FEDERAL TRADE COMMISSION

PROPOSED

GUIDES FOR THE USE OF

U.S. ORIGIN CLAIMS

Federal Register Notice

May 1997

FTC "Made in USA" Review
Federal Register Notice

Table of Contents

FEDERAL TRADE COMMISSION

REQUEST FOR PUBLIC COMMENT ON PROPOSED
GUIDES FOR THE USE OF U.S. ORIGIN CLAIMS

AGENCY: Federal Trade Commission.

ACTION: Request for public comment on proposed Guides for the Use of U.S. Origin Claims.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") has been conducting a comprehensive review of "Made in USA" and other U.S. origin claims in product advertising and labeling. Historically, the Commission has held that a product must be *wholly domestic* to substantiate an unqualified "Made in USA" claim. As part of its review, the Commission, by *Federal Register* notice dated October 18, 1995, requested public comment on various issues related to the evaluation of such claims and, on March 26 and 27, 1996, held a public workshop and invited representatives of industry, consumer groups, unions, government agencies and others to attend and exchange views. On April 26, 1996, the Commission published a *Federal Register* notice extending the deadline for post-workshop public comments until June 30, 1996.

The Commission now announces proposed Guides for the Use of U.S. Origin Claims and seeks public comment on these guides. Under these proposed guides, a marketer making an unqualified claim of U.S. origin must, at the time it makes the claim, possess and rely upon a reasonable basis that the product is *substantially all* made in the United States. To assist manufacturers in complying with this standard, the proposed guides also set out two alternative "safe harbors" under which an unqualified U.S. origin claim would not be considered deceptive. The first safe harbor encompasses products whose U.S. manufacturing costs constitute 75% of total manufacturing costs and were last substantially transformed in the United States. The second safe harbor applies to products that have undergone two levels of substantial transformation in the United States: *i.e.*, the product's last substantial transformation took place in the United States, and the last substantial transformation of each of its significant inputs took place in the United States.

The proposed guides also address various qualified claims, claims regarding specific processes and parts, multiple-item sets, and changes in costs and sourcing. They also authorize specific origin claims for certain products that are both sold domestically and exported. Throughout, the proposed guides address the interaction of FTC deception law with U.S. Customs Service requirements.

DATES: Written comment will be accepted until August 11, 1997.

ADDRESS: Six paper copies of each written comment should be submitted to the Office of the

Secretary, Federal Trade Commission, Room 159, Sixth and Pennsylvania Avenue, N.W., Washington, D.C. 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all comments also should be submitted, if possible, in electronic form, on either a 5-1/4 or a 3-1/2 inch computer diskette, with a label on the diskette stating the name of the commenter and the name and version of the word processing program used to create the document. (If possible, documents in WordPerfect 6.1 or Word 6.0, or earlier generations of these word processing programs, are preferred. Files from operating systems other than DOS or Windows should be submitted in ASCII text format to be accepted.) Individuals filing comments need not submit multiple copies or comments in electronic form. Submissions should be captioned: "Made in USA Policy Comment," FTC File No. P894219.

FOR FURTHER INFORMATION CONTACT: Beth M. Grossman, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, FTC, Washington, DC 20580, telephone 202-326-3019, or Kent C. Howerton, Attorney, Division of Enforcement, Bureau of Consumer Protection, FTC, Washington, DC 20580, telephone 202-326-3013.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission has been conducting a comprehensive review of its standards for evaluating "Made in USA" claims in advertising and labeling. The Commission now proposes to issue Guides for the Use of U.S. Origin Claims, set out at the end of this notice, and seeks comment on these proposed guides. The comment period will remain open until August 11, 1997.

The Commission regulates claims of U.S. origin, such as "Made in USA," pursuant to its statutory authority under Section 5 of the Federal Trade Commission Act, which prohibits "unfair or deceptive acts or practices." Cases brought by the Commission beginning over 50 years ago established the principle that it was deceptive for a marketer to promote a product with an unqualified "Made in USA" claim unless that product was wholly of domestic origin.[1] Recently, this standard had been rearticulated to require that a product advertised as "Made in USA" be "all or virtually all" made in the United States, *i.e.*, that all or virtually all of the parts are made in the U.S. and all or virtually all of the labor is performed in the U.S.[2] In both cases, however, the import has been the same: unqualified claims of domestic origin were deemed to imply to

---

[1] *See, e.g., Windsor Pen Corp.*, 64 F.T.C. 454 (1964); *Vulcan Lamp Works, Inc.*, 32 F.T.C. 7 (1940).

[2] This language was first used in the cases of *Hyde Athletic Industries*, File No. 922-3236 (consent agreement accepted subject to public comment Sept. 20, 1994) and *New Balance Athletic Shoes, Inc.*, Docket No. 9268 (complaint issued Sept. 20, 1994). In light of the decision to review the standard for U.S. origin claims, the Commission later modified the complaints in these cases to eliminate the allegations based on the "all or virtually all" standard. Consent agreements based on these revised complaints were issued on December 2, 1996 (*New Balance*) and December 4, 1996 (*Hyde*).

consumers that the product for which the claims were made was in all but *de minimis* amounts made in the United States.

In a July 11, 1995 press release, the Commission announced that it would undertake a comprehensive review of U.S. origin claims and examine whether the Commission's traditional standard for evaluating such claims remained consistent with consumer perceptions and continued to be appropriate in today's global economy. On October 18, 1995, the Commission published a notice in the *Federal Register* formally soliciting public comment for 90 days on various issues related to this review, including the costs and benefits of continuing to use the "all or virtually all" standard, and announcing that Commission staff would conduct a public workshop on this topic. 60 FR 53922. A follow-up notice published on December 19, 1995, announced that the public workshop would be held on March 26 and 27, 1996, and indicated that the record would be held open for post-workshop public comment until April 30, 1996. 60 FR 65327. In response to these notices, the Commission received approximately 294 written comments. Contemporaneous with the solicitation of public comment, Commission staff also commissioned a two-part study to examine consumer understandings of U.S. origin claims. The results of this study are discussed below.

As noted, Commission staff conducted a two-day public workshop on issues related to U.S. origin claims. Thirty-three individuals, representing corporations and trade associations from a variety of industries; labor unions; federal and state government agencies; and consumer groups, participated in the workshop, and a number of other interested individuals attended the workshop as observers. At the workshop, which was moderated by a neutral, third-party facilitator, results of the Commission's consumer perception study as well as consumer studies conducted by several other participants were presented, and there was an extended round table discussion of the costs and benefits of the various alternative standards under consideration for the evaluation of U.S. origin claims. Following the workshop, the Commission, in a notice published on April 26, 1996, extended the period for clarifying or rebuttal comments until June 30, 1996, and set forth additional questions for comment. 61 FR 18600. Approximately 49 additional comments were received in response to the April 26 notice, including a proposed set of guidelines submitted by the "Ad Hoc Group," a coalition of industry groups that had participated in the public workshop.

After reviewing the public comments, the consumer perception evidence, and the workshop proceedings, the Commission now proposes to adopt Guides for the Use of U.S. Origin Claims, which appear at the end of this notice in Section IX, and seeks comment on the proposed guides.

Section II of this notice discusses the relevant country-of-origin marking rules applied by the U.S. Customs Service and how these rules relate to the FTC's regulation of U.S. origin claims. Section III summarizes the comments received by the Commission. Section IV contains a discussion of the factors considered by the Commission in its formulation of a policy on U.S. origin claims, including evidence of consumer perception; consistency with other statutory and regulatory requirements; and practical issues of implementation. Section V provides an overview of the proposed guides, and Section VI provides a section-by-section analysis of the proposed

guides. Section VII addresses the Commission's policy with respect to goods without any country-of-origin marking. Section VIII requests public comment on the proposed guides. The proposed guides themselves are set out in Section IX.

Information related to the Commission's review of U.S. origin claims, including the public comments received, a transcript of the workshop proceedings, and consumer perception studies conducted by the Commission and other interested parties, are available in the Public Reference Room, Room 130, Federal Trade Commission, 6th and Pennsylvania Ave., N.W., Washington, DC 20580. In addition, the public comments, the workshop transcript, and previous *Federal Register* notices related to this review are available on the Commission's Home Page on the World Wide Web, which can be reached through the internet at *http://www.ftc.gov*.

II. Background: Country-of-Origin Marking Requirements for Imported Goods

A. Relationship between the Requirements of the U.S. Customs Service and the Policies of the FTC

In the course of the Commission's review, there has been much discussion of the relationship between the policies of the U.S. Customs Service ("Customs" or "the Customs Service") and those of the FTC with respect to country-of-origin marking. As a general matter, the Customs Service regulates mandatory country-of-origin markings on imported products, while the FTC's policies govern voluntary U.S. origin claims, whether in advertising or labeling, about domestic products.[3]

Specifically, Section 304 of the Tariff Act of 1930, administered by the Secretary of the Treasury and the Customs Service, requires that all products of foreign origin imported into the United States be marked with the name of a foreign country of origin. Where an imported product incorporates materials and/or processing from more than one country, Customs considers the country of origin to be the last country in which a "substantial transformation" took place. A substantial transformation is a manufacturing process that results in a new and different article of commerce, having a new name, character and use that is different from that which existed prior to the processing. Country-of-origin determinations using the substantial transformation test are made on a case-by-case basis through administrative determinations by the Customs Service.[4]

Where Customs determines that a good is not of foreign origin (*i.e.*, the good undergoes its last substantial transformation in the United States), there is generally no requirement that it be marked with any country of origin. For most goods, neither the Customs Service nor the FTC requires that domestic goods be labeled with "Made in USA" or any other indication of U.S.

---

[3] The Commission also has had policies relating to unmarked goods and disclosures to supplement those required by Customs. These policies are addressed in Section VII.

[4] For goods from NAFTA countries, determinations are codified in "tariff shift" regulations, as noted below.

origin.[5] Where a marketer chooses voluntarily, however, to make a U.S. origin claim in an advertisement or on a label, the marketer must conform with the FTC Act's general prohibition on "unfair or deceptive acts and practices." Thus, a "Made in USA" claim, like any other advertising claim, must be truthful and substantiated.

B. Other Relevant Information on Country-of-Origin Determinations

In addition to the Tariff Act, two international agreements provide a further backdrop to the discussion of country-of-origin labeling.

North American Free Trade Agreement (NAFTA). Goods imported from NAFTA countries are not subject to the Customs Service's case-by-case determinations of substantial transformation. Instead, marking requirements for such goods are governed by a change in tariff classification or "tariff shift" approach. This approach relies on an enumerated list of changes in tariff classification. In determining the country of origin for NAFTA marking purposes, one looks to whether a foreign article has changed sufficiently as the result of processing in another country that it would fit within a different tariff classification than it would have prior to that processing. Where the ultimate article undergoes one of the enumerated shifts in tariff classification as a result of processing in a particular country, the country of origin is the country where that processing took place.[6]

Although the NAFTA tariff classification scheme was intended by the Customs Service to be merely a codification of its traditional substantial transformation test, there continues to be controversy over perceived differences between the tariff shift standard and case-by-case rulings under the traditional standard. A decision on a proposal by the Customs Service to extend the NAFTA marking rules to all imported goods was recently deferred to an indefinite later date.[7]

World Trade Organization (WTO). Pursuant to the Uruguay Round Agreements, the WTO is currently engaged in an effort to harmonize international rules of origin. The goal of this

---

[5] For a limited number of goods, such as textile, wool, and fur products, there are, however, statutory requirements that they disclose the U.S. processing or manufacturing that occurred. *See, e.g.*, Textile Fiber Products Identification Act, 15 U.S.C. 70(b).

[6] For example, assume that a product is partially manufactured in a non-NAFTA country, then sent to Canada for its remaining processing, and the finished product is exported to the United States. Upon import into the United States, the product would be appropriately marked "Made in Canada" if the tariff classification assigned to the finished product when it is exported from Canada to the United States is different from the tariff classification that would be assigned to the product in the state in which it was brought into Canada, and that difference in tariff classification is on a specified list of tariff shifts enumerated in the NAFTA marking rules.

[7] In addition to its marking rules, NAFTA also specifies separate rules of origin that are used to determine whether a product qualifies for preferential tariff treatment under NAFTA. These rules of origin are based on a different set of tariff shifts than are the marking rules and, in many cases, also incorporate a value-added requirement. For purposes of this notice, these rules of origin will be referred to as "NAFTA Preference Rules" to distinguish them from the "NAFTA Marking Rules" described above.

effort is for all participating countries to use the same rules for determining country of origin for all non-preferential purposes, including country-of-origin marking. The WTO Agreement on Rules of Origin (ARO) adopts substantial transformation as the basic standard for determining country of origin, and expresses a preference for a tariff shift approach as the method of determining whether a substantial transformation has taken place. The WTO's initiative does not generally extend to determinations of domestic origin.[8]

The WTO's harmonization program is scheduled to be completed three years from its commencement in March 1995. The U.S. government, through the office of the United States Trade Representative and other agencies, has participated actively in the WTO's effort. In order to take effect in the United States, however, any rules published by the WTO would have to be legislatively enacted by Congress and current Customs rules harmonized with them.[9]

III. Summary of Comments

A. General Information

The Commission received a total of 342 written public comments in response to its announcement on July 11, 1995 that it would conduct a comprehensive review of consumers' perceptions of "Made in USA" advertising claims and conduct a public workshop, and to its *Federal Register* notices that specifically solicited public comments.[10] The commenters included

---

[8] The ARO does provide, however, that standards for determining the origin of domestic goods may be no lower than for determining the origin of imported goods. In doing so, it implicitly recognizes that standards for determining domestic origin may be *higher* than those for determining foreign origin. ARO, Annex 1A, Article 3 (c).

[9] For further information on U.S. and international country-of-origin marking, *see* U.S. International Trade Commission, *Country-of-Origin Marking: Review of Laws, Regulations and Practices,* (Publication 2975, July 1996) a report issued by the U.S. International Trade Commission (ITC) in response to a request from the House of Representatives Committee on Ways and Means ("ITC Report").

[10] The comments have been filed on the Commission's public record as Document Nos. B18354900001, B18354900002, *etc*. The comments are cited in this notice by the name of the commenter, a shortened version of the comment number, and the relevant page(s) of the comment, *e.g.*, **Stanley**, #59, at 5. A complete list of commenters is appended to this notice. Comments #1 through #200 and #332 through #343 were submitted following publication of the Commission's October 18, 1995, and April 26, 1996, *Federal Register* notices soliciting public comment. Comments #201through #281 and #283 through #331 (there is no comment #282) were submitted in response to media coverage prior to the October 18, 1995 notice, but have been added to the public record of this matter because they are relevant to the Commission's consideration). The transcript of the public workshop on March 26 and 27, 1996 has been placed on the Commission's public record as Document No. B199403. References to comments made during the workshop are cited by the name of the speaker, the speaker's affiliation, and the relevant page(s) of the transcript, *e.g.*, Sarah Vanderwicken for **IBT**, Tr. at 80-81.

Twenty-six commenters filed two comments each, in response to the two notices soliciting public comment, and several comments were signed by more than one commenter. Nonetheless, the total number of

approximately 182 individual consumers, 55 manufacturers and other corporations, 37 trade associations, 7 labor unions and union-affiliated organizations, 26 members of Congress,[11] 26 state and federal government agencies (including a coalition of 22 state attorneys general), 2 consumer groups, 2 nonprofit organizations, and 5 others.

The written comments, as well as the discussion at the public workshop, focused primarily on three alternative standards for evaluating U.S. origin claims. One group of commenters favored retaining the Commission's current standard, under which a product promoted as "Made in USA" would have to be "all or virtually all" made in the United States. A second set of commenters favored a percentage content standard. Under this standard, a product could be promoted as "Made in USA" if a set percentage (generally 50%) of the cost of manufacturing that product was attributable to U.S. production, and the product underwent final assembly in the U.S. A third group of commenters favored some version of the substantial transformation test applied by the U.S. Customs Service, such that any product "substantially transformed" in the United States could be labeled "Made in USA."

The discussion below summarizes the commenters positions on the costs and benefits of each of the primary standards. It also briefly summarizes comments proposing other standards, as well as comments supporting and criticizing the guidelines proposed by the Ad Hoc Group.[12]

B. "All or Virtually All" Standard

In its October 18, 1995 *Federal Register* notice, the Commission sought comment on the costs and benefits of its current "all or virtually all" standard. In response, most of the comments received by the Commission discussed this standard, either to support it or to criticize it.

---

commenters is, coincidentally, the same as the total number of *comments*: 342.

[11] In addition, five other members of Congress forwarded comments from their constituents.

[12] Because the Ad Hoc Group's proposed guidelines (comment #183) were submitted to the Commission on the last day of the comment period, they were not generally available for comment and some interested parties may not have had the opportunity to review them before submitting their own comments.

1. Comments Supporting the "All or Virtually All" Standard

Approximately 147 individual consumers and 73 other commenters supported the current "all or virtually all" standard.[13] These include a coalition of 22 state Attorneys General,[14] 13 members of Congress,[15] 6 trade associations,[16] 7 labor unions or union-affiliated organizations,[17] 23 manufacturers and other corporations,[18] a consumer group,[19] and a local political club.[20]

---

[13] Although not expressly identifying themselves as supporters of the "all or virtually all" standard, at least two commenters urged the Commission to adopt a percentage-based standard that would require that products be made with at least 90% domestic parts and labor in order to be called "Made in USA." Bill Haley & Associates, Inc. ("**Haley**"), #128; G.G. Bean, Inc. ("**Bean**"), #36 (submitted by the American Pet Products Manufacturers Association, Inc., of which G.G. Bean is a member; the trade association itself took no position on the appropriate standard for Made in USA claims). For purposes of this summary, the Commission has treated these comments as supporting an "all or virtually all" standard.

[14] The comment originally submitted to the Commission on behalf of the Attorneys General was signed by the Attorneys General of the states of California, Connecticut, Florida, Hawaii, Iowa, Kansas, Maryland, Michigan, Missouri, Nevada, New Hampshire, New York, Ohio, Rhode Island, Washington, and West Virginia ("**AGs**"), #43. Following the submission of comment #43, the Attorneys General of the states of Illinois, #185, New Jersey, #138, North Carolina, #114, Pennsylvania, #134, Tennessee, #122, and Wisconsin, #151, joined in the coalition comment. A follow-up statement by the Attorney General of Connecticut on behalf of the coalition was submitted at the opening of the public workshop, and is included in the public record as comment #343.

[15] U.S. Rep. John D. Dingell ("**Dingell**"), #153; U.S. Rep. Peter Deutsch ("**Deutsch**"), #340; U.S. Rep. Dale E. Kildee ("**Kildee**"), #333; U.S. Rep. Jerry Kleczka ("**Kleczka**"), #337; U.S. Sen. Carl Levin ("**Levin**"), #332; U.S. Rep. Donald A. Manzullo ("**Manzullo**"), #334; U.S. Rep. Carlos J. Moorhead ("**Moorhead**"), #339; U.S. Sens. Carol Moseley-Braun and Paul Simon ("**Moseley-Braun/Simon**"), #341; U.S. Rep. Glenn Poshard ("**Poshard**"), #163; U.S. Rep. James H. Quillen ("**Quillen**"), #168; U.S. Rep. Charles H. Taylor ("**Taylor**"), #169; U.S. Rep. James A. Traficant, Jr. ("**Traficant**"), #144.

[16] Alabama Textile Manufacturers ("**ATM**"), #12; American Hand Tool Coalition ("**American Hand Tool**"), #91, #186; American Textile Manufacturing Institute ("**ATMI**"), #92, #171; Crafted With Pride in USA Council, Inc. ("**Crafted With Pride**"), #35, #176; National Knitwear & Sportswear Association ("**NKSA**"), #53; Tile Council of America, Inc. ("**TCA**"), #161.

[17] Jefferson, Lewis & St. Lawrence Counties Central Trade & Labor Council, AFL-CIO ("**AFL-CIO/Jefferson**"), #146; Union Label & Service Trades Dept., AFL-CIO ("**AFL-CIO/ULSTD**"), #48; Engineers Political Action Committee ("**EPAC**"), #335; International Brotherhood of Teamsters ("**IBT**"), #107; International Leather Goods, Plastics, Novelty & Service Workers' Union, AFL-CIO/CLC ("**ILGPNSWU**"), #80; United Auto Workers ("**UAW**"), #93, #174; Retired Workers Council, Region 1-A, UAW (Buy American Union Label Committee) ("**UAW/RWC**"), #33.

[18] **Bean**, #36; Capital Mercury Shirt Corp. ("**Capital**"), #9; Steel Technologies ("**Steel Technologies**"), #152; Centerville Lumber Co. (attached to submission of U.S. Rep. Ed Bryant) ("**Centerville**"), #145; Deere & Co. ("**Deere**"), #57; Diamond Chain Co. ("**Diamond Chain**"), #55; Dynacraft Industries ("**Dynacraft**"), #45, #173; Estwing Manufacturing. Co. ("**Estwing**"), #179; Hagar Hinge ("**Hagar**"), #160; **Haley**, #128; Impress Industries ("**Impress")**, #308; Laclede Steel Co. ("**Laclede**"), #143; Porterco, Inc. and Megasack Corp. ("**Porterco/ Megasack**"), #132; Precision - Kidd Steel Co.; ("**Precision-Kidd**"), #142; Summitville Tiles, Inc. ("**Summitville**"), # 162; Tileworks ("**Tileworks**"), #156; Tompkins Brothers Co., Inc. ("**Tompkins**"), #157;

The large majority of consumer comments supported the current standard or some other, similarly high standard. Typically, individual consumer commenters stated that "Made in USA" should mean "Made in USA." Many also stressed that they wish to buy American products, and expressed concern that if the standard is lowered, they may be deceived into buying a product that was not really made in the USA. The following comments capture the flavor of many of the individual consumer comments:

> Please do not change the definition of "Made in USA." "Made in USA" means precisely that - manufactured on American soil, by American workers, with American-made materials - 100%.[21]

> How will we know what country made part or all of any item, or what was completely made here, including raw materials? Can anything be done to stop this action [changing the standard] on the part of the FTC?[22]

> American consumers who wish to purchase goods which are domestically made will clearly be hampered from doing so if the labels on those goods are ambiguous and may not mean what they say. Please do not allow this to happen.[23]

Other supporters of the "all or virtually all" standard warned that altering the current standard will lead to consumer deception, or at least consumer confusion, because the current standard is most consistent with consumer perception. Citizen Action, for example, stated:

> Should the FTC [change the "all or virtually all" standard], it is clear to us that a situation would exist in which the 'Made in USA' label means one thing in regulation and something very different in the minds of consumers. The confusion that would be created would directly contradict the primary purpose of utilizing labels to provide an effective consumer information tool.[24]

Vaughan & Bushnell Manufacturing (**"Vaughan & Bushnell"**), #97, #191; Weldbend Corp. (**"Weldbend"**), #190; Werner Co. (**"Werner"**), #129; Western Forge Corp. (**Western Forge"**), #49; Wright Tool (**"Wright"**), #40.

[19] Citizen Action (**"Citizen Action"**), #181.

[20] Jefferson Democratic Club of Flushing, NY (**"Jefferson Democratic Club"**), #61.

[21] Virginia Hoover (**"Hoover"**), #5, at 1.

[22] Helen Menahen (attached to submission of U.S. Sen. Dianne Feinstein) (**"Menahen"**), #200.

[23] Gloria Gonzalez (**"Gonzalez"**), #113.

[24] **Citizen Action**, #181, at 2.

These commenters argued that the consumer perception evidence before the Commission demonstrates that many American consumers interpret a "Made in USA" label consistent with the "all or virtually all standard." Consumers, according to these commenters, believe that a product that is labeled "Made in USA" is entirely made in the USA, not merely assembled in the U.S. of foreign parts.[25]

Many commenters favoring the current standard further asserted that consumer perception surveys demonstrate that "Made in USA" is a material claim to the vast majority of American consumers. For example, the American Hand Tool stated that all of the surveys presented at the public workshop indicate that consumers consider a "Made in USA" label to be important when making purchasing decisions.[26] Accordingly, these commenters concluded consumers want to know if a product is made entirely, or only partially, in the United States and choose to purchase products fully made in the United States for quality reasons, to ensure that the product was not made by exploited workers, and to support the U.S. economy and U.S. workers.[27]

Several advocates of the "all or virtually all" standard acknowledged that today's marketplace is a more global one, but argued that this has not caused consumers to change their perception that products advertised or labeled "Made in USA" contain all or virtually all domestic materials and labor. Indeed, some of the supporters of the current standard maintained that the fact that consumers may be aware of increased globalization of production makes unqualified "Made in USA" claims more, not less, significant. The coalition of Attorneys General explained it thusly:

> As the perception grows that America is losing jobs due to a shrinking manufacturing base, and the availability of truly U.S.A. products declines, the fact that a product is Made in the USA becomes increasingly valuable to consumers who wish to buy American. In such a climate, we believe it becomes more, not

---

[25] *See, e.g.*, **Deere**, #57, at 2 (citing FTC 1991 consumer perception study showing that 77% of buying public believed that "Made in USA" claims mean "all or nearly all" of a finished product was manufactured in U.S.); **AGs**, #43 at 2-4 (citing 1991 FTC consumer perception study), #343; **Dynacraft**, #45, at 1-2 (citing 1991 FTC consumer perception study), #173, at 2-3, 5, 7; **American Hand Tool**, #91, at 6; #186, at 2, 7; **Diamond Chain**, #55, at 1; **NKSA**, #53, at 2; **Western Forge**, #49, at 1; **Vaughan & Bushnell**, #97, at 3; **Laclede**, #143, at 1; **Dingell**, #153, at 2.

[26] **American Hand Tool**, #186, at 6, n.2.

[27] *See, e.g.*, **AGs**, #43, at 4 (1991 FTC consumer perception study showed respondents preferred U.S. products because buying USA supports economy and keeps Americans working); **Vaughan & Bushnell**, #97, at 2 (consumers look for Made in USA label to assure themselves of a high-quality tool and to express support for domestic manufacturing); **Wright**, #40, at 1 (enlarging Made in USA definition would no longer strictly convey U.S. workmanship); **Crafted With Pride**, #35, at 2 (consistent and corroborative research confirms consumers' positive perception of the quality of Made in USA apparel and home textiles); **UAW/RWC**, #33, at 1-2 (would be sacrilege to allow any part of any product to be sanctioned by Made in USA label if made in foreign nations by exploited workers under deplorable conditions).

less, important to ensure that manufacturers are not using deceptive claims . . . .[28]

A number of supporters of the "all or virtually all" standard disputed critics' assertions that it is nearly impossible to comply with the standard. They emphasized that some companies can and do produce products that are "all or virtually" made in the USA.[29] These commenters argued that lowering the standard would penalize producers who are able to label their products as "Made in USA" under the current standard, and would reward companies who purchase foreign materials or use foreign labor. Diamond Chain Co., a U.S. manufacturer of precision roller chains, for example, wrote:

> Being able to make an unqualified Made in USA claim for a product with as little as 50% domestic content benefits the manufacturer of that product by allowing customers to believe that manufacturer contributes much greater support to the domestic economy than is actually the case. The manufacturer of a product with 95% domestic content is penalized because he or she has incurred the cost of finding and developing domestic sources of supply that the manufacturer of the lower domestic-content product has not.[30]

Many supporters of the current standard asserted that the standard furthers investment in U.S. manufacturing and creates secure jobs in this country. Accordingly, lowering the standard would lessen the incentive that companies have to use U.S. labor and U.S. product components. American jobs, these commenters concluded, would be jeopardized as companies rely more and more on less expensive foreign sources. The United Auto Workers noted:

> The increasing globalization of production has led to the incorporation of foreign materials, parts and components into most of the products made by UAW members. In too many cases, U.S. firms use foreign inputs solely to increase their profits, which comes at the expense of American jobs. When foreign procurement comes from the subsidiaries of the U.S. firm, the adverse impact on American jobs

---

[28] **AGs**, #43, at 2. *See also* International Brotherhood of Teamsters ("[i]n the face of globalization, consumers can appreciate even more the determination of a company to retain American jobs and use American materials"); **IBT,** #107, at 4; **Poshard**, #163, at 1.

[29] *See, e.g.*, **Diamond Chain**, #55; **Vaughan & Bushnell**, #97, at 2 (manufactures hand tools that meet standard); **Tileworks**, #156, at 1 (only 5% of its raw materials are procured abroad); **Welbend**, #190 (makes fittings in U.S. without depending on foreign materials or labor); **American Hand Tool**, #91, at 5 (Coalition members have made and continue to make hand tools that meet current standard), #186, at 2-3; **Dingell**, #153, at 2; **UAW**, #174, at 1.

