Complying with the

MADE IN USA STANDARD

Federal Trade Commission | **business.ftc.gov**

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Introduction

The Federal Trade Commission (FTC) is charged with preventing deception and unfairness in the marketplace. The FTC Act gives the Commission the power to bring law enforcement actions against false or misleading claims that a product is of U.S. origin. Traditionally, the Commission has required that a product advertised as *Made in USA* be "all or virtually all" made in the U.S. After a comprehensive review of *Made in USA* and other U.S. origin claims in product advertising and labeling, the Commission announced in December 1997 that it would retain the "all or virtually all" standard. The Commission also issued an Enforcement Policy Statement on U.S. Origin Claims to provide guidance to marketers who want to make an unqualified *Made in USA* claim under the "all or virtually all" standard and those who want to make a qualified *Made in USA* claim.

This publication provides additional guidance about how to comply with the "all or virtually all" standard. It also offers some general information about the U.S. Customs Service's requirement that all products of foreign origin imported into the U.S. be marked with the name of the country of origin.

This publication is the Federal Trade Commission staff's view of the law's requirements. It is not binding on the Commission. The Enforcement Policy Statement issued by the FTC is at the end of the publication.

Basic Information About *Made In USA* Claims

Must U.S. content be disclosed on products sold in the U.S.?

U.S. content must be disclosed on automobiles and textile, wool, and fur products (*see page 15*). There's no law that requires most other products sold in the U.S. to be marked or labeled *Made in USA* or have any other disclosure about their amount of U.S. content. However, manufacturers and marketers who choose to make claims about the amount of U.S. content in their products must comply with the FTC's *Made in USA* policy.

What products does the FTC's *Made in USA* policy apply to?

The policy applies to all products advertised or sold in the U.S., except for those specifically subject to country-of-origin labeling by other laws (*see pages 15-17*). Other countries may have their own country-of-origin marking requirements. As a result, exporters should determine whether the country to which they are exporting imposes such requirements.

What kinds of claims does the Enforcement Policy Statement apply to?

The Enforcement Policy Statement applies to U.S. origin claims that appear on products and labeling, advertising, and other promotional materials. It also applies to all other forms of marketing, including marketing through digital or electronic mechanisms, such as Internet or e-mail.

A *Made in USA* claim can be express or implied.

> **Examples** of express claims: *Made in USA*. "Our products are American-made." "USA."

In identifying implied claims, the Commission focuses on the overall impression of the advertising, label, or promotional material. Depending on the context, U.S. symbols or geographic references (for example, U.S. flags, outlines of U.S. maps, or references to U.S. locations of headquarters or factories) may convey a claim of U.S. origin either by themselves, or in conjunction with other phrases or images.

> **Example:** A company promotes its product in an ad that features a manager describing the "true American quality" of the work produced at the company's American factory. Although there is no express representation that the company's product is made in the U.S., the overall — or net — impression the ad is likely to convey to consumers is that the product is of U.S. origin.

Brand names and trademarks

Ordinarily, the Commission will not consider a manufacturer or marketer's use of an American brand name or trademark by itself as a U.S. origin claim. Similarly, the Commission is not likely to interpret the mere listing of a company's U.S. address on a package label in a non-prominent way as a claim of U.S. origin.

> **Example:** A product is manufactured abroad by a well-known U.S. company. The fact that the company is headquartered in the U.S. also is widely known. Company pamphlets for its foreign-made product prominently feature its brand name. Assuming that the brand name does not specifically denote U.S. origin (that is, the brand name is not "Made in America, Inc."), using the brand name by itself does not constitute a claim of U.S. origin.

Representations about entire product lines

Manufacturers and marketers should not indicate, either expressly or implicitly, that a whole product line is of U.S. origin ("Our products are made in USA") when only some products in the product line are made in the U.S. according to the "all or virtually all" standard.

Does the FTC pre-approve *Made in USA* claims?

