-of-origin information on the label detailing the ingredients used in making frozen vegetable products. Some industry representatives have concluded, therefore, that the cost and burdens imposed on this industry are not justified by any appreciable benefit to the consumer.[31]

While steel producers note that the main benefit of country-of-origin marking for purchasers is the ability to trace products for safety and quality assessments, other factors often weigh in as more important. The American Wire Producers Association (AWPA) maintains that its members have indicated that customers in the wire industry, who are almost entirely industrial consumers, are more concerned with the identity and manufacturing practices of the U.S. wire drawer than of the origin of the wire.[32] The Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers reports that country-of-origin marking is essential for liability reasons, and underscored the need for stronger enforcement.[33] The American Pipe Fittings Manufacturers (APFA) notes that as long as producers are competitive on pricing, customers will greatly favor "Made in USA" products over foreign, and will shift purchases accordingly.[34]

Markings Are More Important for Certain Products Than Other Products

Various studies highlight the fact that consumers frequently look for the country-of-origin mark on certain products, and not so often for others. For example, the IMRA study notes that the two product areas receiving the most scrutiny for their country of origin are automobiles (54 percent of those surveyed) and clothing (51 percent). Thirty-one percent of those surveyed look for the country of origin when purchasing electronic products, 15 percent when buying small appliances, and 12 percent when buying tools.

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[30] For more details, see *Consumers' Perceptions and Understanding of "Made in USA" in the Context of New Balance Athletic Shoes*, Wind Associates and Data Development Corp., as prepared for the FTC's "Made in USA" Workshop, Mar. 26-27, 1996, "Made in USA Policy Comment," FTC File No. P894219. New Balance has been charged by the FTC with inaccurately labeling its athletic shoes "Made in USA." The company is fighting for the right to label its product as such, and the case is currently in litigation.

[31] Joint Industry Group, prehearing submission to the USITC, Mar. 28, 1996, p. 6.

[32] American Wire Producers Association, posthearing submission, Apr. 25, 1996.

[33] The Committee estimates that 40 percent of steel wire rope imports is not marked properly as required on their containers. For wire rope assemblies, manufactured from imported wire rope, the Committee believes violations occur on as many as 90 percent of the imports entering the United States. Statement of Jeffery Levin, Harris & Ellsworth, on behalf of the Committee of Domestic Wire Rope and Specialty Cable Manufacturers, transcript of hearing, pp. 105-106.

[34] American Pipe Fittings Manufacturers Inc., posthearing submission, Apr. 24, 1996.

When country of origin is considered among other purchasing factors, 40 percent of respondents in the 1988 *Chain Store Age* study said that clothing was the product area most scrutinized for country of origin (often as an indicator of quality), followed by electronics (12.8 percent), automobiles (9.6 percent), and home furnishings (3.8 percent). However, 22.1 percent of respondents in this survey did not answer this question.[35]

The Danaher study asks a similar question. Respondents were asked to rate products on a scale of 1 to 10, where 10 means country of origin is very important, and one signifies it is not important. Seventy percent of those surveyed rated hand tools with a "10," 60 percent gave cars a "10" rating, 49 percent gave clothing a "10," and 32 percent rated home electronics (TVS and stereos) a "10" as well.[36] However, when consumers were asked later for the main reason for buying the brands of hand tools they currently owned, warranty was mentioned most frequently (44 percent). That factor was followed by high-quality materials (19 percent), low price/affordable (16 percent), convenience of stores (16 percent), strength/durability (11 percent); "Made in USA" labeling was mentioned by only 1 percent of respondents when asked this question.

Products most consistently identified in all consumer surveys as being scrutinized for country-of-origin marking are automobiles, clothing, and electronics. Some surveys suggest that origin may be less important to consumers for products such as shoes, furniture, food, and toys.

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[35] *Chain Store Age*, pp. 13-14.

[36] Respondents could respond to more than 1 product.

CHAPTER 6
Industry Sector Analyses

This chapter contains examinations of marking problems, concerns, benefits, and costs for the producers and consumers in several specific industries. Included for analysis are the electronics, steel, pharmaceuticals, hand tools, frozen vegetables, automobiles and parts, textiles and apparel, and footwear industries.

Electronics

Principal finished goods in the electronics sector include computers, communications equipment, office machines, audio and video recorders and players, television receivers, and recorded media containing data, images, and sound. Among the major types of intermediate goods in the electronics industries are semiconductors, printed circuit boards, and a wide variety of subassemblies designed for use in most of the finished goods identified above, as well as capacitors, resistors, and other electronic components.

Industry Profile

Trade data 1995 (*billion dollars*):	
U.S. shipments	375.0
U.S. imports	170.0
U.S. exports	120.0
Apparent U.S. consumption	425.0
Import share of apparent U.S. consumption (*percent*)	40

Source: Compiled by USITC staff based on official statistics of the U.S. Department of Commerce.

Trends in Globalization

Over the past decade, electronics manufacturers have adopted an increasingly global approach to production and procurement decisions. As price competition in these industries has intensified, manufacturers have felt increasing pressure to identify low-cost sources of supply for standardized electronic components, such as printed circuit boards. Particularly in the case of computers and communications equipment, leading U.S.-headquartered manufacturers have shifted away from a vertically integrated business model in search of better ways to trim production costs through outside procurement of key electronic parts.

Specific Marking Requirements

During most of the electronics age, the impact of country-of-origin marking requirements on electronics producers has been limited by the high degree of geographical concentration of production and assembly in these industries. However, the purchasing of components in recent years has become global. Finished goods often are assembled from components produced in multiple countries. This has given rise to a new set of problems that has emerged for U.S. electronics firms. If subsequent processing in the United States does not result in substantial transformation, the good is considered an imported article. Section 304 of the Tariff Act of 1930 requires that, unless excepted, every imported article of foreign origin must be clearly labeled with its country of origin. Included in the category of items subject to strict marking rules are

printed circuit boards imported for assembly into finished computers and communications systems, products imported to undergo repairs, and items imported specifically for use in "field service" maintenance operations.[1]

Marking exceptions

The principal marking exception that applies to electronics firms is for intermediate goods imported into the United States for processing into finished goods.[2] If this processing results in substantial transformation--for example, the process that produces completed television sets[3] or the assembly of a large number of fabricated components onto a printed circuit board[4]—the individual imports are excepted from marking.

There are other exemptions from individual unit marking although the outermost container is still required to be marked with the country of origin of the contents. Under 19 CFR 134.32(q), goods of a NAFTA country classified under HS headings 8541[5] and 8542,[6] are exempted from individual marking.[7] Semiconductors are also exempted from individual marking in accordance with 19 CFR 134.32(d) and Treasury Decisions (T.D.) 75-187.

Examples of marking requirements in electronics

In many instances, electronics components from different countries are packaged together, unassembled, for delivery to the ultimate consumer, and the final assembly does not constitute substantial transformation. Examples of such products are cordless telephone sets[8] and modem kits containing a modem, transformer, and telephone cable.

Cordless telephone sets consist of a base unit, handset, telephone line, power cord, and recharge cradle. Customs has determined that final assembly of these parts is such a simple

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[1] Digital Equipment Corp., written submission to USITC, Mar. 20, 1996.

[2] 19 CFR 134.35.

[3] U.S. Customs ruling HQ 732170, Jan. 5, 1990.

[4] Customs Service Decision 85-25, Sept. 24, 1984; U.S. Customs ruling HQ 733159, July 23, 1990; HQ 733690, Feb. 22, 1991.

[5] These products include diodes, transistors, and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted crystals; and parts thereof.

[6] These products include electronic integrated circuits and micro assemblies, and parts thereof.

[7] NAFTA Annex 311 and 19 CFR 134.32(q).

[8] Similar rulings have been issued for residential and business telephone sets. See U.S. Customs rulings HQ 764046, May 10, 1991 and HQ 734560, July 20, 1992.

process that no substantial transformation takes place and, as a result, the country of origin of each component must be identified.[9] Customs offered three alternatives[10] to marking each of the individual components:

- ❑ Marking the container received by the ultimate consumer with the origin of each of the components;

- ❑ Marking the container received by the ultimate consumer with a legend which identifies each major component with its respective country of origin and listing the country or countries of origin of the remaining less significant components; when grouping together the countries of origin of the remaining components, the actual countries of origin must be identified --designating two or more countries in the alternative (either/or) is not satisfactory;

- ❑ Marking one of the main parts with a single conspicuous country-of-origin legend that clearly indicates the countries of origin of all the components.

In the modem kit ruling, the principal component was of U.S. origin while the transformer and cable, which represented less than 3 percent of the retail cost, were imported. The importer stated that transformer and cable sources were constantly changing and contended that it would be extremely costly to develop different retail packages to fit all country combinations. Citing T.D. 91-7, Customs held that because these components represent a small part of the value of the kit, are of minor significance, and there are difficulties associated with marking the containers, it is not necessary to label the container with the origin of the transformer and cable provided that they are marked individually and conspicuously.[11]

Semiconductors

Country-of-origin markings for semiconductors have been the subject of much debate. Basic questions have been raised by industry participants concerning the method of determining country of origin and the differences between the U.S. and the European Union (EU) criteria. Even though many exceptions to individual marking apply to semiconductors, there are still many unresolved issues in the United States regarding marking of containers and the size, location, and spelling (use of abbreviations and contractions) of markings.

Customs has determined that assembly of integrated circuits from imported silicon semiconductor chips, a process which includes attachment of the die and lead wires, and

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[9] U.S. Customs ruling HQ 559067, Sept. 7, 1995. Customs has proposed a modification that would exempt the need to separately identify the origin of the telephone line. 30 *Cust. B. & Dec.*, "Proposed Modification of Customs Ruling Letter Relating to Country of Origin Marking Requirement for Certain Cordless Telephone Sets," June 5, 1996, pp.13-21.

[10] U.S. Customs ruling HQ 734560, July 20, 1992.

[11] U.S. Customs ruling HQ 764363, Feb. 18,1992.

encapsulation, results in a substantial transformation of the chips.[12] Nearly every country in the world uses the same standards for determining origin with the exception of the EU and Japan. In 1989, the EU, then the European Community, changed its rule of origin on semiconductors to make diffusion--the process of etching the circuits onto the wafer--the criterion for determining origin.[13] Japanese regulations governing country-of-origin[14] determinations are based on whether or not the goods were wholly produced in a country or have undergone substantial transformation. Substantial transformation is further defined as having taken place if the product has changed classification from one four-digit HS heading to another. Given this requirement, the tariff nomenclature dictates that substantial transformation in Japan, as in the EU, is based on the process of diffusion, not assembly.[15]

H.R. 947, currently before Congress, would exempt semiconductors and their containers from country-of-origin marking requirements.[16] The supporters of the bill claim that marking requirements add significantly to product cost and that the small size of semiconductors makes marking difficult. In addition, because U.S., Japanese, and EU marking requirements conflict and create difficulties for manufacturers selling the same product into more than one market, U.S. semiconductors rules allegedly disadvantage U.S. producers. Semiconductors marked according to U.S. rules are not in compliance with Japanese or EU laws, and semiconductors that are marked in accordance with Japanese or EU rules or that are unmarked are not in compliance with U.S. laws if imported here.

Country-of-origin marking is required to be conspicuous, and Customs considers this to mean that one must be able to find the marking easily and be able to read it without strain. Customs has consistently ruled that markings on individual semiconductors must be sufficiently large, must spell out country names, and must be in an obvious place on the chip.[17] In the case of semiconductor containers, this is usually not a problem. However, firms have stated that semiconductor devices are so small that individual marking is a hardship.

Because semiconductors are a commodity item and may be shipped from many countries to central processing facilities and then exported to their final destinations, country of origin for a particular device is difficult, if not impossible, to determine. Customs has ruled that when semiconductors made in a number of foreign countries are commingled for a bona fide reason and then repackaged for sale to the ultimate purchaser, marking requirements are met if the containers are legibly and conspicuously marked to indicate that the devices were made

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[12] U.S. Customs Service Decision 80-227, Feb. 13, 1980.

[13] "Commission Regulation (EEC) No. 288/89 of 3 February 1989 on Determining the Origin of Integrated Circuits," *Official Journal of the European Communities*, No. L 33 (Feb. 10, 1989), p. 23.

[14] General Circular 68-3-4.

[15] Vermulst, Edwin, Paul Waer, and Jacques Bourgeois, eds., *Rules of Origin in International Trade* (Ann Arbor: The University of Michigan Press, 1994), pp. 305-306.

[16] H.R. 947 was introduced by Rep. Archer on Feb. 15, 1995 and referred to the Subcommittee on Trade of the Committee on Ways and Means on Feb. 21, 1995.

[17] U.S. Customs rulings HQ 734443 June 3, 1992, and HQ 734191, Aug. 8, 1991.

in one of more of the countries listed on the container. In these cases the container may be marked "Made in . . . or . . . ."[18]

Other electronics products

With regard to country-of-origin marking of articles returned to the United States after having been advanced in value or improved in condition outside the United States, there is an exception to the rule that they be marked to indicate the country origin as the country in which the last substantial transformation occurs. Any item eligible for entry under HTS subheading 9802.00.80 is entitled to this exemption and is considered a product of the country of assembly for purposes of section 304. For example, flexible magnetic recording disks assembled in Mexico from coated magnetic disks made in the United States and a hub and protective shell made in Mexico are eligible for importation under subheading 9802.00.80 and to be labeled "Assembled in Mexico."[19]

Other regulations that are part of the country-of-origin marking process are relevant to these goods. In addition to the country-of-origin marking, the FCC requires that registered telecommunications terminal equipment and registered protective circuitry display not only the FCC registration number and other information, but also the country of origin if the equipment is not manufactured in the United States.[20] It is possible that conflicting NAFTA country-of-origin rules exist, although no instances were noted.

Compliance Concerns

The Commission received comments from 25 companies in the electronics sector in response to its survey.[21] Two industry associations representing semiconductor manufacturers testified at the public hearing held in connection with this study. The Commission also received written submissions from four industry associations representing firms in the electronics sector and four written submissions from individual firms in the electronics sector. Together these responses provide information from firms in the semiconductor, electrical components, office machines, computer, telecommunications, and consumer electronics areas. Almost all firms responded that they experienced some difficulties with marking, although the difficulties varied by industry sector and product. The following information is based on the 25 survey responses unless otherwise noted.

Several different problems were identified with marking. Mentioned most often are the difficulty of determining origin for products made with components of multinational and constantly changing origin, and the costs and technical challenge of marking small items. Many of the electronics firms contacted feel that, given U.S. marking regulations, it is hard to determine a definitive working definition of origin from product to product. Also, they stated that they had difficulty in meeting FTC "Made in USA" labeling standard due to the

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[18] U.S. Customs ruling HQ 734761 Oct. 16, 1992.

[19] U.S. Customs ruling HQ 732018, Feb. 7, 1990.

[20] 47 CFR 68.300(b)(4). This equipment and circuitry is defined in 47 CFR 68.2. The country of origin is determined in accordance with 19 U.S.C. 1304 and regulations promulgated thereunder.

[21] Staff contacted 47 firms to request information for the survey.

necessity of using foreign-origin inputs; it is very difficult to estimate the parts content by country accurately and consistently.[22] Further, the firms report that the complexity of computer products does not lend itself to easy categorization by Customs officials , thereby making the system difficult to administer. Other problems arise from the differences between Customs and FTC marking regulations.

Electronics manufacturers report devoting significant resources to comply with country-of-origin markings requirements because of worldwide, multi-country procurement of parts and accessories and their potential reexportation. Most U.S. manufacturers of electronics incorporate many components of foreign origin in their goods. The sources of these components may change frequently; this makes tracing, tracking, and then marking parts and components extremely time consuming, particularly for fungible products from multiple sources. For many products, it is virtually impossible to keep track of the source of all inputs to a product. Survey respondents noted that most products are made using a multi-step manufacturing process with inputs from all parts of the world; the biggest problem is the tracking of thousand of components that go into each product.

In its submission, the American Association of Exporters and Importers stated that it opposed Customs rulings requiring that the origin of accessories and components packed with finished goods be identified on the retail carton, regardless of the fact that the ultimate purchaser's buying decision is based on the finished good and not low value accessories, each of which may be supplied by a number of countries. Electronics products including telephones, VCRs, and TVs are often sold to the retail customer in a carton that contains a variety of components and accessories, each subject to a marking requirement. The current marking requirements for components and accessories allegedly create a substantial burden for the importers of electronics products.[23]

Digital Equipment Corp.'s submission contained concerns regarding the technical or commercial suitability for marking products, notably those imported parts and components to be further manufactured into salable products and merchandise imported to be used in field service.[24] The firm is particularly concerned with the requirement that the origin of all computer components be tracked and disclosed and that the costs associated with tracking all parts are too high. Even in the case of service parts that are shipped internally from one Digital Equipment facility to another around the world, the company finds reporting requirements are overly burdensome and can greatly slow shipments. Other manufacturers expressed similar concerns about marking field repair kits with the country of origin of all the components of the kit. Because the service technician installs the parts without the owner/lessee ever seeing the repair kit, marking the kit does not appear to provide any benefit for the firm or the owner/lessee.[25]

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[22] See also Compaq Computer Corp., Okidata, a Div. of Oki America, Inc., Packard Bell Electronics, Seagate Technology, Inc., and Toshiba America Electronic Components, Inc., written submissions to the FTC, "Made in USA Policy Comment," FTC File No. P894219, Jan. 1996.

[23] American Association of Exporters and Importers, written submission to the USITC, Apr. 11, 1996, pp 2-3.

[24] Digital Equipment Corp., written submission to the USITC, Mar. 30, 1996, p 2.

[25] Neville, Peterson & Williams and International Business-Government Counsellors, Inc., on behalf of Xerox Corp., written submission to the USITC, Mar. 27, 1996, pp. 9-10.

The size, location, and acceptable spelling of origin markings were cited by several survey respondents as a hindrance to their operations. The marking requirements are very specific, causing administrative burdens and excessive costs for a firm to comply properly. In some cases, it is very difficult and expensive to find a place on the product where a permanent marking can be made to reflect the country of origin. Also, depending upon the product, it is not easy to determine whether the completed good is the product of the identified country or whether only a component is the product of the identified country.

Firms reported that Customs is unresponsive to requests for reasonable abbreviations of country names and some firms would greatly prefer the ability to use 2-letter abbreviations for country names. All such requests have been rejected even though fulfilling marking requirements has resulted in the elimination of product information in some cases. Customs has also objected to imports of semiconductors marked with a company name that included the word "American."

Companies contend that the body of regulations concerning rules of origin marking are not always consistently applied, particularly in the treatment of imports of finished and unfinished products and that there is a lack of uniformity in the rules of origin which can lead to a conflict. For example, marking items for export to meet foreign country requirements can conflict with the domestic marking standard of the FTC. It is not unusual for a company to be required to mark its products destined for the U.S. market with "Made in USA with U.S. and foreign components" while the same products intended for export must be marked as "Made in USA."

Almost all electronics products are made from components from several countries; therefore, they cannot bear the "Made in USA" label. A number of companies, especially semiconductor manufacturers, find that there is no evidence of benefits from or consumer interest in "Made in USA" labeling, and that their customers do not make purchasing decisions based on the country of origin of a product. Semiconductors are highly competitive commodity products, and manufacturers report that customers do not care about country of origin as much as they do company of origin. Some firms reportedly do not use "Made in USA" labeling as the costs of assuring compliance are not worth the benefits. A smaller number of companies stated that quality assurance and support for the U.S. economy are benefits from "Made in USA" labeling. There is a 2-to 3-percent price premium for U.S. articles relative to products of perceived low-quality countries, but little or no price premium relative to European products. These respondents support the reform of "Made in USA" labeling so that 80-percent content is sufficient and also a "Made in North America" label to reflect NAFTA integration.

Many companies noted that there is a lack of uniformity and consistency in the rules of origin between U.S. and foreign practice. Semiconductor firms, in particular, indicated that the differences in rules of origin for different country markets were a problem.[26] For export markets, rules of origin consider from where a product is shipped, manufacturing origin, as

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[26] See also statement of Evelyn Suarez, chairperson of the Rules of Origin Committee, Joint Industry Group, transcript hearing, pp. 74-75 and 138, and Joint Industry Group, written submission to the USITC, Mar. 27, 1996, p. 7.

well as other criteria. The lack of international standardization of rules of origin reportedly constitutes an "enormous" de facto trade barrier, and standards in this area would help greatly. Much of the uncertainty related to future market access problems could be eliminated if U.S. and foreign approaches to country of origin and product marking were harmonized.

Cost savings could be achieved by harmonizing marking requirements internationally, according to certain firms. Currently, compliance measures must be taken on a country-by-country basis. Many companies stated that NAFTA Marking Rules would be a good model because they are very specific and clear. However, the NAFTA Marking Rules for some products exported from the United States to Canada or Mexico are not consistent with marking rules for sales within the United States. If the goods are returned to the United States, they must be remarked.

Compliance Costs and Benefits

The costs identified by the electronics industry as relating to marking fall into several categories. There are the costs actually incurred in marking the product as well as the costs of using limited space for marking rather than for product information. Administrative costs are cited by most firms that responded to the survey, as are the costs incurred for delays, segregated inventory space, and employee training.

Industry-wide estimates are not available and costs per firm vary widely, from negligible to millions of dollars per year. The following examples were given by survey respondents:

- A computer manufacturer reported that the total cost of upgrading its marking-related monitoring systems is expected to be over $100,000 for 1996 alone. Ongoing administrative costs are in addition to this amount.

- An office machine producer reported that it is currently modifying one of its logistic systems to control for multiple country of origin for the same part number; its expected programming cost is $500,000.

- A diversified electronics products producer's costs of marking amount to $2 million per year for semiconductors alone, and an additional $4 million including marking of system products containing semiconductors. Costs were estimated at 0.25 cents per integrated circuit.

- A telecommunications equipment producer indicated that marking costs add less than 1 percent to the retail price.

- A consumer electronics company stated that the total cost of labeling adds 4 to 5 percent to the retail price with country of origin representing only a part.

The Semiconductor Industry Association (SIA) estimated that the annual costs of compliance to U.S.-based semiconductor companies is approximately of $50 million, roughly equivalent

to 1,000 entry level engineering jobs in the industry.[27] At the Commission's public hearing, the SIA stated that "...the compliance burden takes a toll in the form of added internal procedures, specialized tooling and design work, increased manufacturing and cycle time, inability to place more useful information on semiconductors, given their limited size, delays in inventory movement, having to deal with foreign country regulations and really the human resource allocation that is apportioned across all of the foregoing."[28] A significant cost for electronics producers in general, and semiconductors manufacturers in particular, is the inability to best use the limited space available. This issue was also mentioned by the Joint Industry Group testifying at the Commission hearing.[29] Another respondent added that it is required by Customs to check with distributors every 2 years to assure that container markings are "passed on" through the distribution channel.

Three firms making capacitors and electrical connectors reported that the costs of marking are not significant because other information is marked on the products anyway. The largest cost is maintaining tracking systems with information on country of origin. However, because tracking is done for other inventory and quality-control purposes, there is little additional cost associated with either marking or compliance with NAFTA or the American Automobile Labeling Act tracking requirements. A fourth company indicated that it had incurred substantial marking expenses including retooling costs for molds or dies that include "Made in USA" labeling as well as administrative costs. The company stated that it does research and development and initial production runs in the United States before transferring production lines to overseas plants. To accommodate new marking, the firm reports it is often necessary to retool at a cost of as much as $100,000 for a single mold or die. In 1995, retooling for such instances occurred three times, for an estimated cost of $300,000.[30] This company also noted that to meet NAFTA country-of-origin requirements, its compliance group spent thousands of hours to ensure conformance.

Xerox Corp., a manufacturer of office equipment, stated that there are essentially no foreign marking rules for most of the parts and components it ships worldwide used for repair and servicing. The greater portion of its marking expense is incurred upon importation into the United States for manufacture. In its submission, Xerox Corp. stated that it had to segregate and mark differently otherwise fungible components based on their intended use in the United States (e.g., for equipment manufacture or as replacement parts).[31] The primary types of costs incurred are (1) packaging and repackaging; (2) labeling; (3) costs to segregate parts and accessories; (4) tracking parts and packaging; (5) employee costs to perform marking compliance functions; and (6) staff training costs.

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[27] Semiconductor Industry Association, written submission to the USITC, Apr. 25, 1996, p. 5. Intel Corp., alone, claims to spend $4 million per year marking its products. Statement of David Rose, director of import/export affairs, government affairs, Intel Corp., on behalf of the Semiconductor Association, transcript of hearing, p. 136. This cost represents 0.02 percent of Intel's annual net revenues in 1995 of $16.2 billion (annual 10-K report).

[28] Statement of David Rose, director of import/export affairs, government affairs, Intel Corp., on behalf of the Semiconductor Association, transcript of hearing, p. 135.

[29] Statement of Evelyn Suarez, chairperson of the Rules of Origin Committee, Joint Industry Group, transcript hearing, p. 73.

[30] Telephone discussion with company official, June 20, 1996.

[31] Neville, Peterson & Williams and International Business-Government Counsellors, Inc., on behalf of Xerox Corp., written submission to the USITC, Mar. 27, 1996, p. 19.

Company responses were divided regarding the benefits of marking. Most contended that there was little or no advantage for consumers or firms from country-of-origin marking. However, there were companies in several different segments of the electronics industry that felt that because their products were not labeled "imported," they had an advantage in the market. These companies state that their customers believe that U.S. made goods are of higher quality and they were able to charge a premium because of this factor.

For the most part, semiconductor firms indicated that there were no benefits to country-of-origin marking; the products are highly competitive commodity products and customers are not concerned about country of origin. However, one firm asserted that its customers prefer to buy semiconductors made in the United States and the company's sales are improved by this demand. The company also said that marking enables better monitoring and enforcement of antidumping orders. At the hearing, the SIA stated that using final assembly-based marking on semiconductors as a basis for enforcing particular dumping orders would be a sham because it is the point of diffusion, along with various other factors, that is relevant for the scope of the antidumping order not the point of final assembly.[32]

A capacitor manufacturer noted that its customers desire country-of-origin marking because (1) country of origin is taken as an indication of quality, (2) end customers prefer certain countries of origin (especially the United States) and (3) customers' workers (especially union members) prefer "Made in USA" to support the U.S. economy. Another capacitor firm stated that marking made it easier for the company to claim duty drawback for reexports because the same product types are produced domestically. At the hearing, the Joint Industry Group representing electronics manufacturers stated that one of its members favored marking because it gave the firm another means of tracking origin rather than relying solely on trade documentation.[33]

One computer maker reported that it performs all final assembly operations in the United States, so it might benefit from a more well-defined distinction in marking between "U.S.-made" and "imported." This distinction would allow customers to choose between U.S. and imported products. Several companies said that marking would allow the consumer to choose between U.S. and imported products and this would benefit the companies. A consumer electronics firm stated that foreign customers will pay a premium for a U.S. made good, so country-of-origin marking would be of benefit.

Intel Corp. reported that customers care about quality, price, performance, and delivery rather than country of origin. In its submission, Intel stated that marking for country-of-origin purposes "...is not an indicator of product quality because Intel devices are subject to the same standards wherever they 'originate.' The relevant mark of quality on semiconductor products is the Intel brand or logo."[34] However, the marking of intermediate goods may be important to manufacturers of finished goods so that they can control their

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[32] Statement of David Rose, director of import/export affairs, government affairs, Intel Corp., on behalf of the Semiconductor Association, transcript of hearing, p. 145.

[33] Statement of Evelyn Suarez, chairperson of the Rules of Origin Committee, Joint Industry Group, transcript hearing, p. 75.

[34] Intel Corp., written submission to the USITC, Apr. 24, 1996, p. 2.

inventory and be in compliance with country-of-origin marking rules on their products. Intel reports that one customer wanted country-of-origin marking in order to properly handle its own transnational shipments of inventory.

Another semiconductor manufacturer also reported that some customers desire marking in order to be able to separate out commingled parts that are reexported, typically going to overseas facilities of the customer company. In its submission, Micron Technology, Inc., stated that its customers "...frequently need to know the origin of the semiconductors they buy for purposes of declaring the origin of semiconductors exported to third countries. Without clear markings, purchasers will have a very difficult time determining country of origin for third country customs' certification purposes. This could create a real hardship for Micron's customers."[35] Other semiconductor manufacturers stated that marking is important to customers and that customers, including retail end customers of products containing semiconductors, have a right to know the country of origin.

Although some electronics manufacturers reported that customers care where products come from, preferring products with U.S. or European origin, the majority stated that industrial customers do not have an intrinsic interest in country-of-origin or "Made in USA" marking. Industrial and multinational customers care about origin only to satisfy government regulations. Such regulations include the American Automobile Labeling Act, Buy-America laws, and NAFTA tariff rules.

In general, the firms responding to the survey stated that origin may be important but other factors, such as price, quality, and performance, appear to be more important. One consumer electronics firm reported that Wal-Mart, a major retailing chain, is very sensitive to the country of origin and would like to be able to sell "Made in USA" products. Sensitivity among other retailers is lower. Customers tend to focus first and foremost on brand rather and make purchase decisions based on criteria other than origin. Within the United States or Canada, the country of origin reportedly is not of particular importance. Value is placed on brand name and the quality represented by the brand. For other countries, particularly those in Asia and the Middle East, the country of origin is considered important because some countries ban importation of products and components from certain other countries.

Customers will steer away from products made in certain "problem" countries, but, in general, buyers are said to be becoming less concerned with origin. A maker of blank tape reported that the feeling among its customers is that products made in the United States or Japan are of high quality, while products from other countries are not. If the "Made in USA" label could be used with a majority U.S.-content product, there might be some effect on consumer choice; however, buyers have become more price-conscious and less concerned with country of origin.