[30] **Diamond Chain**, #55, at 2. *See also* Michael S. Hinshaw and Ernest R. Rollins (attached to submission of U.S. Sen. John D. Rockefeller IV (**"Hinshaw"**), #66 (franchisees of U.S. company that sells products truly made in U.S. will be at a great disadvantage selling against competitors who will be able to claim that imported products they sell are made in the United States); **Bean**, #36 (use of Made in USA label where product is not 100% manufactured in U.S. increases profits of companies using inaccurate labeling); **Dingell**, #153, at 2; **Poshard**, #163, at 1; **Estwing**, #179, at 1.

is a direct substitution of foreign labor for domestic.[31]

Other commenters contended that the "all or virtually all" standard should be maintained because it gives clear guidance to those wishing to make a "Made in USA" claim. The coalition of Attorneys General, for example, commented:

> Due to the increasing relevance and popularity of *Made in the U.S.A.* claims, consumers, manufacturers and law enforcement agencies need clear and authoritative guidance regarding their meaning. . . . Accordingly, we urge the FTC to promulgate a regulation, or an enforcement guideline, incorporating the FTC's current standard that requires products unqualifiedly represented to be *Made in the U.S.A.* to be assembled all, or virtually all, within the U.S.A. using all, or virtually all, U.S.A. component parts.[32]

Finally, several supporters of the "all or virtually all" standard contended that it is not necessary to change the standard in order to permit sellers of products made with some foreign parts or labor to inform consumers of their products' U.S. content. These commenters argued that sellers are free to make qualified claims for such products. As U.S. Representative Traficant stated, the "FTC and Congress have not precluded any manufacturer with such foreign content or involvement from choosing to advertise or label their products as Made in USA so long as they qualify that claim (*e.g.*, 'Made in USA of foreign and domestic components')."[33] Deere & Co. further stated that if such alternatives are not acceptable to these companies, "that is reflective of the importance of the claims based on consumer expectations."[34]

---

[31] **UAW**, #93, at 1. *See also* **AFL-CIO/ULSTD**, #48, at 4 (those that want to dilute Made in USA claim are companies that have destroyed jobs in U.S. by moving all or part of their manufacturing operations to the Third World for lower wages and higher profits); **Estwing**, #179, at 1 (lowering standard would force domestic manufacturers to import components to remain competitive, effectively shipping U.S. jobs overseas); **Traficant**, #144, at 1 (diluting the standard would have a negative impact on U.S. workers); **IBT**, #107, at 3 (consumers will not use power to buy products that are "Made in USA" if they do not know what that means; would cost U.S. jobs); **Quillen**, #168, at 1; **Taylor**, #169, at 1; **Vaughan & Bushnell**, #97, at 4, #191, at 1; **American Hand Tool**, #91, at 5, 10; **Precision-Kidd**, #142, at 1; **Centerville**, #145, at 1.

[32] **AGs**, #43, at 12-13. *See also* **UAW/RWC**, #33, at 1-2. (current standard is "simple and honest" and cost to domestic commerce in maintaining standard is minimal); **Deere**, #57, at 2; **Vaughan & Bushnell**, #97.

[33] **Traficant**, #144, at 1. *See also* **Dingell**, #153, at 1; **Taylor**, #169, at 1; **Citizen Action**, #181, at 2; **Levin**, #332, at 1; Jeanne Archibald for **American Hand Tool**, Tr. at 231-232 ("people seem to be ignoring . . that there is a choice. You can make an unqualified claim if you meet that standard, but you have full discretion to make qualified claims and, in fact, to tell the consumers whatever is the domestic content of your product. So it isn't as if it's an either/or choice. There are many variations that you can develop.").

[34] **Deere**, #57, at 2. *See also* **AGs**, #43, at 6 (manufacturers can still take advantage of fact that a significant portion of product is made in U.S. under FTC standard; manufacturers' insistence that consumers understand that products represented as made in USA have substantial foreign content cannot be reconciled with their separate claim that disclosure dilutes the attractiveness of the made in USA claim); **American Hand Tool**, #186, at 5 (qualified claims protect consumers' interests, while accommodating companies' desire to advertise the U.S. content of their products); **UAW**, #174, at 1.; **AFL-CIO/ULSTD**, #48, at 4. *But see* **Vaughn & Bushnell**, #97, at

In a similar vein, Diamond Chain Co. maintained that, although it is more difficult and expensive to make qualified claims for products that are not wholly domestic, it is also "a substantial sales benefit to be able to make unqualified Made in USA claims," so that the issue is reduced to a "legitimate cost vs. benefit business decision."[35] Thus, Diamond Chain Co. asserted that, if a producer wants the advantage of the lower cost of foreign-produced materials and components, the company should balance that benefit against the cost of not being able to make an unqualified "Made in USA" claim. Conversely, if a producer wants to take advantage of making an unqualified "Made in USA" claim, the company should balance that benefit against the cost of finding and developing the domestic source.[36]

2. Comments Opposing the "All or Virtually All" Standard

Many of the comments received by the Commission criticized the "all or virtually all" standard as being too strict and urged the Commission to lower it. In addition to those commenters who argued in favor of the other standards discussed below, at least 15 commenters who did not indicate a preference for a specific alternative standard nonetheless expressed their dissatisfaction with the current standard.[37]

---

4 (supporting current standard, but stating that qualified claims would generate confusion among hand tool consumers).

[35] **Diamond Chain,** #55, at 2.

[36] *Id.* Some commenters did not explicitly support the "all or virtually all" standard but nevertheless cited the benefits of qualified claims. *See, e.g.*, Brother International Corp. and Brother Industries USA, Inc., (**"Brother"**), #109 at 2 (qualified claims "provide an effective and nonburdensome alternative for advertisers who do not wish to undertake whatever burdens may apply now or in the future with respect to unqualified claims for products that are not made entirely with U.S. labor and U.S. components."); BGE, Ltd. (**"BGE"**), #60, Exhibit A, at 3 (in most cases, "there would be little difficulty in making truthful comparative or qualified claims" that reveal a product is not entirely made in the U.S., provided that the claims are simple and that all relevant government agencies have the same requirement); Cranston Print Works Co. (**"Cranston"**), #38, at 3 (foreign custom officials would not prohibit qualified "Made in USA" claims, and even if they did, different label systems, one for domestic sales and one for export sales would not be problematic); U.S. Customs Service (**"Customs"**), #29, at 5-6, 7 (suggesting qualified claims may be appropriate for goods substantially transformed in the United States from imported components and noting that Canadian Customs accepts various forms of marking for goods of NAFTA parties, including "Made in USA with foreign components"); American Advertising Federation (**"AAF"**), #100, at 5-6 (a flexible standard "whereby a manufacturer has the ability to make specific, qualified, and substantiated claims about a product" would "further competition based on American content of products, as well as increase consumer knowledge by allowing more qualitative information into the marketplace.") *See also* Office of the District Attorney, County of Santa Cruz, CA (attached to submission of National Association of Consumer Agency Administrators (**"Santa Cruz DA"**), #137 (clear, short disclosures such as "USA 80%" on labels would be preferable; consumers most likely view "Assembled in USA" as suggesting a product with a majority of foreign content; print ads logically would have more complete disclosures of percentages and where a product is assembled).

[37] American Electronics Association (**"AEA"**), #87; American International Automobile Dealers Association (**"AIADA"**), #85; **BGE**, #60; Johnston & Murphy (**"Johnston")**, #324; Korea Fair Trade Commission (**"KFTC"**), #141; Processed Plastic Company (**"Processed Plastic"**), #167; U.S. Sen. William S. Cohen

Several of the commenters opposing the "all or virtually all" standard asserted that the standard is no longer consistent with consumer perception. According to these comments, consumers understand that, in today's globalized marketplace, there are few purely domestic products, and that therefore, consumers do not perceive products advertised or labeled "Made in USA" as containing all or virtually all domestic materials and labor.[38] For example, the Footwear Industries of America, Inc., stated:

> We believe that the modern American consumer does not assume that a "Made in USA" label means 100 percent domestic content. There can be no doubt that such consumers realize that the United States imports a large variety of raw materials and components for use in the manufacture of finished goods. They obtain this knowledge from information available in the media and from their own experience working in industries more and more reliant on foreign parts.[39]

Similar views were voiced by United Technologies Carrier:

> Consumers recognize that the globalization of production and assembly is so far advanced today, that it is difficult to recognize any one particular country as parent to that product. Consequently, consumers realize that it is rare, and virtually impossible, for a product to be "100% Made in U.S.A."[40]

A number of commenters further cited consumer perception studies as indicating that consumers do not believe that "Made in USA" refers only to products made with all or virtually all domestic labor and materials.[41]

(**"Cohen"**), #199; U.S. Reps. Joseph P. Kennedy, Edward J. Markey, and Richard Neal (**"Kennedy"**), #67; U.S. Reps. Neil Abercrombie, Peter Blute, Marty Meehan, John Joseph Moakley, and John W. Olver (**"Abercrombie"**), #25.

[38] *See, e.g.*, Brown and Williamson Tobacco Co. (**"B&W"**), #96, at 2 (current standard is inconsistent with consumer expectations); Compaq Computer Corp. (**"Compaq"**), #62, at 2 (consumers of electronic products tend to be both technologically savvy and reasonably well-informed about the globalization of the electronics industry); Caterpillar, Inc. (**"Caterpillar"**), #104, at 2; Minnesota Mining and Manufacturing Co. (**"3M"**), #98, at 14.

[39] Footwear Industries of America (**"FIA"**), #52, at 1, #177, at 2-3. *See also* **3M**, #98, at 10, 14; Automotive Parts Rebuilders Association (**"APRA"**), #30, at 5; Footwear Distributors and Retailers of America (**"FDRA"**), #27, at 2, #172, at 1-2; National Council on International Trade Development (**"NCITD"**), #89, at 3; New Balance Athletic Shoe, Inc. (**"New Balance"**), #44, at 3; Sunbeam Corp. (**"Sunbeam"**), #39, at 2; Toyota Motor Sales USA, Inc. (**"Toyota"**), #26, at 3.

[40] United Technologies Carrier (**"UTC"**), #94, at 2.

[41] *See, e.g.*, **FIA**, #52, at 1 (1991 FTC consumer perception study found that approximately one half of respondents believed "Made in USA" claim meant less than 80% of parts and labor were domestic), #177, at 2 (1995 FTC consumer perception study indicates that only an insignificant minority of consumers understand "Made in USA" claims to mean that all or virtually all of a product's labor and materials are of domestic origin); Rubber and Plastic Footwear Manufacturers Association (**"RPFMA"**), #178, at 1 (1995 FTC consumer perception study found that a majority of participants were willing to accept a "Made in USA" claim on products that

Several commenters argued that the current standard does not reflect current manufacturing and global sourcing practices of U.S. firms.[42] These commenters maintained that, because the standard requires such a high degree of domestic content and domestic labor, few companies are able to meet it in today's world market. Packard Bell Electronics, for example, highlighted the problems associated with trying to obtain U.S.-made components for its products:

> In many industries, and particularly in the consumer electronics area, some types of components are not manufactured at all in the U.S., or are domestically manufactured in such small quantities that it is impossible to obtain the volume of U.S.-made components necessary to support large manufacturing operations.[43]

These commenters contended that a standard that is unattainable for so many industries no longer makes sense.[44]

Many of the commenters opposed to the "all or virtually all" standard asserted that the strictness of the standard deprives manufacturers of a selling tool that could help preserve American jobs and that qualified claims are not an adequate remedy to this problem. Manufacturers who assemble products here of foreign and domestic components, they argued, cannot sufficiently distinguish themselves from manufacturers with lower (or zero) domestic content unless they are permitted to use "Made in USA" claims. In its comment, Stanley Works contended that imposing the current standard would require many companies to stop claiming their products are "Made in the USA" and thereby mislead consumers, who would be unaware that important attributes of tools, such as fit and durability, were attained in American plants through the labor of American workers.[45] Similarly, the American Electronics Association maintained that the current standard "produces a result contrary to the Commission's goal of

---

contained a significant amount of foreign parts, provided the product was assembled in the U.S.); Bicycle Manufacturers Association of America (**"BMA"**), #195, Appendix, at 1 (1995 FTC consumer perception study indicates that only an insignificant minority of consumers understand "Made in USA" to mean that 100 percent of a product's parts and labor are of U.S. origin).

[42] *See, e.g.*, **Compaq**, #62, at 2; **Kennedy,** #67, at 2; U.S. Rep. Glen Browder (**"Browder"**), #119, at 1; U.S. Sen. John Kerry (**"Kerry"**), #68, at 1; Toshiba America Electronic Components, Inc. (**"Toshiba"**), #34, at 2-3.

[43] Packard Bell Electronics (**"Packard Bell"),** #64, at 2.

[44] *See, e.g.*, Polaroid Co. (**"Polaroid"**), #90, at 4-5; **Toyota**, #26, at 5 (no motor vehicle sold in the U.S. would meet the "all or virtually all" standard); **Sunbeam**, #39, at 2 (while manufactured or assembled in the U.S., a number of its products cannot be advertised as "Made in USA" because some small component is sourced from overseas); **AIADA**, #85, at 2 (no vehicle in mass production today is made with virtually all U.S. parts); U.S. Rep. James B. Longley, Jr. (**"Longley"**), #118.

[45] Stanley Works (**"Stanley"**), #59, at 5, #194, at 1 (current standard deprives consumers of information that all the physical qualities and performance characteristics that make the product desirable to them are a result of American labor, technology, and capital equipment). *See also* **Sunbeam**, #39 (current standard makes it hard for consumers to distinguish between a product that consists of an insignificant amount of foreign components or materials from one that is mostly of foreign origin and imported into the U.S.).

creating informed consumers."[46]

Some opponents of the standard further argued in their comments that the current standard penalizes companies committed to maintaining production facilities in the United States. Companies that use some foreign components or labor in manufacturing may be forced to move production abroad if they are unable to get the benefits of an unqualified "Made in USA" label. As a result, the commenters contended, the "all or virtually all" standard can have the perverse effect of moving high-paying jobs overseas, and shrinking the American manufacturing base.[47]

Another criticism of the Commission's "all or virtually all" standard is that it is inconsistent with the country of origin rules applied by other federal agencies and foreign governments.[48] The federal standards most frequently cited by commenters in support of this point were the Buy American Act, which requires that to be eligible for federal procurement certain products must contain 50% domestic content and be subject to a final act of manufacture in the United States, and the regulations of the U.S. Customs Service, which look to the country in which the product was last substantially transformed. These commenters asserted that the Commission's standard imposes yet another regulatory burden on manufacturers.[49] For example, the National Electrical Manufacturers Association stated:

> The Commission's labeling standard is inconsistent with other Federal government programs requirements, resulting in greater inefficiencies and costs for the American manufacturer. An American product should be an American product no matter the market in which it is sold. Under today's conflicting rules, however, NEMA member companies face high administrative costs associated with compliance to numerous calculations.[50]

Several commenters maintained that the current standard also conflicts with other foreign countries' marking rules and thus imposes significant costs on American companies, making

---

[46] **AEA**, #87, at 1. *See also* **AIADA**, #85, at 3 (current standard would only serve to limit the flow of meaningful consumer information); Balluff, Inc. (**"Balluff"**), #69, at 1 (current standard does not help in decision-making process; only hinders manufacturer from labeling product appropriately).

[47] *See, e.g.*, **Abercrombie**, #25; **Kennedy**, #67; Luggage and Leather Goods Manufacturers of America (**"LLGMA"**), #23, at 2.

[48] *See, e.g.*, **Cohen**, #199; Gates Rubber Co. (**"Gates"**), #50, at 2-3; International Electronics Manufacturers and Consumers of America (**"IEMCA"**), #99, at 2-3, #189, at 2; **Kerry**, #68; **Longley**, #118; **NCITD**, #89, at 2; **Polaroid**, #90, at 1, 10; Seagate Technology (**"Seagate"**), #95, at 2 (Commission should implement Buy American standard). *Cf.* General Services Administration (**"GSA"**), #106, at 1 (Commission should "explore the viability" of standardizing its standard with one or more of the federal government's procurement or trade standards).

[49] *See, e.g.*, **Caterpillar**, #104, at 2; **Seagate**, #95, at 2.

[50] National Electrical Manufacturers Association (**"NEMA"**), #102, at 3.

American products less competitive abroad. For example, 3M asserted that many countries require that imported goods be marked with the country of origin, and would accept a product labeled as "Made in USA" if it satisfied Custom's NAFTA Marking Rules. 3M stated, however, that, in many cases, under the Commission's current standard, it cannot sell that same product in the United States with a "Made in USA" label and must therefore either develop two inventories of product, one with a "Made in USA" label for export and another with no origin mark for the United States, or relabel its products.[51]

A further criticism raised by some opponents of the "all or virtually all" standard was that the standard is not adequately defined and therefore fails to provide sufficient guidance to industry. Commenters noted, for example, that the standard as it currently exists gives no guidance as to how far back in the production process a manufacturer must go in determining U.S. parts, material, and labor content. 3M contended that the current standard does not provide a clear method for determining permissible foreign content, and argued that, as a result, many manufacturers are unable to properly determine when they may mark a product "Made in USA."[52] Moreover, the Joint Industry Group stated:

> The multiple questions asked in [the Commission's April 1996] request for comments regarding what constitutes a 'step' back in manufacturing is indicative of the complexity and subjectivity of this yet to be defined methodology. In a practical business sense, this complexity and subjectivity can only evolve into a standard that is equally cumbersome.[53]

---

[51] **3M**, #98, at 5. *See also* Joint Industry Group (**"JIG"**), #88, at 2 (the "multiplicity of origin rules" has resulted in increased costs for U.S. manufacturers, requiring them to establish special packaging and re-labeling facilities and to design and manufacture multiple forms of packages for different destination markets), #196, at 3-4; Okidata (**"Okidata"**), #42, at 3 (it is expensive and cumbersome for a company to have to apply different labels to the same product depending on the product's destination; different labels and boxes must be printed, the product must be segregated in inventory, and tracking systems are needed to ensure that a product is sent to the specific country destination to which the product is labeled); **Longley**, #118, at 1 (the Commission should "consider a standard that conforms to that articulated by other government agencies so that domestic manufacturers are not disadvantaged by: 1) having to meet one standard for their exports and another for their goods sold within the U.S.; and 2) having to provide more information on labels than what is required to be placed on the labels of imported goods. U.S. industry must not be placed at a competitive disadvantage.").

[52] **3M**, #98, at 4. *See also* **NCITD**, #89, at 2 (because there is no reliable definition, the current standard is difficult to follow; not clear how far back in the manufacturing process a company must go to meet the standard -- for example, whether the iron ore that became the steel tubing for a bicycle must have been mined in the U.S. before the bicycle can claim to be made in the U.S.); Paul Gauron for **New Balance**, Tr. at 162; **Balluff**, # 69, at 2.

[53] **JIG**, #196, at 2.

Finally, some of those commenters opposing the current standard specifically rejected the utility of using qualified claims. Qualified claims, they contended, will not solve the problems with the "all or virtually all" standard, but would instead be costly, impractical, and confusing to consumers. One commenter suggested that a qualified claim, such as "Made in USA with domestic and foreign parts," would not allow consumers to distinguish between goods made with significant or minimal foreign parts and would not assist with their decision-making process.[54] Another commenter argued that consumers examining a qualified claim would not be informed that a manufacturer was unable to obtain all of a product's components domestically, and that, without the cost savings realized from sourcing some components offshore, the manufacturer could not continue to maintain its U.S. factory and price its products competitively.[55]

Some comments also contended that qualified claims put U.S. manufacturers at a disadvantage relative to importers who, in most instances, can indicate a single country of origin, regardless of the origin of a product's components.[56] Other commenters expressed concern that space limitations may prevent a lengthy disclosure on the labeling of small consumer items,[57] and that such labeling may not comply with the customs requirements of foreign countries, which, they asserted, generally require a simple, clear "Made in USA" label.[58] Some comments noted that, because sourcing requirements and parts costs change continually, any specific qualifier based on percentages, such as "Made in USA using 65% U.S. parts," would have to be constantly changed at great expense to the company.[59]

---

[54] **FIA**, #52, at 3, #177, at 7.

[55] **New Balance**, #44, at 22-23. *See also* **BMA**, #86, at 6 (a claim that a bicycle was "Assembled in the USA from 75% US parts and labor" would fail to "communicate the simple, accurate 'Made in USA' message that Huffy, Murray, and Roadmaster are entitled to convey: that their bicycles are produced in American factories and represent the highest commercially feasible level of American materials, labor and craftsmanship at a certain price level").

[56] *E.g.*, **New Balance**, #44, at 22-23.

[57] *E.g.*, **FIA**, #52, at 3; **3M**, #98, at 17 (manufacturers may have to increase a product's packaging size to accommodate a lengthier qualified marking).

[58] *E.g.*, **FIA**, #52, at 3; **JIG**, #88, at 11 (qualified origin claims are often not recognized as legitimate claims resulting in customs delays or denied entry of merchandise); **3M**, #98, at 19-20 (it is not certain that other foreign governments would accept a qualified mark, thereby requiring costly relabeling of products); **Polaroid**, #90, at 8.

[59] *E.g.*, Electronic Industries Association (**"EIA"**), #84, at 4, #193, at 4; **NEMA**, #102, at 5 (qualified claims are unrealistic due to the complex nature of electrical products and the administrative costs associated with calculating comparative or qualified claims).

C. Percentage Content Standard

1. Comments Supporting a Percentage Content Standard

Approximately 13 individual consumers and 21 other commenters favored the adoption of a specific percentage content standard for unqualified "Made in USA" claims. Supporters of this standard include 4 members of Congress;[60] 6 trade associations;[61] 10 manufacturers and other corporations,[62] and 1 nonprofit organization.[63]

Of those commenters supporting a standard based on a percentage content, approximately 3 supported an 80% domestic content standard for unqualified "Made in USA" claims and at least 6 others supported a 75% standard.[64] Most, however, favored a standard permitting "Made in the USA" claims for items that undergo final assembly in the United States and consist of more than 50% domestic content.

Many of those commenters favoring a 50% standard argued that it is more practical than the "all or virtually all" standard in today's world. The Bicycle Manufacturers of America, for instance, suggested that requiring a domestic contribution of at least 50% would be "more commercially realistic" given the globalization of the economy.[65] The Rubber and Plastic Footwear Manufacturers Association stated: "Any formula which deviates to a considerable degree from this proposal would have the effect of defeating consumers' desires for American-

---

[60] **Kerry**, #68; **Browder**, #119; U.S. Rep. Barney Frank (**"Frank"**), #140 (favoring permitting manufacturers to use a "Made in USA" label when they have achieved "a certain minimum amount of domestic content," but not specifying a specific minimum percentage); **Longley**, #118.

[61] **APRA**, #30; **BMA**, #86, at 2-3; **FIA**, #52, at 3-4, 6, 8-9, #177; **LLGMA**, #23; Packaging Machinery Manufacturers Institute (**"PMMI"**), #56; **RPFMA**, #32, at 2, 6, #178.

[62] American Export Association, (**"American Export"**), #291; **B&W**, #96; Conair Corp. (**"Conair"**), #155; **Cranston**, #38; **New Balance**, #44, #197; **Packard Bell**, #64; **Seagate**, #95; Secant Chemicals, Inc. (**"Secant"**), #247; **Sunbeam**, #39; **UTC**, #94. *See also* Whirlpool Corp. (**"Whirlpool"**), #54 (supporting adoption of the NAFTA preference rules or, alternatively, a 50% content standard).

[63] Made in the USA Foundation (**"MUSA Foundation"**), #28.

[64] **American Export**, #291 (supporting an 80% standard); **MUSA Foundation**, #28, at 4, 14 (supporting a 75% standard; in addition, would permit a product to be labeled "Assembled in USA" if it has 50% or more U.S. content); **APRA**, #30, at 5 (supporting a 75% standard and asserting that this would allow items "substantially processed or assembled" in U.S. to claim "Made in USA" without diluting message to consumers); **Sunbeam**, #39, at 2 (supporting a standard requiring at least 75% of cost attributable to component parts made in U.S., and at least 75% of cost of labor performed in assembling the product into the form in which it is introduced, delivered, sold, offered, or advertised, to be incurred in U.S.). In addition, approximately two individual consumers supported an 80% standard; three supported a 75% standard; two supported a 70% standard; and one supported a 65% standard.

[65] **BMA**, #86, at 2.

made rubber footwear or slippers, since the domestic plants of most such manufacturers are competitively dependent on the need to use one or more imported components."[66]

Some comments suggested that adoption of a 50% standard would take into consideration that particular components or raw materials may be unavailable in the United States. Packard Bell Electronics stated that, to the best of its knowledge, no personal computers sold in the United States currently are able to carry a "Made in America" label because none is made with all or virtually all U.S. components and labor. In part, this is because in many industries, particularly in consumer electronics, some types of components are not manufactured at all in the United States, or are domestically manufactured in such small quantities that it is impossible to obtain the volume of U.S.-made components necessary to support large manufacturing operations.[67] Other commenters agreed.[68]

In addition to being more realistic than an all or virtually all standard, some commenters also argued that a 50% standard would ensure that a "Made in the USA" claim would be limited to products with substantial U.S. content. The Rubber and Plastic Footwear Manufacturers Association concluded that a 50% standard "requires a 'substantial' share of components and labor to be of American origin,"and provides "consumers who prefer American-made products because of their desire to preserve American jobs and/or quality" with the information they need to choose between competing products and manufacturers with an "effective way of distinguishing between the output of American plants and that of foreign plants."[69] By contrast, it asserted that "a final assembly, substantial transformation or significant processing test, standing alone without a required percentage of domestic value and/or labor, would so dilute the significance of a Made in USA logo. . . as to be virtually meaningless."[70] Seagate Technology similarly maintained that a standard that requires that more than 50% of the value of the parts and components be domestically produced and that the final act of "manufacture" take place in the U.S. is sufficient to protect consumers' expectations concerning the "Made in USA" mark.[71]

Some commenters further argued that a 50% U.S. content standard also would support the creation or retention of U.S. jobs. New Balance Athletic Shoe, Inc., for example, asserted:

> For industry, given that there are strong economic incentives to move offshore and dramatically reduce labor and other costs, whatever advantage might accrue from use of the "Made in USA" label provides at least some incentive to stay in the U.S. to

---

[66] **RPFMA**, #32, at 6.

[67] **Packard Bell**, #64, at 2.

[68] *See, e.g.*, **Seagate**, #95, at 3; **Whirlpool**, #54, at 1-2.

[69] **RPFMA**, #32, at 2, 6.

[70] **Id.**, #178, at 2-3.

[71] **Seagate**, #95, at 6 (citing with approval the Buy American Act).

> counterbalance the clear economic benefits of locating elsewhere. . . . A standard allowing the use of "Made in USA" claims when a manufacturer uses a majority of domestic materials and labor would help to level a very uneven playing field.[72]

Footwear Industries of America agreed, stating that a 50% U.S. content standard "would have the advantage of encouraging American companies to do more domestic sourcing so that they could proclaim their American content," while still giving them sufficient flexibility to maintain their labeling even if their sourcing changed somewhat during the manufacturing process.[73]

Some commenters supporting a 50% standard pointed to the wide variety of regulations governing domestic content claims both within the U.S. and internationally (*e.g.*, Customs' rules, FTC standards, the Buy American Act, the North Atlantic Free Trade Agreement, the World Trade Organization's potential standards), and suggested that the Commission adopt a standard that is consistent with an existing test.[74] Seagate Technology urged the Commission to adopt the 50% standard of the Buy American Act, arguing that this is an established standard with which the industry is well-versed and knowledgeable, and that it would avoid burdening U.S. manufacturers with yet another new and different standard.[75]

Seagate Technology, along with several other commenters, further maintained that the Buy American Act's 50% U.S. content standard, coupled with a requirement for final assembly in the U.S., would be consistent with consumers' expectations and the need for accurate product information. Thus, Seagate asserted:

> The Buy American Act standard has been in existence for more than 60 years and is well understood in the computer industry. It is sufficient to protect consumers' expectations concerning the "Made in USA" mark because it both requires (1) a significant amount of U.S. content, *i.e.*, more than 50% of the value of the parts and components must be domestically produced and (2) that the final act of "manufacture" take place in the United States. If clear guidelines are developed concerning the elements of value that are considered in the 50% test as well as the meaning of the term "manufacture," the Commission can be assured that it has protected consumers' expectations that significant U.S. labor and jobs were involved in the creation of the product that is being purchased.[76]

---

[72] **New Balance**, #44, at 21-22, #197, at 3.

[73] **FIA**, #52, at 3-4.

[74] *E.g.*, **Seagate**, #95, at 3, 6; **B&W**, #96, at 2-3; American Association of Exporters and Importers, ("**AAEI**"), #37, at 2, 4-5; **Balluff**, #69, at 2.

[75] **Seagate**, #95, at 2-3.

[76] *Id.* at 2. *See also* **RFPMA**, #32, at 6; **New Balance**, #44, at 26-27; **B&W**, #96, at 2 (supports adoption of a Buy American Act 50% domestic content standard because it will provide certainty to manufacturers and still properly protect consumer expectations); **FIA**, #52, at 4, #177, at 3 (1995 FTC consumer perception study supports view that 50% U.S. content plus final assembly in U.S. would satisfy consumer perception of significant processing in U.S.), at 6-7 (50% U.S. content plus final assembly in U.S. would generally ensure that product would have a

2. Comments Opposing a Percentage Content Standard

Commenters who specifically opposed adopting a percentage content standard for unqualified "Made in USA" claims generally fell into two groups. One group, composed of at least 14 commenters[77] (and generally supportive of a substantial transformation-type standard) was concerned that the calculations required by any percentage standard would be onerous. The other, composed largely of those who supported the current standard,[78] was primarily concerned that a 50% standard was too low and unlikely to result in an appropriate level of U.S. content.