The Commission does not pre-approve advertising or labeling claims. A company doesn't need approval from the Commission before making a *Made in USA* claim. As with most other advertising claims, a manufacturer or marketer may make any claim as long as it is truthful and substantiated.

The Standard For Unqualified *Made In USA* Claims

What is the standard for a product to be called *Made in USA* without qualification?

For a product to be called *Made in USA*, or claimed to be of domestic origin without qualifications or limits on the claim, the product must be "all or virtually all" made in the U.S. The term "United States," as referred to in the Enforcement Policy Statement, includes the 50 states, the District of Columbia, and the U.S. territories and possessions.

What does "all or virtually all" mean?

"All or virtually all" means that all significant parts and processing that go into the product must be of U.S. origin. That is, the product should contain no — or negligible — foreign content.

What substantiation is required for a *Made in USA* claim?

When a manufacturer or marketer makes an unqualified claim that a product is *Made in USA*, it should have — and rely on — a "reasonable basis" to support the claim at the time it is made. This means a manufacturer or marketer needs competent and reliable evidence to back up the claim that its product is "all or virtually all" made in the U.S.

What factors does the Commission consider to determine whether a product is "all or virtually all" made in the U.S.?

The product's final assembly or processing must take place in the U.S. The Commission then considers other factors, including how much of the product's total manufacturing costs can be assigned to U.S. parts and processing, and how far removed any foreign content is from the finished product. In some instances, only a small portion of the total manufacturing costs are attributable to foreign processing, but that processing represents a significant amount of the product's overall processing. The same could be true for some foreign parts. In these cases, the foreign content (processing or parts) is more than negligible, and, as a result, unqualified claims are inappropriate.

> **Example:** A company produces propane barbecue grills at a plant in Nevada. The product's major components include the gas valve, burner and aluminum housing, each of which is made in the U.S. The grill's knobs and tubing are imported from Mexico. An unqualified *Made in USA* claim is not likely to be deceptive because the knobs and tubing make up a negligible portion of the product's total manufacturing costs and are insignificant parts of the final product.

Example: A table lamp is assembled in the U.S. from American-made brass, an American-made Tiffany-style lampshade, and an imported base. The base accounts for a small percent of the total cost of making the lamp. An unqualified *Made in USA* claim is deceptive for two reasons: The base is not far enough removed in the manufacturing process from the finished product to be of little consequence and it is a significant part of the final product.

What items should manufacturers and marketers include in analyzing the percentage of domestic content in a particular product?

Manufacturers and marketers should use the cost of goods sold or inventory costs of finished goods in their analysis. Such costs generally are limited to the total cost of all manufacturing materials, direct manufacturing labor, and manufacturing overhead.

Should manufacturers and marketers rely on information from American suppliers about the amount of domestic content in the parts, components, and other elements they buy and use for their final products?

If given in good faith, manufacturers and marketers can rely on information from suppliers about the domestic content in the parts, components, and other elements they produce. Rather than assume that the input is 100 percent U.S.-made, however, manufacturers and marketers would be wise to ask the supplier for specific information about the percentage of U.S. content before they make a U.S. origin claim.

Example: A company manufactures food processors in its U.S. plant, making most of the parts, including the housing and blade, from U.S. materials. The motor, which constitutes 50 percent of the food

processor's total manufacturing costs, is bought from a U.S. supplier. The food processor manufacturer knows that the motor is assembled in a U.S. factory. Even though most of the parts of the food processor are of U.S. origin, the final assembly is in the U.S., and the motor is assembled in the U.S., the food processor is not considered "all or virtually all" American-made if the motor itself is made of imported parts that constitute a significant percentage of the appliance's total manufacturing cost. Before claiming the product is *Made in USA*, this manufacturer should look to its motor supplier for more specific information about the motor's origin.