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[35] Hale and Dorr, on behalf of Micron Technology, Inc., written submission to the USITC, Apr. 25, 1996, p. 4.

Steel Products

This section examines both steel mill products and those fabricated steel products[36] for which concerns are expressed about the impact of country-of-origin marking requirements.[37] The U.S. steel industry, consisting of steel mills and steel-fabricating facilities, produces intermediate goods that are among the most basic inputs for a myriad of industries across the nation's economy. Semifinished mill products (e.g., ingots, blooms, billets, and slabs) are subject to further hot-rolling or hot-working into finished mill products[38] such as flat-rolled sheets, strips, and plates; structural shapes and rails; long-rolled bars and rods; pipes and tubes; and rolled and drawn wire. In addition to being inputs for other manufacturing sectors, mill products are also consumed directly by the steel industry for production of fabricated steel products such as stranded-wire products, chain, fasteners, castings, and forgings.

Industry Profile

Trade data 1995 (*1,000 short tons*):	
U.S. production (net shipments)	96,859
U.S. imports	24,409
U.S. exports	7,080
Apparent U.S. consumption	114,188
Import share of apparent U.S. consumption (*percent*)	21

Source: Compiled by USITC staff based on data of the American Iron and Steel Institute and U.S. Department of Commerce.

Trends in Globalization

Over the past decade, the U.S. steel industry has experienced extensive foreign investment by Japanese, Western European, Korean, and Canadian steel makers in melting and finishing operations through buy-outs, joint ventures, and strategic alliances. To remain competitive, the U.S. industry shifted its product mix towards stronger, lighter weight, higher value-added products; directed its investment into rolling and finishing technologies; and developed extensive production-sharing arrangements for product upgrading.

Specific Marking Requirements

Steel products are subject to at least three labeling regimes, including (1) industry practice and technical specifications, (2) country-of-origin marking rules of Customs, and (3) requirements by the FTC to substantiate "Made in USA" claims. Of the three, Customs rules impose the largest number of regulations on whether and how a particular product is to be marked with country of origin.

[36] The relevant fabricated-steel-products sectors are wire rope and cable, roller and link chain, pipe fittings, and municipal castings (e.g., manhole covers, rings and frames, and assemblies).

[37] To sample across the product range, steel producers, service centers, importers, and steel trade-associations were contacted by USITC staff for interviews. Of the 31 firms contacted for telephone interviews, 24 responded with information for this study.

[38] Products considered semifinished and finished steel mill products for purposes of this report are those delineated by the American Iron and Steel Institute.

Within the steel industry, marking practices are not uniform across products nor among producers, being dictated by both industry-sector custom and technical specifications. The common industry practice for marking semifinished and finished steel mill products for shipment, according to the American Society for Testing and Materials (ASTM),[39] is to indicate the producer's name or hallmark, mill designation, product size, product grade designation, and heat,[40] among other information. But imprinting of such information directly on the article is not uniformly nor universally practiced by U.S. producers except where specified by product standards or industry practice. For example, steel concrete-reinforcing bars, to conform with ASTM Standards, are required to be hot-rolled with the producer's hallmark, mill designation, size, and grade designation.[41] Domestic wire-rope producers distinguish their products with a dyed strand or colored core.[42] Likewise, U.S. manufacturers of link chain stamp their hallmark and a grade designation spaced about every 6" to 8" along the length of the chain.[43] In these cases, country of origin is implied from the identity of the producer and the mill location marked on the product.

Marking requirements for the country of origin of steel products imported into the United States are administered by Customs under section 304 of the Tariff Act of 1930. Imported steel products are generally required to be legibly, indelibly, and permanently marked with country of origin as the article will allow, but there are also exemptions or more specific requirements for some products. Numerous steel mill and fabricated steel products are "J-List excepted"[44] from country-of-origin marking requirements set forth in 19 CFR 134.33, but their containers must still be marked. Due to problems in the past, some steel products (e.g., pipes and pipe fittings,[45] and municipal castings [46]) are singled out for more stringent marking requirements (e.g., municipal castings must be marked on the top surface with the English name of the country of origin by permanent methods of marking). Some permanent marking methods enumerated in section 304 are die stamping, cast-in-mold lettering, etching, or engraving. Where these marking methods are technically or commercially infeasible, making the product unfit for intended end uses by threatening its structural or performance integrity, or by marring surfaces, products can be marked with equally

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[39] American Society for Testing and Materials, Designation A700-90, "Standard practices for packaging, marking, and loading methods for steel products for domestic shipment," *1995 Annual Book of ASTM Standards*, v.01.05, pp. 439-475.

[40] The furnace batch from which the steel product is poured, rolled, cast, or forged.

[41] American Society for Testing and Materials, Designation ASTM A615, "Standard specification for deformed and plain billet-steel bars for concrete reinforcement," *1995 Annual Book of ASTM Standards*, v.01.05, pp. 300-304.

[42] Statement of Jeffery Levin, Harris & Ellsworth, on behalf of the Committee of Domestic Wire Rope and Specialty Cable Manufacturers, transcript of hearing, p. 124.

[43] Representatives of a U.S. chain-manufacturing company, telephone interview with USITC staff, Apr. 24, 1996.

[44] Semifinished mill products on the J-List are billets, blocks, blooms, ingots, pigs, and slabs. Finished mill products are plates and sheets, excluding galvanized sheets; bars, except concrete rebars; rails; and wire, except barbed wire. Fabricated steel products are steel bands and hoops; certain ball bearings; metal blanks to be plated; bolts, nuts, washers, and rivets; nails, spikes, and staples; shafting; joint bars and tie plates; wire rope; certain buckles; and furniture glides.

[45] 19 U.S.C. 1304(c). Added to section 304 in 1984.

[46] 19 U.S.C. 1304(e). Added to section 304 in 1984.

permanent methods including paint stenciling, affixed tag or sticker, tagging containers, or tagging bundles.

Only a handful of Customs rulings have been issued that dealt specifically with steel products, and focus primarily upon whether and how particular steel products or their containers should be appropriately marked for country of origin. At issue in many of these disputes is whether prescribed marking methods under section 304 are technically or commercially infeasible, making the product unfit for intended its end uses by threatening its structural or performance integrity or by marring surfaces. Marking directives in Customs rulings reviewed in the next section are indicative of this problem. In a recent modification of its ruling regarding county of origin marking of wire rod,[47] Customs recognizes that the wording of 19 CFR 134.26 on notification requirements for articles that are repackaged in retail containers after importation may be ambiguous as to who is the ultimate purchaser; thus a complete revision of Part 134 was proposed.

Finally, issues that directly affect steel products of concern to the industry are alternatives to the FTC's current wholly of domestic origin threshold, and lack of harmonization among Federal regulations, among others. Specific comments from steel producers on these issues are presented below.

Compliance Concerns

Nearly all product sectors of the U.S. steel industry expressed varying degrees of concerns and problems in complying with current U.S. country-of-origin marking requirements. Of primary concern is not only the technical suitability of domestic marking regulations, but also enforcement of existing regulations, and technical and commercial suitability of criteria for conferring origin. However, few problems over lack of transparency of U.S. marking regulations were noted.

Numerous technical- and commercial-suitability problems confront U.S. manufacturers of steel products in complying with domestic marking requirements. According to Customs ruling letters and USITC staff interviews of industry officials, technical problems in physically applying markings are reported across product sectors. For example, any markings on underground pipes would be obliterated by protective coatings applied after importation.[48] Paint stenciling mars specialty surfaces and leaves residues on steel tubing that may impede a customer's efforts to apply finishes to surfaces.[49] A U.S. chain manufacturer indicated that the ease of marking link chain depends on the size of links, for those less than 3/16" in diameter are much more difficult to stamp or emboss. Another technical problem is that origins of inputs are becoming increasingly difficult to track as supply sources become more numerous and varied. According to another U.S. chain manufacturer, some domestic manufacturers whose products contain significant amounts of foreign-origin components experienced difficulty in tracking component origins for their

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[47] 30 *Cust. B. & Dec.*, "Modification of Customs Ruling Relating to Country-of-Origin Marking of Wire Rod," No.14, Apr. 3, 1996, pp. 22-29.

[48] U.S. Customs ruling, HQ 731047, Feb. 26, 1988.

[49] U.S. Customs rulings HQ 734806, Apr. 22, 1993, and HQ 735278, July 13, 1994.

exports to Mexico under NAFTA. Several wire-rope producers have installed specialized computer programs to track wire rod from specific coils through the production process.[50]

Steel traders note that customers are necessarily aware of country of origin of imported steel products, for customers develop long-term relationships with particular off-shore suppliers and that the majority of steel imported into the United States has been pre-sold by the importer.[51] However, inconsistent application of marking requirements is of particular significance for fabricated steel products where product liability is of concern. Steel-industry members of the Joint Industry Group[52] support country-of-origin marking requirements because of the importance of traceability and as a certification of product compliance with performance specifications. Domestic manufacturers of pipes and tubes,[53] pipe-fittings,[54] wire rope,[55] chain,[56] and municipal castings,[57] either through their trade associations or directly to USITC staff, expressed concern about foreign-origin products and components being sold in the United States without proper country-of-origin markings. Some foreign-origin products (e.g., pipe fittings)[58] are reported to be faulty, and without proper country-of-origin markings, sources cannot be traced. Based upon the experience of its members, the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers believes[59] that as much as 40 percent of steel wire rope imports fail to be marked with the required country-of-origin markings on their containers. For wire-rope assemblies manufactured from imported wire rope, the rate of violations is believed to be as high as 90 percent.

Furthermore, some domestic producers also fail to properly mark imported products or components. Due to price competition, some U.S. manufacturers purchase off-shore and mix imports with domestic products (e.g., pipe fittings)[60] or assemble their products from imported as well as domestic components without distinction (e.g., roller chains).[61] Penalties do not necessarily provide much of a deterrence to mis-marking. In the case of a pipe-fittings company alleged to have imported over 7 million pieces, ground-off the country of

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[50] American Wire Producers Association, posthearing submission to the USITC, Apr. 25, 1996.

[51] American Institute for International Steel, Inc., posthearing submission to the USITC, Apr. 24, 1996.

[52] Joint Industry Group, prehearing submission to the USITC, Mar. 27, 1996.

[53] Schagrin Associates, on behalf of the Committee on Pipe and Tube Imports, prehearing submission to the USITC, Mar. 27, 1996.

[54] American Pipe Fittings Manufacturers, Inc., posthearing submission to the USITC, Apr. 24, 1996.

[55] Harris & Ellsworth, on behalf of the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, posthearing submission to the USITC, Apr. 25, 1996.

[56] Diamond Chain Co., written submission to the USITC, Mar. 18, 1996.

[57] Collier, Shannon, Rill & Scott, on behalf of the Municipal Castings Fair Trade Council, posthearing submission to the USITC, May 2, 1996.

[58] C. D. Tyeryar, executive director, American Pipe Fittings Manufacturers Association, telephone interview with USITC staff, Feb. 21, 1996.

[59] Harris & Ellsworth, on behalf of the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, posthearing submission to the USITC, Apr. 25, 1996.

[60] American Pipe Fittings Manufacturers, Inc., posthearing submission to the USITC, Apr. 24, 1996.

[61] Representatives of U.S. chain manufacturing companies, telephone interviews with USITC staff, Apr. 22 and 29, 1996.

origin, and restamped them with its own trademark, the fine amounted to less than 3 cents per piece.[62]

Although lack of harmonization of country-of-origin marking requirements is of concern, another problem confronting the domestic steel-products industry is criteria for conferring origin. The extent to which domestic fabricated steel-products manufacturers can mark their goods as being of U.S. origin under current regulations varies widely by product sector. In written submissions to the FTC, several firms, including producers of wire and wire rope[63] and chain manufacturers,[64] expressed difficulty in meeting the FTC's wholly domestic-content standard owing to global procurement of inputs (e.g., wire rod for wire rope) as the domestic industry strives to remain competitive with imports. Numerous alternatives were put forth in these submissions including lower domestic-content thresholds, substantial-transformation tests, essential processing stage (e.g., the stranding operation for production of wire rope), and wording to indicate country of processing in addition to country of origin of inputs, among others.

Exported quantities are relatively small compared to the level of domestic production for most steel-product sectors and many industry officials interviewed by USITC staff indicated that they do not export or only export in small quantities. But a few respondents expressed concern over lack of transparency in foreign regulations for products exported from the United States; lack of harmonization between U.S. and foreign regulations, and among various foreign regulations; and problems in tailoring proper documents for each individual destination country. Delays at the border, the need to re-mark goods, and the need to pay extra duties were cited by some producers of structural steel and chain products. Only one U.S. chain producer cited market-access difficulties with foreign distribution networks and overcoming brand loyalties.

Compliance Costs and Benefits

The major types of marking costs identified by the industry officials surveyed by the USITC staff are infrequently and not uniformly cited and no clear pattern emerges. But representatives of a few of the firms that process both domestic and foreign steel such as service centers and domestic producers of fabricated steel products do cite administrative costs of complying with regulatory agencies for their imports, the cost of warehousing, accounting, and tracking the use or handling imports, and the added production costs required for multiple marking lines. Only one respondent cited all these categories.

Total costs of marking steel products with country of origin were difficult to quantify for most steel firms that were surveyed. Of those that did provide estimates, costs generally ranged from nil to less than one percent of gross sales. Only one respondent, a U.S. producer of cold-finished steel bars, indicated that the capital cost of upgrading its inventory tracking

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[62] U.S. pipe-fittings manufacturer, member comments to the American Pipe Fittings Manufacturers, Inc., Apr. 24, 1996.

[63] Harris & Ellsworth, on behalf of the Committee of Domestic Steel Wire Rope & Specialty Cable Manufacturers, written submission to the FTC, "Made in USA Policy Comment," FTC File No. P894219, Jan. 1996.

[64] Diamond Chain Co., written submission to the FTC, "Made in USA Policy Comment," FTC File No. P894219, Jan. 1996.

system, including the administrative, warehousing, accounting, and tracking origins of hot-rolled bars would amount to 1 to 2 percent of sales, which would be very difficult to recoup, if at all.[65] Once the capital cost for installing a die-stamping or tagging line is met, several respondents indicated that the per-unit cost of marking is minimal. In prehearing submissions, the costs and burdens of country-of-origin marking requirements for pipe and tube,[66] and wire rope and specialty-cable manufacturers[67] were stated as negligible. The latter source estimates the cost more specifically at approximately $1 per short ton compared with an average unit value for all steel wire rope imports in 1995 of approximately $1,462 per short ton, which amounts to less than 0.1 percent of average unit value. Furthermore, according to a pipe-fittings manufacturer, compliance costs would become burdensome only when marking rules change and long-standing procurement and production practices must be adjusted accordingly.[68] None of the respondents could quantify the addition to retail purchase price; and one producer of hot- and cold-rolled steel bars remarked that marking costs could not be passed to the firm's customers, but are rather a cost of the production process.

Benefits to each company, as identified by the firms surveyed by USITC staff, are also infrequently and not uniformly cited and no clear pattern emerges. A few respondents stressed that domestic producers could benefit from country-of-origin markings as long as the foreign-origin like-product is clearly identified as such. Only then could customers choose between the U.S.-made and the imported product and have a basis for determining quality of materials, workmanship, or service. Furthermore, none of the respondents could indicate to what extent unit sales were increased due to competitive preference.

The extent of customer preference for steel products from any particular country of origin varies by product and end-use. Generally, country of origin is less important for customer preferences than price and product quality in the majority of cases (as long as the product meets specifications for physical performance) and identity and manufacturing process of the producer. For example, a U.S. manufacturer of link chain indicated that price is the primary consideration for hot-galvanized chain for marine and fishing applications and for mine hanger chains in anchoring conveyor belts for coal mining; in such applications, domestic manufacturers lost market share to cheaper imports. However, product quality and traceability of origin are overriding factors due to liability concerns in lifting or overhead applications. Customers with such concerns (e.g., original equipment manufacturers, industrial distributors, and automotive warehouse distributors) prefer U.S.-origin chain products over lesser-known foreign sources. Similarly, as noted by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers,[69] customers have marked allegiance, developed over years of consistent and reliable use, to steel wire rope produced by U.S. manufacturers, a loyalty which is particularly evident for applications which pose

[65] U.S. manufacturer of cold-finished steel bars, written correspondence to USITC staff, May 7, 1996.

[66] Schagrin Associates, on behalf of the Committee on Pipe and Tube Imports, prehearing submission to the USITC, Mar. 27, 1996.

[67] Harris & Ellsworth, on behalf of the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, prehearing statement to the USITC, Mar. 27, 1996.

[68] Mayer, Brown & Platt, on behalf of Weldbend Corp. written submission to the USITC, Apr. 25, 1996.

[69] Harris & Ellsworth, on behalf of the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, posthearing statement to the USITC, Apr. 25, 1996.

potential risk to life or property. In many segments of the wire rod industry (e.g., for automotive parts where components must meet exacting standards), customers work closely with wire drawers to achieve the desired dimensional, physical, and alloy specifications of the wire that they purchase.[70]

Customers may be willing to purchase foreign-origin products imported by an U.S. manufacturer based upon the U.S. manufacturer's reputation for providing high-quality products. However, a chain manufacturer indicated that industrial distributors have very strong preferences for U.S.-origin products, and some distributors may refuse to accept products from producers who do not distinguish their domestically manufactured product lines from their imported lines. Furthermore, as noted by a hot- and cold-rolled steel bar producer, in a product-quality driven market, customers prefer known suppliers for quality assurance, and the introduction of alternate sources involves extensive testing and relaying results to customers to assure them of product quality.

Although most steel products are sold on the basis of price and quality, respondents cite some evidence that their customers will shift purchases to products marked with a particular country of origin for a number of reasons. Several U.S. producers of pipe-fittings indicated that most customers prefer domestic products as long as the price is competitive. However, a cold-rolled steel bar manufacturer that purchases hot-rolled bars from outside sources noted that its customers are inquiring more frequently than in the past about country of origin with increased preference for products certifiable as of NAFTA origin. Conversely, according to a foreign-owned U.S.-based producer of steel mill products, country of origin would also be a very important consideration for foreign-origin steel-mill products that are perceived to be of higher quality than comparable domestic products. A crucial impact of country-of-origin preferences falls on those products where there have been problems associated with imports from a particular country, specifically for articles with rigid or high-performance specifications (e.g., chain, wire rope, and pipe fittings). For example, according to one U.S. producer of pipe-fittings, foreign pipe-fittings are perceived as inferior and some customers request domestic products.

Among steel manufacturers that mark their products with "Made in USA"-type labeling, producers of pipe fittings, structural steel, and chain cite all similar benefits. Few respondents could estimate how much customers are willing to pay for products bearing such labeling, but those who indicated that their customers have such preferences also noted that customers were not willing to pay much if any premium. However, according to one producer of chain, such premiums range from none for original equipment manufacturers to from 5 to 10 percent for industrial distributors.[71]

Benefits to the retail consumer, identified by firms surveyed by USITC staff, are also highly varied across products by individual respondent; again, no clear pattern emerges. By their nature, few steel mill and fabricated-steel products are purchased by retail customers, exceptions being small-diameter reinforcing bars, link chain, and wire fencing. But a U.S. chain manufacturer cautions that the retail consumer really has no basis for comparing

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[70] American Wire Producers Association, posthearing submission to the USITC, Apr. 25, 1996.

[71] Industry representative of a U.S. chain manufacturing company, telephone interview with USITC staff, Apr. 22, 1996.

domestic versus foreign-origin chain because hardware stores generally carry only one brand. Even if a customer could find several different brands among different retail outlets, it is difficult to distinguish the country of origin of a chain just by casual observation due to lack of consistent marking practices. Furthermore, none of the respondents could offer an estimate as to how much in addition would customers be willing to pay for products bearing "Made in USA"-type labeling.

Pharmaceuticals

The pharmaceuticals industry is comprised of companies that produce therapeutic products, including antibiotics, hormones, therapeutic substances, botanical products, in vivo and in vitro diagnostic substances, and other similar substances, that are used in the treatment of human and veterinary diseases. Many of the companies involved in the production of these substances are large multinational companies. Most of these companies and plants are located in areas of the world that maximize cost/benefit tradeoffs with respect to product quality, economies of scale, and overall cost. Other companies are smaller, local firms that primarily produce generic drugs or over-the-counter (OTC) preparations, with more of a view towards producing a consumer product using little or no investment in the development of new drugs.

Industry Profile

Trade data 1995 (*million dollars*):	
U.S. shipments	52,000
U.S. imports	8,655
U.S. exports	8,091
Apparent U.S. consumption	52,564
Import share of apparent U.S. consumption (*percent*)	16

Source: Compiled by USITC staff based on official statistics of the U.S. Department of Commerce.

Trends in Globalization

The U.S. pharmaceuticals industry is highly globalized, as pharmaceutical companies have taken advantage of economies of scale and national cost differentials for inputs, such as labor, land, and operational expenses, while effectively balancing these considerations with product quality and other factors. Because of the global nature of many pharmaceutical companies, and because of the complexities involved in formulating active ingredients into finished products, a finished product may use many different components that are obtained from a variety of sources. Active ingredients, excipients, fillers, diluents, syrup and ointment bases, flavorings, colorings and the like, may be obtained from domestic or global sources. In many instances, a pharmaceutical active ingredient will be produced to tight quality control specifications overseas and then shipped to the United States for formulation into a dosage-form finished product.

Specific Marking Requirements

The FDA has many requirements for general and specific labeling of pharmaceuticals, including one requirement akin to country-of-origin marking. According to 21 CFR 201.1, a packaged, finished pharmaceutical must have the name and place of business of the manufacturer, packer, or distributor. The FDA defines a manufacturer as one who performs mixing, granulating, milling, molding, lyophilizing, tableting, encapsulating, coating, or sterilizing, as well as filling dispensing containers with aerosol or gas drugs. The place of business of the manufacturer, with address or zip code must be included. Additionally, if the

manufacturing was performed at a location other than the principal place of business, this also must be stated. Exact phrases, such as "Manufactured for _____," "Distributed by _____," or "Manufactured for _____ by _____," are required when stating the above information. However, the processes used by FDA to define a manufacturer are not always accepted by Customs as substantial transformation for purposes of marking.

This FDA requirement tends to invoke a Customs service requirement existing in 19 CFR 134.46 which states that if any location of the United States is mentioned on the imported article (such as would be the case as a result of the FDA requirement that a company's place of business be displayed on the pharmaceutical label), the name of the country of origin is to be displayed "in close proximity" to the words referring to the U.S. location. Therefore, many pharmaceuticals may have multiple geographic locations listed on the labels. In one instance, for example, Customs recommended a marking to read "Made in China, granulated in the U.S.A." to indicate their ruling that the product was made in China, although according to the FDA, it would be "manufactured" in the United States.

Customs has issued several rulings concerning the marking of pharmaceuticals in the past 7-10 years. These rulings are examples of the somewhat fine divisions that exist in the marking of pharmaceutical products.

For example, first-aid kits from Canada, assembled from non-Canadian components, were ruled to be non-Canadian products and the country of origin of each component had to be identified, either on the product or on the package label.[72] In another case, while not a kit, a certain pharmaceutical packaged in ampules as a 5-pack, intended for hospital or clinic use, had the country of origin marked on the package label. However, because of FDA labeling requirements for the manufacturer's name and location to be prominently displayed on package labeling (i.e., any part of a package that can be interpreted as a 'label'), Customs determined that the country of origin must be marked anywhere there is a reference to a U.S. location. Thus, in the case of the 5-pack package, the country of origin was required on more than one side of the box.[73]

In other cases, a certain anesthetic cream produced in Sweden bore the FDA requirement for identifying the manufacturer, using the words "Manufactured by Astra Pharmaceutical Production, AB Sodertalje, Sweden" near the distributor's address "Astra Pharmaceutical Products, Inc., Westborough, MA 01581." Customs rendered the opinion that labeling of the cream in this manner would satisfy the country marking requirement.[74] However, on another occasion, Customs opined that the marking that satisfied FDA requirements did not accurately reflect the country of origin.[75]

For pharmaceuticals, the ultimate purchaser for the purposes of section 304 of the Tariff Act of 1930 is usually the individual retail consumer if the pharmaceutical is imported in individual retail packages. Otherwise, the ultimate purchaser can be a distributor, packager, dispensing authority, or any other entity that receives the product in the imported form. If

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[72] U.S. Customs ruling HQ 555632, Mar. 8, 1991.
[73] U.S. Customs ruling HQ 734232, Nov. 20, 1991.
[74] U.S. Customs ruling HQ 878010, Sept. 9, 1992.
[75] U.S. Customs ruling HQ 558002, Oct. 11, 1994.

repackaged, the pharmaceutical's container must retain some marking as to the country of origin.

Pharmaceuticals that are dispensed from a pharmacy generally do not carry any country-of-origin marking, nor is any marking usually required. For dispensed pharmaceuticals, especially pills, tablets, capsules, or syrups that are dispensed from larger pharmacy containers, labeling of any retail container, bottle, or jar is governed by state regulation. State law usually requires the name, address, telephone number, and zip code of the dispensing pharmacy, along with the name of the licensed practitioner, a statement of directions given by the practitioner, and other information such as the date of dispensation, the date of expiration, and any other information considered useful to the patient.

Certain individual pharmaceutical products are specifically excluded from marking, in subpart D of 19 CFR 134.33 (commonly called "J-List exceptions"). The pharmaceutical products that need not have country-of-origin markings are "Chemicals, drugs, medicinal and similar substances, when imported in capsules, pills, tablets, lozenges, or troches." For these exceptions, the products must bear the country of origin on the container. Subpart C provides for the marking of containers or holders for such items. Imports of bulk pharmaceuticals require marking on the container label, unless the container is reusable or is a vehicle of transport.

Compliance Concerns[76]

None of the firms contacted in the Commission survey voiced serious concerns with respect to U.S. marking requirements administered by Customs, the Federal Trade Commission, or any other U.S. government agency. The principal reason cited is that the firms adhere to FDA labeling requirements and that FDA requirements often fulfill other government labeling or marking requirements.

Pharmaceutical firms, because of their global nature, do not strive to qualify products for "Made in USA" labeling. FDA requirements already require the name of the firm, as well as an address, whether domestic or foreign, as well as the name of the company and location of the manufacturer of the drug. Pharmaceutical firms do not view any additional marking requirements, such as any wording that may be required by Customs, as being significant.

At least one firm expressed concern over differences between product registration in the United States and in foreign countries. In some instances, foreign countries are selective in allowing registration of foreign-marked goods, although for products produced in the United States there were generally no problems encountered. As nearly all countries require some sort of registration of pharmaceutical products prior to sale, pharmaceutical firms do not experience additional costs of re-marking goods, extra duties, or delays at the border.

[76] Six individual pharmaceutical firms and two pharmaceutical industry associations were contacted. Four individual companies and one industry trade association responded.

One firm stated that their product line, which is primarily kits used for surgery, often contains pharmaceuticals and is classified as such.[77] The firms expressed concern that the kits, which can consist of up to 100 components, require space for country-of-origin labeling that in many cases exceeds the space available in the packaging. The firm also stated that maintaining any current country-of-origin labeling was difficult given the frequent changes in suppliers and procurement.

One association stated that it was difficult to separate rules on the physical marking of the imported good from the rules by which the country of origin is determined,[78] because the reason for the rules on marking was the requirement that a product be marked. According to the submission, the pharmaceutical industry has evaluated the proposed NAFTA Marking Rules and feels that the proposal to apply the NAFTA Marking Rules to all imports is premature. As a result, the industry concludes, uniform, multilateral rules should be developed that would reflect the internationally accepted principle of substantial transformation.

Compliance Costs and Benefits

The respondents to the Commission survey reported that the major costs of producing a pharmaceutical are warehousing, accounting, and costs associated with tracking of the use of foreign-made materials. The reason for this is that foreign materials, if not considered substantially transformed by Customs, must be tracked into U.S. commerce to the consumer packaging or labeling that will state the country of origin of the pharmaceutical product.

No pharmaceutical firm or association was able to quantify the additional cost of marking. Some respondents stated that the additional cost of marking would be minimal, given all of the FDA labeling requirements currently in place.

Pharmaceutical firms identified few, if any, benefits to the pharmaceutical company as a result of country-of-origin markings. The only benefits observed were the ability to use the country-of-origin marking as a basis for price comparison of the raw material among several potential suppliers and a reliance on country of origin for determining classification and duty rates. There were no perceived benefits to the retail consumer of pharmaceutical products as a result of country-of-origin marking requirements.

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[77] Baxter Healthcare Corp., written submission to the USITC, May 8, 1996, p. 1.

[78] Barnes, Richardson & Colburn, on behalf of the Pharmaceutical Research and Manufacturers of America, prehearing submission to the USITC, Mar. 27, 1996. See also Eli Lilly and Co., written submission to the USITC, Apr. 25, 1996, p. 2.

Hand Tools[79]

This sector includes non-powered hand tools (hand tools) for the home improvement, consumer, and professional markets. These tools are employed by a variety of users such as mechanics, plumbers, carpenters, masons, construction and industrial workers, households, hobbyists, and other trades persons who rely on hand tools to make their living. In the hand tool market, country-of-origin marking appears to play a significant role as a marketing tool for producers and as an indicator of quality and national pride with customers. Country-of-origin marking also is a significant factor in purchase decisions of consumers, especially professionals that use tools for their livelihood. Professional users account for over 65 percent of the U.S. non-powered hand tool market.[80] Because of customer perceptions of quality and value, marking hand tools with "Made in USA" label is an effective marketing tool, according to industry officials.

Industry Profile

Trade data 1995 (*million dollars*)	
U.S. shipments	5,618
U.S. imports	1,205
U.S. exports	687
Apparent U.S. consumption	6,136
Import share of apparent U.S. consumption (*percent*)	20

Source: Compiled by USITC staff based on official statistics of the U.S. Department of Commerce.