A number of commenters opposing a percentage content standard stated that adoption of any such standard would be arbitrary and emphasized that a single percentage would not be appropriate for all manufacturing processes. In the International Mass Retail Association's view, the Commission cannot pick a single number -- such as 75% or 50% value -- and create a yardstick that will be fair or non-deceptive, because the value added depends so much on the type of product.[79] The Joint Industry Group agreed, maintaining that the selection of any quantitative basis for an advertising or labeling claim is necessarily arbitrary. If a 50% U.S. content rule is adopted, for example, there is likely to be no appreciable difference in goods featuring 49.5% and 50.5% U.S. content, respectively -- although the goods would have different labeling and advertising requirements under such a test.[80] Further, Gates Rubber Co. asserted that differences in relative domestic content may be found where identical constituent parts are imported from different countries at different costs. Alternatively, the same operations can be performed in the U.S. yet the domestic content will vary based on wage rates, yields, variable material costs, capacity utilization, or other factors. Fluctuations in exchange rates could cause origin to change over time, if a bright-line percentage-of-value test is adopted.[81]

Several commenters opposed adoption of a percentage content standard because of the

---

new name, character and use as a result of U.S. operations, would fulfill Customs' substantial transformation requirements, and would comport with consumer perceptions).

[77] **AAEI**, Tr. at 346-347; **Balluff**, #69; **Caterpillar**, #104; **Compaq**, #62; **Gates**, #50; **IEMCA**, #189; International Mass Retail Association (**"IMRA"**), #46; **JIG**, #88; **NCITD**, #89; **Polaroid**, #90; Red Devil, Inc. (**"Red Devil"**), #139; **Stanley**, #59; **3M**, #98; U.S Watch Producers in the U.S. Virgin Islands (**Watch Producers"**), #192; Writing Instrument Manufacturers Association, Inc. (**"WIMA"**), #133. *See also* **AAF**, #100 (advocating a case-by-case approach and criticizing a bright-line percentage standard).

[78] *E.g.*, **AGs**, #43; **American Hand Tool**, #186; **Deere**, #57; **Jefferson Democratic Club**, #61; **Vaughan & Bushnell**, #191; **Weldbend**, #190. Most of those supporting a 100% standard, of course, either explicitly or implicitly rejected adoption of a lower percentage.

[79] **IMRA**, #46, at 8-9. *See also* **Stanley**, #59, at 8 (no specific percentage content could be applied across the board that could serve as a useful guide for determining whether consumers may be deceived).

[80] **JIG**, #88, at 8-9. *See also* **Polaroid**, #90, at 6; **AAF**, #100, at 3-4 (strict thresholds, *e.g.*, 75%, likely to deprive consumers of valuable information; there is no useful distinction between products 70% and 75% American made).

[81] **Gates**, #50, at 2.

administrative burdens and costs it would impose on companies. Compaq Corp., for example, stated that percentage content tests are arbitrary, difficult to administer, and can lead to absurd or anomalous results.[82] Similarly, the Joint Industry Group and Polaroid maintained that minor changes in a producer's sourcing patterns, in the price for a given material, and variances in depreciation, units produced and other fixed and variable dependent cost allocations can change the result of a country-of-origin marking determination.[83] According to Deere and Co., many components may be outsourced and shipped to the manufacturer in an assembled state. Although unknown to the manufacturer, some of the parts of the purchased component may be foreign sourced. Therefore, companies may face many problems in determining the source of all subcomponents and then determining the "Domestic Content" of a finished product.[84] The Joint Industry Group and Polaroid asserted that a percentage content standard also would require companies to conduct detailed internal cost analyses in order to accurately determine the exact domestic content for their products. Furthermore, as sourcing patterns shift, and prices of materials, labor, and other fixed and variable cost allocations change, companies would have to update their cost/value analyses constantly.[85] Thus, a cost-of-production or value-added requirement, these commenters argued, could add a burdensome and complicated new layer to the rules-of-origin requirements already faced by manufacturers.

The International Electronic Manufacturers and Consumers of America summarized the burdens:

> An . . . important reason for opposing a percentage content standard is the complexity such a rule would impose on producers and marketers of goods. A percentage content standard, no matter what specific percentage is chosen, poses an accounting nightmare for producers of sophisticated electronic products, with components and production costs from multiple sources. A cost-of-production or value added requirement would add a burdensome and complicated new layer to the rules of origin requirements already faced by IEMCA members. Moreover, . . . cost fluctuations for components in electronic products would render such a system completely inconsistent and unworkable; a product

---

[82] **Compaq**, #62, at 5 (noting, for example, that two companies performing the same operations in U.S. may receive different origin determinations simply because they paid different prices for a given material or component).

[83] **JIG**, #88, at 8-9, #196, at 2; **Polaroid**, #90, at 5-6. (two companies performing the same operations in U.S. may receive different origin determinations simply because they paid different prices for a given material or component).

[84] **Deere**, #57, at 1.

[85] **JIG**, #88, at 9, #196, at 2; **Polaroid**, #90, at 7. *See also* **3M**, #98, at 18 (the added accounting requirements associated with a value content test would be overwhelming); **WIMA**, #133, at 3, 5 (questions will continually arise regarding accounting, valuation and profit methodology; whatever the specific percentage standard, would require a complex set of calculations); **NCITD**, #89, at 3 (would require substantial investigation, calculation, and paperwork from too many sources).

might pass, *e.g.*, a 50% content test one day and, after component cost fluctuations, fail the same test on another day, even though the exact same product using the exact same foreign and domestic inputs is "made" in the United States.[86]

Given all of the variables in the production process, one participant in the workshop, a representative of the American Association of Exporters and Importers, argued that it would very difficult to know in advance whether the finished product would meet the percentage threshold. The American Association of Exporters and Importers representative expressed concern that a manufacturer may prepare advertising and packaging fully anticipating to be able to claim "Made in the USA" for the product, only to find that, during production, a currency fluctuation occurs and the product no longer meets the standard.[87]

For this reason, some commenters also suggested that a percentage content standard would be expensive and difficult for the Commission to enforce. The Stanley Works and the Joint Industry Group maintained that the enforcement effort required would be enormous and wholly inconsistent with the current government downsizing trend.[88]

The Attorneys General expressed similar reservations, albeit from the contrasting perspective of "all or virtually all" supporters, about the application of a percentage content standard and the difficulty of enforcing such a standard. In addition, the Attorneys General suggested that in some circumstances a percentage content standard might distort the relative weight of U.S. and foreign content. The Attorneys General thus urged the Commission not merely to apply mechanically such a standard:

> In applying the formula, the FTC would need to create strict definitions of raw materials and would have to anticipate an endless number of contexts in which a manufacturer might wish to make a *Made in the U.S.A.* claim. While cost might be the best way to compare domestic and foreign content in many instances, sheer monetary measures are not universally appropriate. Indeed, rote application of any formula could lead to the anomalous result that a shirt made in a "sweatshop" in a foreign country from materials originating in the U.S.A. could be labeled as *Made in the U.S.A.* if the cost of the labor comprises a small portion of the product's total cost. Moreover, we have seen no consumer surveys linking consumer perception of *Made in the U.S.A.* to the cost of component parts as opposed to size, prominence or number of the component parts.[89]

---

[86] **IEMCA**, #189, at 6.

[87] Gail Cumins for **AAEI,** Tr. at 346-347.

[88] **Stanley**, #59, at 9; **JIG**, #88, at 9-10. *See also* **Polaroid**, #90, at 7-8; **WIMA**, #133, at 5 (percentage content standard would require constant case-by-case basis examination by the FTC).

[89] **AGs**, #43, at 7.

Several commenters also opposed a percentage content standard because it does not reflect consumer understanding. The International Electronics Manufacturers and Consumers of America, for example, argued that the consumer survey results did not demonstrate that consumers understand "Made in USA" to mean that some specific minimum percentage of the production costs are domestic, and that there is no indication that buyers of electronic products focus on the specific percentage of domestic or foreign content in their understanding of a "Made in [anywhere]" marking.[90] Some commenters supporting the current standard emphasized that a percentage content standard would be at odds with consumer perceptions by permitting items with significant foreign content to be claimed "Made in USA." The American Hand Tool Coalition, for example, asserted that percentage thresholds, whether 50% or 70%, are inconsistent with consumers' interpretation of "Made in USA" and would result in deception of a large proportion of the U.S. consuming public.[91] Along these lines, a representative from the International Brotherhood of Teamsters stated at the workshop:

> I think one of the real problems as [a] public policy kind of matter is that for the FTC to come out and say it's okay for the "Made in America" standard to apply to something which has as little as 50 percent American content can only lead to increased cynicism, increased disbelief, increased inability of consumers to pay any attention whatsoever, and to have any of these advertising slogans or anything else to have meaning.[92]

Finally, some commenters supporting an "all or virtually all" standard expressed concern that a percentage content standard may hurt domestic jobs and industry. For example, a participant at the public workshop suggested that manufacturers whose domestic content exceeds the minimum percentage required to claim "Made in USA" (for example, 50%) will have an incentive to "move some production offshore so they still stay within whatever is the tolerance level to make the claim, but save on cost."[93]

3. Calculation of U.S. content

Under any percentage content standard, a marketer must determine how to measure the value of U.S. content. In response to questions posed in the Commission's *Federal Register* notices, a number of comments discussed which costs should and should not be included, as well as how far back in the manufacturing process to go in making the calculation.

---

[90] **IEMCA**, #189, at 6.

[91] **American Hand Tool**, #186, at 21. *See also* **Vaughn & Bushnell**, #97, at 3-4 (would depart from consumer perceptions and generate considerable confusion in the marketplace; even 90% threshold could permit some tools manufactured with foreign-forged metal to qualify for the "Made in USA" label; consumers would not be able to distinguish between genuine domestically forged metals and imported substitutes).

[92] Sarah Vanderwicken for **IBT**, Tr. at 250-251.

[93] Jeanne Archibald for **American Hand Tool**, Tr. at 348. *See also* **UAW**, #93, at 3.

a. Costs to be included

There was a considerable range of opinion as to the type of costs that should be included in a determination of U.S. content. One commenter, the Retired Workers Council, Region I-A, of the UAW, suggested that any calculation of U.S. content should be based on labor hours and should exclude "[o]verhead, advertising [and] financing at any point."[94] At the other end of the spectrum, Balluff, Inc., proposed that the definition of U.S. content should extend to costs of development, engineering, profit, and the overhead costs to maintain the product's made in USA status.[95] The largest number of commenters suggested that all direct manufacturing costs, including manufacturing overhead, be included in the computation of U.S. content.[96] Hager Hinge stated "[T]he calculation should be made on a labor and material cost basis only, including direct overhead."[97] Conair Corp. suggested that the determination of domestic content should include labor and fringe benefits for shipping, receiving, warehousing, and packaging as well as overhead and the cost and amortization of capital equipment and square footage.[98]

A few comments specifically addressed whether profit should be included in the calculation of U.S. content. Seagate Technology stated that the profit made by the final assembler in the U.S. should constitute part of the domestic value.[99] Hager Hinge, however, insisted that "profit is an entirely separate issue and should not be a part of the calculation."[100]

The commenters also expressed a variety of opinions as to whether, and to what extent, raw materials should be included in the calculation of U.S. content. At least five commenters maintained that raw material costs should be included in final product cost.[101] Others, however,

---

[94] **UAW/RWC**, #33, at 2.

[95] **Balluff,** #69**,** at 3**.**

[96] *E.g.*, **FIA**, #52, at 1, 4, 6-9, #177, at 1, 4-5; **New Balance**, #44, at 26. *See* **RPFMA**, #32, at 5, #178, at 4; **Dynacraft**, #173, at 9; The Ad Hoc Group (**"Ad Hoc Group"**), #183, at 2-3; **American Hand Tool**, #186, at 30; **AAEI**, #187, at 5; and **Hager**, #160, at 2.

[97] **Hager**, #160, at 2.

[98] **Conair,** #155, at 1.

[99] **Seagate**, #95, at 6. *See also* **Balluff**, #69, at 3.

[100] **Hager**, #160, at 2. *See also* **UTC**, #94, at 2; **NEMA**, #102, at 8; **American Hand Tool**, #186, at 30; and **FIA**, #52, at 8.

[101] **MUSA Foundation**, #28, at 12-13; **Seagate**, #95, at 6; **Conair**, #155; **American Hand Tool**, #186, at 17-20; **AAEI**, #187, at 6. *See also* **UAW,** #174 at 3 (in suggesting further definition of the "all or virtually all" standard, would not create a blanket exception for all raw materials because, for some products, raw materials will account for a large share of final product cost, while for others, raw material costs will be negligible).

suggested that raw materials that were not direct inputs into final products should be excluded.[102] A few commenters suggested that the Commission exclude from total product cost only a narrowly defined class of raw materials. The Ad Hoc Group, for example, proposed excluding natural resources (which it defined as "products such as minerals, plants or animals that are processed no more than necessary for ordinary transportation") that are not indigenous to the United States.[103] Similarly, the Attorneys General indicated that only materials "not significantly transformed from their natural condition" should be excluded.[104] Finally, some commenters proposed industry-specific limitations on the inclusion of raw materials.[105]

b. How far back to look

In its October 18, 1995 and April 26, 1996 notices, the Commission sought comment as to how far back in the production process marketers should look in calculating the percentage of total product cost attributable to U.S. content. Specifically, in its questions about implementation of the all or virtually all and percentage content standards, the Commission sought comment on whether it was adequate for a marketer to look only "one step back" in the manufacturing process, *i.e.*, to where the immediate inputs into the final product were produced, or whether the marketer should look further back, *i.e.*, to where the subcomponents that went into that input were produced. In other words, in determining what percentage of a refrigerator is U.S. content, is it adequate to know that the compressor underwent final production in the United States, or must the marketer also inquire as to where the parts that make up that compressor were made? The Commission further sought comment on how to define a "step" for these purposes.

---

[102] **FIA**, #52, at 6-7 (include raw materials in cost of materials but only if within one-step back; if not, exclude because it is infeasible to make sellers determine the source of subcomponents and other inputs that are incorporated into the parts they purchase); **Balluff**, #69, at 3 (raw material costs should be used in determining the calculation for a subassembly if the only product the company was producing was from raw material, *e.g.*, steel manufacturers, oil refineries, diamond producers). *See also* **B&W,** #96, at 3 (foreign raw materials should be considered part of U.S. content if they undergo significant processing in the U.S. and are then used further in producing the finished product).

[103] **Ad Hoc Group,** #183, at 3. *See also* **American Hand Tool**, #186, at 19-20 (opposing exclusion of raw materials, but supporting a similar definition if such materials are to be excluded); **FIA**, #177, at 4 (exclude raw materials one-step back only if not indigenous to the United States).

[104] **AGs**, #43, at 10-11.

[105] *E.g.*, **APRA**, #30, at 4 (define raw materials in the automotive rebuilding industry to exclude cores, *e.g.*, old motor vehicle parts); **EIA**, #84, at 7 (raw materials of electronics industry are electronic or mechanical piece parts, *i.e.*, transistors, capacitors, terminals, wiring harnesses, screws, DRAMs, LEDs, plastic parts, which generally are ordered from piece part suppliers). *See also* **UAW**, #174, at 3 (asserting that the definition of raw materials may not be standard across industries and citing as an example that coated alloy steel could be considered a raw material by some companies and a manufactured product by others).

Most of the commenters who addressed how far back manufacturers should look to determine the amount of domestic content advocated a "one step back" approach.[106] They contended it would be unduly burdensome and impractical to require manufacturers to make inquiries beyond the suppliers from whom they purchase materials or components.[107] Footwear Industries of America, for example, explained:

> While manufacturers should be able to determine the source of raw materials and components they purchase directly, it is entirely infeasible to make sellers determine the source of subcomponents and other inputs that are incorporated into the parts they purchase. Suppliers often buy inputs from a variety of sources, depending on market conditions, and do not keep track of which inputs go into which end product. To require such comprehensive tracking would be difficult for every manufacturer, but exceptionally hard for those that use a substantial quantity of small inputs from various countries.[108]

And, in a similar vein, the Rubber and Plastic Footwear Manufacturers Association commented:

> Anything beyond one step back would create an unduly formidable burden which manufacturers should not be expected to meet, particularly since the net effect on American employment and quality of product would in the vast majority of cases be de minimis.[109]

A few commenters supporting an all or virtually all standard submitted comments opposing a "one step back" approach. Dynacraft Industries stated that such an approach was not appropriate for the bicycle industry, and urged the Commission to require that U.S. content be calculated based on all stages of production. It asserted, among other things, that the "one step back" approach could lead to circumvention of the standard by, for example, permitting an unscrupulous party to restructure sourcing to purchase through middlemen in the U.S. and claim the part is of U.S. origin.[110] The American Hand Tool Coalition similarly opposed allowing manufacturers to look only one or two steps back in the manufacturing process to determine the origin of a product's components and therefore the origin of the product. The Coalition asserted that, regardless of how a manufacturing "step" is defined, such an approach would be subject to manipulation and "would conflict with consumers' understanding of 'Made in USA.'"[111]

---

[106] *E.g.*, **LLGMA**, #23, at 4; **RPFMA**, #32, at 5, #178, at 4; **FIA**, #52, at 1, 6-8, #177, at 1, 3-4; **EIA**, #84, at 8, #193, at 2-4; **Ad Hoc Group**, #183, at 2.

[107] *E.g.*, **RPFMA**, #32, at 5, #178, at 4; **FIA**, #52, at 7-8, #177, at 3-4.

[108] **FIA**, #52, at 7. *See also id.*, #177, at 3-4.

[109] **RPFMA**, #32, at 5. *See also id.*, #178, at 4.

[110] **Dynacraft**, #173, at 8.

[111] **American Hand Tool**, #186, at 14-17.

The United Auto Workers suggested that in most cases, looking "two steps back" to unrelated supplier firms would be sufficient to identify nearly all foreign content. It suggested that "two step back" information would be critical for complex products such as electronics that use imported components.[112] The United Auto Workers also concluded, however, that in many cases obtaining the first tier supplier's U.S. content level ("one step back") should be sufficient.[113]

D. Substantial Transformation Standard

1. Comments Supporting a Substantial Transformation Standard

The Commission received comments from approximately 24 commenters favoring some version of a "substantial transformation" standard.[114] These commenters included 10 trade associations,[115] 12 manufacturers,[116] a law firm specializing in international trade law,[117] and the U.S. Customs Service.[118] While some of the commenters in this group expressed a preference for substantial transformation generally, or for any standard consistent with that of the U.S. Customs Service, others advocated adoption of a specific form of substantial transformation, such as the

---

[112] **UAW**, #174, at 2-3.

[113] *Id.* at 3 (noting, for example, that if a part that accounted for 10% of the value of the final product was 50% foreign value, the contribution of this part to the foreign value of the final product would be only 5%; on the other hand, if the 50% foreign part accounted for 30% of final product's value, this foreign content alone would account for 15% of final product's value).

[114] In addition, approximately 4 individual consumers indicated support for a standard by which a product put together or assembled in the United States could be labeled Made in USA even if it was assembled from imported parts.

[115] **IEMCA**, #99, #189; **JIG**, #88, #196; U.S. Apparel Industry Council (**"USAIC")**, #24; **WIMA**, #133; **AAEI**, #37, #187; **NCITD**, #89; **Watch Producers**, #192; **IMRA**, #46, #184; American Wire Producers Association (**"AWPA")**, #65 (advocating adoption of the Customs standard specifically for steel wire, steel wire products and wire rod); Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (**"Domestic Steel Wire Rope"**), #63 (advocating adoption of the Customs standard specifically for steel wire rope).

[116] **Balluff,** #69; **Caterpillar**, #104; **Compaq**, #62; **Gates**, #50; **Okidata**, #42; **Polaroid**, #90; **Red Devil**, #139; Timkin Co. and Torrington Co. (**"Timkin/Torrington"**), #51 (advocating adoption of the Customs standard specifically for antifriction bearings); **Toshiba**, #34; **Stanley**, #59, #194; **3M**, #98, #198. *See also* **Packard Bell**, #64 (suggesting that adoption of a WTO standard would be the best solution, but supporting a percent content standard in the interim).

[117] Meeks and Shephard (**"Meeks"**), #105.

[118] **Customs**, #29 (suggesting for unqualified "Made in USA" claims that a product be substantially transformed in the United States and have a 35% U.S. value-content).

tariff-shift approach employed by the NAFTA Marking Rules.[119] In addition, some commenters urged the Commission eventually to adopt whatever standard is ultimately accepted by the WTO.[120] At least one commenter suggested that adopting the actual Customs rules was less important than that the Commission adopt a standard that, like substantial transformation, focused on the processing of a product rather than on the value of its components.[121] At the workshop, others also voiced support for a "processing" approach.[122]

Many of the commenters favoring a substantial transformation standard expressed concern that the FTC's standard was inconsistent with that of the Customs Service. Some remarked on the incongruity of not being able to mark a product "Made in USA" under FTC policy even though the Customs Service would not require it to be marked with a foreign country of origin.[123] Several of the commenters, moreover, pointed to the benefits associated with using a standard that was consistent with that used by a sister federal agency. If FTC policy was harmonized with Customs rules, Compaq Corp., for example, noted, "manufacturers would not incur the additional expense of monitoring compliance with two potentially conflicting origin criteria."[124] Similarly, the Stanley Works argued that "Use of substantial transformation would unify and harmonize domestic marking regulation. . . . business could look to a single, uniform set of marking regulations."[125] Other commenters noted the number and variety of laws already in existence related to country-of-origin labeling and argued that using the substantial transformation standard used by Customs had the advantage of "not adding to the regulatory burden of U.S. companies."[126]

In a similar vein, a number of commenters noted that because businesses must already comply with Customs requirements, the substantial transformation standard is familiar to industry and can be readily complied with. Thus, the Joint Industry Group asserted that application of the substantial transformation standard will "bring benefits of predictability, transparency, and

---

[119] **AAEI,** #37, #187; **Gates**, #50; **3M**, #98, #198; **NCITD**, #89; **Polaroid,** #90.

[120] **AAEI,** #187; **Compaq**, #62; **USAIC**, #24; **IEMCA**, #99, #189; **IMRA**, #46, #184; **Stanley**, #59, #194; **JIG**, #88, #196; **Meeks**, #105; **3M**, #98, #198.

[121] **IMRA,** # 46, at 9-11.

[122] *E.g.*, Cynthia Van Renterghem for **NEMA,** Tr. at 268; James Clawson for **JIG**, Tr. at 389.

[123] *E.g.*, **Meeks**, #105, at 1; **Polaroid**, #90, at 3.

[124] **Compaq**, #62, at 3.

[125] **Stanley**, #59, at 8.

[126] **WIMA**, #133, at 5. *See also* **Caterpillar**, #104, at 2; **Okidata**, #42, at 1-2; **Toshiba**, #34, at 3.

enforceability to the process."[127] The American Association of Exporters and Importers echoed this view, contending that "the Customs standard, which has been the subject of thousands of administrative rulings and court opinions, will be more objective than the FTC standard, which has never been authoritatively defined."[128] The Writing Instruments Manufacturers Association and the Timkin and Torrington companies also each praised the substantial transformation test for establishing a "bright-line rule."[129]

Perhaps the most frequently cited advantage of the substantial transformation standard, however, was that it is consistent with the standards used by most other countries, and its adoption was seen by many of these commenters as an action that would facilitate international trade. "Obtaining uniformity and flexibility in country of origin labeling," stated the U.S. Apparel Industry Council, "would enable manufacturers to more efficiently supply wearing apparel to an increased number of countries. This benefits consumers and manufacturers alike . . . ."[130] Similarly, the American Association of Exporters and Importers noted that adoption of labeling requirements consistent with those of other countries would benefit the increasing number of companies developing international labels for their products.[131]

Many commenters pointed in particular to instances where a manufacturer would not be permitted by the FTC to mark its product "Made in USA," but would be *required* to do so by a foreign country when the same product is exported.[132] "To meet these conflicting requirements," Polaroid asserted, "US companies are often required to establish special packaging and relabeling facilities, and to design and manufacture multiple forms of packaging for different destination markets."[133] The Stanley Works also highlighted the costs associated with preparing separate packaging for domestic and exported products, stating:

A packaging change alone, without considering the additional administrative costs

---

[127] **JIG**, #88, at 3. *See also* **JIG**, #196, at 3; **IECMA**, #99, at 2, #189, at 3 (substantial transformation rule is understandable and usable, and there is a body of customs law and precedent for producers of virtually every product to follow).

[128] **AAEI**, #37, at 4. *See also* **3M**, #98, at 11, 18 (stating that the NAFTA Marking Rules "provide a workable and objective standard" and that "[m]any U.S. manufacturers already are operating under the NAFTA and performing the required NAFTA Marking Rule analysis for their products." **3M**, however, at the same time characterized the traditional case-by-case application of the Customs principle of substantial transformation as "too subjective.").

[129] **WIMA**, #133, at 2; **Timkin/Torrington**, #51, at 2. *See also* **Stanley**, #59, at 9.

[130] **USAIC**, #24, at 3.

[131] **AAEI**, #37, at 4-5.

[132] *E.g.*, **Caterpillar**, #104, at 1-2; **IEMCA**, #189, at 5.

[133] **Polaroid,** #90, at 3. *See also* **IEMCA**, #99, at 2.

> associated with maintaining dual inventories, costs Stanley roughly $250 per stock keeping unit. That amount multiplied by the thousands of individual products made by Stanley graphically illustrates the steep, unnecessary costs of maintaining dual inventories.[134]

This theme was reiterated by 3M, which stated that:

> With regard to relabeling, 3M has in many cases chosen not to label its U.S. products with an origin mark (so that they can be sold in the United States without violating the Commission's standards), only to have to add a sticker indicating "Made in USA" to comply with a foreign country's marking requirement. The stickering not only increases costs and burdens on 3M, but also makes the 3M products look less physically attractive to the consumer.[135]

Furthermore, several commenters supporting the substantial transformation standard argued that adoption of this standard was in keeping with efforts of the United States and other countries, through the WTO and other means, to harmonize international marking standards. Thus, one commenter suggested that "because substantial transformation is the conceptual basis for emerging international origin standards, the Commission's adoption of this test would greatly aid international efforts to harmonize rules."[136]

Finally, a number of commenters argued that the substantial transformation standard serves to protect consumers. These commenters noted that the marking requirements applied by Customs were intended, like the Commission's policy, to ensure that consumers received accurate information about the origin of the products they purchased.[137] In addition, several commenters pointed out that, because the FTC and the Customs Service apply different tests, a "Made in USA" label had different meaning from one that said "Made in [foreign country]," and that this was likely to lead to considerable consumer confusion. Observed one commenter, "A reasonable buyer surely does not understand that a 'Made in U.S.A.' product must be all or virtually all U.S. content, while a product "Made in Japan" may, on the other hand, have substantial content from other countries." [138] Similarly, another commenter argued:

> A "Made in COUNTRY X" claim should represent the origin of the underlying product to consumers in a consistent manner, whether the relevant country is the United States or any

---

[134] **Stanley**, #59, at 6.

[135] **3M**, #98, at 4.

[136] **Watch Producers**, #192, at 2. *See also* **USAIC**, #24, at 3 ("uniformity in country of origin rules will meet a stated objective of NAFTA and the GATT Uruguay Round Agreements").

[137] **Compaq**, #62, at 8; **Okidata**, #42, at 1-2; **Stanley**, #59, at 3-4; **3M**, #98, at 13.

[138] **Watch Producers**, #192, at 11.

other country. The long-standing Customs marking rule of origin, based on substantial transformation, applies to the country of origin markings on all imports. Consumers should not be faced with a conflicting origin rule for products marked "Made in USA."[139]

Several of these commenters also argued that the substantial transformation standard is consistent with consumer perception. One commenter, for example, suggested that substantial transformation "fits with general consumer perception that an article is **made** in the place where it takes on its final identity or is transformed into a new item."[140] 3M asserted that "consumers are concerned with the major elements of a product and its final place of manufacture. Consumers are not concerned with detailed accounting procedures and do not understand the significance of allocating general overhead expenses, etc."[141] Moreover, some commenters specifically pointed to the consumer survey evidence as supporting a similar view. For instance, IEMCA stated that:

> While the results of various consumer surveys presented at the workshop failed to reveal a universal consumer attitude about the meaning of "Made in USA," at least one simple perception was evident: consumers feel that "Made in USA" means that the product was "made" domestically. Nothing in the survey results indicate that consumers typically understand this to mean that 100% of the content or labor that went into producing all components of the good was domestic. Rather, as elucidated by several participants in the workshop, consumers, by and large, view the "Made in . . ." language to indicate where the ultimate product "came into being." [142]

---

[139] **IEMCA**, #189, at 3. *See also* **JIG**, #88, at 2 ("When a consumer buys a product labeled 'Made in Japan,' the consumer should have the same understanding of that product's origin as one labeled 'Made in USA'."); **USAIC**, #24, at 3 ("It is not realistic to assume that consumers know or believe 'Made in U.S.A.' determinations are based on rules which differ from the rule for 'Made in [Foreign Country].' With uniform rules, consumers will be able to make informed decisions about product origin without the confusion now associated with country of origin marking.").