Example: On its purchase order, a company states: "Our company requires that suppliers certify the percentage of U.S. content in products supplied to us. If you are unable or unwilling to make such certification, we will not purchase from you." Appearing under this statement is the sentence, "We certify that our ___ have at least ___% U.S. content," with space for the supplier to fill in the name of the product and its percentage of U.S. content. The company generally could rely on a certification like this to determine the appropriate country-of-origin designation for its product.

How far back in the manufacturing process should manufacturers and marketers look?

To determine the percentage of U.S. content, manufacturers and marketers should look back far enough in the manufacturing process to be reasonably sure that any significant foreign content has been included in their assessment of foreign costs. Foreign content incorporated early in the manufacturing process often will be less

significant to consumers than content that is a direct part of the finished product or the parts or components produced by the immediate supplier.

> **Example:** The steel used to make a single component of a complex product (for example, the steel used in the case of a computer's floppy drive) is an early input into the computer's manufacture, and is likely to constitute a very small portion of the final product's total cost. On the other hand, the steel in a product like a pipe or a wrench is a direct and significant input. Whether the steel in a pipe or wrench is imported would be a significant factor in evaluating whether the finished product is "all or virtually all" made in the U.S.

Are raw materials included in the evaluation of whether a product is "all or virtually all" made in the U.S.?

It depends on how much of the product's cost the raw materials make up and how far removed from the finished product they are.

> **Example:** If the gold in a gold ring is imported, an unqualified *Made in USA* claim for the ring is deceptive. That's because of the significant value the gold is likely to represent relative to the finished product, and because the gold — an integral component — is only one step back from the finished article. By contrast, consider the plastic in the plastic case of a clock radio otherwise made in the U.S. of U.S.-made components. If the plastic case was made from imported petroleum, a *Made in USA* claim is likely to be appropriate because the petroleum is far enough removed from the finished product, and is an insignificant part of it as well.

Qualified Claims

What is a qualified *Made in USA* claim?

A qualified *Made in USA* claim describes the extent, amount or type of a product's domestic content or processing; it indicates that the product isn't entirely of domestic origin.

> **Example:** "60% U.S. content." "Made in USA of U.S. and imported parts." "Couch assembled in USA from Italian Leather and Mexican Frame."

When is a qualified *Made in USA* claim appropriate?

A qualified *Made in USA* claim is appropriate for products that include U.S. content or processing but don't meet the criteria for making an unqualified *Made in USA* claim. Because even qualified claims may imply more domestic content than exists, manufacturers or marketers must exercise care when making these claims. That is, avoid qualified claims unless the product has a significant amount of U.S. content or U.S. processing. A qualified *Made in USA* claim, like an unqualified claim, must be truthful and substantiated.

> **Example:** An exercise treadmill is assembled in the U.S. The assembly represents significant work and constitutes a "substantial transformation" (a term used by the U.S. Customs Service — *see pages 13-14*). All of the treadmill's major parts, including the motor, frame, and electronic display, are imported. A few of its incidental parts, such as the handle bar covers, the plastic on/off power key, and the treadmill mat, are manufactured in the U.S. Together, these parts account for approximately three percent of the total cost of all the parts. Because the value of the U.S.-made parts is negligible compared to the value of all the parts, a claim on the treadmill that it is "Made in USA of U.S. and Imported Parts" is deceptive. A

claim like "Made in U.S. from Imported Parts" or "Assembled in U.S.A." (*see page 13*) would not be deceptive.

U.S. origin claims for specific processes or parts

Claims that a particular manufacturing or other process was performed in the U.S. or that a particular part was manufactured in the U.S. must be truthful, substantiated, and clearly refer to the specific process or part, not to the general manufacture of the product, to avoid implying more U.S. content than exists.

Manufacturers and marketers should be cautious about using general terms, such as "produced," "created" or "manufactured" in the U.S. Words like these are unlikely to convey a message limited to a particular process. Additional qualification probably is necessary to describe a product that is not "all or virtually all" made in the U.S.