Trends in Globalization

The United States has traditionally been one of the world's leading manufacturers of hand tools and its largest single market. The U.S. hand tool industry is both mature and highly competitive, with over 800 manufacturers. Leading U.S. producers operate production, distribution, and sales operations throughout the world. Most domestic manufacturers produce the preponderance of their hand tools in the United States from domestic steel. Some producers, however, supplement their domestic production with imported finished hand tools, or with components, materials, and rough metal forgings that need further processing.

[79] The principal hand tools used in the professional, industrial, and consumer markets include: striking and struck tools (e.g., hammers, malls, sledges, punches, and chisels); screwdrivers; wrenches and spanners; ratchets, drive socket sets, and extensions; edge tools (axes, hatchets, machetes, sickles, and shears); hand-operated saws and blades; pliers, snips, and shears; files and rasps; vices and clamps; and horticultural tools (shovels, hoes, forks, picks, and rakes).

[80] "Hand and power tools march forward," *Industrial Distribution*, vol. 84, No. 5, May 1995, pp. 56-58.

Specific Marking Requirements

Manufacturers usually apply multiple markings/labels to their tools. Depending on the manufacturer, in addition to country of origin the following information may be marked/labeled on its hand tools: brand name, size characteristic, part number, professional or consumer series, and the grade of steel used.

Hand tools generally are marked to convey country of origin in three ways. Hand tools that are imported are marked with the country of origin as required under section 304 of the Tariff Act of 1930. Hand tools that are made in the United States and that meet the FTC standard for "Made in USA" claims may be voluntarily marked "Made in USA" or "USA," otherwise they may be marked just with a brand name, or not marked at all. Hand tools that incorporate foreign components may bear a qualified statement of being produced in the United States with foreign components or may be marked with just the brand name, or not at all, depending upon whether Customs has deemed that the imported component has undergone a substantial transformation in the United States after entry.

In January 1995, Customs announced a major policy proposal to modify or revoke 12 prior country-of-origin marking rulings [81] concerning the marking and substantial transformation of forgings for hand tools so as to be consistent with the findings of the Court of International Trade (CIT) in its decision on *National Hand Tool Corp.* v. *United States*.[82] Previously, imported forgings for hand tools that were substantially transformed in the United States ceased to be foreign articles and were no longer required to be marked with a foreign country of origin. For substantial transformation of an imported tool forging to occur, significant machining and finishing with significant value added was required in the United States to avoid foreign origin markings. Conversely, Customs required all imported forgings that did not undergo substantial transformation to be marked with a foreign country-of-origin marking. These proposed modifications/revocations would therefore alter the way Customs tests or measures substantial transformation. However, the proposed standard was described as follows: "if the shape of an imported forging establishes its intended end-use, then no substantial transformation can occur irrespective of the extent of postimportation operations performed in the United States or of the value added by such

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[81] 29 *Cust. B. & Dec.*, No. 2, Jan. 11, 1995, pp. 11-36.

[82] See *National Hand Tool Corp. v. United States*, Slip Op. 92-61 (CIT April 27, 1992), aff'd F.2d 1201 (Fed. Cir. 1993). In its decision, the Court of International Trade held that imported hand tool components which were used to produce flex sockets, speeder handles, and flex handles were not substantially transformed when further processed and assembled in the United States. The Court stated that the determination of a substantial transformation must be based on the totality of the evidence, and applied the criteria of whether the tool forging has the same name as the finished tool (name); whether the tool forging has a predetermined use (use); or whether the tool forging has the essential character of the finished tool (character); to determine whether a substantial transformation has occurred. The Court found that the character of the articles remained substantially unchanged after heat treatment, electroplating and assembly, as this process did not change the form of the components as imported; that the use of the imported articles was predetermined at the time of importation; and that the name of the components also remained the same after entry into the United States. The Court discounted the idea that a substantial transformation should be found based on the value of the processing performed in the United States, but decided the issue based solely on the criteria of name, character, and use.

operations."[83] Consequently, this change would have required U.S. manufacturers making hand tools from imported rough forgings to mark them with a foreign country of origin regardless of the extent of postimportation processing or the value added in the United States, unless there were a change in name, character, and use of the forging.[84] However, on April 27, 1995, Customs issued a notice withdrawing the proposed modifications or revocations of past ruling letters pertaining to substantial transformation of rough imported forgings into finished hand tools.[85]

This action occurred because, in January 1994, Customs had announced that it would honor all existing written rulings issued pursuant to 19 CFR 177 during the proposed application of the NAFTA Marking Rules to imports from all countries.[86] All Customs actions were to be delayed until a decision was made on the final adoption of the proposed regulations. The NAFTA Marking Rules will become final rules, effective August 5, 1996, for NAFTA goods, but have not been extended to cover all imports.[87] In addition, the original requestor to Customs for the decision on the modification/revocation of the 12 rulings withdrew their request in early 1995.

Hand tools produced in the United States are not required by law to be marked "Made in USA." While a label listing domestic content is not mandated by law on domestically produced goods, U.S. producers may voluntarily label their qualifying products with "Made in USA" or claim the extent of domestic content to appeal to consumers who prefer U.S. origin products.

Compliance Concerns

There are two basic country-of-origin marking issues of concern to the domestic industry. The first is the apparent lack of consistency between the Federal Trade Commission's consumer protection standards and Customs' substantial transformation test for country of origin;[88] the second is how the Court of International Trade's decision in *National Hand Tool Corp.* v. *United States* should be applied and enforced as a test for substantial transformation by Customs.[89]

Members of the U.S. hand tool industry agree that marking qualifying tools with "Made in USA" gives them a significant marketing edge over imports because of its importance to

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[83] Testimony of Richard H. Ayers, chairman and CEO, The Stanley Works, before the Subcommittee on Trade, Committee on Ways and Means, Subcommittee on Trade, U.S. House of Representatives, *Rules of Origin: Hearing before the Committee on Ways and Means, Subcommittee on Trade*, 104th Cong., 1st sess., July 11, 1995, Serial No. 104-27, p. 55.

[84] William Axline, president and general manager, Stanley Mechanics Tools, Inc., interview with USITC staff, Apr. 3 and 4, 1996.

[85] 29 *Cust. B & Dec.*, No. 20, May 17, 1995, p. 5.

[86] Treasury Decision (T.D.) 94-4, 59 F. R. 110, Jan. 3, 1994.

[87] 61 F.R. 28932-28980, June 6, 1996.

[88] World Trade Organization harmonization of the customs rules of origin (Agreement on Rules of Origin, Art. 9(2)(c)(ii)), if ever proposed to and approved by Congress, could alter Customs' case-by-case approach to substantial transformation to a tariff shift approach that reflects the concept of substantial transformation.

[89] In 1986, the National Hand Tool Corp. was acquired by The Stanley Works and became its Stanley Mechanics Tool Division.

their customers. U.S. producers report that a "Made in USA" label is second only to warranty for consumers, and as important as price in purchasing decisions.[90] Tool buyers, especially professionals, associate "Made in USA" with reliability, superior quality of materials, strength/durability, corrosion resistance, warranty, price, craftsmanship, and value.[91] The preference for domestically manufactured hand tools is most pronounced in the professional hand tool market. Conversely, buyers of professional hand tools hold that foreign made hand tools are inferior in quality.

In February of 1996, the Borget Research Group published a hand tool opinion survey on behalf of Danaher Tool Group.[92] The market research study results indicate that U.S. hand tool consumers consider country of origin a very important factor in their purchasing decisions and prefer U.S.-made hand tools. The survey reported that 75 percent of those surveyed owned domestically made tools and that 53 percent of the respondents associated "Made in USA" with tools of 100 percent U.S. origin. The survey also indicated that country-of-origin markings enable customers to differentiate between imported and domestic products and "to exercise a preference for or against the product of specific foreign country." U.S. producers reported that its customers were willing to pay between 10 to 40 percent more, per piece, for tools labeled "Made in USA."[93]

To obtain the views of the domestic industry regarding proposed changes in Customs rulings on substantial transformation and a change in the FTC's wholly of domestic origin standard, members of the American Hand Tool Coalition ("Coalition")[94] and The Stanley Works ("Stanley") were contacted. Stanley opposes any change in Customs methodology for measuring substantial transformation and opposes changes in Custom's rulings to make them consistent with the *National Hand Tool Corp.* decision.[95]

Stanley maintains that the holding in *National Hand Tool Corp.* is not appropriate in its case. The decision, according to Stanley, concerns imports of unfinished hand tools processed to a more advanced stage of production. National Hand Tool was importing unfinished tools that were fully machined and did not undergo a substantial transformation from postimportation processing in the United States, according to Stanley. These tools did not need the extensive machining, heat treating, and finishing that Stanley's imported forgings must undergo before they can function and are usable. The multi-step heat treatment process itself significantly alters the metallurgical and chemical properties of an imported forging "in terms of strength, durability, and toughness." Stanley believes that its extensive U.S. processing creates the "performance and quality attributes" demanded by its

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[90] Statement of George M. Sherman, president and CEO, Danaher Corp., transcript of hearing, p. 166.

[91] Statement of Dan G. Craighead, vice president, international, Snap-on Inc., transcript of hearing, p. 156.

[92] Bourget Research Group, *"Made in USA" Hand Tool Opinion Survey*, West Hartford, CT, Feb. 1996.

[93] Snap-on Inc., survey response, Apr. 18, 1996, p. 4; Vaughan & Bushnell, survey response, Apr. 25, 1996, p. 4.

[94] The coalition is comprised of 9 members: Danaher Tool Group, Snap-on, Inc., SK Hand Tool Corp., Pratt, Read Corp., Ajax Tool Works, Inc., Woodings-Verona Tool Works, Inc., Cornwell Quality Tools Co., Ridge Tool Co., and Vaughan & Bushnell Manufacturing Co.

[95] Ablondi, Foster, Sobin & Davidow, P.C., on behalf of The Stanley Works, posthearing submission to the USITC, Apr. 25, 1996, pp. 2-3.

customers. Stanley reported that the value added created by postimportation processing varies by product. In general, Stanley estimates that over 60 percent of the selling price of its tools can be ascribed to U.S. parts, processing, and labor.[96]

Stanley has built and expanded its international hand tool operations contingent on "long-standing court decisions and Customs administrative rulings that hold that when imported forgings undergo significant processing in the United States that changes the name, character, and use of the article, thereby effecting a substantial transformation, the completed tools are not deemed to be the product of the country where the forgings were made and need not be marked as having been made there."[97] Previously, Stanley had received Customs rulings, which stated that imported forgings for some of Stanley's hand tools underwent a substantial transformation and therefore the finished hand tool was not required to be marked with a foreign origin. Stanley maintains that Customs should honor those rulings, so that it may continue this practice.

Stanley also would like the FTC to abandon its strict standard for "Made in USA" marking because global producers, like Stanley, are put to a "distinct competitive disadvantage with both foreign and other domestic producers."[98] The continued use of the FTC's labeling standard, according to Stanley, would prohibit the marking of finished products manufactured in the United States from foreign components even if "all of the physical qualities and performance characteristics that make it useful were the result of American labor, technology, and capital equipment."[99] Stanley would prefer that the FTC adopt the substantial transformation test established by the Supreme Court in 1907 and used subsequently by Customs.

The Coalition, on the other hand, does not find the difference between the FTC's "Made in USA" standard and Customs' substantial transformation test to be inconsistent. The objective of the two is very different, according to the Coalition, as they were designed to accomplish different tasks.[100] The FTC standard was designed as a consumer protection rule, while Customs' substantial transformation rule "evolved from the need to assign an origin to a product in order to determine the relevant tariff rate and to identify any preferences, quotas, or trade sanctions that might apply."[101]

Members of the Coalition oppose any changes to the FTC's or Customs' standards for "Made in USA." It also endorses the use of the substantial transformation standard established by the Court of International Trade in the *National Hand Tool Corp.* decision and favors modifying all past Customs rulings to make them consistent with the court's decision. The Coalition believes that FTC standard was intended to protect both domestic manufacturers and consumers from inferior quality imports. Consequently, it opposes any

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[96] Ibid., p. 6.

[97] Ibid.

[98] Ablondi, Foster, Sobin & Davidow, P.C., on behalf of The Stanley Works, written submission to FTC, "Made in USA Policy Comment," FTC File No. P894219, Jan. 18, 1996.

[99] Ibid.

[100] Danaher Corp., prehearing submission to the USITC, Mar. 27, 1996, exhibit 4, American Hand Tool Coalition, written submission to the FTC, "Made in USA Policy Comment," FTC File No. P894219, Jan. 22, 1996, p. 8.

[101] Danaher Corp., prehearing submission to the USITC, Mar. 27, 1996, p. 5.

changes that would dilute FTC's long-standing wholly of domestic origin criteria for what constitutes "Made in USA." It especially contests any proposed quantitative test or formula to measure value added in the United States as a yardstick for the "Made in USA" label.

A Coalition member, the Danaher Tool Group, criticized Customs for not modifying its pre-existing rulings to make them consistent with *National Tool Corp.* because of a pending proposal to extend the NAFTA origin rules to goods of all countries.[102] Danaher reported that the *National Tool Corp.* decision should be enforced by Customs as a means to enable U.S. consumers to distinguish between tools made from imported or domestic forgings. The company believes that U.S. producers using foreign forgings and components should not be allowed to label their products "Made in USA." Otherwise, companies could reap a double benefit by enabling them to take advantage of low cost foreign labor and benefiting from the consumer preferences for tools marked "Made in USA." The cost of domestic labor, according to Snap-on, accounts for nearly 55 percent of the cost of producing a finished hand tool.[103] The differential in labor costs puts substantial economic pressure on other U.S. producers and would force many of them to relocate production offshore to lower labor cost countries. Snap-on also reported that domestic producers could lower their labor costs by as much as 98 percent if they shifted their production to a lower labor cost country like China.

Vaughan & Bushnell Manufacturing Co. stated that the quality of steel used in a metal forging and the quality of the forging process itself, not the extensive machining process as Stanley alleges, is the most important element in the production of hand tools.[104] Steel quality and the forging process can greatly affect the strength and durability of a hand tool.[105] The company believes that the elimination of the FTC standard could disadvantage smaller manufacturers like itself. It also worries that unmarked tools made from imported forgings can be advertised by U.S. producers under domestic brand names in such a manner that will deceive consumers into believing that they are domestically produced.

Compliance Costs and Benefits

Members of the American Hand Tool Coalition reported that the cost of observing country-of-origin marking requirements is negligible for its members.[106] The actual cost of marking a tool "Made in USA" is de minimis.[107] According Vaughan & Bushnell, "the cost of compliance with the marking requirements amount to less than one-quarter of one percent of net sales."[108] The marginal cost of adding an extra line to a die informing the consumer where the product was made is very small, especially when the cost is spread out over the

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[102] Danaher Corp., posthearing submission to the USITC, Apr. 25, 1996, p. 9.

[103] Statement of Dan G. Craighead, vice president, international, Snap-on, Inc., transcript of hearing, p. 164.

[104] Mayer, Brown & Platt, on behalf of Vaughan & Bushnell Manufacturing Co., posthearing submission, Apr. 25, 1996, pp. 8-9.

[105] Wright Tool Company, survey response, May 2, 1996, p. 5.

[106] Danaher Corp., posthearing submission to the USITC, Apr. 25, 1996, p. 18.

[107] William Axline, president and general manager, Stanley Mechanics Tools, Inc., interview with USITC staff, Apr. 3 and 4, 1996.

[108] Mayer, Brown & Platt, on behalf of Vaughan & Bushnell Manufacturing Co., posthearing submission to the USITC, Apr. 25, 1996, p. 15.

useful lifetime of the die. Also, the additional or incremental cost of buying and maintaining multiple dies, those with and without a country-of-origin markings, is also reported to be marginal. Stanley also notes that the cost of complying with country-of-origin marking of hand tools is not significant.[109] However, U.S. manufacturers disagree as to whether the FTC's standard for "Made in USA" labeling inhibits the development of multi-lingual packaging and labels for global use, and forces them to maintain separate inventories of either tools or packaging for the domestic and export markets.[110]

Coalition members, however, reported that any dilution of the "Made in USA" standard would tangibly weaken their competitive position and could force them offshore "reducing U.S. jobs and exports."[111] The Danaher Corp. indicated that it would be forced to eliminate 1,000 jobs in its machining and forging operations if Customs rulings are not modified to be "consistent with the 1992 *National Hand Tool* decision."[112] By shifting manufacturing operations to a low-labor cost country like China, Coalition members could reduce their labor costs by nearly 98 percent.[113] Smaller manufacturers, such as Vaughan & Bushnell, would also be at a competitive disadvantage and would be forced to lay off workers because they lack both the "resources and the flexibility to quickly build factories or qualify sources in foreign countries."[114]

Stanley, on the other hand, states that conforming to Customs rules on substantial transformation with the *National Hand Tool* decision would cost it millions of dollars.[115] The company would either have to mark all tools made from imported forgings with a foreign country-of-origin marking or build duplicate production facilities in the United States. The first alternative would require Stanley to maintain two dedicated inventories of tools, one for domestic products and the other for tools made from imported forgings. Costs associated with administration, warehousing, packaging, and bookkeeping would also increase. Stanley's other alternative would require a capital outlay of approximately $56 million. Neither of these alternatives is satisfactory to Stanley. The company reported that the most sensible option would be to transfer all domestic mechanics tools operations and investment offshore and lay off its 1,800 production workers in the Dallas and Wichita Falls, TX plants.[116] Stanley's domestic materials suppliers also report that they will be

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[109] Statement of Thomas E. Mahoney, vice president, The Stanley Works, transcript of hearing, p. 175.

[110] Danaher Corp., posthearing submission to the USITC, Apr. 25, 1996, p. 11.

[111] Statement of Dan Craighead, vice president, international, Snap-on, Inc., transcript of hearing, pp. 165.

[112] Statement of George M. Sherman, president and CEO, Danaher Corp., transcript of hearing, p. 170.

[113] Statement of Dan Craighead, vice president, international, Snap-on, Inc., transcript of hearing, pp. 160-161.

[114] Mayer, Brown & Platt on behalf of Vaughan & Bushnell Manufacturing Co., posthearing submission to the USITC, Apr. 25, 1996, p. 2.

[115] William Axline, president and general manager, Stanley Mechanics Tools, Inc., interview with USITC staff, Apr. 3 and 4, 1996.

[116] Ablondi, Foster, Sobin & Davidow, P.C., on behalf of The Stanley Works, posthearing submission to the USITC, Apr. 25, 1996, pp. 2 and 18.

adversely affected if a change in Customs marking requirements results in Stanley relocating its domestic operations overseas.[117]

Stanley also states that if the rules of origin for mechanics hand tools were changed (e.g., adoption of the NAFTA Marking Rules to all imports) to require marking based on the country in which the raw forging was produced, it would be anomalous with the rules of NAFTA partners and cause Stanley to incur additional costs estimated at $9 million initially and $4.5 million annually thereafter to cover duplicate inventories, packaging changes, and additional book keeping charges.[118]

[117] See written submissions to the USITC from Rack Technology, Inc., Apr. 22, 1996; Lone Star Gas Co., Apr. 22, 1996; Component Specialty, Inc., Apr. 29, 1996; and Consolidated Casting Corp., Apr. 18, 1996.

[118] Ablondi, Foster, Sobin & Davidow, P.C., on behalf of The Stanley Works, posthearing submission to the USITC, Apr. 25, 1996, p. 18.

Frozen Vegetables

The U.S. vegetable-freezing industry consists of many small regional producers and several large national and multinational producers. The large firms process principally under their own labels for national distribution. In addition, the large firms compete directly with regional firms for market share. The frozen vegetable processing industry includes an estimated 310 firms.[119] These firms are primarily in California and Washington, where large quantities of raw vegetables for freezing are grown. A significant number of firms are also located in the Northeast, North Central, and South Atlantic regions. The U.S. market for frozen vegetables is growing, especially for frozen potato products, nontraditional style frozen vegetables, and value-added vegetables and vegetable mixtures.[120]

Industry Profile

Trade data 1995 (*million dollars*):	
U.S. production	9,343
U.S. imports	203
U.S. exports	113
Apparent U.S. consumption	9,433
Import share of apparent U.S. consumption (*percent*)	2

Source: Estimated by the Commission staff based on data from Quick Frozen Foods International (Fort Lee, NJ: E.W. Williams Publications Co.), October 1995, pp. A18 and A19.

Trends in Globalization

The principal frozen vegetables produced domestically are french-fried potatoes and other frozen potato products (57 percent of U.S. output), corn (11 percent), green peas, and green beans (4 percent each). Although relatively small (imports accounted for 2.2 percent U.S. consumption in 1995), imports allow for year round availability of frozen vegetables, and allow U.S. processing plants to more fully utilize their labor and production facilities.

Specific Marking Requirements

Imports of frozen vegetables are subject to country-of-origin marking requirements under section 304 of the Tariff Act of 1930,[121] which requires that every article of foreign origin (or its container) be marked to indicate to the ultimate purchaser the country of origin of the article. Under section 304, the article is to be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit. In 1988,

[119] Estimated by USITC staff based on data from U.S. Department of Commerce, "Preserved Fruit and Vegetables," 1987 *Census of Manufactures*, Industry Series (MC87-I-20C), Mar. 1990, pp. 20C-10 and 20C-11. The actual number of individual firms is believed to be somewhat less since the overall vegetable processing industry has been downsizing in recent years.

[120] Ibid.

[121] 19 U.S.C. 1304(a)(1).

several California-based frozen food companies[122] requested that the existing practice of marking frozen produce with country-of-origin information on the rear panel of packages be rescinded, and to require that such markings be placed on the front panel of packages. Customs ruled in a letter, HQ 731830, November 21, 1988, that country-of-origin markings of certain packages of frozen produce that appeared on the backside of the packaging next to the nutritional information were legally marked under section 304. In 1989, Norcal appealed, and the U.S. Court of International Trade (CIT) held that HQ 731830 was incorrectly decided and directed Customs to issue a decision requiring front panel country-of-origin marking.[123] Customs successfully appealed to the U.S. Court of Appeals for the Federal Circuit and the CIT opinion was vacated.[124]

In January 1993, Norcal/Crosetti Food, Inc., and Patterson Frozen Foods, Inc., petitioned Customs under section 516 of the Tariff Act of 1930 (19 U.S.C. 1516 and Part 175, Customs Regulations (19 CFR Part 175)), seeking a ruling that imported frozen produce was not marked in accordance with the requirement of section 304.

In December 1993, Customs ruled that packages of frozen vegetables must show the country-of-origin marking on the front side of the package to be considered as marked conspicuously. In addition, Customs specified the type style, size, color, and other requirements relating to labeling. In June 1994, the CIT invalidated the Customs ruling[125] on the grounds that Customs did not follow proper rule making procedures. In 1995, Customs announced[126] that it had begun a new rule making process, holding the section 516 petition in abeyance until a final rule is made.

In 1993, Customs determined that imported raw or frozen vegetables of different varieties (broccoli, cauliflower, peas, carrots, etc.), which were cleaned, cut, peeled, frozen, then combined with different domestic varieties of vegetables, and packaged in the United States were not substantially transformed in the United States.[127] The individual vegetables were found to retain their identities after the above mentioned processing and packaging operation, and therefore, the ultimate purchasers of the imported vegetables are the retail purchasers of the mixed frozen vegetables. Customs also ruled on whether country-of-origin marking on the packaging was in a conspicuous place and otherwise satisfied the marking requirements. Customs determined that mixed frozen vegetables sold as "American Mixtures" or "Heartland Style" required country-of-origin marking on the front panel of the

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[122] Norcal/Crosetti Foods, Inc., Patterson Frozen Foods, Inc., and Richard A. Shaw, Inc. collectively referred to as "Norcal." Norcal/Crosetti Foods went out of business in early 1996.

[123] *Norcal/Crosetti Foods, Inc., v. U.S. Customs Service*, 758 F. Supp. 729 (CIT 1991), Feb. 27, 1991.

[124] Rev'd. 963 F.2d 356 (Fed. Cir. 1992), vacated, May 4, 1992.

[125] 855 F. Supp. 388 (CIT 1994).

[126] 60 F.R. 6464, Feb. 2, 1995.

[127] U.S. Customs ruling HQ 735085, June 4, 1993.

package in order to be considered conspicuously marked,[128] but indicated at that time that marking on the back would be permissible if certain conditions were followed.[129]

Some frozen vegetables processors, represented by the American Frozen Food Institute (AFFI), maintain that NAFTA Marking Rules improperly depart from the traditional substantial transformation principle to rules based on a change in tariff classification. [130] Because of the wording for the heading covering frozen vegetables in the Harmonized Tariff Schedule and the rules based upon it, the NAFTA Marking Rules require that frozen vegetable mixtures be marked to indicate the country of origin of each component of the mixture instead of the country of origin of the final product.[131] This group is concerned that Customs will adopt NAFTA Marking Rules as the new rules of origin governing merchandise from all sources. With regard to substantial transformation, the NFPA believes that the food preservation process is "unquestionably a substantial transformation of the product and should continue to be recognized as such."[132]

Compliance Concerns

From the comments received during the Commission survey, there is little consensus among frozen vegetable food processors regarding the necessity, cost, consumer reaction, and correct application of country-of-origin marking requirements. Some processors are concerned that the United States is not enforcing the requirement that the country of origin be displayed conspicuously on retail packages of imported frozen vegetables.[133] They are also concerned that current law is not sufficiently specific as to the size and placement of country-of-origin marking. The International Brotherhood of Teamsters shares in these concerns.[134] Other vegetable processors have concerns that NAFTA Marking Rules may communicate wrong or misleading information to the ultimate consumer. In particular, Pillsbury notes that "in cases where fungible materials from different countries are commingled, the regulations (19 CFR 102.11(b)(2)) allow the goods' origin and markings to be determined on the basis of certain inventory management methods.... [which] hardly effectuates the marking law's goal of advising a United States consumer of a product origin at the point of purchase."[135]

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[128] This is in line with Customs' practice of requiring importers to place foreign country-of-origin marking near any U.S. flag or reference to the United States or America on any product.

[129] For example, if references to the United States, America, or U.S. geographic names were removed from the front panel.

[130] American Frozen Food Institute, prehearing submission to the USITC, Mar. 27, 1996, and posthearing submission to the USITC, Apr. 25, 1996.

[131] This concern could be addressed if the rule for the specific tariff heading were to be changed.

[132] Statement of Dr. Allen W. Matthys, vice president, technical regulatory affairs, National Food Processors Association, transcript of hearing, p. 235.

[133] United Foods, Inc., written submission to the USITC, Apr. 24, 1996, p. 1.

[134] International Brotherhood of Teamsters, AFL-CIO, written submission to the USITC, Apr. 25, 1996, p. 1.

[135] Hogan & Hartson, on behalf of Pillsbury Co., prehearing submission to the USITC, Mar. 28, 1996, p. 20.

AFFI, along with some processors, contends that regulations requiring front-panel marking of frozen food products or imposing specific type size, style, and spacing should not be required for frozen vegetables.[136] Furthermore, AFFI feels that Customs must recognize that substantial transformation occurs when ingredients or materials of foreign origin are combined in a mixture of composite goods. In addition, AFFI asserts that Customs should recognize the commingled product as having the origin of the country in which the different ingredients or materials are last combined.

NFPA believes strongly that mixing imported ingredients substantially transforms the imported good by changing the name, and very often the use, of the imported food article.[137] NFPA is opposed to any proposal which assign multiple countries of origin to goods created in the United States by mixing, blending, or assembling imported ingredients. In fact one firm points out that other food commodities that are processed in the United States from imported raw materials are not required to label country of origin, and feels that the frozen produce industry is being unduly burden with regulation.

Other domestic frozen vegetable processors believe that Customs should require front panel labeling of frozen vegetable products because the consumer would not need to handle the product to see if it contained foreign-sourced material; this would give the consumer the opportunity of making an informed purchase decision, while observing the product in the freezer case. Other processors believe that back-panel labeling would be more beneficial since it would be closer to the nutritional labeling information contained on frozen vegetables.

One company stated that Customs country-of-origin labeling requirements should consider a de minimis rule that would allow a processed vegetable mix containing only a small portion of imported material not to be labeled under the country-of-origin marking requirements. This firm suggested a 10-percent threshold. AFFI in its testimony also supported the adoption of a de minimis standard for the food industry.[138] AFFI believes this would facilitate compliance with country-of-origin marking requirements and reduce the burden on the frozen produce industry.

Some firms have developed branded products that have strong U.S. consumer identification and may be reluctant to label their product as containing some ingredients of foreign origin, while firms that state they use "Made in USA" labeling believe that using the "Made in USA" label allows them to expand their sales volume. However, the frozen vegetable market, except for branded products, is a commodity market and, hence, the firms are not able to command a premium for the "Made in USA" label.

None of the firms cited specific problems with foreign country-of-origin marking requirements. In most cases, the purchasing agents in the foreign countries are responsible

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[136] American Frozen Food Institute, prehearing submission to the USITC, Mar. 27, 1996, p. 13, and posthearing submission to the USITC, Apr. 25, 1996, p. 2.

[137] National Food Processors Association, posthearing submission to the USITC, Apr. 25, 1996, p. 1.

[138] Statement of Joel D. Joseph, chairman, Made in the USA Foundation, transcript of hearing, p. 19.

for ensuring the proper country-of-origin label. One firm noted that bilingual labeling requirements of Canada have caused some shipping delays at the border.

Compliance Costs and Benefits

The firms responding to the Commission country-of-origin marking survey indicated that the major types of costs incurred in complying with marking requirements are the physical marking costs, costs for new printing plates, inventory costs for multiple source packaging, label design costs, and inventory control costs.