[140] **WIMA**, #133, at 3 (emphasis in original).

[141] **3M**, #98, at 24.

[142] **IEMCA,** #189, at 3 (emphasis in original).

2. Comments Opposing a Substantial Transformation Standard

At least 15 commenters specifically criticized a substantial transformation standard.[143] The most frequent criticism voiced was that the standard is too low and permits goods with significant foreign content to be labeled "Made in USA" because one step in the manufacturing process has been performed in the United States. The Footwear Distributors and Retailers of America maintained that using a substantial transformation standard, a manufacturer could claim that its shoes were made in the U.S. if the shoes were assembled using imported uppers and outsoles:

> Under the rules promulgated by Customs, footwear assembled in Country B with an upper manufactured in Country A and an outsole manufactured in Country C would be labeled as a product of Country B, without qualification. By the same token, footwear assembled in this country using both imported uppers and outsole, need not be marked with a foreign country of origin.[144]

The Footwear Industries of America maintained that this problem extends across an array of products "because virtually any product could have a new name, character and use after its foreign components are finally assembled in the United States."[145]

Other commenters also argued that the substantial transformation standard fails to ensure that products claiming to be "Made in the USA" actually contain significant domestic content. The United Auto Workers, for example, point to Customs' practice of adding a value-added test to the substantial transformation standard in certain circumstances to illustrate the standard's limited domestic content requirement:

> When there is a suspicion that the location of the transformation has been moved from one country to another to circumvent a trade law (*e.g.*, antidumping, subsidies), a test that requires additional value-added is applied. This demonstrates the minimal local value that is attached to the substantial transformation; its domestic content is very far from the FTC standard.[146]

---

[143] **American Hand Tool**, #91, #186; **APRA**, #30; **Cranston**, #38; **Diamond Chain**, #55; **Dingell**, #153; **Estwing**, #179; **FDRA**, #27, #172; **FIA**, #52, #177; **New Balance**, #44, #197; **RPFMA**, #178; **Summitville**, #162; **Tileworks**, #156; **UAW**, #93, #174; **Vaughan & Bushnell**, #191; **Welbend**, #190. In addition, although the coalition of state Attorneys General did not specifically address substantial transformation in their written comments, the coalition's representative at the public workshop did voice his concerns about the substantial transformation standard during the proceedings. *See, e.g.*, Roger Reynolds for **AGs**, Tr. at 434. Some commenters opposed a "pure" form of substantial transformation such as used by Customs (indicating that in some circumstances such a standard might not ensure that sufficient work was performed in the United States), but suggested that a modified version could be acceptable. *E.g.*, **EIA**, #84, at 6, #193; **BMA**, #195.

[144] **FDRA**, #27, at 3. *See also id.*, #172, at 4-5.

[145] **FIA**, #177, at 6. *See also id.*, #52, at 4.

[146] **UAW**, #93, at 3-4.

A Bicycle Manufacturers Association representative observed that in some instances, simple assembly may be enough to constitute substantial transformation: "[A]t least in the case of bicycles, ... the NAFTA marking rule basically says you take bicycle parts and assemble them together and make a bicycle, and you have done a substantial transformation."[147] Thus, while BMA did not oppose a substantial transformation standard, it urged the Commission to include a provision that would ensure the addition of significant domestic value.[148]

Some commenters opposed to the adoption of a substantial transformation standard contended that, contrary to the supporters' assertions, the substantial transformation standard does not apply objective criteria, nor does it afford predictability or consistency in administration.[149] An American Hand Tool Coalition representative, for example, stated that in Customs' January 1994 notice, Customs noted that "'the application of the [substantial transformation] rule involves considerable subjective judgments, that it's non-systematic, that the judicial and administrative decisions in one case have little bearing on another case.'" Accordingly, the American Hand Tool representative did not believe that a substantial transformation standard would "give the kind of consistency and guidance to business that most of the people around this table [at the workshop] are looking for."[150]

U.S. Representative Dingell maintained that the Commission's standard and Customs' rules serve different purposes and are thus not inconsistent with each other. He urged that the Commission "be guided by its statutory charter of prohibiting unfair or deceptive practices rather than focusing on the red herring argument made by certain companies that the FTC and Customs Service should use identical standards."[151] Several commenters agreed with this view, arguing that the Commission's current policy protects consumers from deception.[152]

Commenters opposed to the adoption of a substantial transformation standard further argued that application of the standard would result in labeling contrary to most consumers' understanding of the phrase "Made in USA." American Hand Tool asserted that in the surveys that were presented at the FTC's workshop, no respondents indicated that "Made in the USA"

---

[147] Michael Kershow for **BMA**, Tr. at 187.

[148] **BMA**, #195, at 3.

[149] *E.g.*, **FIA**, #52, at 5.

[150] Jeanne Archibald for **American Home Tool**, Tr. at 373-74. *See also* Lauren Howard for **FIA**, Tr. at 377 (substantial transformation standard will not give manufacturers clear guidance).

[151] **Dingell**, #153, at 2. *See also* Jeanne Archibald for **American Hand Tool**, Tr. at 270; **American Hand Tool**, #91, at 4-5, #186, at 4, 34; **UAW**, #174, at 3; **Dynacraft**, #45, at 4-5, #173, at 4; **Diamond Chain**, #55, at 3. Similarly, according to one workshop participant, substantial transformation is based on manufacturing processes rather than on consumer perception. Jeanne Archibald for **American Hand Tool**, Tr. at 373-374.

[152] **APRA**, #30, at 6; **Cranston**, #38, at 2; **Diamond Chain**, #55, at 3.

meant that the product had undergone substantial transformation or tariff shift in the U.S., or even suggested it meant creating a distinct article from something else:

> Such a concept would require consumers to distinguish among various manufacturing processes and to identify the point at which the final product came into being. But the consumer perception evidence demonstrates the opposite: consumers view "Made in the USA" as applying to all of the materials and labor used to make a product and do not distinguish among manufacturing steps or processes.[153]

Noting that the consumer survey presented at the FTC public workshop found that the majority of consumers would not agree with a "Made in USA" label on a product with 50% foreign content, the same commenter stated that use of the substantial transformation standard would result in "deceiving a fairly large segment of the U.S. public."[154] Another workshop participant observed: "I don't see any relation of the substantial transformation test to consumer perception."[155]

Finally, the American Hand Tool Coalition questioned whether using a substantial transformation standard would in fact harmonize the Commission's standard with other U.S. and international standards. The Coalition maintained that several of the proponents of a substantial transformation standard in the Commission's proceeding actually advocated adopting various modifications to the substantial transformation standard as applied by the Customs Service. Adopting such variations, the American Hand Tool Coalition maintained, would not achieve harmonization with the Customs Service. Moreover, a unified Customs/Commission standard would nevertheless be inconsistent with the Buy American Act.[156]

E. Comments Supporting Other Standards

In addition to the three primary alternatives discussed above, a number of commenters suggested other possible approaches to the evaluation of U.S. origin claims.[157] For example, some commenters suggested that a "Made in USA" standard should focus on the production of "major" or "essential" components. The Footwear Distributors and Retailers of America, for example, suggested that the Commission adopt a standard that permits the use of a "Made in

---

[153] **American Hand Tool**, #186, at 31.

[154] Jeanne Archibald for **American Hand Tool**, Tr. at 373.

[155] Roger Reynolds for **AGs**, Tr. at 434.

[156] **American Hand Tool**, #186, at 34.

[157] As noted above, *see supra* note 37, there were also approximately 15 commenters who opposed the current "all or virtually all" standard, but who did not specify a preferred alternative standard. In addition, there were approximately 33 other commenters (including approximately 18 consumer commenters) whose comments did not clearly indicate any preferred standard.

USA" label when the "major component production" and final assembly takes place in the United States.[158] Similarly, Manchester Trade Ltd. argued that products whose "essential elements" are produced and assembled in the United States should be allowed to carry an unqualified "Made in USA" label.[159]

The National Electrical Manufacturers Association supported a similar standard. It asserted that, at least for electronic products, the standard for making an unqualified U.S. origin claim should focus on whether the product is "manufactured primarily" in the United States. Specifically, if an American electronics producer uses primarily U.S.-built subassemblies and performs the remaining steps in the United States, the product should be eligible for a "Made in USA" label, regardless of the source of the basic electronic and mechanical components.[160] According to the National Electrical Manufacturers Association, this standard "more fairly acknowledges that the source of electrical products' greatest cost, value, and essence is found at the subassembly level rather than the basic component level."[161]

Other commenters, most notably two trade associations of automobile manufacturers, specifically objected to any bright-line test for determining whether a seller can make a U.S. origin claim and instead advocated the use of a case-by-case approach.[162] The American Automobile Manufacturers Association, for example, stated that consumers' understanding of "Made in USA" claims varies greatly from product to product, and that this understanding continues to evolve. Accordingly, it urged the Commission to avoid setting rigid standards that may become obsolete or cause consumer confusion, and recommended that the Commission apply well-established principles of advertising law, considering the express and reasonably implied meaning of the claim,

---

[158] **FDRA**, #27, at 2, #172, at 4.

[159] Manchester Trade Ltd. (**"Manchester Trade"**), #21, at 2. *See also* Federation of the Swiss Watch Industry (**"FSWI"**), #47 (FTC should adopt a standard that recognizes the relative importance of the different parts of a product, such as the importance of the movement and the casing of a watch). *But see* Jim Clawson for **JIG**, Tr. at 513-514 (discouraging the Commission from adopting a standard based on essential components because of the difficulty of determining which components of a product are essential, and because such a standard may discourage the use of American materials).

[160] **NEMA**, #102, at 2. *See also* **EIA**, #84, at 1-2 (similarly advocating that "if a U.S. electronics producer uses primarily U.S.-built subassemblies and performs the remaining manufacturing steps in the U.S., that product should be eligible for a 'Made in USA' label, whatever the source of the basic electronic and mechanical components").

[161] **NEMA**, #102, at 2. In NEMA's post-workshop comment, however, it contended that the Commission should defer to the substantial transformation standard for industrial products, or alternatively, exclude industrial products "from any rule directed to 'Made in USA' claims." *Id.*, #182, at 2-3.

[162] Association of International Automobile Manufacturers (**"AIAM"**), #101, at 2, #180, at 1. *See also* **Toyota**, #26, at 2 (suggesting that, with respect to the automotive industry, the Commission should adopt a traditional reasonable basis standard for measuring domestic content, rather than a precise formula); **AAF**, #100, at 2, 5 (urging the Commission to "avoid establishing a bright line definition of 'Made in USA'" and instead adopt "a flexible standard whereby a manufacturer has the ability to make specific, qualified and substantiated claims about a product").

the materiality to consumers of the claim, and whether the advertiser has a reasonable basis to make the claim.[163] The Association of International Automobile Manufacturers similarly asserted that a "one-size-fits-all standard" would be confusing, and that it may be impossible to develop a standard that can accurately reflect consumer views about all products. It therefore suggested that, at least for automobiles, the Commission adopt a case-by-case approach that reviews specific advertising claims and the meaning of those claims to consumers.[164]

F. Guidelines Proposed By the Ad Hoc Group

After the workshop, a group of several companies and industry associations calling themselves the "Ad Hoc Group" jointly submitted as a post-workshop comment proposed "Guidelines for Making U.S. Origin Advertising and/or Labeling Claims" ("Ad Hoc Guidelines").[165] Central to the Ad Hoc Guidelines are three proposed safe harbors for making an unqualified "Made in USA" claim. Specifically, the Ad Hoc Guidelines provide that "a product that contains materials, parts or components that are not wholly obtained in the United States can be non-deceptively advertised or labeled 'Made in USA'" if one of three conditions is met:

> (1) the last significant manufacturing process or processes, which must be more significant than simple assembly or minor processing, occur in the United States, and the cost of U.S. processing is at least 50% of the cost of goods sold; or
>
> (2) (i) a majority of all the processing that is normally undertaken to produce a product takes place in the U.S.;
>
> (ii) such process(es) result in the creation of a new article of commerce that has a different name, character, and use than the materials, parts, or components from which it is made; and
>
> (iii) such process(es) when taken together, are more significant than simple assembly or minor processing and result in a ratio of the cost of U.S. processing to the cost of goods sold that is not insignificant;

---

[163] American Automobile Manufacturers Association (**"AAMA"**), #103, at 2.

[164] **AIAM**, #101, at 4, #180 at 1-2. Another approach suggested was to include a grading scale from A+ to F, depending on percentage of U.S. content. Tech Team, Inc. (**"Tech Team")**, #307. The Federation of the Swiss Watch Industry advocated that the FTC adopt a standard for "Made in USA" designations similar to Switzerland's "Swiss Made" rule for watches. It said this rule provides that the watch must contain a Swiss movement (defined as one in which 50% of the value of the parts are of Swiss manufacture and which is assembled and inspected in Switzerland), the movement must have been encased in Switzerland, and the watch must have undergone final inspection in Switzerland. **FSWI**, #47, at 4-5.

[165] **Ad Hoc Group**, #183. The proposal was signed by **AAEI**, the Association of Home Appliance Manufacturers (**"AHAM"**), the Automotive Parts and Accessories Association (**"APAA"**), **AWPA**, **BMA**, **EIA**, **IMRA**, **3M**, and **Stanley**.

or

(3) the good satisfies a modified version of the NAFTA Preference Rules.

In addition, the Ad Hoc Guidelines propose establishing a second tier of U.S. origin claims. Specifically, a product could be labeled "Wholly made in the U.S." (emphasis added) if "all or virtually all of the processing, materials, components, and labor used in the production of product are of U.S. origin."

Some of the signatories to the Ad Hoc Guidelines also submitted separate comments emphasizing their support for the Ad Hoc Guidelines. The American Association of Exporters and Importers explained that the Guidelines attempt to provide American manufacturers with reasonable and easily understandable alternative methods for claiming that their products are "Made in USA."[166] The Bicycle Manufacturers Association asserted that "consumers are entitled to expect that a claim that a product was 'Made in USA' means not only - but most fundamentally - that the product came into being (*i.e.*, was substantially transformed) here, but that *substantial value* was added in the U.S. . . . [E]ach of the three 'safe harbors' acknowledge this principle . . . "[167] Similarly, the International Mass Retail Association asserted that, in rejecting both a simple value-added standard as well as a simple adoption of Customs' substantial transformation standard, the Ad Hoc Guidelines "get to the plain idea of what it takes to 'make' something"; accordingly, the proposal provides guidance to advertisers and avoids consumer deception.[168] The Association of Home Appliance Manufacturers also submitted a separate comment endorsing the Guidelines and reiterating its support for the NAFTA Preference Rules as one of the three safe harbors for making a "Made in USA" claim.[169]

Other signatories to the Ad Hoc Guidelines submitted separate comments suggesting modifications to the proposal. 3M expressed its support for the Ad Hoc Guidelines, but suggested two additional safe harbors: (1) that goods be allowed to be labeled "Made in USA" if they are substantially transformed in the United States;[170] or alternatively, (2) that a lesser mark such as "Country of Origin: USA" or "Product of the US" (rather than "Made in USA") be permitted when a product is sufficiently manufactured in the United States to become a U.S. product for international customs purposes (*i.e.*, is substantially transformed in the U.S.), but would not meet the standard for an unqualified "Made in USA" claim.[171] Under 3M's proposal, to bear the lesser mark: (1) the product would have to be actually sold in the market that requires

---

[166] **AAEI**, #187, at 2.

[167] **BMA**, #195, at 3.

[168] **IMRA**, #184, at 1-4.

[169] **AHAM**, #188, at 1-2.

[170] *See also* **AAEI**, #187, at 3; **EIA**, #193, at 8.

[171] **3M**, #198, at 1-2.

the label; (2) the label would have to be no larger than is necessary to meet foreign labeling requirements; and (3) the claim could not be repeated in U.S. advertising unless it could meet the Ad Hoc Guidelines' safe harbors for unqualified "Made in USA" claims.[172]

New Balance and Footwear Industries of America, although not signatories to the Ad Hoc Guidelines, expressed general support for them, but asserted that any safe harbor for making unqualified "Made in USA" claims should require that a product have over 50% domestic value.[173] According to New Balance, without this requirement, products with low domestic content that undergo only final assembly in the United States could be labeled "Made in USA" in some instances, and in those instances, the label would be deceptive.[174]

In contrast, the American Hand Tool Coalition, and two of its member companies, submitted comments strongly objecting to the Ad Hoc Guidelines. The American Hand Tool Coalition asserted that the Ad Hoc Guidelines are a "conglomeration of vague and potentially unequal tests that would promote rather than prevent consumer deception."[175] Among its specific criticism of the Ad Hoc Guidelines were: (1) by permitting products with 50% or even more foreign content to be labeled "Made in USA," the Ad Hoc Guidelines would deceive a substantial percentage of consumers;[176] (2) the two-tiered approach of "Made in USA" and "wholly Made in USA" would lead to consumer confusion and make it difficult for companies that meet the higher standard to distinguish their products;[177] and (3) the proposed Guidelines would not achieve harmonization with other U.S. or foreign government standards.[178]

IV. Analysis: General Considerations

The comments submitted to the Commission, as well as the Commission's independent

---

[172] *See also* **IMRA**, #184, at 7 (should allow manufacturers to mark products sold in the U.S. with the words "Country of origin: USA" in limited instances where actual exports of the product are subject to foreign marking requirements); **EIA**, #193, at 2 (the Commission could prevent consumer deception through education concerning the limited meaning of such marking and through prohibition on U.S.-origin claims to consumers); **JIG**, #196, at 3-4 (should the FTC decide that the substantial transformation standard is not appropriate, advocates establishing a "safe harbor" that would allow companies to provide consumers with country-of-origin information that also satisfies international origin marking rules).

[173] **New Balance**, #197, at 2; **FIA**, #177, at 6-7.

[174] **New Balance**, #197, at 4.

[175] **American Hand Tool**, #186, Appendix A, at 1.

[176] *Id.* at 1, 4-6.

[177] *Id.* at 7-8. *See also* **Vaughan & Bushnell**, #191, at 2; **Estwing**, #179, at 2 ("Only the most vigilant consumers would notice the difference between the two claims, and even if the distinctions were noticed, consumers would have no basis by which to discern the different meanings of the two phrases. Consumers are likely to assume that [both claims] refer to all or virtually all domestic origin . . .").

[178] **American Hand Tool**, #186, Appendix A, at 8-10.

analysis, suggest a number of factors to be considered in seeking an appropriate standard for evaluating U.S. origin claims. The Commission considered consumer perception of such claims, consistency of the Commission's standard with other, existing standards, and practical issues of implementation. This notice discusses each in turn.

A. Consumer Perception

1. Studies and Findings

As noted above, Commission staff commissioned a consumer perception study[179] as part of the FTC's overall review of U.S. origin claims in advertising and labeling. In addition, some commenters responded to the Commission's request for further consumer perception evidence by submitting data of their own.[180]

The FTC staff-commissioned study consisted of two parts. The first part ("1995 FTC Copy Test") was a traditional copy test in which subjects were shown advertisements containing one of five qualified or unqualified U.S. origin claims (*e.g.*, "Made in USA," "70% Made in USA," "Made in U.S. of U.S. and imported parts") and asked a series of questions about what they understood each claim to mean. The second part of the Commission's study was termed an attitude survey ("1995 FTC Attitude Survey"). It presented subjects with a series of scenarios in which the percentage of a product's cost that was U.S. in origin varied; in addition, subjects were either told that the product was assembled in the U.S., told that it was assembled abroad or not told the site of assembly. Subjects were then asked whether or not they agreed with a label stating that the product was "Made in USA."[181] In addition to the results of the new study commissioned for this review, the results of a 1991 FTC study ("1991 FTC Copy Test") also were considered.[182] This 1991 consumer perception study asked consumers general questions about

---

[179] Document No. B212883 on the Commission's public record.

[180] **IMRA,** Document No. B212895; **Crafted with Pride**, Document No. B212908; **American Hand Tool** (Danaher Tool Group), Document No. B212910; **New Balance**, Document No. B212922; **National Consumers League**, Document No. B212934; **BGE**, Document No. B212946.

[181] For example, a typical question in the 1995 FTC Attitude Survey read:

> This stereo is assembled in the United States using U.S. and foreign parts. The foreign parts account for 10% of the total cost of making the stereo. The U.S. parts and U.S. assembly together account for 90% of the total cost. If this product had a label stating that the product was "Made in the USA," how much would you agree or disagree with the label? Would you strongly agree, somewhat agree, neither agree nor disagree, somewhat disagree, or strongly disagree?

A respondent would then be presented with the same scenario, except that 30% of the cost was foreign and 70% U.S., then with a scenario in which U.S. and foreign costs each accounted for 50% of the total costs, and so on.

[182] Document No. B213001.

"Made in USA" claims, as well as questions about the use of such claims in specific advertisements.

In addition to the Commission's studies, at least six other commenters provided consumer perception data on U.S. origin claims, including: New Balance Athletic Shoe (New Balance), the International Mass Retail Association (IMRA), the American Hand Tool Coalition (American Hand Tool), Crafted With Pride in U.S.A. Council, Inc. (Crafted with Pride), BGE Ltd. (BGE), and the National Consumers League (NCL).[183] The studies addressed a number of topics related to U.S. origin claims and found a range of results. The most significant findings are discussed below.

a. Importance of U.S. Origin in Purchasing Decisions

All of the studies looked in one way or another at how important a "Made in USA" designation was to consumers. Several of the studies found that many consumers express a preference for U.S.-made goods. For example, when respondents to the 1991 FTC Copy Test were asked to circle things in an ad that were important to them, 52% of those shown a typewriter ad and 33% of those shown a bicycle ad circled the "Made in USA" logo. Similarly, American Hand Tool survey participants considered a "Made in USA" label to be a highly important factor when buying hand tools. On average, this label was considered as important as price and more important than brand name and reputation of store (but was seen as less important than the warranty). Crafted With Pride submitted the results of several studies, all of which indicated that consumers have a significant preference for items made in the USA.[184] For example, in one test conducted in retail stores, sales of U.S.-made apparel increased 24% when the items were affixed with hangtags prominently identifying them as "Made in USA."[185] Finally, 84% of respondents in the NCL study said they were more likely to buy an item that was made in the USA than a foreign-made product, assuming that price and other features of the product were identical.

On the other hand, three other studies suggested that country of origin is not as important to consumers as some other product features, such as price, design, and style. When asked an open-ended question as to what factors they considered in deciding which brand of athletic shoes to buy, no respondents to the New Balance survey mentioned the country of origin of the shoes' components. Country of origin was ranked by respondents in that survey below comfort and fit, durability, design/style, and price in factors they considered in their athletic shoe purchasing decisions. Similarly, in the BGE survey, only 26% of participants indicated that they would base their decision about whether to buy a collectible plate on the country in which it was

---

[183] The NCL study consisted of mail-in survey of its membership and did not purport to be a scientifically valid survey. Nonetheless, it is included in this discussion for informational purposes.

[184] **Crafted With Pride**, #35, at 3-7, Exhibits 1-7; #176, at 2-3.

[185] *Id.*, #35, at 6, Exhibit 7.

manufactured. In contrast, 99% said the primary reason for buying such a plate was because of the art on it. IMRA submitted poll data suggesting that although consumers say they prefer buying products made in the USA, this preference noticeably declines if an American-made good is more expensive than a foreign-made good. IMRA's data also indicated that a product's country of origin rated well below a product's warranty, price, and other product features in importance to purchasing decisions. In addition, the survey submitted by IMRA showed that people care more about the country of origin for certain products, such as cars, clothing, and electronics, than for other products, such as tools, shoes and large appliances.

Consumer responses to the 1995 FTC Copy Test and 1995 FTC Attitude Survey reflect a range of views about the importance to consumers of purchasing products that are made in the USA. Participants in the Copy Test were asked "When you are considering buying a [product], how important is it to you that the item be made in the USA?" On a scale of 0-10, 0 being not at all important and 10 being very important, 39% of participants responded in the 8-10 range; 39% of participants responded in the 3-7 range; 22% of participants responded in the 0-2 range. The importance participants placed on buying a product that was produced in the U.S. did not vary among the copy test products (a stereo, coffee maker or pen).

The results of the 1995 FTC Attitude Survey were similar, although participants in the Attitude Survey rated the importance of buying a pen that was "Made in USA" somewhat higher than the importance of buying a stereo that was made in the USA. Just under 50% of participants who were asked about pens rated the importance of buying a pen that was "Made in the USA" between 8-10. Less than 20% put the importance between 0-2. For participants who were asked about stereos, approximately 35% rated the importance of buying a stereo that was Made in the USA between 8-10, while just over 25% put the importance between 0-2.

Several of the studies found that consumers associate "Made in USA" claims with positive economic consequences for the United States, such as more jobs for Americans. For example, in the New Balance study, when respondents were asked "What does Made in USA mean to you," 35% of respondents stated that a "Made in USA" label implied jobs or work for U.S. citizens. In the Commission's 1991 Copy Test, when respondents were shown a card with "Made in USA" on it and asked what they think of when they see this on a product, the largest number of respondents (27%) mentioned that "Made in USA" means jobs or employment, gave responses focused on keeping dollars in the United States, or gave other answers relating to the U.S. economy. Similarly, in the American Hand Tool study, among 443 respondents who said that a majority of their hand tools are American made, the largest percentage (41%) stated that they buy American products to support the U.S. economy and U.S. labor.

On the other hand, Crafted With Pride concluded that people check country of origin for quality reasons, not because of abstract political or social concerns; most think U.S. companies make better clothing, appliances, telephones. Like Crafted With Pride, IMRA concluded that people who base their purchasing decisions on a "Made in USA" label do so because such a label represents better quality than foreign produced goods, not because of patriotic sentiment.

b. Consumer Understanding of "Made in USA"

i. General Meaning

Several studies indicate that when asked to define "Made in USA," consumers do so in only the most general terms. Most commonly, when asked the meaning of "Made in USA," study participants stated that a product was "Made in the USA" with no elaboration. For example, in the New Balance study, when consumers were asked "What does 'Made in USA' mean to you," the highest percentage of respondents (40%) stated some version of "Made/Manufactured in US." Similarly, American Hand Tool found that when respondents were asked what a "Made in USA" label would mean if they were considering buying a hand tool, the largest percentage of respondents (46%) simply stated it would mean the tool was "Made in the U.S."

The Commission found similar results. In the 1995 FTC Copy Test, when respondents were asked what a "Made in USA" claim means in an advertisement or label, 63.5% gave answers indicating the product was made in the U.S. without further elaboration. Similarly, in the 1995 FTC Attitude Survey, 60.8% of respondents stated that a "Made in the USA" label means "Made in US."

ii. How Much is Made in the United States

In looking at *how much* of a product that is labeled "Made in USA" consumers believe is made in the United States, the answer appears to depend in part on how the question is asked. As noted above, when asked the general, open-ended question what does "Made in USA" mean, most consumers simply answer "Made in USA." In the 1995 FTC Copy Test, for example, when asked what a "Made in USA" statement in an ad or label meant, only 5% of respondents answered "all made in US."

Where studies, however, directly asked consumers how much of a product marked "Made in USA" was made in the United States, or presented them with scenarios that posited a level of U.S. content, many respondents indicated that they view "Made in USA" claims as representing that products possess a high amount of U.S. content. This result, for example, was reflected in two of the Commission studies. The 1995 FTC Attitude Survey found that the number of consumers who were willing to accept a "Made in USA" label on a product decreased significantly as the amount of production costs incurred abroad increased. For example, while 52% of respondents agreed with a "Made in USA" label when foreign production accounted for 30% of total production costs, only 28% of respondents were willing to accept a "Made in USA"

label when foreign production accounted for 50% of total production costs.[186] In the 1991 FTC Copy Test, approximately 77% of consumers stated that "Made in USA" references mean that all or almost all of a product was made in the USA.[187]

Other studies found similar results. American Hand Tool asked respondents what percentage of a hand tool they assumed was made in the U.S. Fifty-three percent of the respondents stated 100%. An additional 27% gave responses between 50% and 99%. Similarly, in the NCL study, consumers were asked "When you see a product advertisement or label stating "Made in USA," what amount of U.S. parts (*i.e.*, components) do you assume is in the product?" Forty-five percent of respondents stated 100%; an additional 9% of the respondents stated a minimum ranging between 90% and 100%. When respondents to this survey were asked about the minimum amount of U.S. labor they assume is in the product, 58% stated 100%, and an additional eight percent stated a minimum between 90% and 100%.

---

[186] These figures are for responses across all sites of assembly, *i.e.*, whether the respondent was told that the product was assembled in the U.S., assembled in a foreign country, or not told the site of assembly. More complete results of the 1995 Attitude Survey appear in the chart below.