In addition, if a product is of foreign origin (that is, it has been substantially transformed abroad), manufacturers and marketers also should make sure they satisfy Customs' markings statute and regulations that require such products to be marked with a foreign country of origin (*see page 14*). Further, Customs requires the foreign country of origin to be preceded by "Made in," "Product of," or words of similar meaning when any city or location that is not the country of origin appears on the product.

> **Example:** A company designs a product in New York City and sends the blueprint to a factory in Finland for manufacturing. It labels the product "Designed in USA — Made in Finland." Such a specific processing claim would not lead a reasonable consumer to believe that the whole product was made in the U.S. The Customs Service requires the product to be marked "Made in," or "Product of" Finland since the product

is of Finnish origin and the claim refers to the U.S. Examples of other specific processing claims are: "Bound in U.S. — Printed in Turkey." "Hand carved in U.S. — Wood from Philippines." "Software written in U.S. — Disk made in India." "Painted and fired in USA. Blanks made in (foreign country of origin)."

Example: A company advertises its product, which was invented in Seattle and manufactured in Bangladesh, as "Created in USA." This claim is deceptive because consumers are likely to interpret the term "Created" as *Made in USA* — an unqualified U.S. origin claim.

Example: A computer imported from Korea is packaged in the U.S. in an American-made corrugated paperboard box containing only domestic materials and domestically produced expanded rigid polystyrene plastic packing. Stating *Made in USA* on the package would deceive consumers about the origin of the product inside. But the company could legitimately make a qualified claim, such as "Computer Made in Korea — Packaging Made in USA."

Example: The Acme Camera Company assembles its cameras in the U.S. The camera lenses are manufactured in the U.S., but most of the remaining parts are imported. A magazine ad 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 U.S." This ad is likely to convey that more than a specific product part (the lens) is of U.S. origin. The marketer should be prepared to substantiate the broader U.S. origin claim conveyed to consumers viewing the ad.

Comparative Claims

Comparative claims should be truthful and substantiated, and presented in a way that makes the basis for comparison clear (for example, whether the comparison is to another leading brand or to a previous version of the same product). They should truthfully describe the U.S. content of the product and be based on a meaningful difference in U.S. content between the compared products.

> **Example:** An ad for cellular phones states "We use more U.S. content than any other cellular phone manufacturer." The manufacturer assembles the phones in the U.S. from American and imported components and can substantiate that the difference between the U.S. content of its phones and that of the other manufacturers' phones is significant. This comparative claim is not deceptive.
>
> **Example:** 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 percent in the previous version to 4 percent in the current version. This comparative claim is deceptive because the difference between the U.S. content in the current and previous version of the product are insignificant.

Assembled in USA Claims

A product that includes foreign components may be called "Assembled in USA" without qualification when its principal assembly takes place in the U.S. and the assembly is substantial. For the "assembly" claim to be valid, the product's last "substantial transformation" (*see page 14*) also should have occurred in the U.S. That's why a "screwdriver" assembly in the U.S. of foreign components into a final product at the end of the manufacturing process doesn't usually qualify for the "Assembled in USA" claim.

Example: A lawn mower, composed of all domestic parts except for the cable sheathing, flywheel, wheel rims and air filter (15 to 20 percent foreign content) is assembled in the U.S. An "Assembled in USA" claim is appropriate.

Example: All the major components of a computer, including the motherboard and hard drive, are imported. The computer's components then are put together in a simple "screwdriver" operation in the U.S., are not substantially transformed under the Customs Standard, and must be marked with a foreign country of origin. An "Assembled in U.S." claim without further qualification is deceptive.

The FTC and The Customs Service

What is the U.S. Customs Service"s jurisdiction over country-of-origin claims?

The Tariff Act gives Customs and the Secretary of the Treasury the power to administer the requirement that imported goods be marked with a foreign country of origin (for example, "Made in Japan").