Most companies surveyed were not able to quantify the cost of complying with U.S. country-of-origin labeling requirements. One firm, the Pillsbury Co., submitted cost information as proprietary data that cannot be published, but did reveal the types of costs Pillsbury expected to incur related to country-of-origin marking in 1996. These included direct internal costs, contractor and consultant costs, and modernization or purchase costs. If front panel labeling is required, Pillsbury also would incur increased costs for front panel label redesign and as a result of downtime to change labels that would cut productivity.[139] One firm stated that it cost approximately $100,000 annually, or about 8 percent of their packaging costs, to comply. Another firm noted that it has not calculated the cost of complying with marking requirements because compliance is a cost of doing business that it cannot control and as such is included under general overhead expenses. Several firms estimated that the cost of complying with marking requirements was insignificant (from less than 1 percent to 1.5 percent of the retail price for frozen vegetables depending on the vegetable mix). One firm noted that compliance costs could be reduced with a de minimis rule for imported content of frozen vegetable mixtures.

NFPA is concerned that "a food company that sources ingredients from several countries would be required to maintain label inventories covering all options."[140] This is viewed as being expensive and impractical. However, many of the firms noted that they already voluntarily mark their packages (usually such marking is coded) to identify the sources of materials in the finished product as a good manufacturing practice. This is currently done to meet product liability and recall requirements and to comply with regulations issued by State and Federal agencies charged with regulating food products. United Foods states that it does "not incur any identifiable cost in complying with country-of-origin marking requirements."[141] Pillsbury stated that "Pillsbury inventory management system does not include the function of tracking the country of origin of vegetable products."[142] The current Pillsbury inventory management system tracks the date a shipment of vegetables is received, the lot number, and the identity of the supplier, but it does not maintain and process country-of-origin information. Incorporating the latter function would require a major modification to multiple computer systems, to track and process information at the following

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[139] Hogan & Hartson, on behalf of the Pillsbury Co., posthearing submission to the USITC, Apr. 25, 1996, p. 9.

[140] National Food Processors Association, posthearing submission to the USITC, Apr. 25, 1996, p. 1.

[141] United Foods, Inc., written submission to the USITC, Apr. 23, 1996, p. 3.

[142] Hogan & Hartson, on behalf of the Pillsbury Co., posthearing submission to the USITC, Apr. 25, 1996, p. 8.

stages: initial receipt of the vegetable ingredients retrieval of the ingredients, marking of packages and re-storage of ingredients. The process would need to be organized specifically to allow retrieval and re-storage of product on the basis of a particular country of origin.[143]

Several respondents to the Commission survey noted that U.S. processors who produce for both the domestic and export markets and use imported and domestic vegetables in their finished vegetable products may incur higher costs because of differing country-of-origin marking requirements administered by various U.S. and foreign government agencies. Finished frozen vegetable packages containing both imported and domestic vegetables intended for the U.S. market are required to list the country of origin of all imported vegetables, whereas a frozen vegetable product intended for export would be required to be labeled as "Made in USA" in some export markets, resulting in higher labeling and inventory costs.

United Foods stated "that the typical U.S. purchaser of frozen produce prefers not to buy and consume imported produce, does not know when she is doing so, and would change her buying patterns if country-of-origin information were brought to her attention."[144] Another processor noted that he believes that consumers assume that the product is of U.S. origin if the label does not state that it is foreign sourced. Other processors surveyed stated that although consumers may be concerned about the origin of frozen produce they consume, they are more concerned about the price, quality, and availability of the produce. A survey conducted by Field Research Corporation[145] in February 1995 of California grocery shoppers found that 54 percent of shoppers' decisions regarding frozen vegetables purchases were price-related. The next most important response was the mix of vegetable or ingredients in the product. Less than 0.5 percent of the respondents mentioned where the vegetables were grown or processed as a factor. A survey of frozen vegetable shoppers regarding their attitude towards the country of origin of the frozen vegetables they buy found that about 25 percent of the shoppers recall the country of origin of the frozen vegetables they purchase. Respondents indicated that the types of vegetables, ingredients, and nutritional information were more important factors in their purchase decisions.[146]

Firms responding to the Commission survey seemed to corroborate the findings of these other studies, stating that although country of origin is perceived to be important, purchasers are more concerned with quality, safety, consistency, and price of food products. Also, none were able to quantify any instances where its sales were affected as a result of country-of-origin marking requirements. However, several firms noted that country of origin was an important factor in some of their customers' decisions on frozen vegetables purchases. Some purchasers specify they will only buy frozen vegetables produced from domestic materials, while other purchasers sometimes prefer products of specific foreign countries or regions, especially when preparing ethnic cuisine.

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[143] Ibid.

[144] United Foods, Inc., written submission to the USITC, Apr. 24, 1996, p. 2.

[145] Joint Industry Group, posthearing submission to the USITC, Apr. 24, 1996.

[146] *Frozen Vegetable Attitude Study*, Maritz Marketing Research Inc., Nov. 1994, p. 1.

Automobiles[147] and Automotive Parts

The U.S. motor vehicle industry is largely governed by cyclical macroeconomic trends in the U.S. economy that influence characteristics of demand of individual consumers of motor vehicles for private use. The recently enhanced competitiveness of U.S. production facilities, including those of foreign based companies, has increased the export capability of the industry as well as supplanted imports.

Product marking can be important for automotive consumers who narrow their choice of new vehicles by the country of origin, either of the car or the company, particularly in an era of increasing globalization of auto manufacturing when the country of origin is rarely apparent. However, some manufacturers, industry officials, and observers believe that the results of the methodology behind current regulations requiring labeling for the benefit of the consumer present misleading results. Further, they report that this marking requirement is

Industry Profile

Passenger Automobiles & Light Trucks	
Trade data 1995 (*million dollars*):	
U.S. production	170,500 (e)
U.S. imports	73,314
U.S. exports	17,283
Apparent U.S. consumption	226,531 (e)
Import share of apparent U.S. consumption (*percent*)	32 (e)

Source: *Automotive News*, Jan. 8, 1996, p. 63; USITC, *The U.S. Automobile Industry Fourth Quarter 1995 Report on Selected Economic Indicators*, USITC publication 2951, Mar. 1996; USITC staff estimates.

Automotive Parts	
Trade data 1995 (*million dollars*):	
U.S. production	118,650 (e)
U.S. imports	46,400
U.S. exports	39,200
Apparent U.S. consumption	125,850 (e)
Import share of apparent U.S. consumption (*percent*)	37 (e)

Source: U.S. Department of Commerce, and USITC staff estimates.

Trends in Globalization

There has been a significant trend toward the internationalization of motor vehicle production in recent years. The U.S. Big Three (General Motors, Ford, and Chrysler) have major manufacturing facilities in South America, North America, Europe, and Australia. Foreign-based manufacturers continue to increase their U.S. production capabilities.

The U.S. motor-vehicle parts industry has stepped up the pace of globalization in order to meet the changing international procurement strategies of automakers. The U.S. motor-vehicle parts industry manufactures and assembles parts overseas, and foreign based parts manufacturers continue to establish U.S. facilities.

[147] Includes light duty trucks.

burdensome in that it does not follow the same methodologies required under other country-of-origin regulations, as discussed below.

Specific Marking Requirements

Automobiles, light trucks, and parts are subject to country-of-origin marking rules under the American Automobile Labeling Act (AALA) and section 304 of the Tariff Act of 1930. U.S. origin claims may be evaluated under the FTC standard for "Made in USA" labeling. On July 21, 1994, the National Highway Traffic Safety Administration (NHTSA) published a final rule establishing a new regulation, 49 CFR Part 583, Automobile Parts Content Labeling, to implement the AALA. These regulations require passenger motor vehicles[148] manufactured on or after October 1, 1994, to be labeled with information about their domestic and foreign content.[149] The purpose of these provisions is to enable consumers to take country-of-origin information into account in deciding which vehicle to purchase. Each new passenger motor vehicle is required to be labeled with the following five items of information:

- ❑ The percentage U.S./Canadian equipment (parts) content
- ❑ The names of any countries other than the United States and Canada which individually contribute 15 percent or more of the equipment content, and the percentage content for each country (only the two leading country names are required if more than two countries individually contribute at least 15 percent)
- ❑ The final assembly place by city, state (where appropriate), and country
- ❑ The country of origin of the engine
- ❑ The country of origin of the transmission

The first two items are calculated on a carline[150] basis rather than for each individual vehicle. The other items are determined for each individual vehicle. However, the country of origin for groups of engines and transmissions is determined once during a model year. Manufacturers of passenger motor vehicles are required to establish the required information annually for each model year, and are responsible for the affixing of the required label to the vehicle. Dealers are responsible for assuring that the labels remain fixed to the car until it has been delivered to a customer.

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[148] The term "passenger motor vehicle" defined as a motor vehicle with motive power designed to carry not more than 12 individuals, was amended to include any "multipurpose vehicle" and "light duty truck" that is rated at not more than 8,500 pounds gross vehicle weight. Thus, the motor vehicle content labeling requirements apply to passenger cars, light trucks, multipurpose passenger vehicles, and certain small buses. Motorcycles are excluded.

[149] NHTSA developed for a temporary alternative approach which permits manufacturers and suppliers to use procedures that are expected to yield similar results to the full content calculation procedures because there was insufficient time to implement the proscribed methodology before the statutory date. This temporary approach was allowable for the 1995 and 1996 model years.

[150] The term "carline" refers to a name of a group of vehicles which has a degree of commonality in construction such as body and chassis.

In order to calculate the information required for the label, the vehicle manufacturer must know certain information about the origin of each item of passenger motor vehicle equipment used to assemble its vehicles. For example, in order to calculate the information for the percentage of the value of the motor equipment installed on passenger motor vehicles within a carline that originated in the United States/Canada, the manufacturer must know the U.S./Canadian content of each item of motor vehicle equipment. The statute provides different procedures depending on whether equipment is received from an allied supplier (a supplier wholly owned by the manufacturer) or an outside supplier. For equipment received from outside suppliers, the equipment is considered U.S./Canadian if it contains at least 70 percent value added in the United States/Canada. Thus, any equipment that is at least 70 percent U.S./Canadian is valued at 100 percent U.S./Canadian, and any equipment under 70 percent is valued at zero percent.[151] For equipment received from allied suppliers, the actual amount of U.S./Canadian content is used.

NHTSA made several changes to the July 1994 final rule in response to petitions filed by interested parties.[152] A revised final rule addressing some of the petitioners' issues was published in the September 15, 1995 *Federal Register*. The remaining outstanding petition, filed by the American Automobile Manufacturers Association (AAMA) in response to the September 1995 final rule, was denied in the April 19, 1996 *Federal Register*.

While the AALA applies to all motor vehicles offered for sale or lease in the United States, Customs marking regulations apply only to imports. On July 31, 1989, Customs issued a ruling on certain automobile imports from Malaysia. Specifically, the automobile was assembled in Malaysia from the following components--the transaxle (i.e., engine and transmission) was from Japan, plastic parts were from Australia, electrical parts were from the United Kingdom, textiles and related products were from the United States, lamps and seat belts were from Korea, and most or all of the remaining parts were of Malaysian origin. Customs ruled that the country of origin of this automobile is Malaysia, as "the manufacturing process taking place in Malaysia causes the component automobile parts to lose their separate identities and emerge from the assembly process as a new article of commerce with a new name, character, and use."[153]

Recent Customs rulings on country-of-origin marking issues in the automotive area have covered a variety of products, including crankshafts, automotive exhaust component parts, automobile air conditioner kits, repackaged auto parts, automotive replacement glass, automotive water pump components, forgings for steering linkages, automotive hinge parts, and automotive wiring harnesses. Automotive products that are imported for further assembly or processing and undergo a substantial transformation in the United States do not have an origin label, and country-of-origin marking of automobile parts differ depending on the ultimate purchaser of the parts. For parts used in the production of automobiles, individual parts are not required to be marked if they are substantially transformed by being

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[151] This statutory provision is sometimes referred to as the "roll-up, roll-down" provision.

[152] Petitioners included the American Automobile Manufacturers Association (AAMA), General Motors, the Association of International Automobile Manufacturers, Volkswagen, the American International Automobile Dealers Association, and the Kentucky Cabinet for Economic Development.

[153] U.S. Customs ruling HQ 731568, July 31, 1989.

assembled into an automobile. AALA regulations do not require suppliers to mark the part or the container; these regulations merely require that the specified information is provided to the vehicle manufacturers in the form of a certification. Outside suppliers that directly supply allied suppliers are required to provide the specified information and certification directly to the allied suppliers. Suppliers are also required to maintain records of the information used to compile the information provided to the manufacturers and outside suppliers. These requirements under the AALA apply only to suppliers which supply directly to the vehicle manufacturer or to an allied supplier. No requirements are imposed on suppliers earlier in the chain, e.g., a company which supplies an item of equipment to an outside supplier which then supplies it to a vehicle manufacturer.[154]

In October 1993,[155] Customs ruled that various replacement automotive parts individually wrapped in containers which bear the proper country-of-origin marking and part number and which will reach the ultimate purchaser in these containers were excepted from individual marking.[156] This ruling applies to situations to achieve Congressional intent where a car owner orders the part directly from the manufacturer or purchases the part in its box from an auto parts store. If a mechanic orders the part, it is assumed by Customs that the consumer can ask to see the box before purchasing the part and requesting the installation. Because each part is imported in its own sealed box which identifies the part number, Customs concluded that in most cases the part will remain in the box until installation. Therefore, marking the country of origin of the imported auto part in a permanent, conspicuous, and legible manner on the sealed box in which the auto part is contained satisfies the requirements of section 304.[157] One exception to this rule is automotive replacement glass. Customs has ruled that this replacement part is not substantially transformed by installation; therefore, the car owner is the ultimate customer. Thus, the glass itself must be marked with the country of origin.[158]

Rebuilt auto parts present a unique situation with respect to country-of-origin labeling. Rebuilt or remanufactured parts are completely disassembled, cleaned, inspected for wear and breakage, reassembled with new or rebuilt components replacing worn out or nonfunctioning components, and typically tested for compliance with specifications. Almost all cores[159] of rebuilt parts are nonfunctional, and most are nontraceable as to country of origin because they will have been on a vehicle for a significant number of years. However, while value is given to the core by the rebuilder who makes an effort to salvage it, the country of origin, under both Customs rules and those of our NAFTA partners, of the rebuilt part is the country in which the original part was made, not where it was rebuilt.[160]

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[154] 60 F.R. 47880, Sept. 15, 1995.

[155] U.S. Customs ruling HQ 722727, Oct. 21, 1993.

[156] 19 U.S.C. 1304 (a)(3)(D).

[157] U.S. Customs ruling HQ 733241, Aug. 27, 1990.

[158] U.S. Customs ruling HQ 734092, Apr. 1, 1991.

[159] The core is the platform on which the rebuilt part is produced.

[160] Conlon, Frantz, Phelan, Knapp and Pires on behalf of the Automotive Parts and Rebuilders Association, written submission to the USITC, Apr. 24, 1996.

There are a number of other regulations under which automakers are required to calculate the foreign content of their motor vehicles;[161] however, a separate and distinct marking is not required. NAFTA Marking Rules are invoked to determine on which country the import duty is to be assessed and do not require a separate origin marking; however, NAFTA country-of-origin determinations may conflict with Customs regulations for marking determinations.

Regulations for in-bond processing zones, known as foreign trade zones (FTZs), do not address marking issues specifically. Auto parts arrive in FTZs under one of two categories: foreign privileged and nonforeign privileged. Foreign privileged goods arrive in the FTZ virtually in their finished state, and are eventually imported into the United States. In the auto parts sector, these are principally aftermarket parts. These parts are marked with their original country of origin, because they do not undergo a substantial transformation in the FTZ or in the United States. U.S. auto parts, classified as nonforeign privileged parts, frequently are used in an FTZ for auto assembly. These parts usually enter the FTZ unmarked, and leave unmarked as well, because only the finished product, the automobile, must be marked. In general, if parts imported into the U.S. FTZ are substantially transformed into an automobile, the automobile is considered a product of the United States, and would not be required by Customs to bear a country-of-origin marking; AALA marking requirements would still apply.[162] Situations vary, however, and case-by-case rulings are often made.

Compliance Concerns

Industry members and concerned parties[163] raised a number of issues in response to the July 1994 final rule on the AALA in petitions filed with NHTSA. In its September 1995 final

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[161] The Energy Policy and Conservation Act of 1975 led to the creation of Corporate Average Fuel Economy (CAFE) standards, which requires separate calculations of a manufacturer's average fuel economy for automobiles manufactured "domestically" and those which are not. According to CAFE standards, a carline is considered domestically produced if less than 25 percent of the components are imported. This percentage is calculated as a ratio: the sum of the declared value of imported components plus the cost of transportation and insurance for the components to the U.S. or Canadian port of entry, divided by the cost of production. Under the North American Free-Trade Agreement (NAFTA), a vehicle must have 50 percent domestic content, increasing to 62 percent when the agreement takes full effect, to be eligible for NAFTA duty-free treatment. AALA, CAFE, and NAFTA specify different methods for calculating domestic content; thus, a particular carline likely has three separate domestic content percentages.

[162] U.S. Customs official, telephone interview with USITC staff, May 13, 1996. According to U.S. Customs ruling HQ 710586, June 25, 1979, Customs determined that the country-of-origin marking requirements of 19 U.S.C. 1304 were not applicable to the finished goods (towels, in this case) because the processing constituted a substantial transformation. As such, at the time of their withdrawal from the FTZ, the product was considered a product of the United States, within the meaning of 19 CFR 134.1(e), and no foreign country-of-origin marking requirements applied.

[163] Petitioners included the American Automobile Manufacturers Association, General Motors, the Association of International Automobile Manufacturers, Volkswagen, the American International Automobile Dealers Association, and the Kentucky Cabinet for Economic Development.

rule, NHTSA granted the petitions to the extent they were accommodated by the following changes:

- Whenever material or motor vehicle equipment is imported into the United States or Canada from a third country, the value added in the United States or Canada is presumed zero unless documentation is available to the supplier which identifies value added in the United States or Canada for that equipment, in which case value added in the United States or Canada is counted; For materials used by suppliers in producing passenger motor vehicle equipment (other than for materials imported from third countries), suppliers are to make a good faith estimate of the value added in the United States or Canada (to the extent necessary to make required determinations concerning the value added in the United States or Canada of their passenger motor vehicle equipment);

- Suppliers are provided greater flexibility in making estimates;

- The number of stages for which suppliers must consider where value was added is reduced (although not to the degree recommended by AAMA);

- Manufacturers can petition to use alternative calculation procedures based on representative or statistical sampling to determine U.S./Canadian parts content and major sources of foreign parts;

Several other minor clarifying changes were made.[164]

The AAMA petitioned NHTSA's September 15, 1995 final rule, reasserting its objection to the regulatory provision which states that the U.S./Canadian content of components must be defaulted to zero if suppliers fail to respond to a manufacturer's or allied supplier's request for content information. The AAMA stated that NHTSA could not reasonably expect high supplier compliance, given that the percentage of suppliers reporting under NAFTA ranged from 60 to 65 percent for General Motors, Ford, and Chrysler.[165] When the AAMA petitioned the 1994 rule on this issue, it asserted that the content information provided to consumers would be more accurate if manufacturers and allied suppliers were permitted to estimate content levels based on information in their records for components supplied without content information. NHTSA rejected this petition on the following grounds: (1) the alternate methods likely to be used to estimate a component's content would be inconsistent with the AALA's value-added approach; (2) the most likely instance of supplier noncompliance would be when the component is less than 70 percent domestic content; and (3) manufacturers should be able to get outside suppliers to comply through specifications in purchase contracts and the like.[166]

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[164] 60 F.R. 47880-47881, Sept. 15, 1995.
[165] 61 F.R. 17254, Apr. 19, 1996.
[166] Ibid.

When the AAMA re-petitioned NHTSA on this issue, it noted that the September 1995 final rule provided outside suppliers additional flexibility for determining U.S./Canadian content, and argued that the same flexibility should be provided to vehicle manufacturers. The petition restated the AAMA's belief that the "default to zero" provision provides consumers of automobiles with inaccurate content information. NHTSA again denied this petition, stating that it believes it is reasonable to require outside suppliers to make good faith estimates based on the information that is available from their suppliers.[167] Other manufacturer and dealer perspectives on the AALA yield the following concerns: (1) the label does not distinguish between Canadian content and U.S. content; (2) the act requires a different methodology for calculating content based on the financial relationship between the automobile manufacturer and a parts supplier; (3) the methodology employs a 70 percent roll-up/roll-down rule for parts supplied by outside suppliers, meaning that a part of 69 percent U.S. content is not included as U.S. content;[168] (4) the value of parts made in-house by the automobile manufacturer is excluded; (5) the value of U.S. labor/final assembly, which may be as high as 20 percent of the vehicle's value, is excluded; and (6) the content presented does not necessarily represent the value for the particular car labeled, as the calculation is made for the entire carline regardless of the country of assembly (i.e., if a carline is produced in more than one country, the content figures on the vehicle label will be overstated or understated).[169]

Auto industry concerns with rules of origin and marking include a lack of standardization among trading partners; ambiguity in, and inconsistent application of, Customs rules to goods made in whole or in part from materials originating in another country (the development of a standard international test of substantial transformation is sought); and a lack of a consistent definition of the 'ultimate purchaser,' which is of particular interest to the replacement parts industry.[170]

The FTC "Made in USA" standard also poses certain problems for the automotive industry. In general, the industry recommends a case-by-case approach to considering challenges to "Made in the USA" claims, and rejects the notion of additional content calculation regulations which different industries have proposed. However, U.S.-based and foreign-based manufacturers have different views of the proposed changes in the FTC's standard for "Made in USA" claims. The traditional U.S. industry (Ford, General Motors, and Chrysler) has stated that, while transplant production and its domestic content have increased in recent years (although generally not approximating that of U.S. Big Three vehicles), the increased

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[167] 61 F.R. 17255-6, Apr. 19, 1996.

[168] NHTSA has concluded that the same vehicle with identical parts could have a U.S./Canadian content as high as 53 percent or as low as 11 percent, based solely on whether the parts were obtained from an allied or outside supplier.

[169] See American International Automobile Dealers Association, written submission to the USITC, Mar. 27, 1996; Association of International Automobile Manufacturers, Inc., written submission to the USITC, Apr. 25, 1996; statement of Walter Huizenga, president, American International Automobile Dealers Association, transcript of hearing, pp. 127-146; industry officials, information provided to USITC staff, Apr. 15, 1996. Commission staff surveyed nine automobile and parts producers regarding country-of-origin marking issues; however, only two responded to the survey.

[170] Association of International Automobile Manufacturers, Inc., written submission to the USITC, Apr. 25, 1996.

use of advertising by transplant manufacturers emphasizing assembly at U.S. plants has confused consumers about the country of origin of certain automotive products. These industry officials recommend that an FTC standard not conflict with the informationconveyed on the AALA label, and thatadvertisers not be permitted to make "Made in USA" claims that consumers would consider to be conflicting with the AALA information.[171] [172]

Industry sources representing foreign-based manufacturers with manufacturing/assembly operations in the United States and their dealers indicate that in this era of globalized automotive production, the wholly domestic standard (recently expressed as "all or virtually all") is nearly impossible for any automobile manufacturer to achieve, and that a single standard cannot be universally applied to the automotive and other, unrelated industries.[173] These sources report that the wholly domestic standard does not reflect current consumer perceptions and comprehension of the automobile industry, asserting that consumers understand that the terms "made," "assembled," or "built" in the United States means that the final assembly takes place in a U.S. plant with U.S. labor. This group also notes that the wholly domestic standard is inconsistent with other governmental origin determination programs such as CAFE, NAFTA, Customs rules, and the AALA, and that none of these programs can be adopted by the FTC because each includes as least one foreign country within the meaning of "domestic" or "U.S."

As does the traditional U.S. industry, the foreign-based industry in the United States recommends that FTC focus on prohibiting those claims that are "false or deceptive" to consumers or that result in unfair competition. However, members of this sector contend that consumers are aware that an automobile advertised as assembled or made in the United States by a foreign-owned automaker is not claiming that all or virtually all of the component parts are made in the United States.[174]

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[171] American Automobile Manufacturers Association, submission to the FTC, "Made in the USA Policy Comment," FTC File No. P894219, Jan. 22, 1996.

[172]The United Auto Workers (UAW) supports the retention of a single standard to be met for a "Made in USA" claim as opposed to a variety of standards for different products, as far as it is practical. The UAW recognizes that the complexity of products like motor vehicles and the multinational nature of production of parts could make the wholly domestic single standard impossible to enforce, and would support the use of cost of production as a base rather than value-added or broader measures as found under NAFTA, CAFE, and Buy American provisions. United Auto Workers, submission to the FTC, "Made in the USA Policy Comment," FTC File No. P894219, Jan. 22, 1996.

[173]See Association of International Automobile Manufacturers, Inc., submission to the FTC "Made in the USA Policy Comment," FTC File No. P894219, Jan. 22, 1996; Toyota Motor Sales, U.S.A., Inc., submission to the FTC, "Made in the USA Policy Comment," FTC File No. P894219, Jan. 16, 1996; American International Dealers Association, submission to the FTC, "Made in the USA Policy Comment," FTC File No. P894219, Jan. 22, 1996.

[174] Association of International Automobile Manufacturers, Inc., submission to the FTC "Made in the USA Policy Comment," FTC File No. P894219, Jan. 22, 1996.

Compliance Costs and Benefits

Costs of implementing and maintaining the AALA have been estimated by NHTSA with the assistance and input of industry sources. In its July 21, 1994 *Federal Register* notice of the final rule, NHTSA estimated the cost of a separate label for marking to be $0.06 to $0.11, and the cost of expanding a fuel economy label to be less than $0.01.[175] Therefore, for the 15 million light vehicles sold in the United States in 1994, the total cost for labels would have ranged from $150,000 to $1,650,000. Based on industry input, NHTSA estimated the one-time cost of implementing a system to collect and store the necessary information for the labels to be about $1 million for each of the U.S. Big Three, and $500,000 for each of the 20 other large vehicle manufacturers.[176] In terms of annual program maintenance costs, Ford provided NHTSA with an estimate of $150,000 per year; NHTSA affirmed that this figure is reasonable for the U.S. Big Three. NHTSA estimated that each of the 20 other large vehicle manufacturers would incur an annual expense of about $75,000.[177] Based on these data, the estimated cost to producers and importers of automobiles of marking under the AALA for the first year could have been as much as $14.7 million.[178] The combined total net income of the U.S. Big Three alone in 1994 totaled nearly $14 billion.[179]

Estimates vary greatly for the approximately 15,000 parts suppliers. Large suppliers manufacturing hundreds of parts could experience costs similar to those of a large vehicle manufacturer, while many small suppliers procure all of their inputs from the same country and would experience negligible costs. NHTSA noted that an industry estimation of costs ranged from $40,000 to $80,000 per company in the first year, with a reduction in successive years.[180] Therefore, the auto parts industry's costs associated with the AALA in the first year likely ranged from $600 million to $1.2 billion.

Perceived benefits to automotive manufacturers and consumers of the various applicable marking regulations vary between traditional U.S. manufacturers and foreign-based manufacturers. The AALA appears to provide more benefits to the traditional U.S. automakers - the Big Three - than to foreign-based manufacturers. Firstly, the AALA counts Canadian-origin parts as domestic content; transplant operations report that this benefits the Big Three which have extensive parts-making facilities in Canada. Secondly, the AALA allows actual domestic content calculations to be used for parts coming from an allied supplier, instead of the 70 percent roll-up/roll-down standard applied to outside suppliers; transplant operations report that this also benefits the Big Three which own more parts suppliers than do transplant operations. Finally, the AALA does not count the value of the

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[175] 59 F.R. 37330, July 21, 1994.

[176] Ibid.

[177] Ibid.

[178] Estimated by USITC staff. This figure includes the cost of labels and one-time implementation cost estimates. Annual program maintenance costs would be incurred in subsequent years.

[179] *Ward's Auto World*, Mar. 1996, p. 20.

[180] 59 F.R. 37330, July 21, 1994.

labor used to assemble vehicles, which reportedly discriminates against the transplants by "unfairly depreciating the job-creating investments they have made in this country."[181]

As for the benefits consumers gain from AALA country-of-origin labeling, industry sources present varying opinions.[182] Some manufacturers and dealers assert that the information presented on the AALA label is not of interest, and that consumers make automotive purchasing decisions based primarily on price and quality of the product.[183] Other industry sources report that automotive research indicates that consumers consider information regarding a vehicle's country of origin is useful to them.[184] One source states that many consumers want to purchase vehicles manufactured domestically, while others specifically seek out vehicles manufactured abroad; the source asserts that the information presented on the AALA label is confusing and misleading.[185]

Foreign-based and U.S.-based manufacturers also disagree on the consumer benefits of FTC "Made in USA" labeling. Foreign-based manufacturers contend that consumers are aware, through advertising and other types of publicity, that the automotive industry is highly internationalized, and that consumers are able to apply what they know to the "Made in USA" claim in the context of a particular advertisement. Specifically, these sources assert that "consumers understand that, when it comes to automobiles, the terms 'made,' 'assembled,' or 'built' in America means that the final assembly takes place in a U.S. plant with American labor;" and that "automobile consumers know that when a 'foreign' automobile manufacturer's advertising shows a plant in Ohio producing a model of automobile in conjunction with a statement that the product is 'assembled' or 'made' in the United States, this is not a claim that 'all or virtually all' the component parts or sub-components were made in the U.S."[186] In sum, these foreign-based manufacturers believe than an FTC regulation not based on the "all or virtually all" standard but on traditional advertising standards of "false or deceptive" claims would provide consumers with sufficient information about the manufacturing process of the automobile. Such a rule would also be considered a competitive benefit to the manufacturers themselves, many of which manufacture a sizeable percentage of their motor vehicles for the U.S. market in the United States with U.S. labor.

