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August 11, 1997

Office of the Secretary
Federal Trade Commission
Room 159
Sixth and Pennsylvania Avenue, NW
Washington, D.C. 20580

RE: **"Made in USA Policy Comment" FTC File No. P894219 (62FR25019)**

Attached are Whirlpool Corporation's comments regarding the Federal Trade Commission's request for public comments on the proposed Guides of the Use of U.S. Origin Claims.

Please enter our comments for the record.

Sincerely,

Mike Thompson

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Attachments -6 paper and one electronic copy of comments

STATEMENT BY

WHIRLPOOL CORPORATION

REGARDING:

"MADE IN USA POLICY COMMENT"

FTC FILE NO. P894219

FEDERAL TRADE COMMISSION PROPOSED GUIDELINES

FOR THE USE OF U.S. ORIGIN CLAIMS

AUGUST 11, 1997

(62FR25019)

Whirlpool Corporation, the world's largest manufacturer of major home appliances, has comments regarding proposed guides by the Federal Trade Commission (FTC) pertaining to U.S. origin claims. At the outset, we would like to applaud the FTC's proposal to apply "safe harbor" standards to the test of unqualified U.S. origin claims as they relate to "two levels of substantial transformation." However, we take issue with two other proposals/examples set forth by the FTC. They are:

1) an oversight by the FTC with respect to a "refi-igerator" example for determining the appropriateness of an unqualified claim;

and,

2) the exceptionally high 75% "safe harbor" standard proposed by the FTC for unqualified Made in U.S.A. claims.

Whirlpool Corporation is well qualified to comment on these issues. Worldwide we have 49,000 employees, manufacture in 24 countries and distribute our products to over 120 countries. In the U.S. we manufacture our products at 10 facilities in 7 states. At the vast majority of our U. S. facilities, the final assembly of the finished goods as well as the assembly of the key subassemblies occurs within the borders of the contiguous 48 states.

"Refrigerator" Example Oversight (see example 2, Federal Register page 25050):

On page 25045 of the FTC's Federal Register proposal, the Commission states:

"For purposes of...the "two levels of substantial transformation" safe harbor, . . the guides define "substantial transformation" to encompass.. the enumerated shifts in tariff classification set forth in NAFTA marking rules."

Further elaborating on this issue, the Commission defines substantial transformation on Federal Register page 25048 [V. Definitions, (f)] as meaning:

".. .a manufacturing process which results in an article's having a new name, character and use different from that which existed prior to the processing. For purposes of the guide, a good will be considered to have been substantially transformed if. .it undergoes an applicable tariff classification change and/or satisfies other applicable requirements set out in the NAFTA marking rules, 19 CFR 102."

On page 25050 (example 2) of the Federal Register, the FTC sites a refrigerator example as being one that would likely not meet the standard for unqualified claims. Specifically, the FTC says that a manufacturer of a refrigerator, that is assembled in the U. S. but sources "certain major components such as the compressor and the motor" from outside the U. S., probably could not make unqualified U.S. origin claims "because the last substantial transformation of these major components occurred abroad."

We take issue with this example. **Under NAFTA marking rules, the compressor definitely is NOT a "major component" (referred to as a "key subassembly" under the NAFTA rules) of the refrigerator.** A compressor is merely one part of the sealed system which also comprises the evaporator, capillary tube, condenser and connecting tubing. Thus, the compressor is "substantially transformed" to become part of the sealed system. **This entire sealed system IS recognized under NAFTA marking rules as being a "key subassembly" of the refrigerator and has its own Harmonized Tariff System (HTS) nomenclature.**

The FTC should also know that the U.S. refrigerator industry MUST source a significant percentage of its compressors from abroad since there is insufficient domestic production of these parts. The two largest global manufacturers of compressors are located in Asia and Latin America.