When 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. Customs defines "substantial transformation" as a manufacturing process that results in a new and different product with a new name, character, and use that is different from that which existed before the change. Customs makes country-of-origin determinations using the "substantial transformation" test on a case-by-case basis. In some instances, Customs uses a "tariff shift" analysis, comparable to "substantial transformation," to determine a product's country of origin.

What is the interaction between the FTC and Customs regarding country-of-origin claims?

Even if Customs determines that an imported product does not need a foreign country-of-origin mark, it is not necessarily permissible to promote that product as *Made in USA*. The FTC considers additional factors to decide whether a product can be advertised or labeled as *Made in USA*.

Manufacturers and marketers should check with Customs to see if they need to mark their products with the foreign country of origin. If they don't, they should look at the FTC's standard to check if they can properly make a *Made in USA* claim.

The FTC has jurisdiction over foreign origin claims on products and in packaging that are beyond the disclosures required by Customs (for example, claims that supplement a required foreign origin marking to indicate where additional processing or finishing of a product occurred).

The FTC also has jurisdiction over foreign origin claims in advertising and other promotional materials. Unqualified U.S. origin claims in ads or other promotional materials for products that Customs requires a foreign country-of-origin mark may mislead or confuse consumers about the product's origin. To avoid misleading consumers, marketers should clearly disclose the foreign manufacture of a product.

> **Example:** A television set assembled in Korea using an American-made picture tube is shipped to the U.S. The Customs Service requires the television set to be marked "Made in Korea" because that's where the television set was last "substantially transformed." The company's World Wide Web page states "Although our televisions are made abroad, they always contain U.S.-made picture tubes." This statement is not deceptive. However, making the statement "All our

picture tubes are made in the USA" — without disclosing the foreign origin of the television's manufacture — might imply a broader claim (for example, that the television set is largely made in the U.S.) than could be substantiated. That is, if the statement and the entire ad imply that any foreign content or processing is negligible, the advertiser must substantiate that claim or net impression. The advertiser in this scenario would not be able to substantiate the implied *Made in USA* claim because the product was "substantially transformed" in Korea.

Other Statutes

What are the requirements of other federal statutes relating to country-of-origin determinations?

Textile Fiber Products Identification Act and Wool Products Labeling Act — Require a *Made in USA* label on most clothing and other textile or wool household products if the final product is manufactured in the U.S. of fabric that is manufactured in the U.S., regardless of where materials earlier in the manufacturing process (for example, the yarn and fiber) came from. Textile products that are imported must be labeled as required by the Customs Service. A textile or wool product partially manufactured in the U.S. and partially manufactured in another country must be labeled to show both foreign and domestic processing.

On a garment with a neck, the country of origin must be disclosed on the front of a label attached to the inside center of the neck — either midway between the shoulder seams or very near another label attached to the inside center of the neck. On a garment without a neck, and on other kinds of textile products, the country of origin must appear on a conspicuous and readily accessible label on the inside or outside of the product.

Catalogs and other mail order promotional materials for textile and wool products, including those disseminated on the Internet, must disclose whether a product is made in the U.S., imported or both.

The Fur Products Labeling Act requires the country of origin of imported furs to be disclosed on all labels and in all advertising. For copies of the Textile, Wool or Fur Rules and Regulations, or the new business education guide on labeling requirements, call the FTC's Consumer Response Center (202-382-4357). Or visit the FTC online at **www.ftc.gov**. Click on Consumer Protection.

American Automobile Labeling Act — Requires that each automobile manufactured on or after October 1, 1994, for sale in the U.S. bear a label disclosing where the car was assembled, the percentage of equipment that originated in the U.S. and Canada, and the country of origin of the engine and transmission. Any representation that a car marketer makes that is required by the AALA is exempt from the Commission's policy. When a company makes claims in advertising or promotional materials that go beyond the AALA requirements, it will be held to the Commission's standard. For more information, call the Consumer Programs Division of the National Highway Traffic Safety Administration (202-366-0846).