Percentage of Respondents Who Agreed and Disagreed with a "Made in USA" Label

	Assembled in U.S.		Country of Assembly Unspecified		Assembled in Foreign Country	
Total Cost	*Agree*	*Disagree*	*Agree*	*Disagree*	*Agree*	*Disagree*
90% US/10% Foreign	75.0%	22.0%	63.9%	31.5%	54.6%	33.3%
70% US/30% Foreign	67.0%	31.0%	50.9%	43.5%	38.9%	50.0%
50% US/50% Foreign	36.0%	46.0%	28.7%	57.4%	18.5%	63.9%
30% US/70% Foreign	25.0%	68.0%	20.4%	72.2%	10.2%	83.3%
10% US/90% Foreign	20.0%	74.0%	19.4%	74.1%	10.2%	84.3%

[187] In response to a follow-up question, approximately 82% of these respondents specified that this was both parts and labor. Thus, a total of approximately 63% of the respondents to the 1991 FTC Copy Test stated that a "Made in USA" claim meant the product was all or almost all made in the United States and that this meant both parts and labor.

iii. Importance of U.S. Assembly

When participants in the 1995 FTC Copy Test were asked whether a "Made in USA" statement in an ad or on a package suggested or implied anything about where the product was assembled, only 50% of the respondents answered affirmatively. The responses of the participants in to the 1995 FTC Attitude Survey, however, suggest that the site of assembly makes a significant difference to consumers in deciding whether a product is "Made in USA." Specifically, respondents in the 1995 FTC Attitude Survey were considerably more willing to agree with a "Made in the USA" label on products that were assembled in the United States than on products assembled abroad, regardless of the overall percentage of the product that was made in the United States. For example, even if a foreign-assembled product contained U.S.-made parts that accounted for 90% of the product's total cost, only 55% of respondents were willing to agree with a "Made in the USA" label on the product. By contrast, when respondents were asked about the same 90% U.S. content product and told that it was assembled in the United States, 75% were willing to agree with a "Made in USA" label on the product.

2. Conclusions

The Commission received considerable information concerning consumer perception of U.S. origin claims and has found this information useful in its consideration of this matter. Although there are necessarily limitations on the inferences that can be drawn, the Commission believes that the following conclusions are supported by the evidence.

First, the studies cited by the commenters indicate that U.S. origin claims are material to many consumers. A large number of consumers expressed an interest in or preference for U.S.-made goods, even if they did not always follow this interest through when actually purchasing items. A consumer's purchasing decision is, of course, often influenced by other factors, such as fit and price; it is not sensible to expect consumers to buy shoes that do not fit or that cost more than they can afford simply because those products are labeled "Made in USA." Nonetheless, all other things being equal, many consumers express a preference for U.S.-made products. That U.S. origin claims are material to consumers is reinforced by the considerable interest of manufacturers in making these claims. Many of the comments received also indicate that a "Made in USA" label is a valuable marketing tool.

Second, the consumer perception data indicate that many consumers may have only a general sense of what the phrase "Made in USA" means rather than a highly refined view of how "Made in USA" should be interpreted, *i.e.*, whether a "Made in USA" claim should be evaluated in terms of costs, processing, or in another manner. Several commenters, both at the workshop and in post-workshop comments, opined that consumers' failure to specifically mention anything about cost or parts when asked generally what "Made in USA" means shows that these consumers interpret a "Made in USA" claim as meaning only that the product "came into being" in the United States. One commenter said, for example,

> [A]pproximately 65 percent of the [FTC] copy test respondents either repeated the "Made in USA" phrase or responded with a virtually identical phrase when queried about the meaning of "Made in USA." Since such consumers are likely to use the word 'made' according to its dictionary definition, the copy test results show that consumers perceive a product as being created in this country if the materials are either formed or modified, or the component parts are put together in the United States.[188]

Similarly, another commenter suggested that the "overwhelming response of consumers was not that ['Made in USA'] means X percent parts or labor, but rather that it means simply that the product was made, built, manufactured, created in America."[189] And a third commenter argued that "[T]he empirical evidence suggests that consumers conceptualize 'Made in USA' claims in terms of the process by which parts or materials are transformed into a 'new and different' finished product — that is, 'substantial transformed.'"[190]

The Commission, however, does not believe that this complex interpretation is supported by the available evidence. It is likely reading too much into a consumer's tautological statement that "Made in USA" means "Made in USA" to say that it demonstrates that consumers understand "Made in USA" to mean that a product "came into being" in the United States and not to mean anything about where the product's parts were made. A simpler explanation is that many consumers are likely unaware that there are various alternative constructs for evaluating "Made in USA" claims and may not articulate a precise definition of "Made in USA."[191] In other words, it may not have occurred to many of the survey respondents that there are multiple ways of defining the commonly used, short-hand phrase "Made in USA."

Moreover, the view that a product is made where it "comes into being," regardless of the origin of a product's parts, is contradicted by at least some evidence that many consumers do consider parts to be an important element of the "Made in USA" definition. In the 1991 FTC Copy Test, for example, when the respondents who stated that "Made in USA" means that "all or nearly all" of a product was made in the United States were asked "Is that parts, labor, or both parts and labor?," 77% of respondents answered both parts and labor. The American Hand Tool Coalition's study found similar results, with 38% of respondents saying the claim referred mostly to materials, 38% saying it pertained mostly to labor, and 40% saying both parts and labor (even though the latter response was not expressly given as an option). In addition, in the 1995 FTC Attitude Survey, most respondents disagreed with a "Made in USA" label for products that underwent final assembly in the United States but had low overall U.S. content, suggesting that

---

[188] **FIA**, #177, at 2.

[189] **EIA**, #193, at 5.

[190] **BMA**, #194, at 4.

[191] *See* **UAW**, #174, at 2 ("The consumer survey data provides little useful information regarding the understanding of most consumers of the term 'Made in USA.' One conclusion that could be drawn from the data is that very few consumers know enough about the process of production to be able to evaluate different claims about parts content or product fabrication.").

merely "coming into being" in the United States does not satisfy consumers' understanding of the term "Made in USA."[192]

Third, whether or not consumers are able to precisely define "Made in USA," the consumer perception studies indicate that, when given the opportunity, consumers nonetheless fairly consistently suggest that products labeled "Made in USA" are expected to have a high degree of U.S. content. When asked what portion of a product labeled "Made in USA" was made in the United States, many respondents say that the claim means that all of a product is U.S.-made. When presented with specific scenarios, many consumers similarly indicated that they expected a product to have a high level of U.S. content, although they also indicated they were willing to accept a product labeled "Made in USA" even if it had some foreign content. For example, in the 1995 FTC Attitude Survey, 67% of respondents agreed with a "Made in USA" label when the product was assembled in the United States and U.S. production accounted for 70%, and foreign content, 30%, of the total production cost. Even with U.S. assembly, however, consumers appear to require significant U.S. content to justify a "Made in USA" label. Thus, the number of respondents agreeing with a "Made in USA" label in the same study drops off significantly — to 36% — when U.S. content drops to 50%, even where the product is assembled in the United States.[193] Only New Balance found that a majority of consumers were willing to accept a "Made in USA" label when a product was made with 50% U.S. materials and components.[194]

---

[192] On the other hand, only 28% of respondents to the 1995 FTC Copy Test answered "yes" when asked if a "Made in USA" claim suggested or implied anything about where the parts that went into a product were manufactured. Some commenters, including the Bicycle Manufacturers Association, cited this statistic as support for the argument that consumers do not think of "Made in USA" claims in terms of parts. **BMA**, #195, Appendix at 6. Interestingly, only about half of the respondents to the 1995 FTC Copy Test stated that "Made in USA" suggests or implies anything about where the product was *assembled* either (a concept presumably closer to "coming into being"). In fact, a considerable number of respondents (34%) to this copy test were unwilling to say that a "Made in USA" claims suggests or implies anything about where a product was assembled *or* where its parts came from *or* how much of the total cost was U.S., making it hard to infer exactly what these respondents believe "Made in USA" does mean. One possible explanation is that consumers do not believe that any of the factors asked about -- site of assembly, origin of parts, some level of U.S. costs -- are necessarily required for a product to be called "Made in USA," although any or all of them may be required in a particular (or even most) instances. Thus, when asked whether a "Made in USA" representation suggests or implies where the parts are made, a nay-saying participant may have answered, in essence, "not necessarily."

Yet another possible interpretation is that the relatively low number of respondents responding affirmatively to the question of whether a "Made in USA" claims suggests or implies anything about where the parts are made is the result of the conservative phrasing of the question. Pointed to a "Made in USA" statement and asked whether it says anything about where the parts of the product are manufactured, consumers may well respond that, no, literally it does not.

[193] Interestingly, the drop between 70% U.S. content and 50% U.S. content is the largest drop between levels whether respondents were presented with scenarios in ascending order (*i.e.*, proceeding from 10% U.S. content to 90% U.S. content) or in descending order (*i.e.*, proceeding from 90% U.S. content to 10% U.S. content).

[194] New Balance did not present consumers with any scenarios in which a product was made with an amount of U.S. content between 50 and 100 percent.

The Commission accepts the argument of several commenters that consumers increasingly recognize that products are made globally. The multitude of foreign origin labels on products likely reinforces consumers' increased awareness of foreign sourcing. That consumers may recognize that many products are no longer wholly made in the United States, however, does not necessarily indicate that consumers expect that *products labeled "Made in USA"* have significantly less U.S. content. It appears at least equally likely that the commenters are correct who argued that knowledge of increased globalization of production makes high U.S. content more, not less, important to consumers.

Finally, although there may in fact be differences in the way consumers interpret and understand U.S. origin claims for different types of products, the data currently before the Commission appear too limited to draw any conclusions on this subject.[195]

B. Consistency with Other Statutory and Regulatory Requirements

Many of the corporations and trade associations that commented as well as some of the Congressional comments strongly urged the Commission to adopt a standard that is consistent with one of the other, already existing legal standards, such as the substantial transformation test applied by the Customs Service, standards employed by foreign governments, the Buy American Act, or NAFTA preference rules. The Commission recognizes that there are often considerable benefits to harmonizing its standards with those of other government agencies, including decreased burdens on business and additional clarity for consumers. Thus, wherever possible and appropriate, the Commission strives to ensure that its standards are consistent with those of other agencies. To this end, Commission staff has consulted with staff of other federal agencies as part of this review, including staff of the U.S. Customs Service.

Nonetheless, there are certain limitations on the possibility of full harmonization in this area and there are costs to be weighed against the benefits of harmonization. In addition, it is not, of course, possible to be consistent with each of the cited standards, as they are not consistent with each other. Issues raised by the adoption of each of the referenced standards are addressed in turn.

1. Consistency with the Standards of the U.S. Customs Service

Under the current legal regime, there is in fact no direct conflict between Customs Service and FTC requirements. This is because, on product labels, the Customs Service regulates only markings of foreign origin, while the Commission is concerned primarily with claims of U.S. origin. Nonetheless, the Commission recognizes that a certain tension arises from the use of different standards by the Customs Service and by the FTC. In particular, there are two ways in which an appearance of inconsistency may be conveyed. First, although a product is deemed,

---

[195] Nonetheless, to the extent marketers may in the future develop competent and reliable evidence that consumer perception varies among products, this evidence could be relevant to establishing a reasonable basis for their specific U.S. origin claims.

under Customs Service regulations, not to be of foreign origin (because it has been or will be substantially transformed in the United States) and so is not required to be marked with a foreign country of origin, it may not necessarily qualify to be labeled "Made in USA" under the Commission's analysis.[196] Second, a foreign origin marking (such as "Made in Japan") may reflect a different level of processing in that country than would a U.S. origin claim ("Made in USA") on a similar item.

The standards currently applied by the FTC and the Customs Service derive from their respective governing statutes, and the differing purposes of these statutes impose certain limits on harmonization between the two. Section 5 of the FTC Act is designed primarily to protect consumers and to ensure that voluntary advertising and labeling claims, including claims of U.S. origin, are not deceptive. The Customs laws, by contrast, address a range of purposes, including the establishment of tariffs and quotas and the prevention of dumping. While the specific requirement in the Tariff Act that every imported good be marked with its country of origin does indeed spring from the consumer-friendly goal of providing information to the "ultimate purchaser," the standard actually employed to determine which country is the country of origin — substantial transformation — is used not only for this purpose but also for many others. Thus, there is little indication that the standard itself is based on consumer understanding. Indeed, as discussed above, substantial transformation (characterized by some commenters as equivalent to where a product "came into being") is not necessarily consistent with consumer perception. In addition, the fact that Customs' marking rules are mandatory and universal may, to some extent, dictate the form those rules take.

Another consideration in attempting to harmonize the FTC's standard with that of the Customs Service is that the Customs Service uses more than one variation of substantial transformation in its regulation of the marking of imported goods. As explained in Section II, above, goods imported from NAFTA countries are subject to a tariff shift standard instead of the traditional substantial transformation test, and this may, in some instances, lead to divergent determinations of origin.

Moreover, the standards for determining country of origin for the marking of imports appear, in many respects, to be in a state of flux at the present time. Customs proposed, but then set aside, plans to extend the NAFTA tariff shift standards to the marking of all goods. In addition, international efforts in this area may lead to further changes in how country-of-origin determinations are made. As noted previously, the World Trade Organization is currently working on a proposal for uniform international standards for making country-of-origin

---

[196] Many of the commenters appeared to have overlooked other Commission precedent that has historically applied in this circumstance. Specifically, the Commission has had a rebuttable presumption that consumers would view unmarked goods to be of domestic origin, and that when such goods contained a significant amount of foreign content this had to be disclosed to prevent deception. As explained in Part VII, the Commission finds this rebuttable presumption is no longer in the public interest. Nonetheless, up until this point, it was inaccurate to characterize the situation this simply.

determinations.[197] Should the United States ultimately adopt such a proposal, it may lead to significant changes in the current system of country-of-origin marking. In fact, some witnesses at the ITC's recent hearings on country-of-origin issues suggested that the United States take an approach similar to that of some other countries and abolish some or all of its marking requirements altogether, arguing that such requirements present a costly barrier to trade.[198]

Varying standards and the possibility of change in the short-term future complicate attempts at harmonization. Nonetheless, the Commission expects to continue monitoring activities in the area of marking of imports, and, where appropriate, to reevaluate its own standards in light of changes in this area.

In addition, a number of commenters argued that the fact that a "Made in USA" label and a "Made in (foreign country)" label may reflect different amounts of processing in their respective countries is likely to lead to consumer confusion. Under the deception standard of Section 5, however, it is by no means clear that consumers generally interpret foreign-origin claims in a manner analogous to how they interpret "Made in USA" claims or that they place as much value on foreign-origin claims as they do domestic ones. Consumers who look for "Made in USA" claims may do so because they are seeking products that are made by U.S. labor from U.S. components. To the extent that consumers prefer domestic products for patriotic reasons, they may attribute special meaning to U.S. origin claims out of concern for the United States economy and may not have similar concerns about the economy of a foreign country.[199] In addition, consumers reading a foreign-origin label may be more likely to care about the general fact that the product is made abroad than about which specific country or countries it is made in.[200]

Further, the United States is not alone in specifying a higher standard for domestic-origin claims than for foreign-origin claims. A number of the United States' trading partners also impose a higher threshold for goods marked with a domestic origin label. Canada, for example,

---

[197] Although "substantial transformation" is the basic test applied by many countries in determining whether and how to require imports to be marked, the implementation of that standard may vary from country to country. Hence, the WTO is working to harmonize this area.

[198] *See, e.g.*, ITC Report, at 2-8, n. 30.

[199] In addition, it is not clear that most consumers understand that a "Made in (foreign country)" label means only that the product was last substantially transformed in the foreign country and in fact may contain parts from many countries. Thus, to the extent that consumers understand a "Made in USA" claim to have an equivalent meaning to a "Made in (foreign country)" claim, they may expect that both claims mean the product was substantially all made in the named country.

[200] Some commenters have further suggested that differing standards for marking of imported and domestic goods puts U.S. manufacturers at a disadvantage because they may have to qualify their claims while a foreign manufacturer can use simply "Made in (country)" statement. The Commission fails to see a significant disadvantage in this situation. Consumers with a preference for U.S. goods are likely to prefer goods with a qualified U.S. origin label over those with an unqualified foreign origin label.

uses a substantial transformation analysis to determine the country of origin to be marked on imports, but for "Made in Canada" claims requires not only that the last substantial production operation take place in Canada but also that the product contain at least 51% Canadian materials or direct labor. Switzerland requires that a product labeled “Made in Switzerland” contain at least 50% Swiss material and labor, and have its last major processing done in Switzerland.

2. Consistency with the Standards of Other Countries

A number of commenters urged the Commission to adopt a substantial transformation standard to ensure uniformity with the standards of other countries and to enable manufacturers selling in both the United States and abroad to use a single set of labels. Specifically, these commenters asserted that other countries, applying a substantial transformation test, may require that a good be marked "Made in USA" in cases where the Commission, under its traditional standard, would prohibit such a label, thereby requiring the manufacturer to maintain two separate sets of inventory.

The extent of this problem is not clear. Few other countries impose the sort of universal marking requirements on imported goods that are mandated in the United States.[201] Nonetheless, even where marking requirements are not universal, many countries appear to impose marking requirements on at least some (and sometimes many) categories of products. Those countries that do apply marking requirements use, in many cases, a substantial transformation standard, but do not necessarily apply it in a manner that is wholly consistent with the determinations reached by the United States, or by other countries. In addition, only limited information was submitted concerning whether other countries would accept or reject qualified statements of U.S. origin (*e.g.*, "Made in USA of U.S. and imported parts") on imported products.[202] Nor is it clear to what extent manufacturers must use different labels for exports in any event, because of language differences or other regulatory requirements of the foreign government.

---

[201] Insofar as the other country does not require a product to be marked, the manufacturer may avoid any conflict in standards by choosing not to mark the product at all.

[202] According to U.S. Customs, Canada accepts goods from NAFTA countries which contain qualified statements such as “Made in USA with foreign components.” **Customs,** #29, at 5-6. Other commenters, however, suggested that other countries might be unwilling to accept qualified statements. *See supra* note 58. *See also* **FDRA**, #27, at 4 (suggesting that foreign customs officials generally do not prohibit the addition of qualifying information, such as "Made in USA of foreign and domestic components," but that a label indicating the country of origin of components (*e.g.*, "Made in USA from Uppers from the People’s Republic of China") would generally not be accepted).

Despite these uncertainties, the Commission is sensitive to the costs that may be imposed on manufacturers where different countries impose different labeling requirements, and the Commission has in other instances taken steps to promote harmonization with the practices of other countries.[203] The Commission has endeavored to address this problem in Section XIII of the proposed guides, which provides for use, in certain proscribed circumstances, of a modified U.S. origin label intended to be acceptable internationally.

3. Consistency with the Buy American Act and Other Standards

A number of commenters advocating a 50% standard suggested that the Commission adopt such a standard because it is consistent with the Buy American Act (BAA). The BAA requires that, in its procurement of certain products, the United States government, in certain circumstances, buy products that are manufactured in the United States of at least 50% U.S. articles, materials or supplies.[204] Unlike the marking standards used by the Customs Service and other countries, however, the BAA does not relate in any way to the labeling of products, and its standard is not based on consumer perceptions. Rather, the BAA is simply a government procurement preference rule. The Commission is therefore not persuaded that consistency with the BAA, in and of itself, would lead to significant benefits. In addition, adoption of the BAA standard would nevertheless leave the Commission applying a standard different from that of the Customs Service, and the BAA advocates give few, if any, reasons for preferring consistency with the BAA to consistency with the arguably more relevant Tariff Act.

Similarly, the few commenters who suggested that the Commission adopt standards consistent with NAFTA Preference Rules also failed to articulate the relevance of these rules beyond the fact that they are already in existence. Like the BAA, these are preference rules and do not apply to labeling. Moreover, the NAFTA preference rules have the further disadvantage of being highly complex and of having standards that vary from product to product, thereby providing little predictability.

C. Practical Considerations

Each of the three proposed alternative standards necessarily presents its own set of benefits and burdens on those wishing to comply with it. A percentage content standard, as many commenters and participants in the public workshop noted, while presenting a bright-line standard, involves sometimes complex accounting issues. A substantial transformation standard, while already in use and familiar, requires reference to Customs rulings, and the case-by-case, fact-specific approach employed under Customs' traditional (*i.e.*, non-tariff shift) standard may

---

[203] For example, the adoption of NAFTA created industry interest in being able to use symbols in lieu of words to provide care instructions under the Commission's Rule on Care Labeling of Textile Wearing Apparel. 16 CFR Part 423. Symbols are already in use in Canada and Mexico and, to aid in harmonization of requirements, the Commission has approved an interim conditional exemption to allow the use of certain care symbols in lieu of words. 62 FR 5724 (1997).

[204] 41 U.S.C. 10a.

result in a lack of predictability.[205] The all or virtually all standard likely poses the least burden in terms of calculation costs — a marketer need only determine whether its product contains *any* significant foreign content; if so, the product may not be labeled with an unqualified Made in USA label. On the other hand, the all or virtually all standard is less flexible and does not reflect the increasing internationalization of production and consumer recognition and acceptance of this in goods otherwise U.S. made.

In reviewing its policy on U.S. origin claims, the Commission has taken into consideration the costs likely to be borne by industry under any future standard, and has sought ways, consistent with preventing consumer deception, to minimize such costs. Specifically, the Commission has attempted to address these concerns in two ways. First, the Commission's proposed policy provides alternative means of compliance, so that marketers may weigh for themselves the costs and benefits of the alternative approaches and choose the approach that is likely to pose the fewest burdens on them. Second, the Commission has sought to provide a balance in its proposed guides between giving sufficient guidance to marketers on how to comply and giving them adequate flexibility, through such means as providing multiple options where appropriate and allowing the use of ordinary business and accounting practices, so that marketers may determine their compliance without significant alterations of, or additions to, their ordinary business practices.

V. Overview of Proposed Guides

After thoroughly reviewing the public comments and the proceedings of the public workshop, the Commission proposes to adopt the Guides for the Use of U.S. Origin Claims that appear at the end of this notice. Many of the commenters, including many of those in attendance at the workshop, asked that the Commission provide more thorough guidance to marketers on the use of U.S. origin claims, whatever standard the Commission ultimately adopted. Through these proposed guides, the Commission attempts to provide such guidance.[206] Guides are

---

[205] Moreover, any attempt to use a modified version of the Customs standards, as suggested by some commenters, would require the FTC to engage in a similar case-by-case review.

[206] Although the Commission has attempted to provide significant guidance, the proposed guides, by necessity, cannot address all possible issues that may arise in the context of U.S. origin claims. For example, the proposed guides do not address the situation in which a marketer represents that a whole product line is of U.S. origin (*e.g.,* "Our products are Made in USA") when only some of the products in the product line are, in fact, made in the United States. Among other reasons, this is because such situations involve issues of advertising interpretation and deception law that are not specific to U.S. origin claims and have been addressed in Commission cases both within and outside the U.S. origin context. *See, e.g., Hyde Athletic Industries, supra,* Docket No. C-3695 (consent agreement accepted as final December 4, 1996) (complaint alleged that respondent represented that all of its footwear was made in the United States, when a substantial amount of its footwear was made wholly in foreign countries); *New Balance Athletic Shoes, Inc., supra,* Docket No. 9268 (consent agreement accepted as final December 2, 1996) (same); *Uno Restaurant Corp.,* File No. 962-3150 (consent agreement accepted for public comment January 22, 1997) (complaint alleged that restaurant chain represented that its whole line of thin crust pizzas were low fat, when only two of eight of the pizzas met acceptable limits for low fat claims); *Häagen-Dazs*

administrative interpretations of laws administered by the Federal Trade Commission. 16 CFR 1.5. Guides themselves, unlike rules promulgated pursuant to Section 18 of the FTC Act or other statutes for which the FTC is responsible, do not have the force and effect of law. Rather, they are intended to provide the public with guidance as to how the Commission is likely to apply the principles of Section 5 of the FTC Act to a particular issue--in this case, the use of U.S. origin claims. In addition, guides often provide the Commission with greater flexibility than would rules in responding to changes in evolving areas.

The Commission believes that consumers continue to understand "Made in USA" claims as representing a significant level of U.S.-derived content. Although many consumers may not be able to articulate exactly what it is that makes a product "Made in USA," the consumer survey evidence, including the 1991 and 1995 studies commissioned by Commission staff, indicates that, when given the opportunity, consumers consistently state that they understand "Made in USA" claims to connote a high degree (though not necessarily 100%) of U.S. content. This conclusion is reinforced by the overwhelming, albeit anecdotal, views of individual consumers who submitted comments.

At the same time, the Commission recognizes that there have been vast changes in the international economy since the Commission first required that goods labeled "Made in USA" be wholly domestic. Increasing globalization of production suggests that a requirement that even minor parts be all made in the United States is outdated and inflexible. Consumers appear to understand this as well. In the Commission's 1995 Attitude Survey 67% were willing to agree with a "Made in USA" label on a product where foreign inputs accounted for 30% of the total cost if the rest of the product was U.S.-made and final assembly took place in the United States.

Based on these conclusions, as well as the Commission's overall analysis of the record, the guides provide that a marketer making an unqualified U.S. origin claim must have a reasonable basis substantiating that the product is *substantially all* made in the United States. To give further guidance as to what constitutes a reasonable basis for this standard, there are two "safe harbors" set forth; if the product falls within either of these safe harbors, the Commission would not consider an unqualified U.S. origin claim for that product to be deceptive. Some consumers may hold views or understand claims differently from what is set forth in the "substantially all" standard. The Commission, however, believes that, as a general matter, it would not be in the public interest to bring a law enforcement action under section 5 of the FTC Act if a marketer satisfied either one of the safe harbors for meeting this standard. The two safe harbors represent alternative approaches to the determination of U.S. origin: one is a percentage content standard[207] and the other a "processing" approach. While both safe harbors are intended to ensure

---

Company, Inc., Docket No. C-3582 (consent agreement accepted as final June 7, 1995) (complaint alleged that respondent represented that its entire line of frozen yogurt was 98% fat free when only certain flavors were 98% fat free).

[207] Although a percentage content standard safe harbor may pose complex accounting issues, the Commission has attempted to deal with practical problems such as multiple sourcing and price fluctuations in section XII of the proposed guides and to otherwise minimize any accounting burdens. The Commission also notes that some of the

that a product is "substantially all" made in the United States, they reflect the Commission's recognition that different modes of determining U.S. origin may be appropriate for different types of products.

The first safe harbor requires that 75% of the total manufacturing costs of producing a product be U.S. costs and that the product be last substantially transformed in the United States. The Commission believes a product meeting the threshold of 75% U.S. content is likely to conform with consumer expectations for a product labeled "Made in USA," but this safe harbor nonetheless recognizes that even a largely U.S.-made product may necessarily include a relatively minor amount of foreign content.

The Commission gave serious consideration to those commenters who suggested that the most appropriate percentage standard is 50% U.S. content. The higher threshold proposed by the Commission, however, appears to be in greater accord with consumer understanding. As noted above, in the 1995 FTC Attitude Survey, for example, there was a significant drop-off between the number of consumers agreeing with a Made in USA claim for a product where U.S. costs accounted for 70% of all costs and those agreeing with such a claim for a product where U.S. costs accounted for 50% of costs. In fact, even where it was specified that final assembly of the product took place in the United States, significantly fewer than half of those surveyed were willing to accept a "Made in USA" label for a product with 50% U.S. content. Nor does the other consumer survey evidence in the record show much support for a 50% standard. In addition, as a practical matter, it should be noted that, if one includes the costs of final assembly in the U.S. cost calculation, a product for which U.S. costs constitute 50% of total production costs may well have less than half its inputs, by value, be of U.S. origin. Furthermore, because of the potentially lower wages paid to workers in other countries, a 50% cost standard does not ensure that 50% of the work (in terms, for example, of labor hours) was performed in the United States. Such factors add to the concern that a 50% threshold is unlikely to ensure that a product contains sufficient U.S. content to prevent a U.S. origin claim from being deceptive. The Commission believes that a 75% safe harbor more effectively ensures that a product promoted as "Made in USA" has substantially all U.S. content and better reflects consumer understanding.[208]

The second, alternative safe harbor would allow an unqualified U.S. origin claim where a

---

alternatives favored by commenters (for example, NAFTA Preference Rules and BAA) require this type of accounting.

[208] Several commenters, including the Ad Hoc Group and a number of participants at the public workshop, suggested that, were a 50% standard adopted, manufacturers whose products contained higher amounts of U.S. content could nonetheless advertise those products as, for example, "Wholly Made in USA" or "100% Made in USA." The problem with this approach, however, is that there is no basis to believe that consumers will understand the difference between a "Made in USA" claim and a "Wholly Made in USA" claim. That is, to the extent that at least some consumers already interpret "Made in USA" to mean that a product is virtually all of domestic origin, these consumers will not perceive "Wholly Made in USA" as indicating a greater amount of domestic content. Nonetheless, nothing in the proposed guides prohibits a marketer from using a "Wholly Made in USA" or "100% Made in USA" statement, or any other representation that a product contains a particular level of U.S. content, as long as the marketer is able to substantiate such a representation.

product undergoes two levels of substantial transformation in the United States: *i.e.*, the product's last substantial transformation must take place in the United States and the last substantial transformation of each of its significant inputs must take place in the United States. This safe harbor focuses on the processing of the product, and does not require that a marketer engage in any cost calculation or take into account any foreign content further than "one step back" in the manufacturing process. Nonetheless, by requiring that a product be made of parts that undergo their last significant processing in the United States, as well as requiring that the final processing of the product take place in the United States, the Commission believes that this safe harbor ensures that a Made in USA label reflects significant U.S. content and is unlikely to be deceptive to consumers.