Part of the reason that the NAFTA marking rules were established with strict double substantial transformation requirements for final assembly of finished goods, as well as key subassemblies, was in part to streamline the complicated paperwork associated with "content" accounting as well as to recognize the fact that some pieces of key subassemblies can only be found in sufficient quantity and quality abroad. This is definitely the case for compressors for which a significant quantity are sourced from outside the U.S.

If the current FTC "refrigerator" example prevails, much of the U.S. refrigeration industry will be disqualified from making "Made in USA" claims, even though NAFTA marking rules would permit such labeling. In addition, **from an unqualified claims perspective, foreign refrigerator products will be on an equal footing with those produced at most U.S. refrigerator manufacturing facilities. This would be a grossly unfair, and a probably unintended, outcome for those manufacturers which have made a diligent effort to keep production within U.S. borders.**

75°A Safe Harbor Proposal:

The 75% Safe Harbor threshold is exceptionally high and does not take into account the realities of the need for global sourcing by multinational companies of U. S. parentage. It is a necessity for any global manufacturer and marketer to maintain a worldwide procurement base which levers mass purchases and maximizes the commonality of parts to maintain competitiveness against aggressive foreign competition. This often means that some parts MUST be sourced from other locations around the globe.

This is especially true for many in the portable appliance industry. Often, because of price, quality and availability deficiencies here in the U. S., some of the components of small appliances have to be sourced from outside the U. S. The realities are that the cost of these components will approach 50% of the labor and materials cost of the entire product.

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Where such products are assembled inside the U.S. with a 50% or greater U.S. labor and materials content, the manufacturers of such products should be able to make unqualified "Made in USA" claims. This is consistent (for portable appliances) with NAFTA marking rules. Thus, the FTC should accommodate a 50°/0 "safe harbor" threshold of domestic content for those products that qualify under NAFTA marking rules. This will avoid future conflict between U.S. Customs Officials which must enforce NAFTA marking rules and the Federal Trade Commission's 75°/0 content proposal for "Made in USA" labeling.

The failure of the FTC to adopt "Made in USA" marking rules that track the NAFTA rules of origin will result in a lost opportunity for the FTC to encourage U.S. companies to maintain U. S. based manufacturing facilities. The NAFTA rules offer a well defined method to determine whether a product originates in the United States. If the FTC uses the NAFTA rules of origin, U.S. plants with products that qualify for NAFTA treatment would have the marketing benefit of labeling their domestically sold products "Made in USA." This benefit would be easy to determine under the NAFTA rules and would be a key consideration for a company when deciding whether to move manufacturing operations to Mexico or Canada. If the FTC adopts stricter criteria for Made in USA labeling than the NAFTA requirements, one of the benefits of manufacturing in the U. S. would be significantly diluted.

Recommendations:

1) The FTC must maintain consistency between its proposed adherence to NAFTA marking rules as a basis for establishing "two levels of substantial transformation" and the "examples" it uses for providing "guidance" to manufacturers regarding unqualified origin claims.

2) In order to maintain consistency with other examples [example #1 (tape recorder) and example #3 (blank compact disk)] of "two levels of substantial transformation" (noted on page 25050), the current "refrigerator" example should be rewritten. We recommend that the amended example should read:

"A refrigerator is assembled in the United States. Some of the refrigerator's parts (i.e. compressor and motor) are sourced from outside the U. S., but the assembly of its key subassemblies as well as the final assembly of the refrigerator (as defined under NAFTA marking rules) occurs within the U.S. Because the substantial transformation of key subassemblies as well as final assembly of the refrigerator occurred within the U. S. (including incorporation of the compressor into the sealed system), an unqualified claim that the refrigerator was "Manufactured in the USA" would likely not be deceptive."

(continued)

3) The FTC should allow a 50% content "safe harbor" where such levels qualify for "Manufactured in the USA" labeling under NAFTA marking rules. This is especially true for portable appliances.

Thank you for the opportunity to comment. For further information please contact:

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