Buy American Act — Requires that a product be manufactured in the U.S. of more than 50 percent U.S. parts to be considered *Made in USA* for government procurement purposes. For more information, review the Buy American Act at 41 U.S.C. §§ 10a-10c, the Federal Acquisition Regulations at 48 C.F.R. Part 25, and the Trade Agreements Act at 19 U.S.C. §§ 2501-2582.

What To Do About Violations

What if I suspect noncompliance with the FTC's *Made in USA* standard or other country-of-origin mislabeling?

Information about possible illegal activity helps law enforcement officials target companies whose practices warrant scrutiny. If you suspect noncompliance, you may file a complaint online with the FTC Complaint Assistant at ftc.gov/complaint or send an e-mail to **MUSA@ftc.gov**. If you know about import or export fraud, file a complaint with U.S. Customs and Border Protection at **https://apps.cbp.gov/eallegations/**. Examples of fraudulent practices involving imports include removing a required foreign origin label before the product is delivered to the ultimate purchaser (with or without the improper substitution of a *Made in USA* label) and failing to label a product with a required country of origin.

You also can contact your state Attorney General and your local Better Business Bureau to report a company. Or you can refer your complaint to the National Advertising Division (NAD) of the Council of Better Business Bureaus by calling (212) 754-1320. NAD handles complaints about the truth and accuracy of national advertising. You can reach the Council of Better Business Bureaus on the web at **adweb.com/adassoc17.html**.

Finally, the **Lanham Act** gives any person (such as a competitor) who is damaged by a false designation of origin the right to sue the party making the false claim. Consult a lawyer to see if this private right of action is an appropriate course of action for you.

For More Information

The FTC works for the consumer to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint or to get free information on consumer issues, visit **ftc.gov** or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters consumer complaints into the Consumer Sentinel Network, a secure online database and investigative tool used by hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

Your Opportunity to Comment

The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency's responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REGFAIR (1-888-734-3247) or go to **www.sba.gov/ombudsman**.

Enforcement Policy Statement on U.S. Origin Claims

I. Introduction

The Federal Trade Commission ("FTC" or "Commission") is issuing this statement to provide guidance regarding its enforcement policy with respect to the use of *Made in USA* and other U.S. origin claims in advertising and labeling. The Commission has determined, as explained below, that unqualified U.S. origin claims should be substantiated by evidence that the product is all or virtually all made in the United States. This statement is intended to elaborate on principles set out in individual cases and advisory opinions previously issued over the course of many years by the Commission. This statement, furthermore, is the culmination of a comprehensive process in which the Commission has reviewed its standard for evaluating U.S. origin claims. Throughout this process, the Commission has solicited, and received, substantial public input on relevant issues. The Commission anticipates that from time to time, it may be in the public interest to solicit further public comment on these issues and to assess whether the views expressed in this statement continue to be appropriate and reflect consumer perception and opinion, and to determine whether there are areas on which the Commission could provide additional guidance.

The principles set forth in this enforcement policy statement apply to U.S. origin claims included in labeling, advertising, other promotional materials, and all other forms of marketing, including marketing through digital or electronic means such as the Internet or electronic mail. The statement, moreover, articulates the Commission's enforcement policy with respect to U.S. origin claims for all products advertised

or sold in the United States, with the exception of those products specifically subject to the country-of-origin labeling requirements of the Textile Fiber Products Identification Act,[1] the Wool Products Labeling Act,[2] or the Fur Products Labeling Act.[3] With respect to automobiles or other passenger motor vehicles, nothing in this enforcement policy statement is intended to affect or alter a marketer's obligation to comply with the requirements of the American Automobile Labeling Act[4] or regulations issued pursuant thereto, and any representation required by that Act to appear on automobile labeling will not be considered a deceptive act or practice for purposes of this enforcement policy statement, regardless of whether the representation appears in labeling, advertising or in other promotional material. Claims about the U.S. origin of passenger motor vehicles other than those representations required by the American Automobile Labeling Act, however, will be governed by the principles set forth in this statement.