In crafting this safe harbor, the Commission considered, but rejected, other processing-oriented standards. The most commonly used processing standard, of course, is the basic substantial transformation test applied by the Customs Service. By itself, however, substantial transformation does not necessarily ensure that a product contains significant U.S. content. It may, for example, reflect a relatively unsophisticated final assembly process putting together parts made elsewhere or it may be met by a process that in fact changes the nature of the product, but requires little U.S. work (*e.g.*, imprinting software onto a computer disk). The requirement in this safe harbor that there be an additional level of substantial transformation works to remedy these limitations. By requiring that all of a product's significant inputs have undergone substantial transformation in the United States, the safe harbor minimizes the vagaries of the substantial transformation standard and ensures that a product coming within the safe harbor is likely to meet consumer expectations for U.S. content.

The Commission also considered a process-oriented safe harbor proposed in the Ad Hoc Guidelines: that a product could be labeled with an unqualified U.S. origin claim if it underwent a majority of its processing in the United States. Although it has some conceptual appeal, there appear to be significant practical limitations to application of this majority of processing safe harbor. The Ad Hoc Guidelines specify no objective means of determining what constitutes "a majority of processing."[209] Instead, manufacturers apparently may divide their manufacturing process into separate steps as they deem appropriate and then count whether a majority of these steps are performed in the United States. The lack of an objective standard leaves open the possibility of manufacturer manipulation and is likely to lead to inconsistent labeling and consumer confusion. By contrast, the Commission's processing safe harbor avoids these concerns by referring to the existing Customs standards as its fixed, external measure.

In addition to providing guidance on the standard and safe harbors for making unqualified U.S. origin claims, the guides also address qualified U.S. origin claims (*i.e.*, claims that indicate

---

[209] Thus, one manufacturer may divide the production of its product into three steps: a, b, and c, and performing steps a and b in the U.S., determine that it has performed a majority of the processing in the U.S. At the same time, a second manufacturer, engaged in the production of the same product, but that does not perform steps a and b in the United States, may choose to view 'c' as itself three steps (c, d, and e), for a total of five steps. If this second manufacturer performs steps c, d, and e in the United States, then it, too, presumably, has performed a majority of processing in the United States and can label its product "Made in USA."

that the product also contains foreign content or otherwise indicates that U.S. content does not constitute substantially all of the product). Marketers are free to make any qualified U.S. origin claim which is truthful and substantiated, and the guides provide examples of qualified claims that may be appropriate.

A number of commenters expressed doubts about the usefulness of qualified claims and suggested that such claims were impractical and likely to confuse consumers. The Commission disagrees with these conclusions. Qualified claims permit marketers for whose products an unqualified Made in USA claim would be deceptive to nonetheless inform consumers about the U.S. content in their products. By the same token, they allow consumers to receive such information and to distinguish between goods that are manufactured entirely abroad and those that are partially made in the United States. Marketers making efforts to use U.S. inputs when available and practical may tout the U.S. content they do use, and (at least in media allowing for lengthier discussion) explain their efforts to consumers. Moreover, the limited data available from the 1995 FTC Copy Test suggest that consumers viewing qualified U.S. origin claims did not misinterpret such claims and, in fact, had somewhat better recall of such claims than of unqualified Made in USA claims.

The Commission recognizes commenters' further concern that space limitations, in some instances, may pose problems for a marketer wishing to include an appropriate qualification on a small label. Qualifications, however, need not be lengthy; the guides provide examples of short qualified claims, and the Commission is confident that marketers will be able to develop others to meet this need.

The proposed guides also endeavor to address the situation faced by marketers who may face conflicting marking requirements in the United States and other countries. The guides build on a suggestion made by certain commenters that the Commission allow a "lesser mark" to be used where a product does not meet the standard for an unqualified "Made in USA" claim but has been substantially transformed in the United States, so that the product may be marked uniformly for domestic and foreign sale. Specifically, the guides propose to permit an alternative label claim, "Origin: USA," where a product has been substantially transformed in the United States and is exported to a country that requires that the product be marked with an indication of U.S. origin. Thus, in certain circumstances, the guides would allow marketers to use a single country-of-origin label for products sold domestically and abroad. As explained further below, this provision is intended primarily to apply to business-to-business transactions where there is less risk of deception. Nonetheless the provision does permit an "Origin: USA" label to be used in connection with the sale of consumer products, where appropriate actions are undertaken to assure that qualifying information is presented to U.S. consumers.

VI. Section-by-Section Analysis

Section I: Statement of Purpose. Section I of the guides explains that the purpose of the guides is to provide guidance to industry and the public as to how the Commission is likely to interpret

Section 5 of the FTC Act as it applies to U.S. origin claims, so that they may conform their practices with legal requirements.

Section II: Scope of the Guides. Section II establishes that the guides apply to U.S. origin claims in whatever marketing media they may appear and whether they are conveyed through words, depictions or other means. This section also indicates that the proposed guides apply to claims for any product sold in the United States, whether for personal or commercial use, with certain, specified exceptions.

Section III: Structure of the Guides. Section III describes the structure of the guides and advises that claims may raise issues that are addressed under more than one section of the guides.

Section IV: Review Procedure. As part of its efforts to ensure that its policies continue to be relevant and appropriate, the Commission ordinarily reviews each of its rules and guides at least once every ten years. The Commission proposes to review these guides after five years. The Commission believes that a shorter time frame for review is appropriate here to assess the practical application of newly introduced guides. In addition, at that time, the Commission may assess the relevance of any changes in other marking requirements, including any standards adopted pursuant to the recommendations of the World Trade Organization. This section also provides that parties may petition the Commission at any time to alter or amend these guides based on new evidence related to consumer interpretation of U.S. origin claims or significant, relevant changes to U.S. or international country-of-origin marking requirements.

Section V: Definitions. Most of the definitions set forth here are self-explanatory. Some that may not be are the definitions related to manufacturing costs, and these are discussed below, in the analysis of Section VIII. "U.S. origin claim" is defined broadly to mean any claim, express or implied, that any product originates, in whole or in part, in the United States, and encompasses both unqualified and qualified claims.

Section VI: Interpretation and Substantiation of U.S. Origin Claims. This section sets out the basic legal framework for the Commission's evaluation of advertising and labeling claims. It states the general principle that a claim will be found deceptive under Section 5 of the FTC Act if it is likely to mislead consumers acting reasonably under the circumstances and is material. The provision also notes that a U.S. origin claim may be either express or implied; the accompanying *Example 1* describes a situation in which an advertisement, through a combination of words and depictions, is likely to convey a U.S. origin claim even though it contains no express statement that the product at issue is "Made in USA."

In addition, Section VI describes the long-standing requirement that a marketer making an objective product claim must, at the time it makes the claim, have a reasonable basis substantiating the claim and that the reasonable basis consist of competent and reliable evidence. This section further notes that where a marketer's substantiation for its U.S. origin claims is based on an assessment of U.S. costs, that the requirement of "competent and reliable evidence" does not necessarily mandate that a particular formula be used to calculate U.S. costs, but that it

generally will require that whatever calculation is used, it be based on generally accepted accounting principles.

Section VII: Requirements of Other Agencies. The proposed guides do not preempt, alter, or exempt a marketer from the requirements of any other marking statute or regulation. Thus, marketers must continue to follow the marking requirements administered by other government agencies, *e.g.,* the Tariff Act and the American Automobile Labeling Act.

Subsection A is directed to those instances in which the Customs Service, pursuant to the Tariff Act, requires that a product be marked with a foreign country of origin, and discusses how this requirement affects the analysis of whether, and in what manner, a U.S. origin claim may be made for the product. Because the Tariff Act requires markings on articles or their containers, but does not govern claims in advertising or other promotional material, these two types of media are discussed separately.

On a product label — *i.e.,* on an article or its container — where the Tariff Act requires that the product be marked with a foreign country of origin, Customs regulations permit indications of U.S. origin only when the foreign country-of-origin appears in close proximity and is at least of comparable size.[210] Thus, for example, under Customs regulations, a product may be properly marked "Made in Switzerland, finished in U.S." or "Made in France with U.S. and French parts," but it may not simply be labeled "Finished in U.S." if it is deemed to be of foreign origin. The proposed guides admonish marketers to comply with the Customs Service's requirements on this issue, regardless of whether the proposed guides would otherwise permit a U.S. origin claim.[211] Furthermore, the proposed guides note that the failure to clearly and prominently disclose the foreign manufacture of the article in conjunction with the U.S. origin claim may, in some circumstances, constitute a deceptive act or practice under Section 5 of the FTC Act, because of its potential to mislead consumers, as well as a violation of Customs law.

In advertising or other promotional material, there is no Customs requirement that foreign origin be indicated. Nonetheless, in situations where the Customs Service requires that the product itself be marked with a foreign country of origin, the Commission believes that in many instances it may be confusing and deceptive to consumers to make a U.S. origin claim for that same product in an advertisement (even if the U.S. origin claim would otherwise be permitted by the proposed guides) without disclosing the foreign manufacture of the product. Thus, the proposed guides would deem deceptive any unqualified U.S. origin claim made in advertising or other promotional material for a product that is required to be marked with a foreign country of origin under the Tariff Act (that is, notwithstanding any other provision in the proposed guides, a marketer should not advertise a product as "Made in USA" if the product is required to be labeled

---

[210] 19 CFR 134.46.

[211] The Commission has provided similar admonitions in other situations where a guide is closely related to other statutes or regulations. *See* Guides for the Jewelry, Precious Metals, and Pewter Industries, 61 FR 27214, 27214 (1996) (to be codified at 16 CFR 24.4).

by Customs as, for example, "Made in Japan").[212]

The proposed guides and accompanying examples further encourage marketers to disclose foreign manufacture (where the product requires a foreign origin label) in conjunction with even qualified or limited U.S. origin claims so as to avoid potential deception. A consumer who sees an advertisement promoting a product as "Finished in U.S." may well feel misled if he or she then goes to purchase the product and finds the product labeled "Made in Switzerland," and depending on the context and consumer perception, the "Finished in U.S." claim may be deceptive. Therefore, the Commission believes that the better practice, where a foreign-origin marking is required by Customs, is to qualify the U.S. origin claim with a disclosure of foreign manufacture. Such a disclosure, made in close proximity to the U.S. origin claim (as would be required by the Customs Service on the product label), is most likely to make clear the limitations on the U.S. origin claim, and the proposed guides indicate that claims so qualified are unlikely to be considered deceptive.[213]

The Commission recognizes, however, that it may be possible to make a U.S. origin claim that is sufficiently specific or limited that it does not require an accompanying statement of foreign manufacture in order to avoid conveying a broader and unsubstantiated meaning to consumers. As discussed more generally below in the explanation of Section X of the proposed guides (which addresses U.S. origin claims for specific products and parts), whether a nominally specific or limited claim will in fact be interpreted by consumers in a limited matter is likely to depend on the connotations of the particular representation being made (*e.g.*, "finished" may be perceived as having a more general meaning than "painted") and the context in which it appears.[214] Marketers who wish to make U.S. origin claims in advertising or other promotional materials for products that are required by Customs to be marked with a foreign country of origin without an express disclosure of foreign manufacture should be aware that consumers may believe the literal U.S. origin statement is implying a broader meaning and a larger amount of U.S. content than expressly represented. Marketers are required to substantiate material implied, as well express, claims that

---

[212] Of course, marketers required to label their products with a foreign country of origin would generally not be able to meet either of the safe harbors for unqualified claims set forth in the guides, as both require that a product undergo its last substantial transformation in the United States. Moreover, because consumers perceive an unqualified "Made in USA" representation as a claim of substantial U.S. content, that claim is unlikely in any event to be substantiated where the product has undergone sufficient processing in a foreign country that it must be marked, according to Customs law, with its foreign origin.

[213] Although it is possible to read the statement "Finished in U.S." in an advertisement in a manner not inconsistent with the statement "Made in Switzerland" on a package label, the fact that the statements are intended to be read as complementary, rather than contradictory, is more readily apparent when the statements appear in conjunction with one another. Otherwise, consumers may take a broader message from the “Finished in U.S.” representation, and the marketer may not be able to substantiate that broader claim.

[214] Even if not understood as conveying an unqualified U.S. origin claim, a claim about the U.S. origin of specific processes or parts may nonetheless convey a claim sufficiently broad that it would be perceived by consumers as contradicting a foreign origin label and/or as implying more U.S. content than might typically be found in a product substantially transformed abroad.

consumers acting reasonably in the circumstances take from representations.[215]

Subsection B is concerned with the American Automobile Labeling Act (AALA). The AALA requires that all new passenger vehicles bear a label that contains certain information about the vehicle's country of origin, including, among other things, the percentage of U.S. and Canadian parts and the place of final assembly. This provision makes clear that nothing in the guides is intended to alter these requirements in any way. Furthermore, to ensure that there are not conflicting standards for automobiles in labeling and in advertising, this subsection provides that nothing in the guides prohibits a marketer from making any representation, in advertising or elsewhere, that is required in labeling by the AALA or its implementing regulations.

Section VIII: Unqualified U.S. Origin Claims. Section VIII constitutes the heart of the guides. It provides that a marketer may make an unqualified U.S. origin claim only if it has a reasonable basis that substantiates that the product is substantially all made in the United States. The provision then sets out two alternative safe harbors for marketers seeking guidance on what constitutes a reasonable basis that a product is substantially all made in the United States. Specifically, the guides provide that an unqualified U.S. origin claim will not be considered deceptive if the marketer possesses competent and reliable evidence either that the product contains 75% U.S. content (*i.e.*, U.S. manufacturing costs constitute 75% of the total manufacturing costs of the product) and was last substantially transformed in the United States (subsection A); or that the product has undergone two levels of substantial transformation in the United States (*i.e.*, that the final product was last substantially transformed in the United States and that all of the significant inputs into the final product were last substantially transformed in the United States). The Commission solicits comment on whether or not compliance with each of the proposed safe harbors is likely to ensure that a product promoted as "Made in USA" will be substantially all made in the United States.

In calculating 75% content, the guides provide that manufacturing costs shall include all manufacturing materials, direct manufacturing labor, and manufacturing overhead. Although commenters suggested a wide variety of formulas for calculating manufacturing costs, the Commission believes that this definition best captures those costs reasonably related to the actual manufacture of a product. The Commission has decided not to itemize each of the specific costs that may be included or excluded in this calculation. Instead, the guides indicate that a marketer may take into account those costs included in its finished-goods inventory cost or in its cost of goods sold, as those terms are used in accordance with generally accepted accounting principles. The Commission understands finished-goods inventory cost and cost of goods sold to be widely used accounting terms that are presumably calculated by all manufacturers in the course of their ordinary business; the Commission therefore expects that reliance on these terms is unlikely to

[215] The information provided here is intended to guide marketers in making qualified claims as described in Section IX, and claims about specific processes or parts, as described in Section X.

pose significant definitional problems for marketers. [216]

Subsection VIII.A also provides that, in computing manufacturing costs, a marketer should look far enough back in the manufacturing process that a reasonable marketer would expect that it had accounted for any significant foreign content. The Commission has thus rejected, for purposes of this safe harbor, a strict "one-step back" analysis. While such an approach has a facial simplicity that may provide some practical benefits, the Commission has concluded that a strict one-step back approach is likely to lead to inconsistent and unpredictable results, as well as the potential for significant consumer deception.

Commenters appear to have understood what constitutes a "step" in different ways. To some, "one-step back" is considered to refer to those inputs that the manufacturer of a final product has purchased from an outside supplier. If one accepts such a definition, however, then what constitutes a "step" depends on the degree of vertical integration of the final manufacturer. For example, consider a scenario involving the manufacture of a computer. In each case, final assembly of the computer takes place in the United States, as does assembly of the motherboard that is part of the computer. However, assume that in both instances, the microchips that make up the motherboard and presumably constitute much of its value are manufactured abroad. In the first scenario, the computer manufacturer buys completed motherboards from an outside domestic supplier. Under a one-step back analysis, this computer manufacturer, in calculating whether it met the 75% U.S. content safe harbor, would be permitted to treat the entire value of the motherboard as U.S. content. By contrast, in the second scenario, the computer manufacturer buys the foreign-made chips directly and assembles them into motherboards as part of its own in-house manufacturing process. When this second manufacturer looks back one-step to an outside supplier, it reaches the foreign-made chips and so must include the value of these foreign parts in its calculations. Thus, despite the fact that the inputs manufactured in the U.S. and abroad are identical in both cases, under a strict one-step back approach, the first manufacturer (depending on the extent of its other U.S.-made inputs) may be able to label its computer "Made in USA," while the second may not. Such an outcome provides an unfair advantage to the first manufacturer and is almost certain to mislead consumers comparing the country-of-origin labels on the otherwise identical products.

An alternative approach, to avoid the inconsistent results described above, is to define a "step" in a fixed way that would not vary with who performed it. Thus, to continue with the computer example described above, one could simply define a step back in the manufacture of the

---

[216] It was suggested by a number of commenters, including the Ad Hoc Group, that marketers be able to exclude the cost of natural resources not indigenous to the United States from their calculation of total manufacturing costs. The Commission has concluded, however, that such an exclusion is likely to provide little benefit to marketers beyond that inherent in the 75% U.S. content safe harbor, as, in many instances, natural resources are unlikely to represent a large share of the finished product's cost and are likely to be far removed in the manufacturing process from the finished product. Moreover, adoption of such an exclusion would likely raise a number of further enforcement questions: for example, whether or not a natural resource that is found in the United States, but only in small amounts that are insufficient to meet industry demand, would be considered nonindigenous.

computer to be the motherboard or the chips. Unfortunately, there does not appear to be an obvious, objective basis for determining which of these should constitute a "step" — or whether, alternatively, one step back in this process should be viewed only as reaching the system unit subassembly that includes the motherboard and disk drives. The only way to ensure that manufacturers defined steps in similar ways would seem to be to issue product-by-product rulings as to what would be considered a step back in the manufacturing process.[217] The Commission believes that the considerable costs of such far-reaching regulation is likely to greatly exceed any benefit gained thereby.

The Commission has concluded that the better approach is to focus on where the value of the product lies. Thus, the proposed guides do not attempt to draw a bright line, but instead ask marketers to look back far enough to account for any significant foreign content. When using U.S.-supplied inputs with nontrivial value that the marketer would reasonably know to be made up of components, parts or materials that themselves are likely to be of significant value, the marketer should inquire of its supplier or, where appropriate, look further back in its own manufacturing process as to the U.S. content of that input. Thus, as set out in *Example 4* in this section of the proposed guides, the computer manufacturer would presumably know that a significant portion of the motherboard's value lies in the microchips. In calculating the U.S. content of its computer, the manufacturer should therefore not treat the motherboard as if it were 100% U.S. content, but rather should ask the motherboard manufacturer what the U.S. content of the motherboard is. To do otherwise would allow the marketer to overlook potentially significant foreign value.

Nonetheless, while rejecting a strict one-step back test, the Commission expects that, in many cases (particularly those involving a simple product or where most of the processing is done by the final manufacturer), marketers will in fact need to look back no more than one step (*i.e.*, to the immediate inputs into the final product) in calculating U.S. content and that in the remaining cases, a marketer would ordinarily need look no further than two steps back (*i.e.*, to the makeup of immediate inputs). Moreover, in practical terms, whether a marketer looks one or two steps back, it is expected that the marketer will have to communicate only with its immediate suppliers. In ensuring that it has a reasonable basis to substantiate that its product meets this safe harbor, a marketer may rely on the information provided by the immediate suppliers as to the U.S. content of the inputs supplied; unless the marketer has reason to believe its immediate suppliers' representations are false, it need not undertake an independent investigation or contact suppliers/manufacturers further back in the chain of production.

Finally, the 75% U.S. content safe harbor requires that a product undergo its last substantial transformation in the United States. This requirement reflects the importance consumers appear to attach to the site of final assembly in evaluating the appropriateness of a "Made in USA" label. Substantial transformation (or an equivalent concept reflecting final,

---

[217] Indeed, this was done for textile products under regulations issued by the Commission. 16 CFR 303.33. However, unlike other manufacturing, textile production is generally composed of a few discrete steps, *e.g.*, fiber to yarn to cloth to finished product.

significant processing in the United States) was also a component of virtually all the proposals advanced.

For purposes of both the 75% U.S. content safe harbor and the "two levels of substantial transformation" safe harbor set out at subsection VIII.B., the guides define "substantial transformation" to encompass both the Customs Service's case-by-case rulings and the enumerated shifts in tariff classification set forth in the NAFTA marking rules. Thus, in determining whether a final product (and, under the two levels of substantial transformation safe harbor, each of that product's significant inputs) was last substantially transformed in the United States, a marketer may refer to either of these standards, as it chooses.[218]

With respect to the "two levels of substantial transformation" safe harbor, *Example 3* in subsection VIII.B. of the guides makes clear that where a product, such as a compact disk, is not comprised of traditional "parts," a marketer may look to whether the product as a whole has undergone its last two substantial transformations in the United States.

Section IX: Qualified U.S. Origin Claims. Where a marketer is unable to make an unqualified U.S. origin claim for its product, the marketer may still communicate to consumers that the product contains U.S. content through the use of appropriately qualified claims. Section IX provides a number of examples of possible qualified claims. These range from the general (indicating simply the existence of foreign content, *e.g.*, "Made in USA of U.S. and imported parts) to the specific (indicating the percent of U.S. content, which parts are imported, or the particular foreign country from which the parts come). The examples further include short qualified claims that may be useful on labels, as well as more complete explanations that may be more appropriate in advertising or other media. As indicated in the proposed guides, these examples are not intended to be exhaustive: a marketer may make any qualified claim for which it possesses adequate substantiation. Section IX further provides that, to the extent qualifications are necessary to ensure that a claim is not deceptive, those qualifications must be clear, prominent, and understandable.

Section X: U.S. Origin Claims for Specific Processes and Parts. The Commission recognizes that there may be U.S. origin claims, while not specifically referring to foreign parts or processing, that are specific enough so as to convey to consumers only a limited claim that a particular process is performed in the United States or that a particular part is manufactured in the United States and that do not convey a general claim of U.S. origin. Section X provides that marketers may use such claims — that a product, for example is "designed" or "painted" or "written" in the United States or that a particular part or component is produced in the United States — without further qualification as long as the claim is truthful and substantiated. This provision further distinguishes claims about specific processes from general or indefinite claims such as "created," "produced," or "manufactured" in USA, which are likely to be viewed as synonymous with "Made in USA."

---

[218] Marketers are reminded, however, that they may not make an unqualified U.S. origin claim for any product which the U.S. Customs Service requires to be labeled with a foreign country of origin without running afoul of Section VII.A. of the proposed guides as well as U.S. Customs Service regulations.

Example 3 indicates that "Assembled in USA" will be understood not as a claim about a specific process but rather as a general claim of U.S. origin, equivalent to a "Made in USA" designation. It therefore should be qualified to indicate the presence of foreign content if used to describe a product that is not substantially all made in the United States. It is the Commission's tentative conclusion that "Assembled in USA" does not convey a sufficiently specific and limited meaning to consumers so as not to require further qualification. "Assembly" potentially describes a wide range of processes, from simple, "screwdriver" operations at the very end of the manufacturing process to the construction of a complex, finished item from basic materials. Consumers may thus be confused or misled by this term or may simply take from it an unqualified "Made in USA" claim.[219]

The Commission solicits comment on whether a product that does not meet the standard for unqualified U.S. origin claims should nonetheless be permitted to be labeled or advertised as "Assembled in USA" without further qualification. If so, under what circumstances should an unqualified "Assembled in USA" claim be permitted, *i.e.*, what processing must a product undergo in the United States to support this claim?

In addition, *Examples 6-8* present circumstances in which a U.S. origin claim about a specific process or part may be literally true but may nonetheless convey a more general U.S. origin claim, because of the manner in which the claim is presented or the context in which it appears. *Example 8*, in particular, provides a scenario in which advertising embellishments may serve to convey a meaning beyond that of the literal words.

Section XI: Comparative Claims. This section provides that claims of U.S. origin that contain a comparative statement (*e.g.*, "More U.S. content than our competitor") may be made as long as such claims are truthful and substantiated. Through the text and accompanying examples, this provision advises marketers that such comparative claims should be presented in a manner that makes the basis for comparison clear, should not be used to exaggerate the U.S. content of a product, and should be based on a meaningful difference in U.S. content between the compared products. *Example 1* further indicates that appropriate comparative claims may be used even where use of an unqualified U.S. origin claim is likely to be deceptive. On the other hand, *Example 3* indicates that a comparative claim is likely to be deceptive if it is made for a product that does not have a significant amount of U.S. content or does not have significantly more U.S. content than the product to which it is being compared.

Section XII: Miscellaneous Issues. This provision addresses several practical issues in applying these guides.

---

[219] The Commission has before it only limited empirical evidence on consumer understanding of "assembled" claims and this evidence appears to be inconclusive. In the 1995 FTC Copy Test, for example, 30% of respondents asked an open-ended question about what an "Assembled in USA" claim meant, responded that the product was made in the United States with some foreign parts; on the other hand, 18% of respondents said that claim meant that the product was made in USA.

A. Multiple Sourcing. This provision is directed at an issue that may arise in calculating the percentage of U.S. content in the product. In the course of producing a product a manufacturer may obtain an input from multiple sources, some in the United States and some abroad. The Commission recognizes that it would place a considerable burden on manufacturers to trace which specific inputs went into each finished product and to individually label each of those finished products accordingly . Thus, this subsection provides that a manufacturer may use the average U.S. cost of an input over a reasonable period of time in its assessment of U.S. content, and may label all of the finished units with a uniform origin label based on this assessment.

B. Price Fluctuations. This provision is also directed at the calculation of the percentage of U.S. content in a product. The Commission recognizes that the price of inputs may vary frequently (if not constantly) over time and this may affect a marketer's assessment of U.S. costs. This subsection addresses this issue by providing that a marketer may, at its option, use either the average price of the input over a fixed period of time or the price of all of the inputs on a particular date, where those prices are updated on a regularly scheduled basis.

C. Multiple-Item Sets. This provision addresses the situation where a marketer is selling a set of several discrete items, some of which are domestically produced and some of which are produced abroad, and the packaging together of the discrete items does not constitute a substantial transformation of those items. The provision indicates that it is likely to be deceptive to make an unqualified U.S. origin claim for such a set of items and further advises marketers that when making qualified claims for such a set, they should make clear to which items the U.S. origin claim refers. In addition, this provision notes that Customs rules require that each of the foreign-made items or the container bear an appropriate country-of-origin marking, and marketers are reminded that, in marking the items or their container, they must follow Customs requirements.

Section XIII: "Origin: USA" Labels. As noted above, in certain instances, a foreign country (most often applying a form of substantial transformation) may require that a product exported from the United States be marked with an indication of U.S. origin, while that same product would not, under the proposed guides, be permitted to bear an unqualified U.S. origin claim when sold in the United States. This provision establishes a specific designation of U.S. origin

— "Origin: USA" — that may be used, in certain, limited circumstances, to uniformly label such products for sale in both the United States and abroad.[220]

The proposed guides would permit marketers to use an "Origin: USA" label on any product sold in the United States that is not required to be marked with a foreign country of origin under Customs rules, provided that the product is also exported to a country that requires that it be labeled with an indication of U.S. origin, and the label used is no more prominent than necessary to meet the requirements of the country to which it is being exported. For non-consumer products (*i.e.*, for products sold to businesses for commercial or industrial use), no further requirements need be met.

Because consumers may potentially be misled by an "Origin: USA" label and confuse it with a "Made in USA" claim, however, the proposed guides provide that consumer products (*i.e.*, products sold to consumers for personal, family or household use) may only be marked with an "Origin: USA" label if they also disclose to consumers, through other means, the existence of any substantial foreign content.[221] In order to accommodate the problems faced by those selling in multiple countries, this provision contemplates additional flexibility in disclosures in this circumstance. Thus, Section XIII provides that disclosures made to consumers may be made through appropriately qualified claims on packaging, stickers or hangtags visible to consumers prior to purchase and need not be made on the label itself.

The Commission solicits comments on the proposed establishment of a "lesser mark" of "Origin: USA." Specifically, the Commission requests comment on whether such a mark is likely to be of significant utility to those selling goods in more than one country; whether "Origin: USA" in particular is likely to be an acceptable marking to foreign Customs officials; whether the distinction between consumer goods and goods sold to businesses for commercial use is an appropriate one; the extent of any burden the additional requirements for disclosures on consumer goods imposes on marketers (and whether the flexibility of using means of disclosure such as hangtags that need not be permanently affixed at the time of manufacture mitigates these burdens); and whether the additional requirements for disclosures on consumer goods are sufficient to prevent consumer deception.