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[181] Association of International Automobile Manufacturers, Inc.,written submission to the USITC, Apr. 25, 1996.

[182] Research indicates that brand name is somewhat stronger than country-of-origin effects for a new automobile. Gerald Haübl and Dr. Gunter Schweiger, "The Effects of Country of Origin and Brand Name on Consumers' Evaluations of a New Automobile: A Structural Model," unpublished paper, University of Alberta, Faculty of Business, Edmonton, Canada, Apr. 30, 1996, p. 30.

[183] American International Automobile Dealers Association, submission to the FTC, "Made in the USA Policy Comment," FTC File No. P894219, Jan. 22, 1996; information provided by industry sources to USITC staff.

[184] Ibid.

[185] Ibid.

[186] Ibid.

U.S.-based manufacturers oppose "Made in USA" proposals that are not consistent with the information presented on the AALA label, and believe that the increased use of advertising with "Made in USA" type themes by transplant manufacturers has been confusing to some consumers.[187]

[187] American Automobile Manufacturers Association, submission to the FTC, "Made in the USA Policy Comment," FTC File No. P894219, Jan. 22, 1996.

Textiles and Apparel

Textile mill products are comprised intermediate goods—such as yarns and fabrics—and some finished goods such as knitwear, hosiery, and carpeting. Apparel and other finished textile products include both clothing and home furnishings cut and sewn from purchased materials.

Promotion of the "Made in USA" label became increasingly important in the 1980s as textile and apparel imports rose and U.S. sector employment fell. Information received by the USITC as part of this investigation indicated that the "Made in USA" label can be a factor in a consumer's purchasing decision involving apparel and home furnishings, but usually after the product's price, quality, style, and fit meet the consumer's needs. Several apparel companies indicated that the "Made in USA" label recently has become less important to ultimate consumers as they now demand more value, searching for quality products at competitive prices.

Specific Marking Requirements

Requirements for marking country of origin for textiles and apparel are covered not only by Customs regulations but also those issued by the FTC under the Textile Fiber Products Identification Act, the

Industry Profile

Textile Mill Products	
Trade data 1995 (*million dollars*):	
U.S. shipments	75,000 (e)
U.S. imports	7,534
U.S. exports	5,696
Apparent U.S. consumption	76,838 (e)
Import share of apparent U.S. consumption (*percent*)	10 (e)

Source: Compiled or estimated by USITC staff based on official statistics of the U.S. Department of Commerce.

Apparel and Other Textile Products	
Trade data 1995 (*million dollars*):	
U.S. shipments	88,000 (e)
U.S. imports	46,620
U.S. exports	7,189
Apparent U.S. consumption	127,431 (e)
Import share of apparent U.S. consumption (percent)	37 (e)

Source: Compiled or estimated by USITC staff based on official statistics of the U.S. Department of Commerce.

Trends in Globalization

Strong import growth in the last decade has occurred in apparel, which requires relatively labor-intensive production methods. In an effort to preserve market share, U.S. apparel producers have expanded their use of production-sharing programs in Mexico and the Central American and Caribbean countries, where the labor-intensive assembly processes take place. The firms have retained the designing, cutting, and marketing activities in the United States. The U.S. textile mill industry and the U.S. apparel industry are still heavily dependent on each other for sales and inputs, respectively.

Wool Products Labeling Act of 1939, and the Fur Products Labeling Act.[188] The Textile Fiber Products Identification Act (Textile Act) covers all textile goods not covered by the Wool Products Labeling Act of 1939 (Wool Act); however, the effects are quite similar. They both require that most consumer goods be labeled to show the fiber content and set forth the manner in which the fiber content is to be presented. The Textile and Wool Acts also require that the name of the manufacturer or importer, or the registered number (RN) issued by the FTC for the manufacturer or importer, appear on the label. They further require that the country of origin of imported goods be on the label. Goods made in the United States must be marked as "Made in USA," "Made in USA of Imported Materials," or similar wording, as appropriate. This requirement differs from that for many other domestically manufactured products for which such a "Made in USA" label is not mandatory. For garments with a neckline, regulations issued under the Textile and Wool Acts specify that the label must be placed at the inside center of the neck or in close proximity thereto should another label be there. For other garments and textile products, the label must be placed in a "conspicuous" place. The Textile Act and the Wool Act also require that mail order advertising or mail order promotional material contain a statement that indicates whether the product was imported, made in the USA, or could be either.

The Fur Act requires that fur products be labeled to indicate the country of origin of the fur skin incorporated in the product,[189] the name of the animal or animals that produced the fur, and certain information if the fur was processed using specified methods.[190] Unlike the Textile and Wool Acts, the Fur Act does not require that the finished fur article itself be marked with the country of origin if imported, or labeled "Made in USA" if domestically produced. However, section 304 of the Tariff Act of 1930 requires that imported fur articles, such as coats and jackets, be labeled with the country of origin. The Fur Act also requires that general advertising of fur products must contain the statement that the goods are labeled to show country of origin of imported furs and that the information required on the label be included in catalogs and mail order publications.

Customs rules for country-of-origin marking specify that a good must be labeled with permanent and conspicuous markings. They further provide that the degree of permanence should be sufficient to insure that the marking shall remain on the good until it reaches the ultimate purchaser unless it is deliberately removed and that the ultimate purchaser must be able to find the marking easily and read it without strain. The Customs regulations, like the FTC marking rules, require that wearing apparel with a neckline must have the label affixed at the inside center of the neck.

The Uruguay Round Agreements Act (URAA) mandated changes to the rules of origin for textiles and apparel that have marking implications. The change in origin rules, effective for imports on and after July 1, 1996, affect country-of-origin determinations for U.S. imports of textiles and apparel that are subject to manufacturing and processing operations in, or contain components from, more than one country. Under the pre-URAA rules, garments assembled in one country from parts cut in another were generally considered the product

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[188] These acts became effective, respectively, on Mar. 3, 1960; Oct. 14, 1940; and Aug. 8, 1951; and are described more fully in Chapter 3 of this report.

[189] This is the country where the animal producing the fur was raised.

[190] These methods include bleaching, tip dyeing, dyeing, shearing, and plucking.

of the country in which the cutting occurs. The URAA rules, though, assign origin to the country of assembly. For home textiles like sheets and pillowcases, the pre-URAA rules generally conferred origin on the country in which the goods were cut to size from fabric rolls, hemmed, trimmed, and otherwise sewn. The URAA rules conferr origin on the country in which the fabric was made. For fabrics woven or knit in one country and dyed, printed, and otherwise finished in another, the pre-URAA rules generally conferred origin on the country in which the finishing occurs, whereas the URAA rules confer origin on the country in which the fabric was formed.

On November 16, 1995, Customs published a notice in the *Federal Register* stating that it was considering a change to its practice regarding country-of-origin marking for apparel.[191] As noted above, Customs requires that the country-of-origin marking for garments with a neckline be permanently affixed at the neckline. Recently, however, Customs had ruled that the country-of-origin marking need not be at the neck for certain reversible garments such as jackets and tank tops because removal of the label could damage the garment. Customs proposed to evaluate the country-of-origin marking for apparel on a case-by-case basis. The initial 60-day comment period on the proposal was extended for an additional 60 days, or until May 15, 1996.[192]

Customs has also provided a 4-month period of adjustment, from July to November 1996, to allow firms to exhaust their inventory of old country-of-origin labels for certain textile and apparel products because of the economic hardship of converting to labels that reflect the new country-of-origin rules implemented under section 334 of the Uruguay Round Agreement Act.[193] This adjustment period applies to labels stating "Assembled in X country from U.S. components" or similar phrase for goods that were assembled from components cut to shape in the United States.

As part of the FTC's ongoing review of its rules, on May 6, 1994, the FTC published a notice in the *Federal Register* seeking comments on the costs and benefits of the regulations it published to implement the Wool Act, Textile Act, and Fur.[194] It also sought comments on which changes in the rules would increase the benefits of the rules to purchasers and how the changes would affect the costs of compliance. As a result of that review, the FTC proposed several changes to the rules and again sought comment on the proposed new rules.[195] The closing date for these comments was May 13, 1996.

Compliance Concerns

To obtain input from the industry, the Commission staff contacted a number of firms in different segments of the textile and apparel sector and requested that they participate in the

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[191] 60 F.R. 57621, Nov. 16, 1995.
[192] 61 F.R. 3763, Feb. 1, 1996.
[193] 61 F.R. 32924-32925, June 26, 1996.
[194] 59 F.R. 23645-23646, May 6, 1994.
[195] 61 F.R. 5340, Feb. 12, 1996.

telephone survey.[196] Responses from these firms are segregated below into major industry segments.

Yarn, fabric, and industrial textiles segments

Country-of-origin marking rules do not appear to significantly affect producers of intermediate textile goods such as yarn or fabric. For such goods, the country-of-origin marking can be placed on the container or, for U.S.-made goods, the origin information can be on packing slips or other manifests that accompany a shipment of goods.

The most important issue concerning rules of origin for this segment is the treatment of finishing under the URAA-mandated rules. Under these rules, a fabric is deemed to originate in the country where it was made, no matter how much it may have been transformed in a second country. Thus, an imported greige fabric[197] that is dyed, printed, or otherwise finished in the United States must be labeled as made in the foreign country. Further, U.S. firms that import greige fabrics and finish them domestically need to maintain records to keep track of the country of origin for each piece of cloth, thereby adding to their operating costs.[198] Consumers of the finished good will not know how much U.S. labor and technology went into the goods. Another issue somewhat related to country-of-origin marking is the incorrect marking of goods that are transshipped, which is generally done to avoid quotas and has been a problem for several years.

U.S. producers of industrial textile products such as bags, shipping containers, and cordage interviewed by USITC staff expressed concern regarding imported goods that are not marked with the country of origin. According to domestic producers of bags and shipping containers, USDA regulations require that certain agricultural goods be transported only in domestically made containers. These domestic producers claim that, as domestic containers generally cost more than imported ones, a bag supplier often sends its customers imported ones or a mix of domestic and imported goods.[199] U.S. producers of cordage expressed concern over the absence of identifying "tags" on imported cordage, particularly climbing

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[196] Staff contacted 12 textile firms producing yarns, fabrics, and carpets, of which 5 responded to the survey. Staff also contacted 22 producers of industrial textiles, of which 10 responded. Of the 4 firms producing home furnishings that were contacted, 3 responded. The president of Pillowtex Corp., a producer of home furnishings, appeared at the Commission hearing and subsequently submitted further information. Approximately 30 members of the apparel trade community were contacted regarding this investigation, including 24 apparel companies, 4 retailers or buying groups, and 2 apparel trade associations. Of these, 16 apparel companies and 2 large retailers responded to the telephone survey, and a representative of the American Apparel Manufacturers Association testified at the hearing.

[197] "Greige" fabric is the term used for unfinished fabric just off the loom or knitting machine.

[198] For instance, Cranston Print Works Co. converts greige fabrics to finished fabrics. Cranston states that the finishing processes, all done in the United States, contribute well in excess of 50 percent of the value-added of the final goods. Cranston Print Works Co., written submission to the FTC, "Made in USA Policy Comment," FTC File No. P894219, Jan. 11, 1996.

[199] One producer of containers said that since these products are "low-end goods" and are often imported in bales, the absence of the labels is not easily detected.

ropes and safety cords.[200] Cordage is on the "J-list" of goods that are excepted from the marking requirements other than on the container in which the product is imported.[201] Without mandatory tagging, U.S. producers cannot distinguish their ropes from imported ones. When accidents occur, U.S. producers are often faced with liability suits and may have difficulty establishing that they did not produce the faulty goods.

U.S. producers in this segment generally do not use "Made in USA" labeling directly, because virtually all goods of this segment are for commercial use rather than for use by ultimate consumers. However, most of the firms contacted said that the ability of their customers to use the "Made in USA" label is important. The "Made in USA" label enables their customers to compete against imported goods for certain market segments in which the country of origin is important to the final consumer.

One producer of industrial textiles expressed concern over the wholly domestic FTC standard for labeling a good as U.S.-made and the NAFTA provision that allows a good to contain no more than 7 percent of nonqualifying content and still be labeled as U.S.-made. This necessitates different origin marking for certain goods sold domestically and for those exported to Mexico or Canada. The goods for the Canadian or Mexican markets can be labeled as "Made in USA," whereas those for the U.S. market would be labeled "Made in the USA of Imported Materials."[202]

Home furnishings

The URAA-mandated change in country-of-origin rules affects the country-of-origin marking of many home furnishings. The pre-URAA rules for home furnishings generally conferred origin to the country in which the goods were cut to size from fabric rolls, hemmed, and otherwise sewn. The URAA rules confer origin on the country in which the fabric was formed.

Thus a U.S. manufacturer of pillows, for example, that uses domestic and imported fabrics is required to maintain records indicating the origin of each piece of fabric and to maintain an inventory of labels to show origin for each country from which it uses fabrics. Additionally, contractors that dye, print, or otherwise finish greige fabrics, commonly called converters, must maintain such records and inventories. U.S. industry sources indicate that these new requirements not only add to their production costs, but also put them at a marketing disadvantage.

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[200] Cordage can be tagged by having a strand of an identifying color to aid in distinguishing goods of a particular manufacturer.

[201] 19 CFR 134.33, J-List Exceptions contains a list of articles excepted from the country-of-origin marking requirements in accordance with the provisions of section 304(a)(3)(J) of the Tariff Act of 1930, as amended.

[202] Gates Rubber Co. contends that a good labeled "Made in USA" should have the same requirements as a good labeled "Made in Germany" or "Made in Japan," contending that it is deceptive to have different standards apply to goods from different countries. Gates contends that for a good made in the United States using some imported raw materials, the "Made in USA" label accurately discloses that the product was made in the United States using domestic labor in a U.S. facility. Gates Rubber Co., written submission to the FTC, "Made in USA Policy Comment," FTC File No. P894219, Jan. 16, 1996.

A pillow made from imported fabric that is dyed, printed, cut, sewn, and filled in the United States has to be labeled as made in the foreign country despite the fact that the value added to the product in the United States is several times greater than the foreign-content value. These domestic producers that use imported fabric expressed concern that a textile product made in the United States from imported fabric and then exported can be labeled "Made in USA" with no mention of the fabric source. Another major concern of producers of certain types of home furnishings is a lack of harmonization between FTC marking requirements and the URAA-mandated rules. For example, a pillow made in the United States from fabric imported from China, under the FTC rules, if sold in the United States should be labeled "Made in USA of Imported Materials." Under the URAA-mandated rules, the same pillow has to be labeled as "Made in China" or "Sewn and stuffed in USA/Made in China." Producers affected by this difference attempted to resolve this conflict with Customs and FTC officials before the effective date of the URAA Customs rules.[203] Consequently, a bill, S. 1747, was introduced on May 13, 1996, to amend section 304 of the Tariff Act of 1930 to allow an exception to the marking requirements for textile products of HTS subheading 9404.90 that are manufactured in the United States and filled with feathers and/or down, provided that the products' shells are of fabric that is no less than 85 percent of cotton. One U.S. manufacturer of fabric for the home furnishings segment said that the URAA rules will probably not have any long-term effects on producers of home furnishings, but that there may be some adjustment problems in the short-term for those producers that use imported fabrics.

An anomaly exists between the URAA-mandated rules of origin and the NAFTA Marking Rules that can pose problems to certain manufacturers. The products affected by this conflict are down- or feather-filled goods such as pillows and comforters. Under the URAA rules, such goods are deemed to originate in the country where the fabric used for the shell was formed, whereas under NAFTA Marking Rules they are attributable to the country where the pillow or comforter is made.[204] Thus, a comforter made and sold in the United States with imported shell fabric needs to be marked as originating in the country in which the shell fabric is formed.[205] However, the same comforter made in either Mexico or Canada

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[203] Charles M. Hansen, Jr., chairman of the board, president, and CEO, Pillowtex Corp., interview with USITC staff, Washington, DC, May 2, 1996. A representative of one large U.S. apparel firm stated that, when faced with conflicting FTC and Customs rules, the firm tends to follow the Customs rules because the Customs Service more frequently enforces its rules than the FTC and has stricter penalties for noncompliance. This representative also said that he believes that the FTC does not have the manpower to enforce these regulations.

[204] A representative of U.S. manufacturers of feather and down-filled home furnishings has suggested that this problem could be remedied in several ways. One suggestion is to amend section 334(b)(2)(A) of the URAA to exclude HTS subheading 9404.90, covering feather and down-filled comforters. Another is to have the Customs rules of origin apply to imported products, but to permit FTC marking rules to apply to finished products that are made from imported goods that are substantially transformed into a different product in the United States. Charles M. Hansen III, Podesta Associates, Inc., letter to USITC staff, May 6, 1996.

[205] The shell reportedly accounts for about 10 percent of the value of a down comforter made in the United States. The down is generally processed domestically from imported raw feathers; raw feathers are valued at about $1 per pound while cleaned down is valued at about

(continued...)

using the same imported fabric shell and sold in the United States needs to be marked as originating in the appropriate NAFTA partner.[206]

Apparel

Most of the apparel producers and retailers contacted voiced concerns about U.S. country-of-origin marking rules. Many of these concerns focused on the rigidity of both the FTC and Customs rules and the need for flexibility in view of the ongoing globalization of the industry and expanding apparel markets.[207] Many U.S. apparel companies that purchase inputs and market globally are experiencing difficulty in tracking the origin of their materials to meet different countries' marking rules. For example, a company may manufacture an identical garment in four different countries or perform different stages of garment production in more than one country (e.g., cutting fabric into garment parts in one country and sewing the parts together in another). In other production scenarios, inputs such as fabric, hooks and eyes, lace, zippers, and clasps may come from several different countries and it may be necessary to substitute inputs from one line to another.

Moreover, because both the FTC and the Customs marking rules require that the country-of-origin label be permanently affixed to the garment, the global apparel companies claimed that they cannot readily meet changes in demand that may arise in the different country markets. To meet both U.S. and foreign marking rules, these companies must either segregate their production by country markets or apply one label that meets the criteria of all the countries in which they market their products. These firms claimed that they do not necessarily know at the time of production whether a garment will be sold in the United States or abroad.

The URAA-mandated changes in rules of origin affect country-of-origin marking for certain apparel accessories as well.[208] Paris Accessories, Inc., a U.S. producer of handkerchiefs and bandannas, uses both domestic and imported fabric in the production of these goods. The foreign fabric is generally imported in the greige state and then bleached, dyed, printed, cut, and sewn into bandannas and handkerchiefs in the United States. Under the pre-URAA rules, the company marked its products of imported fabrics as "Made in USA of Imported Fabric" for both domestic and export markets. Under the URAA rules, the company must mark these products that are sold domestically with the name of the foreign country in which

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[205](...continued)
$16 per pound. Charles M. Hansen, III, Podesta Associates, Inc., telephone interview with USITC staff, May 7, 1996.

[206] This is a particularly important factor for producers of down-filled comforters and pillows as virtually no down-proof fabric is produced domestically. Statement of Charles M. Hansen, Jr., chairman of the board, president, and CEO, Pillowtex Corp., transcript of hearing, p. 187.

[207] The International Mass Retail Association (IMRA) believes that the FTC standard for "Made in USA" labeling is outdated and that it unfairly penalizes U.S. producers. IMRA states that most manufacturing processes have one or two essential steps that transform raw materials or component parts into some other kind of good, and suggests that origin rules be adopted on a sector-by-sector basis. IMRA, written submission to the FTC, "Made in USA Policy Comment," FTC File No. P894219, Jan. 16, 1996.

[208] Paris Accessories, Inc., written submission to the USITC, Apr. 18, 1996.

the fabric is formed, allegedly putting the firm at a competitive disadvantage in the U.S. market. The firm continues to be able to mark these products for export as "Made in USA of Imported Fabric." Paris Accessories exports a substantial portion of its products and does not always know at the time of production whether a particular product will be sold domestically or abroad. Because of differences in marking requirements, the company must keep records on the country of origin of its inputs, label its products for domestic and foreign markets separately, and maintain separate inventories. According to the firm's submission, these activities greatly increase its costs, may reduce its exports, and may force it to consider shifting its manufacturing to foreign locations. Paris Accessories also stressed that the URAA rules of origin are not intended to define origin for FTC marking purposes. The firm suggested that the Customs marking for country of origin only be required for goods that are sold to the final consumer in the form in which they are imported.

Many respondents to the Commission survey expressed considerable concern over the lack of harmonization of country-of-origin marking rules between the United States and other countries, especially Mexico, a potentially big market for U.S.-produced apparel. Frequent changes in Mexico's rules of origin and marking requirements are causing many of the apparel companies and retailers difficulty. These apparel firms and retailers claim that the Government of Mexico does not allow time for U.S. companies to adapt to the new labeling requirements. These respondents contend that Mexico's changing labeling requirements are nontariff barriers imposed in an attempt to protect Mexico's ailing textile and apparel sector. Many of the U.S. apparel firms and retailers that export apparel to Mexico claim that the amount of information required by the Government of Mexico on apparel labels is growing and is unreasonable. The most recent change in Mexico's labeling rules requires that the country of origin be marked for where the fabric was formed as well as the place of assembly of the garment. One U.S. apparel producer that recently began exporting shirts to Mexico indicated that the firm had stopped exporting there because the cost of tracing back the country of origin of the shirt fabric was prohibitive.

U.S. apparel companies that market globally also expressed concern about the requirement in U.S. and foreign marking regulations for identification (ID) numbers to be marked on the country-of-origin labels. Each country has a different system for assigning and recording these ID numbers. For example, the United States requires a registered number (RN) that identifies the manufacturer and/or importer of the product, while Mexico requires a "taxpayer" ID number for the importer. Canada requires yet another ID number similar to that of the United States, and Chile requires an ID number similar to that of Mexico. Consequently, U.S. apparel exporters that use one universal label to meet both U.S. and foreign marking requirements may have to print as many as four different ID numbers on their country-of-origin labels. Some respondents recommended developing an international system of ID numbers or standardized WTO label. One company indicated that the requirement to standardize a country-of-origin label among WTO members is inferred in that portion of the Uruguay Round Agreement to harmonize the rules of origin.

U.S. apparel companies that use one universal label to meet the marking requirements of several country markets or are instructed to do so by their retailer customers have found that these labels have become so large that they affect the appearance of the garment and are

uncomfortable to the wearer. For example, some companies use one label printed in English, French, and Spanish to meet the marking requirements of several countries.[209]

Some respondents questioned the necessity and practicality of section 134.46 of the Customs Regulations. Under this provision, the country of origin must be disclosed in close proximity to any reference on the imported product or its container to a place other than the country of origin.[210] Thus, if the name "United States," or "USA," or "California," for example, is part of a company's brand name and appears on the label of the garment or a hang tag, the country of origin of the garment must be printed in a comparable size in close proximity to such words on the label or hang tag. This can be in addition to the country-of-origin label attached at the neckline or elsewhere on the garment.

In spite of their concerns over the U.S. country-of-origin requirements, only a few of the companies recommended eliminating the country-of-origin marking requirement altogether. However, concerns were expressed over the enforcement of country-of-origin marking requirements. A few companies that supply the apparel producers with inputs, especially apparel interlinings, shoulder pads, ribbons, braids, and other trimmings, expressed concern over the level of enforcement of country-of-origin marking rules by both the FTC and Customs. These companies claimed that some of their competitors import these inputs and then falsely certify that they are made domestically, or that importers or distributors sell these imported inputs to U.S. apparel producers without indicating that the inputs are in fact imported.

All of the apparel companies that expressed concern about country-of-origin marking would like to see greater flexibility in the application of U.S. marking rules. Many would like to be able to label the country of origin on hang tags that are attached to the garments. One company even suggested using a stick-on label to place on to the outside packaging of a man's shirt, for example. Other company respondents would like the flexibility to be able to affix the labels to the side seam or some area other than the neckline to avoid bulk and the discomfort large labels can cause to the wearer.

Two apparel firms stated that they were concerned with transshipments and that their competitors misrepresenting imported garments as products made in the United States. Both of these firms stated that they would like to see better enforcement of the country-of-origin marking requirements.

Of the three fur apparel companies responding to the Commission survey, two expressed concerns about U.S. country-of-origin marking rules. One U.S. fur apparel producer stated that there should be better enforcement of the marking rules to ensure that imported fur apparel is not labeled as "Made in USA." Another fur apparel producer expressed concern that Customs personnel consider it a violation of country-of-origin marking rules to have labels that are stitched loosely on the garment. This respondent indicated that it is a common

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[209] For example, some country of origin labels may carry Northern Mariannas Islands in English, Spanish, and French, resulting in a label at least 2 inches long and more than 1 inch wide.

[210] 19 CFR 134.46--Marking when name of country or locality other than country of origin appears.

practice in the fur apparel segment to apply country-of-origin labels in a loose manner, often stitching them to the garment at the corners only.

Compliance Costs and Benefits

Yarn, fabric, and industrial textiles segments

The costs of compliance with marking regulations for these industry segments are largely connected with keeping inventory records for those firms that source from several countries. Because records must be kept regarding fiber content, the additional burden of maintaining records indicating origin is not difficult. None of the survey respondents in these segments indicated that compliance costs were significant. One said that it was probably less than 1 percent of total costs. The American Textile Manufacturers Institute (ATMI) pointed out that since the country-of-origin marking is on the label showing fiber content and care instructions, including this information adds almost no further cost to the product.[211]

According to producers in these segments, the country-of-origin markings provide a commercial advantage as their apparel industry customers receive preferential duty treatment when using U.S.-made fabrics in their production-sharing operations offshore. Under NAFTA, apparel assembled in Mexico from fabric wholly formed and cut in the United States enters the United States free of duty and quota. The U.S. special access program with participating Caribbean Basin countries provides for guaranteed access to the U.S. market for apparel assembled there from fabric formed and cut in the United States. Rather than being charged to regular quotas, such imports from Caribbean Basin countries enter under "guaranteed access levels," or GALs. According to one respondent, most of these relationships are well established and any further changes are not anticipated.[212]

ATMI stated that the country-of-origin markings serve as an important control feature in administering the U.S. textile quota program. It stated that mislabeled or unlabeled goods are often a sign of transshipment and circumvention of the quota program.[213]

Home furnishings

Costs to firms in this sector of complying with origin marking are physical marking costs, administrative costs, added production costs for multiple production lines, and warehousing and tracking costs for foreign goods. Most of the respondents in this industry segment indicated that the costs of compliance are nil or negligible. However, one U.S. producer of home furnishings, such as pillows and down comforters, estimated that making the needed

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[211] American Textile Manufacturers Institute, written submission to the USITC, Apr. 22, 1996.

[212] However, should the Caribbean Basin countries be given NAFTA parity under proposed legislation, it is likely that firms that have production-sharing operations in that region will have the incentive to use U.S. rather than foreign fabrics in these operations.

[213] American Textile Manufacturers Institute, written submission to the USITC, Apr. 22, 1996.

changes to conform with the implementation of the URAA rules of origin will cost it nearly $1.5 million, or equal to about 8 percent of the firm's pre-tax 1995 income.[214]

Representatives of this industry segment indicated that brand loyalty and preference for U.S.-made goods is an important factor for home furnishings.[215] Respondents to the Commission survey indicated that for goods of this segment, the "Made in USA" label is important to both retailers and the ultimate consumer. One respondent indicated that in foreign markets, customers would pay an additional 3 to 5 percent for U.S.-made goods.

Apparel

The majority of respondents did not have specific information on the total costs of complying with country-of-origin marking rules because of the difficulty involved in isolating these costs from other business costs. Most did agree, however, that the costs of complying with these rules are generally high and involve much more than just the physical costs. Additional costs are the costs of warehousing, accounting, and tracking of foreign components; the administrative costs of segregating inventory by different country markets; administrative costs involved with keeping abreast of changing Federal marking regulations; and the costs of maintaining a center for labeling and relabeling. In addition, the fur apparel respondents indicated that their firms incur marketing and advertising costs in complying with the marking requirements under the Fur Act.[216]

A few respondents did supply rough estimates of their costs of complying with the marking rules. The cost per garment for marking at the time of production ranged from 1 cent to 10 cents for apparel of textile materials and to as much as $1 for fur garments. Some of the larger companies commented that the costs and administrative burden of meeting the marking rules tend to increase with the extent of globalization in sourcing and marketing by a company.

All of the respondents that commented on the costs of meeting country-of-origin marking rules agreed that the costs of relabeling garments is much higher--reportedly 5 to 30 times as much--than the cost of labeling the garment at the time of production. Rough estimates of relabeling ranged from 25 cents to $1 per garment for garments made of textile materials.[217] Relabeling can involve removing the garment from the packaging and replacing the old country-of-origin label with a new one. Many of the respondents stated that the need to relabel did occur a fair amount of the time. One medium-sized apparel producer stated that his company has to relabel for country of origin about every other week. The primary reasons for relabeling were to respond to changing demand in different country markets and

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[214] Pillowtex Corp., posthearing submission to the USITC, Apr. 19, 1996.

[215] The domestic industry supplies about 85 percent of domestic consumption of home furnishings compared with 63 percent for all of Standard Industrial Classification major group 23 that includes home furnishings, apparel, and other made-up textile goods.

[216] The Fur Act requires that in general advertising of a group of fur products composed in whole or in part of imported furs must state the following, "Fur products labeled to show country of origin of imported furs."

[217] The fur apparel company that responded to this question did not provide costs on relabeling the country of origin.

to meet the changing foreign country-of-origin requirements. A large retailer respondent and an apparel producer respondent stated that they each have separate labeling centers in large distribution centers, where labels, not just country-of-origin labels but also brand name and care labels can be adjusted.