---

[220] Phrasing similar to "Origin: USA" was suggested by **EIA**, #193 at 13. Other terms for a "lesser mark," including "Country of Origin: USA" and "Product of the U.S." were suggested by 3M, the International Mass Retail Association, and the Joint Industry Group. **3M**, #198, at 2; **IMRA**, #184, at 6-8; **JIG**, #196, at 4. The Commission, however, believes that "Origin: USA" is somewhat less likely to be confused by consumers with the more familiar "Made in USA" designation than are these alternative terms.

[221] Competitors who do not sell their product in a country that requires U.S. marking and so cannot use an "Origin: USA" designation may also be placed at a competitive disadvantage without further qualifications to consumers.

VII. Goods With No Country-of-Origin Marking — Rebuttable Presumption

As part of its review of U.S. origin claims, the Commission has taken the opportunity to re-examine its approach to products that do not bear any country-of-origin marking. Historically, the Commission has employed a rebuttable presumption that goods that were not labeled with any country of origin would be understood by consumers to be made in the United States. As a result, the Commission required that foreign origin be disclosed if unmarked goods contained a significant amount of foreign content. In its April 26, 1996 *Federal Register* notice, the Commission sought comment as to whether or not this presumption continued to be valid. Only three commenters addressed this issue. BMA stated that consumer perception of the origin of unlabeled products varies among product categories, depending largely upon the extent to which foreign-made products are present in a particular market.[222] The UAW suggested that the absence of any indication that there could be substantial foreign content in unmarked products could, at least to some degree, mislead consumers.[223] Finally, Watch Producers asserted that the buying public is no longer likely to believe that a product with no origin designation was made in the United States because of public awareness of such developments as the decline in domestic production in many industries and the presence of foreign-owned manufacturing facilities in the United States.[224]

Based on the facts, well-documented in many of the comments received in connection with this review, that manufacturing and the sourcing of components have become increasingly global in nature, and that consumers appear to be increasingly aware that goods they buy are produced throughout the world, the Commission concludes that it is no longer appropriate to presume that reasonable consumers will interpret the absence of a foreign country-of-origin mark by itself, as a representation that the product was made in the United States. Thus, the Commission has determined to cease using its traditional presumption. Instead, the Commission will require disclosure of foreign origin on unmarked goods only if there is some evidence that, with respect to the particular type of product at issue, a significant minority of consumers views country of origin as material and believes that the goods in question, when unlabeled, are domestic. *Cf. El Portal Luggage, Inc.*, FTC No. C-3499 (1994) (consent agreement involving alleged removal of foreign origin labels on luggage in store featuring prominent "Made in USA" signs).

VIII. Request for Comment

Interested parties are invited to submit comments on the proposed Guides for the Use of U.S. Origin Claims. Commenters are welcome to submit comments on any aspect of the proposed guides, but are requested to avoid merely resubmitting views or information submitted

---

[222] **BMA**, #195, at 8-9.

[223] **UAW**, #174, at 4.

[224] **Watch Producers**, #192, at 8-9.

in response to the Commission's earlier requests for public comment in this matter.

All written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Public Reference Room, Room 130, Federal Trade Commission, 6th and Pennsylvania Ave., N.W., Washington, DC 20580.

In addition, the Commission will make this notice and, to the extent technically possible, all comments received in response to this notice available to the public through the Commission's Home Page on the World Wide Web (http://www.ftc.gov.). At this time, the FTC cannot receive comments made in response to this notice over the Internet.

IX. Text of Proposed Guides

GUIDES FOR THE USE OF U.S. ORIGIN CLAIMS

I. Statement of Purpose

These guides represent administrative interpretations of laws administered by the Federal Trade Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. They provide the basis for voluntary compliance with such laws by members of industry. These guides specifically address the application of Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45, to U.S. origin claims in advertising and labeling.

Because the guides are not legislative rules under Section 18 of the FTC Act, they are not themselves enforceable regulations, nor do they have the force and effect of law. Conduct inconsistent with the positions articulated in these guides may, however, result in corrective action by the Commission under Section 5 of the FTC Act if, after investigation, the Commission has reason to believe that the behavior falls within the scope of conduct declared unlawful by the statute.

II. Scope of the Guides

These guides apply to U.S. origin claims included in labeling, advertising, promotional materials and all other forms of marketing, whether asserted directly or by implication, through words, symbols, emblems, logos, depictions, trade names, or through any other means. The guides apply to any claims about the U.S. origin of a product in connection with the sale, offering for sale, or marketing of such product in the United States for personal, family, or household use, or, except as provided, for commercial, institutional or industrial use. These guides, however, do not apply to claims made for any product subject to the country-of-origin labeling requirements of the Textile Fiber Products Identification Act (15 U.S.C. 70), the Wool Products Labeling Act (15 U.S.C. 68), or the Fur Products Labeling Act (15 U.S.C. 69).

These guides do not preempt regulation of other federal agencies or of state and local bodies governing the use of U.S. origin claims. Compliance with other federal, state or local laws and regulations concerning such claims, however, will not necessarily preclude Commission law enforcement action under Section 5 of the FTC Act.

III. Structure of the Guides

The guides are composed of a series of guiding principles on the use of U.S. origin claims. These guiding principles are followed by examples that generally address a single deception concern. A given claim may raise issues that are addressed under more than one example and in more than one section of the guides.

IV. Review Procedure

Five years after the date of final adoption of these guides, the Commission will seek public comment on whether and how the guides need to be modified in light of ensuing developments. Parties may petition the Commission to alter or revise these guides based on substantial new evidence regarding consumer interpretation of U.S. origin claims or significant, relevant changes in United States or international country-of-origin marking requirements. Following review of such a petition, the Commission will take such action as it deems appropriate.

V. Definitions

For the purposes of these guides:

(a) *Commission* means the Federal Trade Commission.

(b) *Consumer product* means any product sold or offered for sale to consumers for personal, family, or household use. It excludes products sold to businesses that are for commercial, industrial or institutional use and that are not intended for re-sale to consumers.

(c) *Foreign content* means the portion of a product that is not attributable to U.S. costs.

(d) *Input* means any item, including but not limited to a subassembly, component, part or material, that is part of, and is made or assembled into, a finished product.

(e) *Marketer* means any individual, partnership, corporation, organization, or other entity that makes a U.S. origin claim in advertising, labeling, promotional materials, or in any other form of marketing.

(f) *Substantial transformation* means 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 these guides, a good will be considered to have been substantially transformed if 1) it would be considered to be substantially transformed under 19 CFR 134 and the rulings of the U.S. Customs Service and decisions of the United States courts issued pursuant thereto; or 2) it undergoes an applicable change in tariff classification and/or satisfies other applicable requirements set out in the NAFTA marking rules, 19 CFR 102.

(g) *Tariff Act* means the Tariff Act of 1930, as amended, including but not limited to 19 U.S.C. 1304, and all regulations and administrative rulings issued pursuant thereto.

(h) *Total cost(s) or total manufacturing cost(s)* means the total cost of all manufacturing materials, direct manufacturing labor, and manufacturing overhead, whether U.S. or foreign. Generally, total cost will be equivalent to finished-goods inventory cost or the cost of goods sold, as those terms are used in accordance with generally accepted accounting principles.

(i) *U.S. content* means the portion of a product that is attributable to U.S. costs.

(j) *U.S. cost(s) or U.S. manufacturing cost(s)* means those costs attributable to U.S. manufacturing materials, U.S. direct manufacturing labor and U.S. manufacturing overhead.

(k) *U.S. origin claim* means any claim, whether express or implied, that a product is made, manufactured, produced, assembled or created, or otherwise originates, in whole or in part, in the United States, or that any work that contributes to the manufacture, production, assembly or creation of the product is performed in the United States.

(l) *United States* means the several states, the District of Columbia, and the territories and possessions of the United States.

VI. Interpretation and Substantiation of U.S. Origin Claims

A. Deception

Section 5 of the FTC Act makes unlawful deceptive acts and practices in or affecting commerce. As set forth in the Commission's Deception Policy Statement,[1] a representation (or omission) will be found deceptive under Section 5 if it is likely to mislead consumers acting reasonably under the circumstances and is material. A representation about U.S. origin may be made by either an express claim (such as "Made in USA") or an implied claim. In identifying implied claims, the Commission will focus on the overall net impression of an advertisement, label, or other promotional material. This requires an examination of both the representation and the overall context, including the juxtaposition of phrases and images, and the nature of the transaction. Marketers should be alert to the possibility that, depending on the context, U.S. symbols or geographic references, such as U.S. flags, outlines of U.S. maps, or references to U.S. locations of headquarters or factories, may, by themselves or in conjunction with other phrases or images, convey a claim of U.S. origin. Indeed, absent qualification, general implied claims of U.S. origin are likely to convey that the product was substantially all made in the United States, and care should be taken to ensure that any such representation is not likely to be misleading. Further information concerning the Commission's interpretation of claims is available in the Deception Policy Statement.

[1] Letter from the Commission to the Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (Oct. 14, 1983); *reprinted in Cliffdale Associates, Inc.*, 103 F.T.C. 110, appendix (1984).

B. Substantiation

A corollary to the principle of deception is the principle of advertising substantiation. Any party making an express or implied claim that presents an objective assertion about the U.S. origin of a product must, at the time the claim is made, possess and rely upon a reasonable basis substantiating the claim. A reasonable basis consists of competent and reliable evidence. To the extent that a marketer's substantiation for its U.S. origin claims is based on an assessment of U.S. costs, there is no single prescribed method or formula for performing this calculation. However, competent and reliable evidence in such circumstances typically will be based on generally accepted accounting principles. Further guidance on the reasonable basis standard is set forth in the Commission's Policy Statement on the Advertising Substantiation Doctrine.[2] Because general implied claims of U.S. origin are likely to be understood as unqualified claims that the product was substantially all made in the United States, marketers should possess appropriate substantiation before making such representations.[3] See Section VIII of these guides.

Example 1: A company advertises its product in an advertisement that features pictures of employees at work at what is identified as the company's U.S. factory. These pictures are superimposed on an image of a U.S. flag, and the advertisement bears the headline "American Quality." The advertisement is likely to convey an unqualified U.S. origin claim to consumers. The company should be able to substantiate such a claim or should include appropriate qualifications or disclosures.

Example 2: A product is manufactured abroad by a prominent U.S. company. The fact that the company is headquartered in the United States is widely known. The company's advertisements for its foreign-made product prominently feature its brand name. Assuming that the brand name does not specifically denote U.S. origin (*e.g.*, the brand name is not "Made in America, Inc."), the use of the brand name, without more, does not constitute a U.S. origin claim.

VII. Other Statutory and Regulatory Requirements

Nothing in these guides should be construed as exempting any product or marketer from the requirements of any other statute or regulation bearing upon country-of-origin advertising or labeling, and marketers should be mindful of such other requirements. The following principles are intended to explain the interaction between these guides and certain other laws, and to minimize potential conflicts.

---

[2] 49 FR 30,999 (1984); *reprinted in Thompson Medical Co.*, 104 F.T.C. 648, appendix (1984).

[3] Of course, representations that a product contains a particular amount of U.S. content (*e.g.*,"U.S. content: 20%" or "Entirely Made in USA") should be substantiated by competent and reliable evidence that the product contains the represented amount of U.S. content.

A. *Tariff Act*

1. U.S. origin claims on an article or its container. Notwithstanding any other provision in these guides, where an article or its container is required to be marked with a foreign country of origin pursuant to Section 304 of the Tariff Act, any U.S. origin claim appearing on the article or its container should comport with the requirements of the Tariff Act and its associated regulations. Specifically, the U.S. Customs Service has issued regulations requiring, in pertinent part, that:

> In any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any city or locality in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced, appear on an imported article or its container, there shall appear, legibly and permanently, in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning.[4]

In addition, where an article is deemed to be of foreign origin for marking purposes under the Tariff Act, making a U.S. origin claim on the article or its container, or making such a claim without clearly and prominently disclosing the foreign manufacture of the article, may, in some circumstances, constitute a deceptive act or practice under Section 5 of the FTC Act.

2. U.S. origin claims other than on an article or its container. The Tariff Act does not address foreign origin marking other than on an article or its container. Where the Tariff Act requires that an article or its container be marked with a foreign country of origin, U.S. origin claims about the article in advertising or through other means may confuse and mislead consumers. Therefore, notwithstanding any other provision of these guides, marketers should not make unqualified U.S. origin claims in advertising or other promotional materials for products that are required by the Tariff Act to be marked with a foreign country of origin. Furthermore, to avoid potential consumer deception, marketers should consider qualifying *any* U.S. origin claim (including U.S. origin claims for specific processes or parts) made in advertising or other promotional materials for such a product so as to disclose clearly the foreign manufacture of the article; claims so qualified are unlikely to be considered deceptive.

EXAMPLE 1: A ceramic figurine is fabricated in Kenya and then painted and

[4] 19 CFR 134.46.

glazed in the United States. The figurine is packaged in a clear, plastic box for sale. The Customs Service, pursuant to the Tariff Act, requires that the figurine be marked "Made in Kenya," and a label to this effect appears on the bottom of the figurine. Affixed to the top of the box is a large sticker that says "Painted in USA." The statement on the sticker would likely not be permitted by the U.S. Customs Service because it fails to include in close proximity to the statement concerning U.S. origin the name of the country of origin preceded by "Made in" or a similar formulation as required by U.S. Customs regulations. A single statement that the figurine was "Made in Kenya, painted in the U.S." would likely be permitted by U.S. Customs and is unlikely to be deceptive under Section 5 of the FTC Act.

EXAMPLE 2: A piano is constructed in Australia using some U.S. and some non-U.S. parts. The piano is then shipped to the United States, where it undergoes some simple, final assembly and gets a final coat of lacquer. Under the Tariff Act, the piano is required to be marked "Made in Australia." An advertisement for the piano includes the statement "Made in USA of U.S. and imported parts." The statement in the advertisement is likely to convey a meaning to consumers that contradicts the meaning conveyed by the required foreign origin statement on the label, and is therefore likely to be deceptive.

EXAMPLE 3: A television set assembled in Korea using a U.S.-made picture tube is shipped to the United States. Under the Tariff Act, the television set must be marked "Made in Korea." A pamphlet distributed by the company that makes the television set states "Although our televisions are assembled abroad, they always contain U.S.-made picture tubes." This statement would likely not be deceptive. However, a representation in an advertisement or promotional pamphlet that "All our picture tubes are Made in the USA" (without any disclosure of foreign manufacture) might, depending on the context, convey a broader implied claim than could be substantiated in light of the significant foreign processing that triggers the foreign origin marking requirement under the Tariff Act.

B. *American Automobile Labeling Act* - Nothing in these guides affects or alters a marketer's obligation to comply with the requirements of the American Automobile Labeling Act (49 U.S.C. 32304) or any regulations promulgated pursuant thereto, nor does anything in these guides prohibit a marketer from making any representation in advertising or other promotional material for any passenger motor vehicle that is required in labeling for that passenger motor vehicle by this Act or its associated regulations.

VIII. Unqualified U.S. Origin Claims

Except as provided in Section XIII, below, a marketer making an unqualified U.S. origin claim should, at the time it makes the claim, possess and rely upon a reasonable basis that substantiates that the product is substantially all made in the United States.

Provided, however, that it will not be considered a deceptive practice for a marketer to make an unqualified U.S. origin claim if the marketer meets the conditions set out in either Paragraph A or B, below.

A. *75% U.S. Content.* At the time it makes the claim, the marketer possesses and relies upon competent and reliable evidence that: (1) U.S. manufacturing costs constitute 75% of the total manufacturing costs for the product; and (2) the product was last substantially transformed in the United States.

In computing U.S. or total manufacturing costs, the marketer should look far enough back in the manufacturing process that a reasonable marketer would expect that it had accounted for any significant foreign content. For simple products, or for products that undergo most of their processing by the final manufacturer, the marketer may, in many cases, have to look only "one step back," *i.e.*, the marketer may look only at the immediate inputs into the finished product, and for those inputs that undergo their last significant manufacturing step in the United States, the marketer may count 100% of their cost as U.S. costs. For more complex products, the marketer may, for some of its inputs, have to look further back, *i.e.*, the marketer may need to consider the amount of U.S. and foreign content in the inputs themselves.

EXAMPLE 1: A company manufactures lawn mowers in its U.S. plant, making most of the parts (housing, blade, handle, etc.) itself from U.S. materials. The engine, however, is bought from a supplier. The engine's cost constitutes 50% of the total cost of producing the lawn mower, while the manufacture of the other parts and final assembly costs constitute the other 50% of the total. The engine is manufactured in a U.S. plant from U.S. and imported parts; U.S. manufacturing costs constitute 60% of the engine's total cost. Thus, U.S. costs constitute 80% of the total cost of manufacturing the product (50% [U.S. cost of final assembly and other parts] + (60% x 50%) [U.S. cost of engine]). Because U.S. manufacturing costs exceed 75% of total manufacturing costs and the last substantial transformation of the product took place in the United States, a claim that the lawnmower is "Made in USA" would likely not be deceptive.

EXAMPLE 2: A toaster is made from primarily U.S. parts and is assembled in Canada in a process that constitutes a substantial transformation. U.S. costs account for 75% of the total costs of manufacturing the product. A claim that the toaster is "American Made" would likely be deceptive, as the last substantial transformation occurs outside the United States.

EXAMPLE 3: Masking tape is produced in the United States and sent to Mexico to

be cut into individual rolls. U.S. costs constitute 90% of the total cost of manufacturing the tape. Cutting the tape is not considered a substantial transformation, and U.S. Customs rules do not require that the tape be labeled with a foreign country of origin when it is brought back into the United States. It would likely not be deceptive to label the tape "Made in USA."

EXAMPLE 4: A computer maker assembles computers in the United States. It buys motherboards for its computers from an outside supplier who assembles the motherboards in the United States. The computer maker intends to run an ad promoting its "U.S. Made Computers." To substantiate the claim the computer maker may not simply assume that the motherboards are composed wholly of U.S. content. Because the components of the motherboard (such as microchips) are likely to represent a significant portion of the motherboard's value and may be produced in other countries, the computer maker should ascertain from the motherboard manufacturer what percentage of the costs of producing the motherboard are U.S. costs.[5]

EXAMPLE 5: A computer maker assembles computers in the United States. It constructs its own motherboards with U.S.-made microchips that it purchases from an outside company. Because the materials used to make microchips are unlikely to represent significant value, the computer maker likely need not look back any further in the manufacturing process and may assume, for computation purposes, that the microchips contain 100% U.S. content.

EXAMPLE 6: A U.S. wallet manufacturer purchases plastic inserts from a U.S. manufacturer of such inserts. The inserts account for approximately 2% of the total cost of making the wallet, which is last substantially transformed in the United States. The wallet manufacturer knows that the insert manufacturer sometimes uses imported plastic to make the inserts. Because the value of the plastic is likely to be de minimis or insignificant relative to the overall cost of the manufacturing the wallet, the wallet manufacturer may, for computation purposes, treat 100% of the cost of the plastic insert as U.S. costs.

EXAMPLE 7: A table lamp is assembled in the United States from an imported base and a variety of other, U.S.-made parts, including a Tiffany-style lampshade. The imported base was made using U.S.-made brass. A marketer may include the value of the U.S. brass in its computation of total U.S. costs even though the brass was made into a base abroad.

B. *Two Levels of Substantial Transformation.* At the time it makes the claim, the

[5] In addition, to comply with the Tariff Act, the marketer may specifically need to determine the origin of the CPU (Central Processing Unit) and BIOS (Basic Input/Output System). Pursuant to the determinations of the U.S. Customs Service, a motherboard has to be marked with a foreign country of origin unless the CPU and BIOS are of U.S. origin.

marketer possesses and relies upon competent and reliable evidence that: (1) the product was last substantially transformed in the United States; and (2) all significant inputs into the final product were last substantially transformed in the United States.

EXAMPLE 1: A tape recorder is made up of three major subassemblies, and a few additional minor parts (which account for only a small fraction of the finished product's cost). Each of the subassemblies is manufactured in the United States, using primarily imported components. Final assembly of the tape recorder takes place in the United States. The assembly of each of the subassemblies as well as the final assembly would be considered substantial transformations under the Tariff Act. A label that said "Made in America" would likely not be deceptive.

EXAMPLE 2: A refrigerator is assembled in the United States from a number of components, and this assembly process constitutes the last substantial transformation of the product. Several of the refrigerator's components are themselves assembled in the United States, but certain other major components, such as the compressor and the motor, are manufactured abroad. Because the last substantial transformation of these major components occurred abroad, unless manufacturing and assembling costs attributable to the United States constitute at least 75% of the total manufacturing costs of the refrigerator, an unqualified claim that the refrigerator was "Manufactured in USA" would likely be deceptive.

EXAMPLE 3: A blank compact disk is manufactured in the United States from imported materials, in a process that constitutes a substantial transformation. Music is then encoded onto the compact disk in the United States, in a process that also constitutes a substantial transformation and is the last substantial transformation of the product. Because both the manufacture of the compact disk and the encoding of music onto the disk would be considered substantial transformations under the Tariff Act, the last two levels of substantial transformation take place in the United States, and a printed statement on the compact disk that said "USA" would likely not be deceptive, even if the imported materials used in the manufacture of the compact disk account for more than 25% of the total manufacturing costs.

EXAMPLE 4: A cordless telephone is made up of a base unit, a handset, and a power cord. Each of these inputs is last substantially transformed in the United States and is made from primarily foreign parts or materials. The final assembly of the inputs into a complete telephone, however, is not considered a substantial transformation by the U.S. Customs Service. Thus, two levels of substantial transformation do not take place in the United States, and an unqualified claim that the telephone is "American Made" would likely be deceptive.

IX. Qualified U.S. Origin Claims

Where a product is not substantially all made in the United States, a claim of U.S. content should be adequately qualified to avoid consumer deception about the presence or amount of foreign content. Marketers may make qualified claims about the U.S. content of their products as long as those claims are substantiated by competent and reliable evidence. The examples below and elsewhere in these guides present options for qualifying a claim. These options are intended to provide "safe harbors" for marketers who want certainty about how to make qualified U.S. origin claims. The examples are not the only permissible approaches to qualifying a claim, and they do not illustrate all claims or disclosures that would be permissible under Section 5. In addition, some of the illustrative disclosures may be appropriate for use on labels but not in print or broadcast advertisements and vice versa.

In order to be effective, any qualifications or disclosures such as those described in these guides should be sufficiently clear, prominent, and understandable to prevent deception. Clarity of language, prominence of type size and style, proximity to the claim being qualified, and an absence of contrary claims that could undercut effectiveness of the qualification, will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent. Finally, if a qualified U.S. origin claim applies only to a part of a product or component, this limited applicability should be made clear as well (*see* Section X, below).

EXAMPLE 1: A piece of luggage is produced in the United States from leather that was tanned and processed in Italy. U.S. manufacturing costs account for 50% of the total manufacturing costs of the luggage; the leather, 40%; and miscellaneous imported parts, 10%. A claim that the luggage was "Made in the USA of Italian leather" would likely not be deceptive.

EXAMPLE 2: A fireplace poker is made from an iron forging that is imported from Canada and finished and painted in the United States. U.S. processing accounts for 40% of the total cost of manufacturing the poker. Assuming that the U.S. processing constitutes a substantial transformation and thus a foreign country of origin marking is not required under the Tariff Act, a label claim that the fireplace poker was "Made in the USA from imported forging" would likely not be deceptive. (Were a foreign origin marking required, a claim on the label such as "Made in Canada. Finished in U.S." would likely be appropriate.)

EXAMPLE 3: A snowblower is assembled in the United States. The engine is manufactured in the United States and other parts, such as the frame and the wheels, are imported from several different countries. Together, the U.S. assembly and U.S. parts account for 55% of the total cost of manufacturing the product. An advertising circular that described the snowblower as "Proudly made in America with U.S. and imported parts" would likely not be deceptive.

EXAMPLE 4: An exercise treadmill is assembled in the United States. All of the major parts of the treadmill, including the motor, the frame, and the electronic

display, are imported. A few of the incidental parts of the treadmill, such as the dial used to set the speed, are manufactured in the U.S.; together, they account for approximately 5% of the total cost of all the parts. Because the value of the U.S.-made parts is essentially de minimis in relation to the value of all the parts, a statement on a hangtag on the treadmill that states that it is "Made in USA of U.S. and imported parts" would likely be deceptive. A claim that the treadmill was "Made in the U.S. from imported parts" or "Assembled in the United States with primarily foreign parts" would likely not be deceptive.

EXAMPLE 5: A typewriter is produced in the United States from a mix of U.S. and imported parts. Assuming that the marketer can substantiate that U.S. costs constitute 60% of the total costs of manufacturing the typewriter, a label that said "60% American Made" or "U.S. Content: 60%" would likely not be deceptive.

EXAMPLE 6: A vacuum cleaner is assembled in the United States from a mix of U.S. and imported parts. Depending upon the availability of particular parts, the U.S. content of the product varies between 50% and 70%. A claim on the box that said "Contains at least 50% U.S. content" or "50-70% U.S. content" would likely not be deceptive.[6]

EXAMPLE 7: A swing set is made up of various components (poles, swing, ladder, etc.), all of which are imported. The unassembled components are packaged together in a box in the United States; the swing set is designed for assembly at-home by the purchaser. A statement on the box that said "Assembled in U.S. of imported parts" would likely be deceptive as neither the mere packaging together of parts nor assembly by the purchaser is likely to be understood by consumers as constituting "assembly."

Example 8: A bicycle is assembled in the United States of a U.S.-made frame and various other U.S. and imported parts. The total U.S. content of the bicycle is 65%. The bicycle manufacturer distributes brochures for the bicycle that state, in part, "To ensure that our customers get the highest quality product possible, we assemble all of our bicycles in our own factories in the United States and, wherever possible, we use American-made parts. Unfortunately, some bicycle parts, such as gear shifts, are no longer manufactured in this country; in these cases, we use the highest quality import available." Assuming the statements are truthful, and the brochure does not contain other, contrary representations, the statements would likely not be deceptive.

[6] See also Section XII.A., below, for information on using average costs to assess U.S. content.

EXAMPLE 9: A marketer manufactures in-line skates in its Maryland plant from primarily imported parts; the U.S. content of the skates is approximately 30%. The marketer runs full-page magazine advertisements with a headline in large, bold print that says "Built in Baltimore*." At the bottom of the page is a fine print disclosure that says "*All our skates are Built in Baltimore, Parts Nos. 122, 353, and 812 imported." Because of its size and location, the disclosure is not clear and prominent. As a result, it is unlikely to be seen by consumers or to affect the net impression conveyed by the advertisement that the entire product was made in the United States. The advertisement, therefore, is likely to be deceptive. In addition, the language of the disclosure is ambiguous unless consumers are readily able to ascertain what the part numbers refer to, and should be clarified.

X. U.S. Origin Claims for Specific Processes or Parts

Regardless of whether a product is substantially all made in the United States, a marketer may make a claim that a particular manufacturing or other process was performed in the United States, or that a particular part was manufactured in the United States, provided that the claim is truthful and substantiated and that reasonable consumers would understand the claim to refer to a specific process or part and not to the general manufacture of the product. Claims, however, that a product is, for example, "created," "produced," "manufactured," or "assembled" in the United States likely would not be appropriate under this provision. Such terms are unlikely to convey to consumers a message limited to a particular process performed, or part manufactured, in the United States. Rather, they are likely to be understood by consumers as synonymous with "Made in USA" and therefore as unqualified U.S. origin claims.

EXAMPLE 1: A manufacturer of crystal stemware imports uncut, crystal stemware from abroad. The manufacturer then hand cuts elaborate designs into the bowl and stem, and performs certain other finishing operations, in its United States factory. Under the Tariff Act, the stemware is considered to have been last substantially transformed in the United States, and so is not required to bear a foreign country-of-origin marking. Because U.S. costs account for only approximately 50% of the total manufacturing costs of producing the finished stemware, an unqualified U.S. origin claim is likely to be deceptive. However, a label that said "Hand-Cut in the United States" would likely not be deceptive.

EXAMPLE 2: Computer software is designed and written in the United States and copied in the United States onto floppy disks that are manufactured in Japan. A package label that stated "Software written in the United States" would likely not be deceptive.

EXAMPLE 3: A sewing machine that is made with primarily foreign parts undergoes its final manufacturing step in the United States. The marketer of the sewing machine wishes to advertise it as "Assembled in USA." Because the term "assembled" may refer to a broad range of actions on the part of the manufacturer,

it is unlikely to be understood by consumers as connoting a specific process. Therefore, the claim would likely be deceptive and should be qualified so as to indicate the presence of foreign parts (*e.g.*, "Assembled in USA of foreign parts").

EXAMPLE 4: A U.S.-based furniture maker designs a sofa in the United States and has the sofa manufactured in Denmark. Because the Tariff Act would require that the sofa be marked with a foreign country of origin, a tag that said only "Designed in USA" would not be permitted by the U.S. Customs Service. Were the furniture maker, however, to note the U.S. design of the product in conjunction with an appropriate foreign origin marking, *e.g.*, "Made in Denmark from U.S. designs," the statement would likely be both permissible under the Tariff Act and not deceptive under Section 5 of the FTC Act.