As noted earlier, the USITC received written submissions from the Crafted With Pride in U.S.A. Council, Inc., and the International Mass Retail Association (IMRA) that discuss, among other things, the results of surveys prepared for them on the importance of country-of-origin marking to consumers. The survey conducted for Crafted With Pride in U.S.A. Council, whose certification mark identifies U.S.-made textile and apparel goods, dealt specifically with apparel and home furnishings. This survey found that about 40 percent of U.S. consumers noticed the country of origin when buying apparel and home furnishings and that the country of origin most often cited was the United States.[218] Among these consumers who said that the country of origin of their purchase was the United States, 73 percent rated themselves as "very satisfied" with the item purchased, compared with only 56 percent for all consumers. This result was similar to the one of a survey conducted by Roper Starch Worldwide Inc. during April 1995, in which 43 percent of the consumers surveyed thought that the "Made in USA" label indicated superior quality, and that 9 out of 10 said the logo reflected superior or fairly good quality.[219] Both the Crafted With Pride in USA Council and the IMRA indicated in their submissions that country of origin becomes a consideration in consumer purchasing decisions once a consumer is satisfied with the quality, size, style or design, and price of the product.

The IRMA/Gallup study also shows that, for apparel, 69 percent of consumers surveyed said U.S.-made garments are of higher quality than those from foreign countries, and 11 percent said foreign-made garments were of higher quality. However, the study shows that Americans are often confused, believing that "American brand" goods are necessarily "American made" goods. Consumers believe that American brand goods are domestic products regardless of where the items are actually made, or the labels they might bear. According to the study, one of the conclusions that can be drawn from this consumer misapprehension is that consumers respond mostly to the perceived quality represented by American brands.

Just over one-half of the apparel companies that responded to the USITC telephone survey indicated that country-of-origin marking was not an important selling factor to many apparel consumers. These companies stated that in today's highly competitive apparel market, consumers are looking for quality products at competitive prices. A few firms noted that several years ago some retailers demanded "Made in USA" products, but, given current market conditions, are now demanding lower prices for quality products. Some firms stated that brand names are a more important factor than the "Made in USA" label, whether or not these brand-name garments are made in the United States. One large global apparel

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[218] Prepared statement of Frank Schapiro, senior partner, Demand Factors, Inc., St. Louis, MO, which prepared the survey for, and appeared on behalf of, the Crafted With Pride in U.S.A. Council, Inc., at the USITC hearing, Apr. 10, 1996. Demand Factors conducted a series of 31 national telephone surveys among consumers between June 1985 and December 1993; these surveys were stratified to represent a universe of retail traffic for apparel and home textiles.

[219] *Roper Reports 95-5*, Roper Starch Worldwide Inc., New York, July 1995.

company stated that country-of-origin marking rules help protect brand-name products from counterfeiting.

A few of the companies surveyed indicated that the "Made in USA" label is an important selling factor in markets both here and abroad. A large global apparel company emphasized the popularity of U.S.-made apparel in foreign markets, particularly in Japan.[220] Another apparel firm that sells to industrial consumers—sometimes union shops that want U.S.-made goods—stated that the "Made in USA" label is a primary selling factor for its products. These companies indicated that the "Made in USA" label assures the consumer of high-quality materials, workmanship, and service; allows consumers to choose between U.S. and imported products; and provides a basis on which consumers can make price comparisons.[221]

A few companies indicated that country-of-origin marking can help in detecting transshipments, tracking foreign-made apparel for quota purposes, and deterring counterfeiting of brand-name apparel. Two apparel companies, one of them a large fur apparel retailer, cited retailer preferences for "Made in USA" labeled products, especially in the fur apparel market where "Made in USA" connotes superior quality. The American Apparel Manufacturers Association's testimony before the USITC pointed out that consumers continue to use country-of-origin information in making their purchasing decisions.[222]

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[220] Note that goods would not necessarily have to meet FTC standards to be labeled "Made in USA" when sold in foreign markets.

[221] The National Knitwear and Sportswear Association (NKSA), representing designers, manufacturers, contractors, and marketers of knit products sees little reason to change the standards currently in place for labeling the country of origin of knit goods. However, its manufacturing members are split as to whether goods made in the United States of imported yarn should be labeled "Made in USA" or "Made in USA of Imported Yarn."

[222] See prepared statement of the American Apparel Manufacturers Association, presented at the Commission's public hearing, Apr. 10, 1996.

Footwear

The U.S. footwear industry is a highly fragmented sector of about 350 to 400 firms, mostly small in size. The highly labor-intensive industry has undergone substantial restructuring in the past decade, largely owing to intense competition from low-cost countries. In general, domestic firms compete on the basis of nonprice factors such as product differentiation, quality, and service. To remain competitive, many of these firms have invested in the latest manufacturing and marketing technology, increased their use of global procurement and marketing, and entered new channels of distribution.

Industry Profile

Trade data 1995 (*million pairs*):	
U.S. production	235.6
U.S. imports	1,399.5
U.S. exports	34.5
Apparent U.S. consumption	1,600.6
Import share of apparent U.S. consumption (*percent*)	87

Source: Compiled by USITC staff based on official statistics of the U.S. Department of Commerce

Trends in Globalization

With the diffusion of information technology, U.S. firms have separated manufacturing tasks from design and marketing functions to take advantage of individual country strengths in these areas. Generally, product design and marketing occur in the United States while manufacturing takes place in low-cost countries. A number of U.S. firms also import footwear components, not only to improve the relative price competitiveness of their product line but also to obtain those parts that are not made domestically. Moreover, several U.S. firms have entered into joint ventures or licensing arrangements with producers in foreign markets to meet growing demand there for American-styled and branded footwear, such as rugged outdoor boots.

Specific Marking Requirements

Footwear is not subject to any product-specific marking requirements like textile and apparel goods. However, the Footwear Distributors and Retailers of America (FDRA) claims that Customs strict application of section 134.46 of the Customs Regulations as it relates to footwear discriminates against the sector. Under this provision, the country of origin must be disclosed in close proximity to any reference on the imported product or its container to a place other than the country of origin. For example, if the outsole of a shoe contains a marking such as "U.S. patent pending," the country-of-origin marking must be in close proximity to this reference. The FDRA contends that, for imported products other than footwear, Customs, in practice, applies a less stringent rule than that called for under

section 134.46, especially when there is little likelihood of consumer deception.[223] Moreover, while the Customs Service has proposed to amend section 134.46 by requiring proximity only when a reference to a place other than the country of origin "may mislead or deceive the ultimate purchaser as to the actual country of origin of the article," the FDRA contends that the proposal, if implemented, would not apply to footwear.[224] The proposed amendment had not been adopted as of July 10, 1996.

Recent litigation by New Balance Shoe Company and Hyde Athletic Industries Inc. concerning FTC standards on country-of-origin marking has led the FTC to examine its rules and regulations on such marking issues.[225] Hyde Athletic Industries is negotiating a consent agreement with the FTC.[226] New Balance contends that the FTC should relax its rules concerning which footwear products may carry the "Made in USA" label in view of the globalization of shoe production and, in many cases, the absence of domestic production of certain shoe parts.[227] The case against New Balance was withdrawn from adjudication on May 14, 1996, for FTC Commission consideration of a settlement proposal.

Compliance Concerns

Four of the five footwear firms contacted by USITC staff in connection with this investigation expressed concern over FTC standard governing the use of "Made in USA" labeling on goods that are manufactured in the United States with foreign materials.[228] They claimed that, in a global economy and with a shrinking supplier base in the United States, the FTC wholly domestic standard (frequently referred to as "all or virtually all") is simply not a commercial reality. U.S. footwear firms must import components that either are not made in the United States or are not cost effective to source domestically. FDRA recommended that footwear firms be allowed to use the "Made in USA" label when all of the labor to manufacture the component parts and to assemble the footwear occurs in the United States. According to FDRA, the fact that some or all of the materials are of foreign origin should have no significance. Thus, footwear made in the United States from imported leather should be eligible for a "Made in USA" label. However, FDRA's recommendation

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[223] Footwear Distributors and Retailers of America, written submission to to the USITC, Apr. 18, 1996, pp. 1-3.

[224] 60 F.R. 57559, Nov. 16, 1995.

[225] The FTC has charged the New Balance Shoe Co. with false advertising for claiming its products are made in the United States. New Balance, which has appealed the decision, claims that the majority of its shoes are assembled in the United States with U.S. materials. Some parts are not available domestically and, thus, must be imported.

[226] Hyde Athletic Industries, which produces about 80 percent of its shoes in the United States, is negotiating the terms of a consent agreement with the FTC, according to David Wolf of Wolf, Greenfield & Sacks, PC., counsel for Hyde Athletic Industries, telephone interview with USITC staff, May 14, 1996.

[227] James Davis, chairman and chief executive officer, New Balance Shoe Co., telephone interview with USITC staff, May 1, 1996.

[228] FDRA and the law firm of Sonnenburg & Anderson also expressed similar concerns in written submissions to the USITC. In addition, FDRA, Footwear Industries of America, and the Rubber and Plastic Footwear Manufacturers Association submitted written statements to the FTC calling for an overhaul of the FTC standards to make them more practical, equitable, and objective.

would prohibit the use of "Made in USA" labeling for footwear made in the United States with imported uppers or outsoles. In developing the rules for "Made in USA" labeling, FDRA suggests a functional, rather than a value-based, approach that offers objectivity, a high degree of certainty and predictability, and is easy to administer. FDRA also contends that the use of Customs rules as the basis for "Made in USA" labeling, as some have suggested, would be inappropriate for footwear and would deceive consumers. Under the NAFTA Marking Rules, for example, footwear assembled in the United States using imported uppers and outsoles is deemed to be "Made in USA" because the assembly of these two major components represents a substantial transformation.

Footwear firms also expressed concern over a lack of harmonization of regulations that are administered by different U.S. government agencies, which has caused labeling difficulties for firms producing footwear for multiple country markets. One firm stated that some 90 percent of its shoes qualify for "Made in USA" labeling under Customs rules but only about 40 percent qualify under the FTC standard. Some U.S. footwear firms selling to both domestic and foreign markets indicated that it is difficult to keep track of shoes that are destined for different country markets and, thus, would be subject to differing marking rules. U.S.-made shoes that meet NAFTA origin rules can be marketed in Canada or Mexico with a "Made in USA" label. However, the same shoes probably could not be sold domestically with a "Made in USA" label because of the FTC wholly domestic standard. Shoes produced for other export markets can be labeled as "Made in USA" if they undergo substantial transformation or meet tariff shift rules in the United States.

Only one respondent indicated that the FTC standard are not a problem for the firm. This firm currently buys over 95 percent of its components in the United States. However, the firm stated that there is a need to establish a quantitative threshold for qualifying a shoe under the FTC "Made in USA" standard because wholly domestic or all or virtually all is too vague. The firm recommended that the FTC establish a quantitative threshold limit such as 90 or 95 percent.

Problems in determining the correct country of origin for marking purposes arise when products undergo processing in, or are procured from, more than one country, as is often the case in the global footwear industry today. Some countries adopt tariff shift rules, some use substantial transformation rules, and others use value-based approaches. For manufacturers producing for multiple country markets, this proliferation of origin rules results in the burden of multiple marking practices, increased costs, and added inefficiencies.[229]

Three firms expressed concern about foreign country-of-origin marking rules, particularly the lack of harmonization between U.S. and foreign regulations. Two firms indicated differences between U.S. and Canadian country-of-origin marking rules that require relabeling to market in the United States footwear returned from Canada marked with a "Made in USA" label. One firm complained about delays at the border and two firms indicated market access difficulties especially for footwear exported to Mexico because of the detailed labeling information required by the Mexican Government and the requirement that the information be in Spanish. Also,one firm expressed concern about market access

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[229] Sonnenberg & Anderson, attorneys & counselors at law, written submission to the USITC, Apr. 25, 1996.

difficulties for shoes that are produced overseas and imported into the United States for export to other markets.

Compliance Costs and Benefits

Almost all firms surveyed claimed that the cost of complying with country-of-origin marking rules is not available but represents less than 1 percent of production costs (the majority estimated the cost at less than 0.5 percent of production costs). Compliance costs consist mostly of administrative costs of complying with regulatory agencies, warehousing, accounting, and costs of tracking the use of foreign components. In addition, two firms cited added production costs due to multiple production lines and inventory records, one for products destined for domestic consumption and the other for those for foreign markets.

Almost all firms surveyed stated that country-of-origin marking plays an important part in the consumer purchasing decision. For example, consumers would generally prefer to buy Italian shoes rather than Chinese ones. One firm claimed that demand for its U.S.-made branded shoes is greater than that for the same brand-name shoes it sources from El Salvador. Although the majority of firms could not precisely estimate their sales volume affected by country-of-origin marking, one firm stated that about 20 percent of its sales volume comes from customers who always buy its U.S.-made products. Some said that the country of origin may not be the most significant factor in the consumer's selection of shoes, but nevertheless it is one of the important selection criteria in the buying decision and their sales would suffer if they are not allowed to label products with an unfettered "Made in USA" marking.

The majority of respondents claimed that information exists showing consumer preference for footwear products with a "Made in USA" label. Letters from consumers, consumer focus group studies, and retailer feedback all indicate buying patterns of consumers favoring products with a "Made in USA" label. One company reported that its sales could decline by as much as 20 percent without the "Made in USA" label on its products. The majority reported that buying U.S.-made shoes and preserving U.S. jobs are important to a significant portion of the U.S. population. The majority of respondents who are also importers indicated that their domestically made shoes offer consumers a competitive product with the special appeal of being U.S. made.

All five firms agreed that country-of-origin marking provides consumers a basis for determining quality of materials, workmanship, or service. The firms also contend that the marking rules help preserve domestic jobs and help the local economy, which are important issues for both consumers and producers. Because the cost of country-of-origin marking rules is estimated to be less than 0.5 percent for most firms, elimination or simplification of these rules will not significantly affect costs. One firm said that the cost savings resulting from either elimination or simplification of country-of-origin marking rules would likely be absorbed by the footwear firms, with little or no savings passed on to consumers.

APPENDIX A

Request Letter from the Honorable Bill Archer, Chairman of the Committee on Ways and Means, U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-6348

December 22, 1995

DOCKET NUMBER 1889

Office of the Secretary
Int'l Trade Commission

RECEIVED
OFC OF THE SEC
U.S. INT'L TRADE COMM
'96 JAN 19 P1:52

Peter Watson
International Trade Commission
Room 718
500 E St., SW
Washington, DC 20437

Dear Mr. Chairman,

Last July, the House Ways and Means Trade Subcommittee held hearings on the issue of rules of origin and country of origin markings for both foreign and domestic goods. Origin markings have been a matter of controversy since they first became public law in 1930. Views expressed during the hearings ranged widely, including calls to drastically modify or eliminate country of origin marking requirements, and requests to harmonize rules for domestic and imported goods.

To provide Congress with a more thorough foundation for consideration of legislative initiatives, this Committee requests that the Commission initiate an investigation under Section 332 of the Tariff Act of 1930 to review the laws, regulations, and practices applicable to country of origin markings. The report should include the following:

- A legislative and administrative history of marking rules, including a comparison of the concepts and approaches for determining country of origin for foreign and domestic goods.

- An analysis of the administrative processes for determining origin and appealing decisions on marking issues.

- An evaluation of the problems which country of origin marking rules create for industry, and the benefits of these rules to consumers. Information should be sought on the costs to government and industry of enforcement and compliance.

While the Commission should provide available information on any U.S. industry, we request a focus on electronics, steels, pharmaceuticals, hand tools, and frozen vegetables.

The administration of U.S. country of origin marking requirements is largely handled by the U.S. Customs Service and the Federal Trade Commission. Copies of this letter and requests for full cooperation with the ITC's study will be sent to these agencies, the latter of which is currently accepting public written comments for a study already underway. The Section 332 study being requested of the ITC in this letter should involve a similar process of seeking public comment and holding hearings open to interested parties.

The Commission report should be submitted within six months of receipt of this request.

Sincerely,

Bill Archer
Chairman

APPENDIX B
Federal Register Notice

INTERNATIONAL TRADE COMMISSION

[Investigation 332-366]

Country of Origin Marking: Review of Laws, Regulations, and Practices

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: February 5, 1996.

SUMMARY: Following receipt on January 11, 1996, of a request from the Committee on Ways and Means, U.S. House of Representatives, the Commission instituted Investigation No. 332-366, Country of Origin Marking: Review of Laws, Regulations, and Practices, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). As requested by the Committee, the Commission will provide a report that will include the following:

(1) A legislative and administrative history of U.S. marking rules, including a comparison of the concepts and approaches for determining country of origin for foreign and domestic goods;

(2) An analysis of the administrative processes in the United States for determining origin and appealing decisions on marking issues; and

(3) An evaluation of the problems which the country of origin marking rules create for industry, and the benefits of these rules to consumers, including the costs to government and industry of enforcement and compliance.

As requested by the Committee, the Commission in its investigation will focus on the industries producing electronics, steel, pharmaceuticals, hand tools, and frozen vegetables; other industries where information is available will be studied as well. Staff will contact U.S. producers and consumer groups to identify those that have major concerns or interests regarding country of origin marking requirements. Committee staff has indicated that this should include problems, as identified by industry and other sources in the course of the investigation, with foreign country of origin marking requirements. The Commission expects to submit its report of the investigation to the Committee by July 11, 1996.

FOR FURTHER INFORMATION CONTACT: General information on the investigation may be obtained from Dennis Fravel, Office of Industries (202-205-3404) or Mark Paulson, Office of Industries (202-205-3429); and legal aspects of section 332 investigations, from William Gearhart, Office of the General Counsel (202-205-3091). The media should contact Margaret O'Laughlin, Office of Public Affairs (202-205-1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202-205-1810).

BACKGROUND: In its letter, the Committee noted that it had held hearings in July 1995, on the issues of rules of origin and country of origin markings for both foreign and domestic goods. The Committee noted that views expressed at the hearings ranged widely, and included requests to modify or eliminate country of origin marking requirements, and also to harmonize rules for domestic and imported goods.

This investigation will focus on country of origin markings, including certain rule of origin issues that directly effect country of origin marking. International rules of origin issues are currently being examined in the Commission's Investigation No. 332-360, *International Harmonization of Customs Rules of Origin*, instituted in April 1995 at the request of the U.S. Trade Representative. The Commission's proposed rules and analysis pertaining to harmonized rules of origin will be published at various intervals in the **Federal Register**.

PUBLIC HEARING: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on April 10, 1996. The Commission requests that testimony focus on the issues noted in the SUMMARY section above. All persons shall have the right

to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., March 20, 1996. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., March 27, 1996; the deadline for filing post-hearing briefs or statements is 5:15 p.m., April 25, 1996. In the event that, as of the close of business on March 27, 1996, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after March 27, 1996, to determine whether the hearing will be held.

WRITTEN SUBMISSIONS: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. The Commission requests that written submissions focus on the issues noted in the SUMMARY section above. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on April 25, 1996. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: February 6, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–3290 Filed 2–13–96; 8:45 am]

BILLING CODE 7020-02-P

APPENDIX C
List of Witnesses Appearing at the USITC Hearing

CALENDAR OF PUBLIC HEARINGS

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject : COUNTRY OF ORIGIN MARKING:

REVIEW OF LAWS, REGULATIONS,

AND PRACTICES

Inv. No. : 332-366

Date and Time : April 10, 1996 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main hearing room 101, 500 E Street, S.W., Washington, D.C.

ORGANIZATION AND WITNESS

GENERAL

Panel 1

Made in the USA Foundation, Washington, D.C.

Joel D. Joseph, Chairman, Made in the USA Foundation

Union Label & Service Trades Department, AFL-CIO, Washington, D.C.

Charles E. Mercer, Secretary-Treasurer, AFL-CIO

-More-

International Mass Retail Association (IMRA), Arlington, VA

Robin W. Lanier, Vice President, International rade & Environment, IMRA

ORGANIZATION AND WITNESS

GENERAL

Panel 2

The Joint Industry Group, (JIG), Washington, D.C.
Evelyn Suarez, Chairperson of the Rules of Origin Committee, JIG and partner with the law firm, Ross & Hardies

National Council on International Trade Development, (NCITD), Washington, D.C.

John Ryan, Chairman, Customs Committee, NCITD

International Business-Government Counsellors, Inc. (IBC), Washington, D.C.

James B. Clawson, Executive Vice President & Treasurer, IBC

Baker & McKenzie Washington, D.C.

William D. Outman, II—OF COUNSEL

STEEL

Panel 3

Harris & Ellsworth Washington, D.C. *on behalf of*

Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers

Jeffrey S. Levin—OF COUNSEL

-More-

ORGANIZATION AND WITNESS

Schagrin Associates Washington, D.C. *on behalf of*

Committee on Pipe and Tube Imports (CPTI)

Mark Magno, Vice President of Marketing, Wheatland Tube Company

Roger B. Schagrin, Schagrin Associates, General Counsel to the CPTI

AUTOMOBILES AND ELECTRONICS

Panel 4

American International Automobile Dealers Association (AIADA), Alexandria, VA

Walter Huizenga, President, AIADA

Semiconductor Industry Association (SIA), San Jose, CA

David Rose, Director of Import/Export Affairs, Intel Government Affairs

HAND TOOLS

Panel 5

Ablondi, Foster, Sobin & Davidow, P.C. Washington, D.C. *on behalf of*

The Stanley Works, New Britain, CT

Thomas E. Mahoney, Vice President, The Stanley Works

Richard H. Abbey—OF COUNSEL

-More-

ORGANIZATION AND WITNESS

Danaher Corporation, Washington, D.C.

George M. Sherman, President and CEO, Danaher Corporation

Snap-on Incorporated, Kenosha, WI

Dan Craighead, Vice President, International, Snap-on Incorporated

Gary Henning, Sr., Director, Corporate Development, Snap-on Incorporated

Jeanne Archibald, Hogan & Hartson--OF COUNSEL

TEXTILES AND APPAREL

Panel 6

Neville, Peterson & Williams New York, NY *on behalf of*

Natural Feather & Textiles, Inc., Wayzata, MN

Daniel R. Kral, President, Natural Feather & Textiles, Inc.

John M. Peterson—OF COUNSEL

American Apparel Manufacturers Association, (AAMA), Arlington, VA

Jerry Cook, Director of International Trade, Sara Lee Knit Products

Pillowtex Corporation, Dallas, TX

Charles M. Hansen, Jr., Chairman of the Board, President and CEO, Pillowtex Corporation

ORGANIZATION AND WITNESS

Crafted With Pride in USA Council, Inc.,
New York, NY

Frank H. Schapiro, Senior Partner, Demand Factors, Inc.

AGRICULTURE AND PHARMACEUTICALS

Panel 7

Michigan Agricultural Cooperative Marketing Association (MACMA), Lansing, MI

Tom Butler, Manager, Processing Apple Division, MACMA

American Frozen Food Institute, McLean, VA

Leslie G. Sarasin, Executive Vice President and Staff Counsel, American Frozen Food Institute

National Food Processors Association (NFPA), Washington, D.C.

Dr. Allen W. Matthys, Vice President, Technical Regulatory Affairs, NFPA

The Pillsbury Company, Minneapolis, MN

Marti Morfitt, Vice President, Green Giant Brands

Barnes, Richardson & Colburn Washington, D.C. *on behalf of*

Pharmaceutical Research and Manufacturers of America (PhRMA)

Matthew T. McGrath—OF COUNSEL

ORGANIZATION AND WITNESS

SPORTING GOODS AND COLLECTIBLES

Panel 8

Stein Shostak Shostak & O'Hara Washington, D.C. *on behalf of*

Ajay Sports, Inc., Delavan, WI
Daiwa Corporation, Garden Grove, CA
Coastcast Corporation, Rancho Dominguez, CA
Lynx Golf, Inc., City of Industry, CA
Lamkin Leather & Rubber Company, San Diego, CA
Taylor Made Golf Company, Inc., Carlsbad, CA

Tony Helf, Production Manager, Taylor Made Golf Company

Mark King, Vice President of Sales,Taylor Made Golf Company

Thomas D. Dixon, Vice President of Marketing, Coastcast Corporation

Bruce N. Shulman)

)—OF COUNSEL

Scott E. Rosenow)

BGE, Ltd., Niles, IL

Joel R. Platt, General Counsel, BGE, Ltd.

APPENDIX D
USITC News Release, Chairman's Letter, and Chairman's Opening Statement at USITC Public Hearing

NEWS
United States International Trade Commission · Office of Public Affairs · Washington, DC 20436

FOR IMMEDIATE RELEASE
February 12, 1996

CONTACT: Peg O'Laughlin
or
John Greer
202-205-1819

OPA 96-005

ITC LAUNCHES INVESTIGATION OF COUNTRY OF ORIGIN MARKING; SEEKS INPUT FROM TRADE ASSOCIATIONS, INDUSTRY OFFICIALS, CONSUMER GROUPS AND OTHER INTERESTED PARTIES

The U.S. International Trade Commission (ITC) has initiated an investigation into country of origin markings on U.S. imports, exports, and domestic products and is seeking input for the report from interested parties.

The investigation, *Country of Origin Marking: Review of Laws, Regulations, and Practices* (investigation No. 332-366), was requested by the U.S. House of Representatives' Committee on Ways and Means. As requested by the Committee, the ITC will provide:

> a legislative and administrative history of U.S. marking rules, including a comparison of the concepts and approaches for determining country of origin for foreign and domestic goods;
>
> an analysis of the administrative processes in the United States for determining origin and appealing decisions on marking issues; and
>
> an evaluation of the problems which the country of origin marking rules create for industry, and the benefits of these rules to consumers, including the costs to government and industry of enforcement and compliance.

As requested by the Committee, the ITC will focus its investigation on the industries producing electronics, steel, pharmaceuticals, hand tools, and frozen vegetables. Other industries where information is available will be studied as well. ITC staff will contact U.S. producers and consumer groups to identify those that have major concerns or interests regarding country of origin marking requirements. Committee staff has indicated that this should include problems, as identified by industry and other sources in the course of the investigation, with foreign country of origin marking requirements.

The ITC expects to submit its report to the Committee by July 11, 1996.

In its letter, the Committee on Ways and Means noted that it had held hearings in July 1995 on both the issues of rules of origin and country of origin markings for both foreign and domestic goods. The Committee noted that views expressed at the hearings ranged widely

-- more --

and included requests to modify or eliminate country of origin marking requirements as well as to harmonize rules for domestic and imported goods.

This investigation will focus on country of origin markings, including certain rule of origin issues that directly affect country of origin markings. International rules of origin issues are currently being examined in the ITC's investigation No. 332-360, *International Harmonization of Customs Rules of Origin*, instituted in April 1995 at the request of the United States Trade Representative. The Commission's proposed rules and analysis in that investigation will be published at various intervals in the *Federal Register*.

The ITC is seeking input for its new investigation from all interested parties and requests that information focus on the benefits, problems, and costs associated with existing country of origin marking requirements, on specific concerns regarding the regulations and practices applicable to country of origin markings, and on specific industries and products.

A public hearing will be held on Wednesday, April 10, 1996, in connection with the investigation. Requests to appear at the hearing should be filed no later than 5:15 p.m. on March 20, 1996, with the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436. For further information, call 202-205-1816.

The ITC also welcomes written submissions for the record. Written submissions should be addressed to the Secretary to the Commission at the above address and should be submitted at the earliest practical date but no later than 5:15 p.m. on April 25, 1996. The hearing will be canceled if no witnesses are scheduled to appear as of the close of business on March 27, 1996. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202-205-1816) after March 27, 1996, to determine whether the hearing will be held.

Further information on the scope of the investigation and appropriate submissions is available in the ITC's notice of investigation, dated February 6, 1996, which can be downloaded from the ITC Internet server (*http://www.usitc.gov* or *ftp://ftp.usitc.gov*) or may be obtained by contacting the Office of the Secretary at the above address or at 202-205-1802.

CHAIRMAN

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

February 14, 1996

Name
Title
Company/agency
Street
Room
City, state, zip

Dear [Name]:

On January 11, 1996, the U.S. International Trade Commission received a request from the Committee on Ways and Means, U.S. House of Representatives to conduct an investigation into issues applicable to country of origin markings of imported and domestic merchandise. This investigation is now underway. The Committee requested that the Commission review the laws, regulations, and practices of U.S. country of origin marking requirements and evaluate the problems which such markings create for industry, and the benefits of these rules to consumers. The Committee also asked that the Commission seek information on the costs to government and industry of enforcement and compliance with marking requirements.

As part of the investigation, the Commission will be holding a public hearing on April 10, 1996, beginning at 9:30 a.m. in the Commission's main hearing room. Such hearings are invaluable for both the Commission and its staff, providing the opportunity to identify new issues as well as to explore existing ones in greater depth. In addition, specific information identifying costs and/or benefits of country of origin marking requirements would be most helpful to the Commission in fullfiling the Committee's request. Because of your interest in country of origin marking requirements, I would welcome your views, either at the hearing or in a written submission.

Enclosed is a copy of the Committee's letter requesting the investigation. Also enclosed is a copy of the Commission's notice of investigation that includes instructions for providing testimony at the public hearing and written submissions. Please note the deadlines for submitting a request to appear at the April 10 hearing (March 20), for filing prehearing briefs (March 27), and for providing post hearing briefs or written statements (April 25).

If you have any questions regarding the investigation or the upcoming hearing, please contact Dennis Fravel, the project leader, at (202) 205-3404.

Sincerely,

Peter S. Watson
Chairman

Enclosures

CHAIRMAN

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

OPENING STATEMENT

COUNTRY OF ORIGIN MARKING: REVIEW OF LAWS,

REGULATIONS, AND PRACTICES

April 10, 1996

CHAIRMAN WATSON: Good morning. On behalf of the United States International Trade Commission, I welcome you to this hearing on Investigation 332-366, "Country of Origin Marking: Review of Laws, Regulations, and Practices." At the request of the House Ways and Means Committee, the Commission instituted this investigation under section 332(g) of the Tariff Act of 1930.

The Commission is preparing a report for the Ways and Means Committee that will include the following:

1. A legislative and administrative history of U.S. country of origin marking rules;

2. An analysis of the administrative process in the United States; and

3. An evaluation of the problems marking rules create for industry and the benefits they provide to consumers.

The report will also include information on the costs to government of enforcement, and the costs to industry of compliance.

Before we begin, let me note that only the Commission and its staff will ask questions of parties, and that all witnesses must be sworn in before testifying. Please give copies of prepared statements or other documents to the Secretary as soon as they are available.

Since all written testimony will be entered fully into the record, it need not be read to us at this time. Copies of the tentative calendar, as well as Transcript Order Forms, are available at the Secretary's desk. Transcript Order Forms are also located in the wall rack outside of the Secretary's Office. Finally, any requests for classification of information as Business Confidential should comply with Commission Rule 201.6

Madam Secretary, are there any preliminary matters?

Will you call the first witness, please?

****

APPENDIX E
Survey Worksheet

COUNTRY OF ORIGIN MARKINGS WORKSHEET

*Analyst*_____ *Trade Monitoring Group #*_____

*Company*_____

Main Products _____

Contact Name and Title _____

Contact Phone (____) _____

For Interviewing **DOMESTIC AND FOREIGN PRODUCERS, AND IMPORTERS—**

1) Does your company have concerns or problems about U.S. or foreign country of origin marking requirements?

United States	Foreign
__ yes	__ yes
__ no	__ no

2) How important are U.S. or foreign country of origin markings to your customers (i.e., are your customers' purchasing preferences influenced by the country of origin of the good)?

__ very important
__ somewhat important
__ not important

If very or somewhat important, is there any evidence that customers will shift purchases to products marked with a particular country of origin?

If not important, then why not?

3) What specific problems or concerns does your company have regarding **compliance with** U.S. country of origin marking requirements administered by agencies of the Federal government, including the U.S. Customs Service and the Federal Trade Commission (FTC)?

__ technical or commercial suitability for marking products
__ difficulty in tracking origins due to varying sources of supply
__ increased costs (specify in question #4, below)
__ difficulty in meeting FTC "*Made in USA*" labeling requirements (due to necessity of using foreign-origin inputs)
__ inconsistent application of marking regulations
__ lack of transparency in U.S. regulations (FTC, Customs, DOT, etc.)
__ lack of harmonization among U.S. regulations (FTC, Customs, DOT, etc.)
__ implications of Customs' rules of origin proposals (explain below)
__ other (specify: _____)

Comments (**including on-going or recently completed efforts to solve problems**):

4) Can you identify the major types of costs that comprise your firm's total cost in **complying** with country of origin marking requirements? (**DO NOT INCLUDE COSTS THAT YOUR COMPANY INCURS VOLUNTARILY IN MARKING YOUR PRODUCTS FOR COMPETITIVE REASONS OR FOR MARKETING STRATEGY**):

__ physical marking costs
__ administrative costs of complying with regulatory agencies
__ warehousing, accounting, and costs of tracking the use of foreign components
__ added production costs required for multiple production or marking lines
__ added marketing/advertising costs incurred in complying with marking requirements
__ other (please specify):

Can you quantify (or estimate) the total cost (as a percentage of net sales) that your company incurs in order to comply with country of origin marking requirements?

_____ % (specify percentage amount or range)
_ no response or cannot quantify

Can you estimate how much these costs of complying with marking requirements add to the retail purchase price of the average product?

_____ (cents/dollars) added per retail price _____ (total cents/dollars) of _____
_____ (specify product)
_____ no response or cannot quantify

Comments:

5(a) What benefits does your company receive from country of origin marking requirements?

__ allows consumers to choose between the U.S. product and the imported product
__ basis for determining quality of materials, workmanship, or service
__ basis for establishing information on conditions of production (including labor conditions, likely kinds of pesticides used, health and safety tests or religious requirements likely satisfied, etc.)
__ basis for price comparisons
__ preserves domestic jobs
__ supports local economy
__ other (specify: _____)

Comments:

(b) What benefits do you believe the retail consumer receives from country of origin marking requirements?

__ allows consumers to choose between the U.S. product and the imported product
__ determining likely place of product availability, including replacement parts
__ basis for determining quality of materials, workmanship, or service
__ basis for establishing information on conditions of production (including labor conditions, likely kinds of pesticides used, health and safety tests or religious requirements likely satisfied, etc.)
__ basis for price comparisons
__ preserves domestic jobs
__ supports local economy
__ enhances labor's bargaining position
__ other (specify: _____)

Comments:

6) Does your company mark its products with "*Made in USA*"-type labeling?

__ **"yes"**, then what benefits do you perceive in doing so?

__ preference by wholesale customers
__ preference by retail customers
__ easier to meet "Buy America" preferences of government agencies
__ brand loyalty (for domestic products)
__ designates superior quality of materials, workmanship, or service
__ other benefits
(specify: _____)
__ increased unit sales due to competitive preference
__ increased unit price, and if so, how much are your customers willing to pay for products bearing a "*Made in USA*"-type label?
_____% (specify percentage amount or range)
____ none
____ no response or cannot quantify

__ **"no"** response (unable to specify benefits)
__ if no, then what might be the reasons?

7) What effect does country of origin marking requirements have on your company's ability to use "made in USA" type labeling?

8) If your company exports, what specific problems have you encountered with foreign country of origin markings?

__ lack of transparency in foreign regulations for products exported from the U.S.
__ lack of harmonization between U.S. and foreign regulations
__ lack of harmonization among various foreign regulations
__ delays at the border
__ market access difficulties (specify: _____)
__ re-marking of goods
__ extra duties
__ other (specify:_____)

Comments:

9) Are you aware of any published studies or information on this issue? If so, could you please tell me of how the USITC can obtain a copy?

10) Do you have any other comments or concerns about country of origin markings?

* * *

APPENDIX F
Positions of Interested Parties (Summarized from Transcript of Hearing, and from Prehearing and Posthearing Written Submissions)

Table F-1
Positions of Interested Parties—Electronics

Company or Organization	Products	Problems and Concerns	Costs	Benefits	Recommendations
Digital Equipment Corporation	Computers and related equipment	Marking regulations are unsuitable for imported components not sold directly to retail consumers. Lack of harmonization among foreign marking requirements. FTC's "all or virtually all" standard is unrealistic for computers due to global sourcing of inputs.		Any possible benefits to ultimate purchaser are far outweighed by cost and administrative effort on the part of importers.	Harmonize FTC and Customs rules. Create a process that reflects the needs of customers and realities of the business world.
Electronic Industries Association	Electronics products and components	FTC's "all or virtually all" standard and value-content tests are unrealistic for electronic products due to global sourcing of inputs.	Costs of detailed tracking of sources and calculating values of inputs would be substantial, if not prohibitive.	Customer perceptions of supporting U.S. producers and U.S. workers.	Abolish FTC's outdated "all or virtually all" standard.
Xerox Corporation	Electronic office machines	Universal marking requirements are commercially infeasible, especially for spare parts and repair kits due to extensive production sharing, and global sourcing, miniaturization, standardization, and modularization of components.	Significant compliance costs for additional product research; inventory tracking and management systems; printing, tracking, and stockpiling multiple designs of packaging for the same product; etc.	No concomitant benefit; U.S. consumers are more concerned about obtaining satisfactory service and repair than they are about origin of parts and components.	Electronic products should be marked only when tangible need is clearly demonstrated. Except spare and replacement parts, and repair kits from marking requirements. Streamline Customs' decision-making, interpretation, enforcement, and appeals processes for marking.

Table F-1 — Continued

Intel	Semiconductors and other computer components	Content-based labeling is unrealistic for computer products due to extensive production sharing, global sourcing of inputs, shifting content mix, and miniaturization of components. Lack of harmonization among U.S. and foreign marking requirements.	Financial impact of total cost to comply with U.S. marking requirements is small compared to annual income. However, the amount is significant, estimated at $4 million for all product lines. Tracking origins and calculating value of often interchangeable components would increase production costs and consumer pricing astronomically.	No return on investment for bringing semiconductors into compliance with consumer-oriented marking regulations.	Narrow the scope of section 304 of the Tariff Act of 1930 marking requirements to include only imported products intended for retail sale. Except from marking requirements the materials, components (especially semiconductors), subassemblies, and finished products not intended for retail sale.
Micron Technology, Inc.	Semiconductors and electronic components	No specific problems encountered with either U.S. or foreign marking requirements.	Inconsequential; estimated at a fraction of a cent for most semiconductors. Semiconductor companies routinely mark their products with country of origin in conjunction with product coding.	Allows customers to distinguish between U.S. and foreign products.	Opposes H.R. 947 to except electronic components and their containers from marking requirements.
Semiconductor Industry Association	Semiconductors	Difficulty and irrelevance of marking semiconductors and their containers due to high-volume production, world-wide manufacturing, and global sourcing of inputs. Furthermore, semiconductor users generally know where the devices are produced before making purchasing decisions.	Annual compliance costs to U.S.-based semiconductor manufacturers is estimated at around $50 million compared to sales of $55.5 billion and mean net revenues of $10.6 billion, from October 1994 through September 1995.	Lack of interest on the part of the ultimate purchaser of computer and electronic products regarding the origin of semiconductors as the basis for informed buying decisions.	Supports H.R. 947 excepting semiconductors and their containers from marking requirements of section 304 of the Tariff Act of 1930.

Table F-1—Continued

American Association of Exporters and Importers	Manufacturers, distributors, banks, forwarders, brokers, carriers, insurers, etc.	Lack of harmonization among Federal agencies' existing rules for conferring origin and for marking. Existing marking regulations are commercially infeasible for imported electronics products due to sheer number of sources, global sourcing, and shifting sources of components and accessories.	Substantial burden for importers of electronics products due to additional expense of inventory tracking, special marking techniques, and printing retail packages with a variety of origin markings.	Lack of interest on the part of the ultimate purchaser of electronic products regarding the origin of low-value accessories and components as the basis for informed buying decisions.	Harmonize existing U.S. rules for conferring origin and for marking. Accessories and components should be excepted from marking when packed with finished electronics products.
The Joint Industry Group	Manufacturers, trade associations, and trading firms	Existing regulations and universal marking requirements for semiconductors are commercially infeasible or nearly impossible to meet due to continued miniaturization. Lack of harmonization between U.S. and foreign marking requirements for semiconductors burdens U.S. semiconductor exports.	Costly compliance burdens of an additional line of text, added cycle time to the marking process, increased inventory volumes, and additional inspection.	Yields little concomitant information to industrial customers whose main interest is price and quality.	Except semiconductors from existing universal marking regulations.

Table F-2
Positions of Interested Parties—Steel Products

Company or Organization	Products	Problems and Concerns	Costs	Benefits	Recommendations
American Institute for International Steel, Inc.	Steel mill products	Marking requirements are commercially impractical and an unnecessary cost for products that will undergo further processing or are ordered by a purchaser who originally specified the country of origin.	Relatively expensive	Marking provides no additional usable information on origin.	Supports full and accurate disclosure of country of origin but modify marking regulations to reflect commercial reality of industrial usage of imported steel.
Specialty Steel Industry of North America	Stainless, alloy, and tool steels	Application of the substantial-transformation test for conferring origin and for marking purposes results in subjective case-by-case determinations, is time-consuming, and is an unpredictable process that undermines objectivity of marking statutes.			Adoption of tariff-shift rules would effect consistent, predictable, and transparent rules for conferring country of origin for marking purposes.
Cold Finished Steel Bar Institute	Cold-finished steel bars	Customs policy requiring cold-finished bars or their containers to be subsequently marked with country of origin after processing from imported hot-rolled bars is unduly burdensome.	Expensive and significant burden to maintain separate tracing and inventory systems for domestic versus imported hot-rolled bars.		Reword clause G of 19 USC 1304a(3) and reverse Customs' past rulings to except products that are significantly processed but not substantially transformed from marking requirements.
Committee on Pipe and Tube Imports	Steel pipes and tubes	In the past, marking methods other than continuous paint stenciling along the entire length of the pipe enabled imported pipe to be misrepresented as American-made.	Virtually no cost	Enforcement of accurate country of origin markings impedes circumvention of antidumping and countervailing duty orders.	Opposes weakening of marking requirements for pipes and tubes under 19 USC section 1304c and opposes extending marking exemptions under NAFTA Annex 311 to non-NAFTA parties.

Table F-2—Continued

Wheatland Tube Company	Welded steel pipes and tubes	In the past, marking methods other than continuous paint stenciling along the entire length of the pipe enabled imported pipe to be misrepresented as American-made.	No additional effort and an inconsequential expense to add country of origin marking to the technical and marketing information already being painted on the product.	Allows customers to distinguish between U.S. and foreign pipe products.	Supports continuing existing special marking requirements for pipe products. Furthermore, recommends that marking requirements be strengthened by requiring continuous paint stenciling.
American Wire Producers Association	Wire and wire products	Customs ruling that wire be marked with the country of origin of the wire rod it is drawn from is irrelevant because purchasers are more concerned with the identity of the wire drawer and whether the product meets performance specifications.			Modify or eliminate country of origin marking requirements for products sold to industrial customers.
Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers	Wire ropes and cables	Lack of enforcement of marking requirements. As much as 40 percent of steel wire-rope imports are not properly marked with country of origin. For wire-rope assemblies produced from imported wire-rope, violations run as high as 90 percent.	Marking costs are negligible and are of little or no burden. Estimates are approximately $1.00 per short ton which is less than 0.1 percent of the average unit value of wire rope imports in 1995 of $1,462 per short ton.	Accurate country of origin markings facilitates preference for domestic wire rope particularly in uses that pose a risk to life or property.	Advocates stricter enforcement and opposes weakening of existing marking requirements for wire rope and cable products.
Municipal Castings Fair Trade Council	Manhole covers, rings, frames, etc.	In the past, numerous violations of and attempts to evade marking requirements, including fraudulent marking and grinding off of markings.		Enforcement of stringent marking requirements helps protect taxpayers from being mislead or deceived as to country of origin of municipal castings.	Opposes Customs' proposals to relax marking requirements for municipal castings under 19 USC section 1304e.

Table F-2—Continued

American Pipe Fittings Manufacturers, Incorporated	Pipe fittings	Lack of enforcement of marking requirements; many imported pipe nipples and couplings are not properly marked with country of origin. Some U.S. producers purchase off-shore and mix imports with domestic product. Penalties are not much of a deterrent to mismarking; in one particular case, penalties amounted to less than 3 cents per fitting.	Specific responses of member firms are: less than 1 percent of net sales; less than 1 percent of total sales; 0 percent; and negligible.	Most common responses from member firms are that enforcement of marking requirements prevents fraud, helps manufacturers that legitimately produce domestically, helps preserves domestic jobs, and helps customers meet "Buy American" provisions of government contracts.	Supports substantial-transformation test for conferring origin for marking purposes. Supports stricter enforcement of existing marking requirements.
Welbend Corporation	Pipe fittings	Unilateral changes to U.S. country of origin marking rules before pending multilateral harmonization negotiations are concluded would compound compliance costs for domestic industry.	Costs of compliance becomes a burden only when marking rules change and long-standing industry practices must be adjusted accordingly.	Benefits to consumers far outweigh cost of compliance with marking requirements.	No changes to existing U.S. country of origin marking regulations.
Diamond Chain Company	Roller chain	Lack of enforcement of marking requirements; some imported roller chains are not properly marked with country of origin.		Enforcement of marking requirements prevents customers from being deceived as to country of origin of product and components. Also helps support domestic economy.	Based upon customers' perceptions, supports a threshold of at least 95 percent rather than 50 percent domestic content for conferring U.S. origin.
The Joint Industry Group	Manufacturers, trade associations, and trading firms	Importance of marking certain steel products is recognized for industrial applications where there are safety and liability concerns.		Allows customer to trace origin of steel products in applications where safety and liability are of concern.	Existing regulations and universal marking requirements are still justified for steel products for purposes of traceability, quality assurance, and performance guarantees.

Table F-3
Positions of Interested Parties—Pharmaceuticals

Company or Organization	Products	Problems and Concerns	Costs	Benefits	Recommendations
Pharmaceutical Research and Manufacturers of America	Pharmaceuticals	Lack of harmonization between Customs marking and FDA registration rules adversely impacts product labeling and marketing with potential for dual origins. Unilateral promulgation of proposed modifications to U.S. rules of origin before pending multilateral WTO harmonization negotiations are concluded could compound compliance costs.	Burdensome costs of labeling and record keeping.		Opposes any unilateral modification of existing U.S. rules of origin until WTO harmonization process is complete. Any new rules should include substantial transformation for conferring origin. Re-evaluate NAFTA Marking Rules (19 CFR 102) and section 304 of the Tariff Act of 1930.
Eli Lilly and Company	Pharmaceuticals	Lack of harmonization between Customs marking and FDA registration rules adversely impacts product labeling and marketing with potential for dual origins. Unilateral promulgation of proposed modifications to U.S. rules of origin before pending multilateral WTO harmonization negotiations are concluded could compound compliance costs.	Burdensome costs of labeling and record keeping.		Supports stance of the Pharmaceutical Research and Manufacturers of America opposing unilateral modification of U.S. rules of origin.

Table F-4
Positions of Interested Parties—Hand Tools

Company or Organization	Products	Problems and Concerns	Costs	Benefits	Recommendations
Component Specialty, Inc.	Hand-tool parts	Any dramatic changes to existing country of origin marking requirements for hand tools to be based upon origin of forgings rather than of manufacture will adversely impact long-term planning of small domestic producers.			Opposes any reinterpretation of existing marking and origin rules to require finished hand tools be marked with the country of origin of component rough metal forgings.
Consolidated Casting Corp.	Hand-tool castings	Customs' proposed reinterpretation of existing country of origin marking requirements for hand tools ignores production and marketing realities that finished tools are fundamentally different from the component forgings and that forging should have no relevance in determining country of origin.			Opposes any reinterpretation of existing marking and origin rules to require finished hand tools be marked with the country of origin of component rough metal forgings. Supports substantial-transformation test for conferring origin.
Danaher Corporation and Snap-On Incorporated	Hand and power tools	Competitive position of domestic producers will be adversely impacted by any weakening or elimination of existing country of origin marking requirements for hand tools. Likewise, domestic producers will be under substantial economic pressure to shift manufacturing offshore.	Insignificant portion of the overall cost of producing a finished hand tool. Marking country of origin in addition to size and brand name is part of the machining and stamping process.	Allows consumers to distinguish U.S. products, perceived to be of higher quality, from imports. Preserves domestic jobs in own firms but also for upstream suppliers. Continued investment in U.S. manufacturing and technology.	Support continuation and strict enforcement of existing country of origin marking requirements and the FTC's "Made in USA" standards.

Table F-4—Continued

Danaher Corporation	Hand tools	Possibility of changes to existing country of origin marking requirements for hand tools to be based upon origin of forgings rather than of manufacture.	Compliance imposes some costs but they are not considered a heavy burden.	Allows consumers to distinguish U.S. products from imports. Benefits to consumers far outweigh costs to the industry.	Supports continuation and strict enforcement of existing country of origin marking requirements and the FTC's "Made in USA" standards.
Rep. N.L. Johnson (R-6-CT), Sr. Member, House Ways and Means Comm. (on behalf of constituents including those of The Stanley Works)		Customs' proposed reinterpretation of existing country of origin marking requirements to no longer recognize substantial transformation of a forging into a finished hand tool will adversely impact long-term investment of domestic producers, mislead consumers, destroy the product's high-quality appeal, and ultimately lead to shifting of manufacturing offshore.		Allows consumers to distinguish U.S. products, perceived to be of higher quality, from imports. Preserves domestic jobs.	Opposes Customs' proposal to require finished hand tools be marked with the country of origin of component rough metal forgings. Supports substantial-transformation test for conferring origin.
E.S. Kraus, Chairman, Fleet Bank (on behalf of The Stanley Works, as a member of the board of directors)		Customs' proposed reinterpretation of existing country of origin marking requirements to no longer recognize substantial transformation of a forging into a finished hand tool will disrupt strategic planning and competitive position of domestic producers, destroy the product's high-quality appeal, and ultimately lead to shifting of manufacturing offshore.			Supports existing country of origin and marking rules. Opposes any reinterpretation by Customs to require finished hand tools be marked with the country of origin of component rough metal forgings.

Table F-4—Continued

Laclede Steel Company	Steel bars for hand-tool forgings	Possibility of changes to existing country of origin marking requirements for hand tools to be based upon origin of forgings rather than of manufacture.		Allows consumers to distinguish U.S. products, perceived to be of higher quality, from imports.	Opposes any changes to the FTC's "all or virtually all" standard for "Made in USA" labeling of finished hand tools.
Lone Star Gas Company (on behalf of National Hand Tool)		Customs' proposed reinterpretation of existing country of origin marking requirements to no longer recognize substantial transformation of a forging into a finished hand tool may encourage National Hand Tool to relocate manufacturing overseas.			Opposes Customs' proposal to require finished hand tools be marked with the country of origin of component rough metal forgings.
Mac Tools distributor (on behalf of The Stanley Works)	Hand tools			Allows consumers to distinguish U.S. products, perceived to be of higher quality, from imports.	Supports continuation of FTC's existing "all or virtually all" standard for "Made in USA" labeling of finished hand tools.
G.G. Michelson, (on behalf of The Stanley Works, as a member of the board of directors)		Possibility of changes to existing country of origin marking requirements for hand tools to be based upon origin of forgings rather than of manufacture adversely impacts corporate long-term planning, existing investments in U.S.-based production facilities, and American jobs.			Opposes any reinterpretation by Customs to require finished hand tools be marked with the country of origin of component rough metal forgings.

Table F-4—Continued

Plymouth Tube Co. (on behalf of hand-tool manufacturers)	Steel tubular components for hand tools	Domestic suppliers to the hand-tool industry would be adversely impacted by Customs' proposed reinterpretation of existing country of origin marking requirements to no longer recognize substantial transformation of a forging into a finished hand tool.			Supports continuation of existing rules for conferring origin based upon substantial transformation of rough metal forgings into finished hand tools.
Rack Technology, Inc.	Plating racks and equipment for chrome plating finished hand tools	Customs' proposed reinterpretation of existing country of origin marking requirements to no longer recognize substantial transformation of a forging into a finished hand tool ignores realities of the production process. If domestic hand-tool manufacturers shift production overseas, their domestic suppliers would also be adversely impacted by loss of business to foreign competitors.			Opposes any reinterpretation to require finished hand tools be marked with the country of origin of component rough metal forgings.
Snap-On Incorporated	Hand and power tools	Possibility of changes to existing country of origin marking requirements for hand tools to be based upon origin of forgings rather than of manufacture.			Supports stance of Danaher Tool Group for continuation of existing country of origin marking requirements, continuation of the FTC's "Made in USA" standards, and enactment of 19 CFR 102 rules.

Table F-4—Continued

The Stanley Works	Hand tools	Customs' proposed reinterpretation of existing country of origin marking requirements to no longer recognize substantial transformation of a forging into a finished hand tool will adversely impact long-term investment of domestic producers and ultimately lead to shifting of manufacturing offshore. FTC's "*all or virtually all*" standard for "*Made in USA*" labeling of finished hand tools is commercially infeasible due to global sourcing of inputs and ignores significant value-added of machining and finishing operations performed in the United States.	Burdensome costs of separate inventories, packaging changes, and record keeping are estimated at more than $9 million initially plus approximately $4.5 million annually, thereafter.	Allows consumers to distinguish U.S. products, perceived to be of higher quality, from imports. Preserves domestic jobs.	Opposes Customs' proposed non-preferential rules in 19 CFR 102 to require finished hand tools be marked with the country of origin of component rough metal forgings. Opposes essential-character tests due to greater uncertainty in conferring origin than with the substantial-transformation test. Advocates harmonizing rules for conferring origin among various Federal agencies and international trade treaties.
Vaughan & Bushnell Manufacturing Company	Hand tools	Competitive position of small domestic producers will be adversely impacted by any weakening or elimination of existing country of origin marking requirements for hand tools. Likewise, domestic producers will be under substantial economic pressure to shift manufacturing offshore.	Minimal; total cost of compliance amounts to less than 0.25 percent of net sales.	Allows consumers to distinguish U.S. products, perceived to be of higher quality, from imports. Preserves domestic jobs. Enhances market competition by enhancing domestic competitiveness of small- and medium-size domestic firms against large multinational corporations.	Supports continuation of existing country of origin marking requirements, continuation of the FTC's "Made in USA" standards, and enactment of 19 CFR 102 rules.

Table F-4—Continued

Vulcan Forge and Machine Co. of San Jose, Inc.	Hand-tool forgings	Competitive position of small domestic producers of forgings will be adversely impacted by any weakening or elimination of existing country of origin marking requirements for hand tools.		Allows consumers to distinguish U.S. products, perceived to be of higher quality, from those produced off-shore.	Supports continuation and strict enforcement of existing country of origin marking requirements and the FTC's "Made in USA" standards.
Wright Tool Company	Hand tools	Competitive position of domestic producers will be adversely impacted by any weakening or elimination of existing country of origin marking requirements for hand tools. Likewise, domestic producers will be under substantial economic pressure to shift manufacturing offshore.			Supports stance of Danaher Tool Group and Snap-On Incorporated for continuing existing country of origin marking requirements and the FTC's "Made in USA" standards.

Table F-5
Positions of Interested Parties—Frozen Vegetables

Company or Organization	Products	Problems and Concerns	Costs	Benefits	Recommendations
American Frozen Food Institute	Frozen food products	Ingredient marking rules for mixtures are commercially infeasible due to extensive global procurement and shifts in sourcing of ingredients. Unilateral promulgation of any new marking or origin rules before pending multilateral WTO harmonization negotiations are concluded could compound compliance costs. Customs' new labeling regulations mandating conspicuous country of origin marking are unnecessary.	Burdensome costs of labeling and record keeping.		Opposes any unilateral modification of existing U.S. rules of origin until WTO harmonization process is complete. Also opposes NAFTA Marking Rules (19 CFR 102) based upon tariff-classification shifts as a basis for any U.S. proposal for WTO harmonization negotiations. Rules of origin must recognize that substantial transformation occurs when foreign ingredients are combined in a frozen-food mixture.
International Brotherhood of Teamsters		Lack of enforcement of marking requirements on packages of frozen food products.		Allows customers to distinguish U.S.-origin from foreign ingredients in mixtures. Preserves domestic jobs.	Supports continuation and strict enforcement of existing country of origin marking requirements. Supports Customs' new labeling regulations mandating conspicuous country of origin marking.

Table F-5—Continued

National Food Processors Association	Frozen food products, produce mixes, and fruit and vegetable juices	Tariff-classification shift tests for conferring origin ignore commercial reality of processing fresh food ingredients into non-perishable food products as a substantial transformation. Customs' new labeling regulations mandating conspicuous country of origin marking are unnecessary.	Compliance with Customs' new packaging regulations is estimated to cost surveyed companies $1.2 million for discarded 6-month inventories of labels and packaging and $8.6 million to redesign and reprint labels and packaging.		Supports concept of substantial transformation for conferring country of origin and for marking purposes. Opposes any proposal that would assign multiple countries of origin to products created in the United States by mixing, blending, or assembling imported ingredients.
The Pillsbury Company/ Green Giant Brands	Frozen food products	Ingredient marking rules for mixtures are commercially infeasible due to extensive global procurement and shifts in sourcing of ingredients. Customs' new labeling regulations mandating conspicuous country of origin marking are unnecessary. Inability to stock diversity of labels in large volumes forced Pillsbury to favor certain foreign countries with longer growing seasons and to turn down contracts with American growers.	Compliance costs estimated from [***] to [***] due to increased requirements for tracking, separate inventories, record keeping, and relabeling; increased capital equipment costs; and productivity losses.	Country of origin of ingredients is less of a concern to consumers than price, product ingredients, brand name, nutritional information, taste and freshness, appearance, etc. Mandatory country of origin marking does not produce any appreciable benefit to consumers sufficient to justify the ongoing costs imposed upon government and industry.	Opposes any proposal that would assign multiple countries of origin to products created in the United States by mixing, blending, or assembling imported ingredients. Country of origin marking should not be mandated universally for all types of imported products but rather, only for products of industries for which public benefit justifies the costs. Opposes Customs' new labeling regulations mandating conspicuous marking on packaging.
United Foods	Fresh and frozen vegetables	Lack of enforcement of marking requirements on packages of frozen food products.	No identifiable costs are incurred in complying with country of origin marking requirements. Far more extensive record-keeping and other costs are incurred in complying with health regulations.	Allows consumers to distinguish U.S.-grown from imported produce, due to health and quality concerns.	Supports more detailed and stricter enforcement of existing country of origin marking requirements. Supports new labeling regulations mandating conspicuous country of origin marking.

Table F-5—Continued

The Joint Industry Group	Manufacturers, trade associations, and trading firms	Ingredient marking rules for mixtures are commercially infeasible due to extensive global sourcing, and seasonal and climactic shifts in sourcing of ingredients.	Costs and burdens are not justified by any appreciable benefit to consumers.	Yields little concomitant information of interest to consumers.	Except frozen produce mixtures from existing universal marking requirements.