EXAMPLE 5: A faucet is manufactured in the United States from a U.S.-made cartridge (which controls water flow) and other parts, all of which are foreign-made. The foreign parts account for sufficient cost that an unqualified U.S. origin claim could not be made for the faucet. The marketer of the faucet has a World Wide Web page on the Internet that advertises the faucet as "Made with our exclusive U.S.-made cartridges." The claim is likely not deceptive.

EXAMPLE 6: A food processor is assembled in the United States from a U.S.-made blade and other parts, all of which are foreign-made. Under the Tariff Act, the assembly of the food processor constitutes the last substantial transformation of the product. U.S. costs, however, account for less than 75% of the total costs of manufacturing the food processor. The marketer of the food processor takes out a print advertisement that includes at the top a large red, white, and blue "Made in USA" logo. Above the logo, in very small print, appears the word "Blade." It is likely that the advertisement will not adequately convey to consumers that the U.S. origin claim is limited to the blade only, but instead, is likely to convey a deceptive unqualified U.S. origin claim. The marketer should more clearly and prominently disclose the limitation on the claim.

EXAMPLE 7: A picture frame is assembled in the United States. The wooden outer frame is manufactured in the United States, but the other parts, such as a sheet of glass, posterboard backing, and miscellaneous hardware, such as clips and a hook for hanging, are imported. The foreign parts account for sufficient cost that an unqualified U.S. origin claim may not be made for the product. A package label features the statement "Frame Made in USA." Because the statement is ambiguous -- it is not clear whether it refers to the picture frame as a whole or just to the wooden outer pieces -- it is likely to be deceptive.

EXAMPLE 8: The Acme Camera Company assembles its cameras in the United States. The camera lenses are manufactured in the United States, but most of the

remaining parts are imported; U.S. costs constitute 40% of the total cost of manufacturing the camera. A magazine advertisement for the camera is headlined "Beware of Imported Imitations" and states "Other high-end camera makers use imported parts made with cheap foreign labor. But at Acme Camera, we want only the highest quality parts for our cameras and we believe in employing American workers. That's why we make all of our lenses right here in the United States." The advertisement is likely to convey to consumers a claim that more than a specific product part (the lens) is of U.S. origin, and the marketer should be prepared to substantiate whatever broader U.S. origin claim is conveyed.

XI. Comparative Claims

Claims of U.S. origin that include a comparative statement should be truthful and substantiated by competent and reliable evidence. In addition, comparative U.S. origin claims should be presented in a manner that makes the basis for the comparison sufficiently clear to avoid consumer deception. Comparative claims should not be used in a manner that, directly or by implication, exaggerates the amount of U.S. content in a product.

EXAMPLE 1: In an advertisement for its stereo speakers, the manufacturer states that "We do more of our manufacturing in the United States than any other speaker manufacturer." The manufacturer assembles the speakers in the United States from U.S. and imported components. U.S. costs, from final assembly operations at the manufacturer's U.S. factory and from U.S.-made parts, are significant but constitute less than 75% of the total cost of manufacturing the speakers, and, therefore, the manufacturer cannot substantiate an unqualified U.S. origin claim. However, provided that the manufacturer can substantiate that the difference between the U.S. content of its speakers and that of the other manufacturers' speakers is significant, the comparative claim would likely not be deceptive.

EXAMPLE 2: A product is marked with the statement "30% More U.S. content." The claim is ambiguous, and depending on the context, could be understood to suggest either a comparison to another brand or to a previous version of the same product. The marketer should clarify the claim to make the basis of the comparison clear, for example, by saying "More U.S. content than brand 'X'." Alternatively, the marketer should be prepared to substantiate whatever comparison is conveyed to reasonable consumers.

EXAMPLE 3: A product is advertised as having "twice as much U.S. content as before." The U.S. content in the product has been increased from 2% in the previous version to 4% in the current version. As neither the amount of U.S. content in the current version of the product, nor the difference between the U.S. content in the current and previous versions of the product, is significant, the comparative claim would likely be deceptive.

XII. Miscellaneous Issues

A. *Multiple Sourcing.* Where a manufacturer purchases an input from multiple sources, some of which manufacture the input in the United States and some of which manufacture the input abroad, the manufacturer may base its assessment of U.S. costs on the average annual U.S. cost for that input (or the average U.S. cost for that input over some other fixed and reasonable time period), based on the cost of the units made in the United States relative to the total cost of the units acquired from all sources.[7]

EXAMPLE 1: A computer maker assembles computers in the United States and buys hard drives from several different U.S. and Brazilian suppliers with whom it has contracts for the coming year. The hard drives from the U.S. suppliers are entirely U.S.-made and the hard drives from the Brazilian suppliers are entirely Brazilian-made. Over the course of the year, the computer maker, pursuant to its contracts, will spend $6.5 million on U.S.-made hard drives and $3.5 million on Brazilian-made hard drives. Sixty-five percent of the cost of the hard drives may be counted as U.S. costs.

EXAMPLE 2: A firm sells brooms that it assembles in the United States. The firm buys bristles for its brooms from both U.S. and foreign suppliers. The firm does not enter into long-term contracts for bristles but, instead, buys them on an as-needed basis from any of several suppliers, based on the price and availability at that time. As a result, when it prints country-of-origin labels for its brooms, the firm does not know what proportion of the bristles will be U.S.-made that year. The firm may use the average U.S. cost for the bristles from the previous year, assuming that the firm does not have reason to believe that the proportion of U.S.-made bristles will be significantly lower in the coming year.

EXAMPLE 3: An electric saw is manufactured with either a U.S.-made or German-made blade, both of which cost the same amount. The blades constitute 50% of the total cost of producing the saw, and, over the course of year, 70% of the blades are U.S.-made. The remaining parts of the saw are U.S.-made, and final assembly of the saw takes place in the United States. Thus, averaged over a year, U.S. costs are equal to 85% of the total manufacturing costs ((70% x 50%) [average U.S. content for the blade] + 50% [final U.S. assembly and other U.S. parts]). Because the average U.S. cost is greater than 75% of the total manufacturing costs, it would likely not be deceptive to print "Made in USA" on the box that the saw is sold in, even though some individual saws (those with imported blades) contain only 50% U.S. content.

---

[7] Under these guides, marketers may use an average of U.S. costs to calculate whether a product contains 75% U.S. content. Marketers should be aware that the U.S. Customs Service, however, requires a determination of origin for each individual item.

EXAMPLE 4: The facts are the same as in Example 3, above, except that only 20% of the saw blades are U.S. made. Thus, U.S. costs would constitute 60% of the total manufacturing costs ((20% x 50%) + 50%). Because the average U.S. cost is less than 75% of the total manufacturing costs, a printed claim on the box that said "Made in USA" would likely be deceptive. The claim should be qualified to indicate the possible inclusion of foreign parts. Examples of qualified claims that are likely not to be deceptive include: "Manufactured in USA with domestic or imported parts"; "Made in USA. Contains parts from U.S. or Germany"; "Assembled in USA. Blade Made in U.S. or Germany." (Alternatively, the manufacturer may separately label those boxes that contain saws with U.S.-made blades with a label that says "Made in USA," while leaving the other boxes unlabeled or labeling them with an appropriately qualified claim).

B. *Price Fluctuations* - In assessing the costs of particular inputs, the price of which may fluctuate over time, a marketer need not calculate the costs on an item-by-item basis for the purposes of complying with these guides and Section 5 of the FTC Act. Rather, the marketer may take as the cost of an input the average price of the input over the period of a year (or over some other fixed and reasonable period). Alternatively, the marketer may use a "snapshot" of the prices for each of the inputs on a particular date and then update these prices on a regularly scheduled basis. A marketer using either the averaging or snapshot approaches should update its calculations annually or, if not annually, after some other interval that is reasonable in light of industry practices and known or anticipated changes in the relevant markets.

EXAMPLE 1: A company manufactures a product in the United States from U.S. and imported parts. One of the key parts is a widget, the price of which fluctuates seasonally, tending to be higher in the spring and summer (when widgets are in short supply) and lower in the fall and winter (when widgets are plentiful). In calculating the percentage of U.S. content of its product, the company may use the average price paid for the widget over the past year, assuming that the company does not have any reason to believe that the average price paid for widgets will be significantly different in the coming year. It may be deceptive for the company to use a "snapshot" of the price at either the high or low point in order deliberately to minimize or maximize the costs of the widgets for purposes of calculating U.S. content.

EXAMPLE 2: A marketer sells a product labeled "Made in USA." As substantiation for this claim, the marketer relies on a computation performed three years earlier that shows the product to consist of 75% U.S. content. Even if the marketer is still using the same suppliers for its inputs, it is likely that three years is too long a period to guard against significant shifts in prices or the make-up of parts. Therefore, the marketer should review the costs of its inputs to confirm that, on the basis of the updated prices, it can still substantiate an unqualified "Made in USA" claim.

C. *Multiple-Item Sets* - Where a product consists of a packaged set of discrete items,

some of which are domestically produced and some of which are imported, and the packaging together of the items does not constitute a substantial transformation of those items, the Tariff Act requires that the imported items (or their container) be marked with a foreign country of origin. In addition, because this set of items was not last substantially transformed in the United States, it would not fall within either of the safe harbors for unqualified U.S. origin claims set forth in Section VIII of these guides. Therefore, an unqualified U.S. origin claim for such a set of items is likely to be deceptive. In making any qualified claim of U.S. origin for such a set, a marketer should make clear to which items any U.S. origin claim refers, and, for claims made on the article or its container, should comply with the requirements of the U.S. Customs Service for foreign origin marking.

EXAMPLE 1: A tool set consists of four separate hand tools (hammer, wrench, pliers, and screwdriver) packaged in a sealed black plastic case. Three of the tools are made in the United States, while the fourth, the screwdriver, is made in Indonesia. It would be deceptive to label the tool set "Made in USA." A label that said "Screwdriver made in Indonesia. Other tools made in USA," or "Hammer, wrench, and pliers made in USA. Screwdriver made in Indonesia," would likely not be deceptive.

EXAMPLE 2: Perfume, which is made and bottled in the United States, is packaged with a promotional gift, an umbrella that is made in England. The two items are packaged together into a set in the United States and wrapped in clear cellophane. Both the bottle of perfume and the umbrella are labeled with their respective countries of origin, and the country-of-origin label on the umbrella is clearly visible to consumers. No country-of-origin statement need be placed on the package as a whole. However, it would likely not be deceptive to label the package "Perfume made in USA. Umbrella made in England" or "Packaged in the U.S. Contains U.S. and imported items. See item for country of origin." It would likely be deceptive to label the package as a whole "Made in USA."

EXAMPLE 3: Several individual pots and pans are packaged and sold together as a set. Some of the pots and pans are made in the United States, while others are made abroad. A department store advertising circular promoting the pots and pans states "Set contains U.S. and imported items." This representation would likely not be deceptive.[8]

[8] Note, however, that the U.S. Customs Service would not permit this label to appear on the box, as the Tariff Act requires an indication of a specific foreign country of origin.

XIII. "Origin: USA" Labels

Notwithstanding any other provision herein, a product that is sold in the United States and is not required to be marked (and the container of which is not required to be marked) with a foreign country of origin pursuant to the Tariff Act may be marked or labeled with the phrase "Origin: USA" provided that:

A. The product is also exported in more than a de minimis quantity to a country or countries requiring that the product be marked to indicate U.S. origin;

B. The mark or label is no more prominent than necessary to meet the requirements of the other country to which the product is being exported; and

C. For consumer products, the existence of substantial foreign content is disclosed to consumers through other means, such as appropriately qualified claims on packaging, stickers, or hangtags that may be seen by consumers before purchase.

EXAMPLE 1: An electrical switch is manufactured in the United States from imported inputs and could not, under these guides, be labeled with an unqualified "Made in USA" claim. The switch is sold both in the United States and in countries that require that the switch be marked with an indication of U.S. origin. The switch is sold to businesses for industrial use and is not sold to consumers. The statement "Origin: USA" embossed on the side of the switch would likely not be deceptive.

EXAMPLE 2: Shoes are assembled in the United States of U.S. and imported components; the assembly process is considered a substantial transformation by the U.S. Customs Service. On the bottom of each shoe is printed "Origin: USA." The shoes are sold in the United States and are also exported to countries that require the shoes to be marked with an indication of U.S. origin. For those shoes sold in the United States, a sticker is affixed to the outside of each shoe box that says "Made in USA of U.S. and imported components." The "Origin: USA" statement would likely not be deceptive.

EXAMPLE 3: A marketer assembles a product in the United States of imported parts; the U.S. content is 30%. A television commercial for the product features the words "Origin: USA" superimposed over the product and in large, stencil-type letters that fill the width of the screen. Simultaneously, the voice-over in the commercial talks about the importance of buying American products. The commercial is likely to be deceptive unless it contains adequately clear and prominent qualifications or disclosures of the substantial foreign content of the product. Where a marketer uses an "Origin: USA" statement in circumstances beyond those prescribed in this provision, the marketer should recognize that the

statement may convey to consumers a broader, or even unqualified, U.S. origin claim, and the marketer should be preprared to substantiate any claim that is conveyed to reasonable consumers.

Authority: 15 U.S.C. 41 *et seq.*

By direction of the Commission.

Donald S. Clark
Secretary

APPENDIX - LIST OF COMMENTERS

NAME	COMMENT NUMBER	CITATION ABBREVIATION*
Ad Hoc Group	183	Ad Hoc Group
Adams, John W.	276	
Alabama Textile Manufacturers Association	12	ATM
Altschul, Frank J. Jr.	41	
Amato, Charles T.	11	
American Apparel Manufacturers Association	31	American Apparel
American Advertising Federation	100	AAF
American Association of Exporters & Importers	37, 187	AAEI
American Automobile Manufacturers Association	103	AAMA
American Electronics Association	87	AEA
American Export Association	291	American Export
American Hand Tool Coalition	91, 186	American Hand Tool
American International Automobile Dealers Association	85	AIADA
American Textile Manufacturers Institute	92, 171	ATMI
American Wire Producers Association	65	AWPA
Angst, Charles R.	250	
Appel, Edwin	235	
Association of Home Appliance Manufacturers	108, 188	AHAM
Association of International Automobile Manufacturers	101, 180	AIAM
Atanosian, M. George	315	
Attorney General of California	43, 343	AGs
Attorney General of Connecticut	43, 343	AGs
Attorney General of Florida	43, 343	AGs
Attorney General of Hawaii	43, 343	AGs
Attorney General of Illinois	185	AGs
Attorney General of Iowa	43, 343	AGs
Attorney General of Kansas	43, 343	AGs
Attorney General of Maryland	43, 343	AGs

Attorney General of Michigan	43, 343	AGs
Attorney General of Missouri	43, 343	AGs
Attorney General of Nevada	43, 343	AGs
Attorney General of New Hampshire	43, 343	AGs
Attorney General of New Jersey	138, 343	AGs
Attorney General of New York	43, 343	AGs
Attorney General of North Carolina	114, 343	AGs
Attorney General of Ohio	43, 343	AGs
Attorney General of Pennsylvania	134, 343	AGs
Attorney General of Rhode Island	43, 343	AGs
Attorney General of Tennessee	122, 343	AGs
Attorney General of Washington	343	AGs
Attorney General of West Virginia	43, 343	AGs
Attorney General of Wisconsin	151	AGs
Automotive Parts Rebuilders Association	30	APRA
Bain, Lauren S.	224	
Baker, Charles A.	258	
Balluff, Inc.	69	Balluff
Barndt, Samuel L. Jr.	111	
Baudier, Roger	216	
Benson, Walter	301	
Bernard, Philip J. Ph.D.	75	
Best, Donald A.	125	
Bevins, William H.	79	
BGE, Ltd.	60	BGE
Bicycle Manufacturers Association of America	86, 195	BMA
Bill Haley & Associates, Inc.	128	Haley
Bissell, Bill	204	
Bonacci, Kenneth P.	202	
Bowman, Sandra J.	121	
Brady, Patrick	289	
Brennan, John M.	221	

Britton, Wallace B.	76	
Bromley, Jesse F.	13	
Brother International Corp./Brother Industries USA, Inc.	109	Brother
Brown & Williamson Tobacco Corp.	96	B&W
Burger, Carol	208	
Burychka, William M.	150	
Butcher, Kathryn K.	236	
Cagle, Thelma	243	
Caiazza, Butch	254	
Canty, John	203	
Capital Mercury Shirt Corp.	9	Capital
Carter, Howell & Elizabeth	233	
Casey, Bic	238	
Caterpillar, Inc.	104	Caterpillar
Centerville Lumber Co.	145	Centerville
Cerulli, Ernest A.	211	
Citizen Action	181	Citizen Action
Clark, Shirley & Harry W.	311	
Clownzo	293	
Colson, Arnold	240	
Committee of Domestic Steel Wire Rope & Specialty Cable Manufacturers	63	Domestic Steel Wire Rope
Compaq Computer Corp.	62	Compaq
Conair Corp.	155	Conair
Consumers for World Trade	14	CWT
Corbeil, Alan	302	
Cornelius, Judith Ann, John & Carla	214	
Crafted With Pride in USA Council, Inc.	35, 176	Crafted With Pride
Cranston Print Works Co.	38, 314	Cranston
Dalton, Helen B.	280	
Dean, Earl S. 3rd	281	
Deere & Co.	57	Deere

Hager Hinge Co.	160	Hager
Hammons, Elizabeth	284	
Haney, George G.	78	
Hart, Joseph M.	77	
Hayworth, Ron	278	
Helfand, Arnold H.	226	
Henkel, Klaus P.	6	
Heyden, Timothy J.	328	
Higgins, Dorothy	244	
Hinrichsen, Chuck	242	
Hinshaw, Michael S.	66	
Hoover, Virginia	5	
Horn, Eddie A.	273	
Hoskins, William	265	
Hott, Mary Catherine A.	223	
Houtz, R. P.	225	
Hrebik, Richard K.	306	
Huber, Patricia D.	4	
Hyde Athletic Industries, Inc.	130	Hyde
ICOM	123	
Impress Industries, Inc.	308	Impress
International Brotherhood of Teamsters	107	IBT
International Electronics Manufacturers & Consumers of America	99, 189	IEMCA
International Leather Goods, Plastics, Novelty & Service Worker's Union, AFL-CIO/CLC	80	ILGPNSWU
International Mass Retail Association	46, 184	IMRA
Iredell, Capt. David Stanton	253	
ITT Industries	165	ITT
James, Lloyd A.	135	
Jefferson Democratic Club of Flushing, NY	61	Jefferson Democratic Club

Jefferson, Lewis & St. Lawrence Counties Central Trade & Labor Council, AFL-CIO	146	AFL-CIO/Jefferson
Jenkins, Elizabeth	246	
Jenkins, Michael V.	305	
Jewelers of America, Inc.	58	Jewelers
Johnston & Murphy	324	Johnston
Joint Industry Group	88, 196	JIG
Jones, Darrell S. Jr.	234	
Jules Jergusen/Helbros International	18, 19	Jergenson
Kaiser, Jim & Ricky	275	
Kammerer, John	120	
Kane, John	71	
Kearney, Mark S.	115	
Kennedy, Gregory B.	70	
Kennedy, Patrick R.	262	
King, Harry D.	256	
Klaus, Karl	82	
Klof, John C.	331	
Knight, Larry J.	259	
Kossuth, Joseph J.	158, 159	
Kotur, Nick	124	
Kujovsky, Joseph S.	336	
Laclede Steel Co.	143	Laclede
Lewis, Marvin	147	
Lisaro, Anne	270	
Luggage & Leather Goods Manufacturers of America, Inc.	23	LLGMA
Lyness, William J.	319	
Lyons, Helen	154	
Lyons, James A. Jr.	175	
Made in the USA Foundation	28	MUSA Foundation
Manchester Trade, Ltd.	21	Manchester Trade
Manufacturing Jewelers & Silversmiths of America, Inc.	164	MJSA

Martirone, Fred L.	222	
Masterjohn, John	313	
McClain, Dianna	2	
McFall, Marlene	304	
McFarlane, Mrs. Don	272	
McMakin, Dorothy	255	
Meeks & Sheppard	105	Meeks
Megasack Corp.	132	Porterco/Megasack
Menahen, Helen	200	
Metz, Anthony	303	
Meyers, Phyllis	274	
Minnesota Mining & Manufacturing	98, 198	3M
Mistretta, Steve Jr.	283	
Moroz, Marion J.	326	
National Association of Consumer Agency Administrators	137	NACAA
National Association of Hosiery Manufacturers	16, 170	NAHM
National Consumers League	117	NCL
National Cotton Council of America	131	NCCA
National Council on International Trade Development	89	NCITD
National Electrical Manufacturers Association	102, 182	NEMA
National Knitwear & Sportswear Association	53	NKSA
Nelson, Marcy	210	
New Balance Athletic Shoe, Inc.	44, 197	New Balance
Oakes, Michael G.	228	
Oakland, Dana	73	
Oakland, Joe	72	
Okidata	42	Okidata
Packard Bell Electronics	64	Packard Bell
Packing Machinery Manufacturers Institute	56	PMMI
Padden, Roger M.	296	
Paige, Ray	271	
Peiffer, Peter W. & Nancy	126	

Pennington, K.	288	
Pilger, Bill	325	
Polaroid	90	Polaroid
Porter, Darlene	220	
Porterco, Inc.	132	Porterco/Megasack
Precision-Kidd Steel Co., Inc.	142	Precision-Kidd
Processed Plastic Co.	167	Processed Plastic
Publia, Thomas J.	136	
Rachal, Raylinda	232	
Red Devil, Inc.	139	Red Devil
Republic of Korea Fair Trade Commission	141	KFTC
Retired Workers Council, Region 1-A, UAW (Buy American Union Label Committee)	33	UAW/RWC
Ricardi, Richard A.	149	
Richardson, Michael R.	299	
Richter, Alan D.	212	
Rollins, Ernest R.	66	
Rothschild, Naomi	295	
Rubber & Plastic Footwear Manufacturers Association	32, 178	RPFMA
Samenfeld, Dr. Herbert W.	20	
Santeford, Bruce A.	329	
Scaglione, Lisa	217	
Scheiderer, Clifton & Joy	110	
Schubach, Stan	294	
Schultz, Gerald R.	321	
Seagate Technology	95	Seagate
Secant Chemicals, Inc.	247	Secant
Shawe, Ted	338	
Sills, William R.	241	
Sinclair, David	287	
Sinclair, James	300	
Sisler, Jerry	22	

Smith, Al M.	112	
Smith, David A.	297	
Smith, James E.	317	
Smith, Michael C.	327	
Soltys, Frank M.	207	
Spreitzer, Dr. Francis F.	266	
Stamm, Patricia	15	
Stanley Works	59, 194	Stanley
Steel Technologies	152	Steel Technologies
Stein, John	81	
Steinberg, Alan	320	
Steinmetz, Craig I.	227	
Story, L.	215	
Stroebel, W.	213	
Studt, William C.	74	
Summitville Tiles, Inc.	162	Summitville
Sunbeam Corp.	39	Sunbeam
Taylor, Veronica	252	
Tech Team, Inc.	307	Tech Team
Tejada, Henry A.	239	
Tile Council of America, Inc.	161	TCA
Tileworks	156	Tileworks
Timken Co.	51	Timkin/Torrington
Tompkins Brothers Co., Inc.	157	Tomkins
Torrington Co.	51	Timkin/Torrington
Toshiba America Electronic Components, Inc.	34	Toshiba
Toyota Motor Sales, U.S.A., Inc.	26	Toyota
Tuchel, Harold	7	
Tyson, Joan	127	
U.S. Customs Service	29	Customs
U.S. Department of Commerce	166	Commerce
U.S. General Services Administration	106	GSA

U.S. Rep. Neil Abercrombie	25	Abercrombie
U.S. Rep. Peter Blute	25	Abercrombie
U.S. Rep. Glen Browder	119	Browder
U.S. Rep. Peter Deutsch	340	Deutsch
U.S. Rep. John D. Dingell	153	Dingell
U.S. Rep. Barney Frank	140	Frank
U.S. Rep. Joseph P. Kennedy II	67	Kennedy
U.S. Rep. Dale E. Kildee	333	Kildee
U.S. Rep. Jerry Kleczka	337	Kleczka
U.S. Rep. James B. Longley, Jr.	118	Longley
U.S. Rep. Donald A. Manzullo	334	Manzullo
U.S. Rep. Edward J. Markey	67	Kennedy
U.S. Rep. Marty Meehan	25	Abercrombie
U.S. Rep. John Joseph Moakley	25	Abercrombie
U.S. Rep. Carlos J. Moorhead	339	Moorhead
U.S. Rep. Richard Neal	67	Kennedy
U.S. Rep. John W. Olver	25	Abercrombie
U.S. Rep. Glenn Poshard	163	Poshard
U.S. Rep. James H. Quillen	168	Quillen
U.S. Rep. Charles H. Taylor	169	Taylor
U.S. Rep. James A. Traficant, Jr.	144	Traficant
U.S. Sen. William S. Cohen	199	Cohen
U.S. Sen. John Kerry	68	Kerry
U.S. Sen. Carl Levin	332	Levin
U.S. Sen. Carol Mosley-Braun	341	Mosley-Braun/Simon
U.S. Sen. Paul Simon	341	Mosley-Braun/Simon
U.S. Watch Producers in the U.S. Virgin Islands	192	Watch Producers
Union Label & Service Trades Dept., AFL-CIO	48	AFL-CIO/ULSTD
United Auto Workers	93, 174	UAW
United States Apparel Industry Council	24	USAIC
United Technologies Carrier	94	UTC
Van Hoosier, Gary	267	
Van Put, K.	116	

Varney, Earl D.	264	
Vaughan, Peter S. III	148	
Vaughn & Bushnell Manufacturing	97, 191	Vaughn & Bushnell
Vereide, Christopher A.	3	
Villarreal, Chris J.	8	
Vogel, Arthur P.	269	
Walker, Douglas L.	201	
Weider, Evelyn	286	
Welch, William L.	245	
Weldbend Corp.	190	Weldbend
Werner Co.	129	Werner
West, Fred C.	260	
Western Forge Corp.	49	Western Forge
Whalen, Karen	277	
Whalen, Tom	310	
Whirlpool Corp.	54	Whirlpool
White, Frank	257	
Whitfield, R. H.	206	
Whittaker, Robert A.	1	
Wicart, John C.	10	
Wilkins, Alfred J. Jr.	323	
Wright Tool	40	Wright
Wright, George H. & Martha M.	219	
Writing Instrument Manufacturers Association, Inc.	133	WIMA
Wujek, Peter M.	209	
Zgone, Thomas	237	
Anonymous	66	
Anonymous	251	
Anonymous	309	
Anonymous	322	
Anonymous	342	

*Individual consumers are cited by last (or complete) name. Other commenters are cited by the citation abbreviation.

Concurring Statement of Commissioner Roscoe B. Starek, III
Regarding Request for Public Comment on Proposed
Guides for the Use of U.S. Origin Claims
File No. P89-4219

I have voted in favor of issuing the proposed Guides for comment, because I believe that the copy tests discussed in the Federal Register notice show that substantial minorities of consumers take contradictory meanings from "Made in USA" claims. In these circumstances, it is appropriate to engage in a form of balancing that may minimize the injury to all consumers from claims inconsistent with their understandings of "Made in USA." The proposed Guides strike the correct balance in recognizing that an unqualified "Made in USA" claim means that a product is substantially all made in the United States. As the proposed Guides make clear, qualified claims may be used to identify U.S. content for products that cannot satisfy a "substantially all" standard. Similarly, stronger claims may be used to identify products that have even higher levels of U.S. content. In any event, however, marketers must substantiate claims for a particular amount of U.S. content with competent and reliable evidence.[1]

The proposed safe harbors and examples should lessen the costs of compliance, although it may be more useful to businesses if the final Guides contain more definitive language in the examples, like the language used in the Green Guides.[2] The examples in the proposed Guides use tentative language to state that an ad or claim is "likely to be deceptive" or "would not likely be deceptive" rather than "is deceptive" or "is not deceptive."[3] Certainly, any advertising or labeling needs to be viewed in context, as the proposed Guides state.[4] The Commission looks at the overall impression created by an ad, and the existence of facts not described in the examples could alter the Commission's interpretation of whether a law violation has occurred. Nonetheless, departure from the more definitive language used in recent Commission interpretations of the FTC Act's requirements for environmental claims may discourage reliance on the proposed Guides. It will be interesting to see any comments that address this issue.

As I have stated on other occasions, I would have preferred to have had the benefit of litigated administrative records, including additional copy test evidence, addressing specific "Made in USA" advertising campaigns in different industries. A majority of this Commission decided to proceed differently. Over time we will know if this undertaking -- when combined with a consumer and business education campaign -- reduces confusion, encourages compliance, and provides consumers with more information on which to base their purchasing decisions.

---

[1] Proposed Guides § VI.B. n.3.

[2] *See* Guides for the Use of Environmental Marketing Claims, 16 C.F.R. Part 260 (using "is not deceptive" or "is deceptive" rather than "is not likely to be deceptive" or "is likely deceptive").

[3] *Compare, e.g.*, Proposed Guides § VIII.B., Examples 1 and 2, *with* Green Guides, 16 C.F.R. § 260.6(b), Examples 1 and 2.

[4] Proposed Guides § VI.A.