Table F-6
Positions of Interested Parties—Automobiles and Automotive Parts

Company or Organization	Products	Problems and Concerns	Costs	Benefits	Recommendations
American International Automobile Dealers Association	Automobiles	Inconsistencies in formulas and definitions of domestic content distort calculations, with misleading and confusing results.			Opposes 1992 American Automobile Labeling Act as a standard for conferring origin.
Association of International Automobile Manufacturers	Automobiles and automotive parts	Inconsistencies in Customs' definition of ultimate purchaser for marking purposes.			Supports rules of origin that are commercially relevant, transparent, and consistent; formulated to be applicable across purposes; and based upon tariff-classification shifts. Opposes 1992 American Automobile Labeling Act as a standard for conferring origin.
Automotive Parts Rebuilders Association	Automotive Parts	Current marking rules are commercially outdated that confer origin for remanufactured or rebuilt used automotive parts based upon the country of original manufacture. Rules are especially burdensome for trade among NAFTA countries.		Reinterpreting existing marking regulations allows consumers to distinguish automotive parts rebuilt in the United States, that are perceived to be of higher quality, from those rebuilt abroad.	Recognize the concept of product-value exhaustion in conferring origin and for marking purposes. Opposes conferring origin for remanufactured or rebuilt used automotive parts based upon the country of original manufacture.

Table F-7
Positions of Interested Parties—Textiles, Apparel, and Footwear

Company or Organization	Products	Problems and Concerns	Costs	Benefits	Recommendations
American Textile Manufacturers Institute	Textile mill products	Mislabeled or non-labeled imported textile mill products and potential circumvention of import controls.	Minimal additional cost	Allows consumers to distinguish U.S.-made apparel and textiles from foreign products.	Supports continuation of existing country of origin marking requirements and the FTC's "Made in USA" standards. Also supports new rules enacted by Congress under section 334 of the Uruguay Round Agreements Act that will close loopholes to circumvention of textile import controls.
Natural Feather & Textiles, Inc.	Home textile products	Rules for marking and conferring origin according to the country where constituent unfinished fabrics were woven are commercially ill-suited due globalized sourcing of inputs and extensive production sharing. Furthermore, such rules limit consumer access to affordable products. Unilateral promulgation of any new marking or origin rules before pending multilateral WTO harmonization negotiations are concluded could compound compliance costs.	Substantial burden of added administrative time and cost to track individual rolls of fabric through the production process and of additional warehouse space to segregate fabric rolls by country of origin.	No concomitant benefit to U.S. consumers	Opposes new home-textile origin and marking rules based upon where constituent unfinished fabric was woven.

Table F-7—Continued

Pillowtex Corporation	Home textile products	Rules for marking and conferring origin according to the country where constituent unfinished fabrics were woven and where fill materials were produced are commercially ill-suited due to globalized sourcing of inputs.	Additional costs of tracking, separate inventories, record keeping, etc., is estimated at 5 cents per unit for pillows, 5 cents per unit for mattress pads, and 3 cents per unit for down comforters. Based upon current volume of production, additional costs of compliance could total nearly $1.5 million dollars annually or about 8 percent of pre-tax income for 1995.	No concomitant benefit to U.S. consumers.	Opposes new home-textile origin and marking rules based upon where constituent unfinished fabric was woven.
Crafted with Pride in U.S.A. Council, Inc.	Apparel and home textile products	Possibility of changes to existing country of origin marking requirements for apparel products.	Insignificant. Cost of marking country of origin is very small in the context of increased sales (30 to 40 percent in increased sales with "Made in USA"-type labeling).	Allows consumers to distinguish U.S.-made apparel and textiles, perceived to be of higher quality, from foreign products. Existing country of origin marking requirements do not impose a penalty on consumers in the form of higher retail prices.	Supports continuation of existing country of origin marking requirements and the FTC's "Made in USA" standards.

Table F-7—Continued

American Apparel Manufacturers Association	Apparel	Lack of harmonization between U.S. and foreign rules for conferring origin. Customs regulation 12.130 lacks transparency, is inadequate, and ignores the significant value-added from assembly operations for conferring origin. Furthermore, regulation 12.130, conferring origin based upon the country where cutting operations are performed, enabled foreign producers to circumvent import quotas.	Relatively small expense compared to the trade-preference gain in lower duty and quota expenses.	Allows consumers to distinguish U.S.-made apparel from foreign products. Furthermore, allows consumers to act on their preferences if country of origin is a factor in their decision-making process.	Supports harmonization of country of origin marking regulations. Supports new more transparent rules of origins for certain textile apparel products in section 334 of the Uruguay Round Agreements Act based upon the country where pieces of cut fabric are assembled.
Paris Accessories, Inc.	Handkerchiefs and bandannas	Lack of harmonization in conferring and marking country of origin between the Textile Fiber Products Identification Act (e.g., "Made in USA of Imported Fabric") and section 334 of Uruguay Round Agreements Act ("Made in Country X"), based upon origin of fabric.	Increased costs of maintaining separate inventories for domestic versus export sales.	No benefit, for consumers will be misinformed as to country of manufacture.	Opposes origin labeling requirements under section 334 of the Uruguay Round Agreement Act as interpreted by Customs and the FTC.
National Association of Hosiery Manufacturers	Hosiery	Lack of harmonization in conferring and marking country of origin between the Textile Fiber Products Identification Act (e.g., "Made in USA of Imported Fabric") and FTC's "Made in USA" standard. Furthermore, FTC's "*Made in USA*" standard is commercially unrealistic for hosiery products that are manufactured in a two-step process.		Allows consumers to distinguish U.S.-made hosiery products, perceived to be of higher quality and value, from foreign-origin products.	Supports reinterpretation of FTC's "Made in USA" standards on a case-by-case basis.

Table F-7—Continued

Footwear Distributors and Retailers of America	Footwear	FTC's "Made in USA" standard is unrealistic for most footwear contains some rubber and rubber is not produced in the United States.			Proposes modification of application and language of Customs Regulation 134.46 so footwear will be treated the same as other merchandise where there is no reason to require close-proximity marking in the absence of a realistic likelihood of confusing consumers.

Table F-8
Positions of Interested Parties—Other Products

Company or Organization	Products	Problems and Concerns	Costs	Benefits	Recommendations
Kraft Foods, Inc.	Food products	Ingredient marking rules for mixtures are commercially infeasible due to extensive global sourcing and shifting sources of ingredients.	Burdensome compliance costs of separate packaging inventories, package relabeling, and altering sources of ingredients are not justified by any benefit to consumers.	Unaware of any consumer interest in, or benefit of country of origin marking of ingredients in food products. Mandatory country of origin marking does not produce any appreciable benefit to consumers sufficient to justify the ongoing costs it imposes on industry.	Supports substantial-transformation test, but not the NAFTA tariff-classification shift test, for conferring origin and for reducing regulatory burdens for the U.S. food-packaging industry.
Burnette Foods, Inc.	Apple juice	Accurate labeling of foreign-origin concentrates in blended juice products.		Allows consumers to distinguish U.S.-origin from foreign juice-concentrate. Preserves domestic jobs.	Supports country of origin labeling rules published in the June 7, 1988 *Federal Register* for containers of juice made from concentrate of foreign origin.
Mason County Fruit Packers Co-op, Inc.	Apple juice	Accurate labeling of foreign-origin concentrates in blended juice products.		Allows consumers to distinguish U.S. apple juice, perceived to be of higher quality and of ingredients that meet stricter health standards, from foreign juice-concentrate. Preserves domestic jobs.	Supports country of origin labeling rules published in the June 7, 1988 *Federal Register* for containers of juice made from concentrate of foreign origin.
Michigan Agricultural Cooperative Marketing Association, Inc.	Apple juice	Accurate labeling of foreign-origin concentrates in blended juice products.		Allows consumers to distinguish U.S. apple juice from foreign juice-concentrate that may be diluted or adulterated.	Supports continuation of existing country of origin marking requirements and the 1989 Customs labeling rule for containers of juice made from concentrate of foreign origin.

Table F-8—Continued

Morrison Orchards	Apple juice	Accurate labeling of foreign-origin concentrates in blended juice products.		Allows consumers to distinguish U.S. apple juice from foreign juice-concentrate. Preserves domestic jobs.	Supports country of origin labeling rules published in the Feb. 14, 1996 *Federal Register* for containers of juice made from concentrate of foreign origin.
Processed Apples Institute, Inc.	Apple juice	Existing country of origin marking regulations are commercially impractical for U.S. processors due to extensive global sourcing and shifting sources of juice concentrate as availability is affected by seasonal and climatological factors.	Compliance costs of separate juice-concentrate and label inventories, altering sources of concentrates, etc., represent less than 2 percent of total production costs but are burdensome to the industry.	No benefit to consumers; majority of consumers are not interested in country of origin of juice products.	
Fuji Vegetable Oil, Inc.	Processed vegetable and tropical oils and mixtures of tropical and vegetable oils	Repeal of CFTA rules of origin and preferential tariff rates for firm's products and extension of NAFTA rules of origin undermines existing investment in the United States, inhibits U.S.-based exports, etc.			Protests adverse impact upon its vegetable oil blended in the United States and exported to Canada from qualifying under NAFTA due to use of tropical oils.
United States Tuna Foundation	Canned tuna	U.S. fishing fleet supplies only about half the annual requirements of the tuna processing and canning industry with the shortfall met from as many as 60 different global sources of raw tuna.	Attempting to label multiple countries of origin of raw tuna would add significantly to the cost of canned tuna.	No concurrent benefit to consumers from labeling multiple countries of origin of raw tuna.	Opposes any change to existing regulations for conferring origin and marking based upon substantial transformation.

Table F-8—Continued

Brown & Williamson Tobacco Corporation	Tobacco products	Lack of harmonization among rules for conferring and marking country of origin. FTC's "all or virtually all" standard for "Made in USA"-type labeling is commercially infeasible for U.S. manufacturers, because some ingredients in tobacco blends are not grown in commercial quantities in the United States.	Cumbersome and costly due to several different and conflicting marking regimes.	Consumers of tobacco products are less interested in the origins of the constituent tobaccos than of the tobacco product. "Made in USA"-type labeling allows consumers in both domestic and foreign markets to distinguish American-made products, perceived to be of higher quality, from foreign-made products.	Opposes FTC's "all or virtually all" standard. No objections to the tariff-classifications shift approach for conferring origin, provided such rules meet recognized substantial transformation.
BGE Ltd.	Collectible plates	Customs ruling that decorating and firing foreign-origin plate blanks and pigments in the United States does not constitute substantial transformation for conferring country of origin ignores consumers' perceptions and is commercially infeasible for U.S. manufacturers.	Marking foreign countries of origin on plates or containers increases the retail price by $3 (approximate administrative cost for marking), which adds significant cost to a typical $30 collectible plate.	Whether there are benefits from marking country of origin are uncertain, for only a quarter of consumers surveyed base their purchasing decisions for collectible plates on country of manufacture.	Reevaluate Customs' existing process for conferring origin that relies upon subjective determination as to whether an item has undergone a substantial transformation.
Corporation House Ltd. (on behalf of Domco Industries, Ltd., a Canadian exporter of vinyl floor covering)	Vinyl floor coverings	Lack of harmonization of U.S. and Canadian country of origin marking requirements.	Burdensome cost of stamping country of origin marking and delays at the border.	No value to U.S. retail consumers from stamping country of origin on products for residential housing construction market.	Eliminate U.S. country of origin marking requirements for imported vinyl floor coverings to harmonize U.S. and Canadian marking regulations.
Copper & Brass Fabricators Council, Inc.	Copper and brass mill and fabricated products	Application of Customs' substantial-transformation principle for conferring origin is complex, subjective, and often results in protracted litigation to resolve disputes.			Supports transparent, consistent, predictable, and neutral rules of origin based upon the NAFTA tariff-classification shift principle.

Table F-8—Continued

Brass Craft Manufacturing Co.	Plumbing fixtures and parts of brass, copper, steel, and plastic	Lack of harmonization among and proliferation of rules for conferring and marking country of origin. Existing marking requirements are commercially infeasible due to global sourcing of components to maintain extensive product lines. FTC's "Made in USA" standard encourages domestic manufacturers to source inputs exclusively outside the United States. Lack of enforcement of existing marking requirements for repackaged imported components offered for retail sale.	Compliance with marking requirements for extensive product lines is costly in terms of inventory management, proper packaging, etc., and is a tremendous impediment to competitive position.		Supports harmonized, transparent, consistent, and predictable rules of origin and their consistent enforcement.
The Hager Hinge Company	Door hinges and builders hardware	Lack of enforcement of existing marking regulations.	Negligible, about 1 cent per 1,000 door hinges.	Allows customers to distinguish U.S.-origin, perceived to be of higher quality, from imported door hinges.	Supports H.R. 2426 that would effect stricter marking regulations for door hinges, specifically uniform marking of country of origin on the exposed face of a door hinge.
McPhillips Manufacturing Co., Inc. (on behalf of Hager Hinge Company).	Prehung wooden doors with attached hardware	Lack of enforcement of existing marking regulations.		Allows customers to distinguish U.S.-origin, perceived to be of higher quality, from imported door hinges. Based on quality difference, U.S.-made hinges are well worth the small (perhaps 2-3 percent) premium over the cost of foreign-made hinges.	Supports stricter marking regulations for door hinges, specifically uniform marking of country of origin on the exposed face of a door hinge.

Table F-8—Continued

Allied Machine & Engineering Corp.	Cutting tools	Continued enforcement of accurate country of origin marking due to product reliability concerns.	A small matter to mark country of origin		Supports continuation of existing country of origin marking requirements.
Cogsdill Tool Products, Inc.	Cutting tools	Lack of enforcement of existing marking regulations.	Cost of marking is totally insignificant	Allows customers to distinguish U.S.-made cutting tools from imports of inferior quality.	Supports continuation and stricter enforcement of existing country of origin marking requirements.
Criterion Machine Works	Cutting tools	Continued enforcement of accurate country of origin marking due to product reliability concerns.		Allows customers to distinguish U.S.-made cutting tools from imports of inferior quality.	Supports continuation of existing country of origin marking requirements.
Jarvis Cutting Tools, Inc.	Cutting tools	Continued enforcement of accurate country of origin marking due to product reliability concerns.	Not costly to mark most cutting tools	Allows customers to distinguish U.S.-made cutting tools from imports of inferior quality.	Supports continuation and stricter enforcement of existing country of origin marking requirements.
Keo Cutters	Cutting tools				Supports continuation of existing country of origin marking requirements.
Koncor Industries	Cutting tools	Continued enforcement of accurate country of origin marking for traceability and due to product reliability concerns.	Not difficult or costly to mark cutting tools	Allows customers to distinguish U.S.-made cutting tools from imports of inferior quality.	Supports continuation of existing country of origin marking requirements.
Moon Cutter Co., Inc.	Cutting tools	Continued enforcement of accurate country of origin marking due to product reliability concerns.		Allows customers to distinguish U.S.-made cutting tools from imports of inferior quality.	Supports stricter country of origin marking requirements.

Table F-8—Continued

Newcomer Products Inc.	Machine tool accessories	Existing country of origin and marking rules are commercially infeasible due to off-shore sourcing of steel inputs.			Supports rules of origin and marking based upon country of manufacture of materials and ultimate product.
Precision Twist Drill Co.	Cutting tools and twist drills	Continued enforcement of accurate country of origin marking for traceability and due to product reliability concerns.		Allows customers to distinguish U.S.-made cutting tools from imports of inferior quality.	Supports continuation of existing country of origin marking requirements.
SGS Tool Company	Cutting tools	Continued enforcement of accurate country of origin marking due to product reliability concerns.	Cost of marking cutting tools is not prohibitive	Allows customers to distinguish U.S.-made cutting tools from imports of inferior quality.	Supports continuation of existing country of origin marking requirements.
Talbot Holdings Ltd.	Cutting tools	Continued enforcement of accurate country of origin marking for traceability and due to product reliability concerns.	Not difficult or costly to mark most cutting tools	Allows customers to distinguish U.S.-made cutting tools from imports of inferior quality.	Supports continuation of existing country of origin marking requirements.
United States Cutting Tool Institute	Cutting tools	Continued enforcement of accurate country of origin marking for traceability and due to product reliability concerns. Not aware of any other problems that existing U.S. country of origin marking requirements create for U.S. industry.	Not difficult or expensive to mark cutting tools	Allows customers to distinguish U.S.-made cutting tools from imports of inferior quality. Benefits to both customers and domestic manufacturers (e.g., traceability, quality, performance, etc.) far outweigh any conceivable additional cost of marking.	Supports continuation and strict enforcement of existing country of origin marking requirements.

Table F-8—Continued

Torrington Company	Antifriction bearings	Continued enforcement of accurate country of origin marking to enhance enforcement of U.S. antidumping and countervailing duty laws and to impede third-country transshipments.	Very little burden upon producers to mark their products	Allows customers to distinguish U.S.-made from imported products.	Supports continuation and strict enforcement of existing country of origin marking requirements.
Aerospace Industries Association	Aircraft, parts, and subassemblies	Existing marking requirements are burdensome and costly for repair and reexport activities and hence has detrimental effect upon the competitive position of the U.S. aerospace industry.	Any one of the substantial costs of new labeling equipment, re-engineering inventory control and tracking systems, added labor, and slower turn-around times for implementing any new marking procedure for individual parts, components, or subassemblies would irreparably harm business and taken together, the results would be disastrous for the industry.		Aircraft parts, components, or subassemblies imported into the United States for repair and re-export, due to the sheer number of parts and off-shore sources involved, should be exempted from marking requirements under 19 USC section 1304, similar to exemptions provided in 19 CFR 134.32f and 134.32g.
National Marine Manufacturers Association	Recreational boats, marine engines, trailers, and marine accessories	Lack of harmonization of U.S. Coast Guard and International Standards Organization (ISO) regulations as to composition of Hull Identification Numbers (HINs) on U.S.-manufactured recreational boats intended for export.	Needless cost to U.S. boat manufacturers in applying two HINs, and for maintaining associated inventory and production control systems.		Harmonize U.S. HINs in 33 CFR 181 with those specified by ISO regulations.

Table F-8—Continued

Bicycle Manufacturers Association of America, Inc.	Bicycles	FTC's "all or virtually all" standard for "Made in USA"-type labeling ignores consumers' perceptions and is commercially unrealistic for U.S. manufacturers due to off-shore sourcing of some components and subassemblies.			Supports a threshold of at least 50 percent domestic content for conferring U.S. origin for bicycles and other products which are assemblies of discrete components that can be labeled separately with their respective countries of origin.
Eastman Kodak Company	Photographic film	No specific problems encountered with U.S. rules for conferring origin or for marking purposes.			Supports continuation of existing rules for conferring origin and marking requirements as applied to color negative photographic film.
Baxter Healthcare Corporation	Surgical and operating-room kits and trays	Kits and trays contain numerous finished goods (each marked with country of origin) from a large number of world-wide suppliers that shifts continually to meet quality and pricing demands of customers.	Cost of having country of origin marking on packaging is significant.	Value of package marking is questionable for products that consist of multiple finished products.	Modify country of origin marking requirements to simplify markings for complex kit products (e.g., "Kits/trays in this package assembled in USA from products manufactured in USA and other countries").
The Federation of the Swiss Watch Industry	Watches	Lack of harmonization among rules for conferring and marking country of origin.		Allows consumers to distinguish Swiss-made watches, perceived to be of highest quality, from those made in other countries.	Supports international harmonization of origin and marking rules for watches, based upon restricting unqualified, single-country of origin designations.
Oneida Ltd.	Stainless, silver plated, and sterling flatware	Supports continuation of existing country origin marking regulations.	Adding country of origin mark to flatware pieces, that are already marked with a trademark or hallmark, rarely adds to manufacturing costs.	Allows consumers to distinguish U.S.-made flatware, perceived to be of high quality and ready availability, from products of foreign-origin.	Supports retention of existing country of origin marking requirements for flatware.

Table F-8—Continued

Ajay Sports, Inc., Coastcast Corporation, Daiwa Corporation, Lamkin Leather & Rubber Company, Lynx Golf, Taylor Made Golf Company, Inc.	Golf clubs and components	Lack of harmonization and consistency in existing and proposed rules for conferring origin and marking requirements disrupts and undermines competitiveness of U.S. industry. NAFTA marking requirements pose a non-tariff trade barrier for U.S. manufacturers with production-sharing operations in Mexico.	One manufacturer estimates its actual cost of marking (printing labels, tracking finished clubs and their components, additional labor, etc.) under the NAFTA marking rules would be approximately $1 per club (which sells for anywhere between $100 to $350 retail) or $1.7 million based upon volume of sales. Tracking and marking would also increase inventory costs by 30 percent or about $6 million a year, primarily in capital expenditures.		Golf clubs should be exempted from marking requirements. Eliminate 19 CFR 102.20 tariff-classification shift requirements for conferring origin.
Coastcast Corporation	Castings for golf club heads	19 CFR 102.14 tariff-classification shift requirements pose a non-tariff trade barrier under NAFTA for U.S. golf-club manufacturers with production-sharing operations in Mexico.			Remove 19 CFR 102.14 from the Customs regulations to restore original marking requirements that recognized assembly of golf clubs as a substantial transformation.
Hitchiner Manufacturing Co., Inc.	Castings for golf club heads	Lack of uniformity in application and enforcement of existing marking requirements. 19 CFR 102.20 tariff-classification shift requirements pose a non-tariff trade barrier under NAFTA for U.S. golf-club manufacturers with production-sharing operations in Mexico.			Reinstate the original tariff-classification shift rule for marking golf clubs appearing in the Jan. 3, 1994, *Federal Register*.

Table F-8—Continued

The Joint Industry Group	Golf clubs	Existing regulations and universal marking requirements are commercially infeasible for golf clubs assembled from foreign components.	Onerous burdens upon U.S. manufacturers who utilize imported components.	No concomitant benefit; current marking requirements offer little to advise consumer of the origin of golf clubs assembled from imported components, each marked with respective country of origin.	Existing regulations and universal marking requirements should be reevaluated or eliminated for golf clubs.
Taylor Made Golf Company, Inc.	Golf clubs and golf equipment	NAFTA marking requirements that do not recognize assembly (including finishing to final dimensional tolerances) in the United States as a substantial transformation are commercially infeasible and may force U.S. producers to shift sourcing of some components to Asia.			Discontinue current rules that do not recognize assembly of golf clubs as a substantial transformation for conferring origin.
Floral Trade Council	Fresh cut flowers	Lack of enforcement of existing rules for marking country of origin on containers or plastic sleeves of imported flowers. Furthermore, information on country of origin is lost once flowers are removed from containers or sleeves.	Vases or individual stems can be marked with stickers at little expense to wholesaler or retailer	Marking individual flowers allows retail customers to distinguish U.S.-grown flowers from imported flowers, due to freshness or phytosanitary concerns.	Remove fresh cut flowers from the J-List of exemptions from country of origin marking requirements.

Table F-8—Continued

Florists' Transworld Delivery Association (FTD)	Fresh cut flowers, retail	No problems with current marking regulations.	Severe adverse economic effects upon retail florists if they are required to mark containers with origins of each one of the many varieties of flowers in an arrangement.		Supports continuation of existing country of origin marking regulations.
Asociacion de Productores y Exportadores de Flores del Ecuador (Expoflores)	Fresh cut flowers	Removal of the J-List exemption from marking requirements imposes a barrier to purchase of imported flowers. Marking individual flowers and arrangements is infeasible because of damage to individual flowers; processing can obliterate, destroy, or cover markings; and arrangements may contain both domestic and imported flowers. Domestic flower-growing capacity cannot meet consumer demand and shortfall is met by imports.			Supports continuation of existing country of origin marking regulations. Likewise, opposes any steps to remove fresh cut flowers from the J-List of exemptions from country of origin marking requirements.

Table F-9
Positions of Interested Parties—Organizations

Company or Organization	Type of Business	Problems and Concerns	Costs	Benefits	Recommendations
AFL-CIO, Union Label & Service Trades Department	Labor union	Accurate country of origin product labeling.		Allows consumers to distinguish U.S.-made from imported products. Also allows consumers to avoid products produced by exploited labor, commonly perceived for imported clothing ; one study cited indicates that consumers are willing to pay an extra $1 for a $20 U.S.-made garment. Helps preserve domestic jobs.	Supports strict enforcement of, and clearer, more accurate, and prominent, country of origin labeling for consumer products. Opposes any weakening of the FTC's "all or virtually all" standard for "Made in USA"-type labeling.
W.D. Outman II, Baker & McKenzie	Law firm	Existing rules for conferring origin and for marking purposes are too complex and costly for U.S. business due to lack of harmonization under various international-trade acts, growth in number of country- and product-specific tariff-preferences, and increased divergence in sourcing of inputs and complexity of products.	Cost to U.S. business will be unbelievably high as long as the current complex set of marking rules exists. One electronics-repair operation spends $960,000 annually to mark defective circuit boards and other electronic devices imported for repair.		Supports a single rule for conferring origin that is transparent and preempts the plethora of existing but complex rules.
Customs Advisory Services, Inc.	Import-export brokerage advisors	U.S. marking regulations are the strictest in the world with high penalties (10 percent of the value of entered merchandise) for violations.	Compliance costs due to very high penalties for marking violations and expense of obtaining Customs rulings for each transaction act as distinct disadvantages to U.S. importers.		Supports approach of the European Union, where goods may enter without being specifically marked as long as the country of origin appears on the entry documents.

Table F-9—Continued

Deloitte & Touche	Accounting and consulting firm	U.S. marking regulations are the strictest in the world with high penalties (10 percent of the value of entered merchandise) for violations. Both Customs' case-by-case approach based upon the substantial-transformation principle and the tariff-classification shift approach under NAFTA result in uncertainty, especially for small and medium-sized businesses.	Compliance costs due to very high penalties for marking violations and expense of obtaining Customs rulings for each transaction act as distinct disadvantages to U.S. importers.		Supports approach of the European Union, where goods may enter without being specifically marked as long as the country of origin appears on the entry documents.
International Business-Government Counsellors, Inc.	Government relations firm	Existing regulations and universal marking requirements are commercially infeasible due to technological sophistication of manufactured products, production-sharing arrangements, globalized sourcing of inputs, and shifting consumer perceptions.	One multinational firm spent more than $130,000 in computer support systems and added 7 staffers to track purchases from foreign and domestic vendors to ensure compliance with U.S. country of origin marking requirements.	Benefits to consumers declined, for less than one third of consumers even consider country of origin as a factor in their buying decisions.	Proposes that various marking rules be harmonized and applied only in selected cases. Eliminate section 304 marking requirements. Inputs for manufacturing processes should be excepted from marking requirements.
International Mass Retail Association	Various types of mass retail stores	Existing single-country of origin marking requirements need to be reassessed in light of a globalized economy characterized by growth in production sharing, phase-out of country-specific import quotas, shifting consumer perceptions, etc. Lack of harmonization among U.S. and various foreign rules for conferring origin.		Priority that consumers place upon country of origin is questioned, for in a survey of five factors perceived to influence purchasing decisions, country of origin was rated last behind price, quality, warranty, and product features.	Supports more generic origin labels (e.g., "Made in Europe") to simplify origin determinations. Harmonize U.S. and foreign rules for conferring origin.

Table F-9—Continued

The Joint Industry Group	Manufacturers, trade associations, and trading firms	Existing regulations and universal marking requirements are commercially infeasible due to extensive globalized production sharing and sourcing of inputs.	Costly compliance burdens for many products.	Yields little concomitant information to consumers.	Reevaluate existing regulations and universal marking requirements. Amend section 304 of the Tariff Act of 1930 to only require marking of imported goods for retail sale.
Made in USA Foundation	Manufacturers, labor unions, and consumer groups	Deceptive use of geographic names and American emblems on foreign-origin products.		Allows consumers to distinguish U.S.-made from foreign-origin products. Furthermore, helps to prevent consumers from being deceived into mistaking imported products as being of U.S. origin.	Supports stricter enforcement of, and more accurate, detailed, and prominent, country of origin labeling on consumer products. Proposed before the FTC that products contain at least 75 percent U.S. content, parts, and labor, on a cost of goods sold basis, with final assembly required in the United States, for "Made in USA" labeling. Also proposed lesser standard of 50 percent for "Assembled in USA" labeling.
P.B. Feller, Esq., McKenna & Cuneo	Law firm	Potential that any relaxation of existing country of origin marking requirements would mislead consumers to assume unmarked imported products are of domestic origin.	Doubtful that compliance costs are significant	Allows consumers to distinguish between domestic and imported products.	Supports continuation of existing country of origin marking requirements but harmonize various Federal agencies' and trade-agreements' regulations by adopting tariff-classification shift rule for conferring origin.
The National Council on International Trade Development	Manufacturers, distributors, banks, forwarders, brokers, carriers, insurers, etc.	Lack of harmonization among various rules for conferring origin and inconsistent application of marking requirements is burdensome to industry.	Adds cost to industry without concomitant value to customers. One importer had to spend $30,000 to hand-label over 250,000 rolls of mismarked tape.	Allows consumers to distinguish between domestic and imported products.	Adopt tariff-classification shift rule for conferring origin. Only consumer goods should be subject to marking requirements.

Table F-9—Continued

B. Odian, Esq.	Law firm	Harmonize the two different standards under NAFTA for tariff preferences (General Note 12(t) of the HTSUS for NAFTA eligibility) versus conferring origin (Chapter 4 and Annex 401 of NAFTA, 19 CFR 102.20) for marking purposes.			Supports one set of rules for conferring origin for goods covered by NAFTA by eliminating marking regulations of 19 CFR 102.20. Instead, rely upon NAFTA General Note 12(t) of the HTSUS to control marking as well as tariff preference.
Sonnenberg & Anderson	Law firm	Lack of harmonization among and ambiguity in rules for conferring origin, and inconsistent application of marking requirements that are commercially infeasible for industries characterized by extensive globalized production sharing and sourcing of inputs.	Burdensome in terms of increased costs and added inefficiencies.		Existing regulations should be reworked and a country of origin marking regime adopted that is transparent, consistent, predictable, and uniformly enforced.

APPENDIX G
Reference List on Consumer Perceptions

Reference List on Consumer Perceptions

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