II. Background

Both the FTC and the U.S. Customs Service have responsibilities related to the use of country-of-origin claims. While the FTC regulates claims of U.S. origin under its general authority to act against deceptive acts and practices, foreign-origin markings on products (*e.g.*, "Made in Japan") are regulated primarily by the U.S. Customs Service ("Customs" or "the Customs Service") under the Tariff Act of 1930. Specifically, Section 304 of the Tariff Act, 19 U.S.C. § 1304, 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 or other 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.[5]

The FTC also has jurisdiction over foreign origin claims in packaging insofar as they go beyond the disclosures required by the Customs Service (*e.g.*, claims that supplement a required foreign origin marking, so as to represent where additional processing or finishing of a product occurred). In addition, the Commission has jurisdiction over foreign-origin claims in advertising, which the U.S. Customs Service does not regulate.

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 goods made partially or wholly in the United States be labeled with *Made in USA* or any other indication of U.S. origin.[6] The fact that a product is not required to be marked with a foreign country of origin does not mean that it is permissible to promote that product as *Made in USA.* The FTC will consider additional factors, beyond those considered by the Customs Service in determining whether a product is of foreign origin, in determining whether a product may properly be represented as *Made in USA.*

This statement is intended to address only those issues related to *U.S.* origin claims. In developing appropriate country-of-origin labeling for their products, marketers are urged also to consult the U.S. Customs Service's marking regulations.

III. Interpreting U.S. Origin Claims: The FTC's Deception Analysis

The Commission's authority to regulate U.S. origin claims derives from Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45, which prohibits "unfair or deceptive acts or practices." The Commission has set forth its interpretations of its Section 5 authority in its Deception Policy Statement,[7] and its Policy Statement Regarding Advertising Substantiation Doctrine.[8] As set out in the Deception Policy Statement, the Commission will find an advertisement or label deceptive under Section 5, and therefore unlawful, if it contains a representation or omission of fact that is likely to mislead consumers acting reasonably under the circumstances, and that representation or omission is material. In addition, objective claims carry with them the implication that they are supported by valid evidence. It is deceptive, therefore, to make a claim unless, at the time the claim is made, the marketer possesses and relies upon a reasonable basis substantiating the claim. Thus, a *Made in USA* claim, like any other objective advertising claim, must be truthful and substantiated.

A representation may be made by either express or implied claims. "*Made in USA*" and "Our products are American made" would be examples of express U.S. origin claims. In identifying implied claims, the Commission focuses 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. 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. For

example, assume that 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." Although there is no express representation that the company's product is *Made in USA,* the net impression of the advertisement is likely to convey to consumers a claim that the product is of U.S. origin.

Whether any particular symbol or phrase, including an American flag, conveys an implied U.S. origin claim, will depend upon the circumstances in which the symbol or phrase is used. Ordinarily, however, the Commission will not consider a marketer's use of an American brand name[9] or trademark,[10] without more, to constitute a U.S. origin claim, even though some consumers may believe, in some cases mistakenly, that a product made by a U.S.-based manufacturer is made in the United States. Similarly, the mere listing of a company's U.S. address on a package label, in a nonprominent manner, such as would be required under the Fair Packaging and Labeling Act,[11] is unlikely, without more, to constitute a *Made in USA* claim.

IV. Substantiating U.S. Origin Claims: The "All Or Virtually All" Standard

Based on its review of the traditional use of the term *Made in USA,* and the record as a whole, the Commission concludes that consumers are likely to understand an unqualified U.S. origin claim to mean that the advertised product is "all or virtually all" made in the United States. Therefore, when a marketer makes an unqualified claim that a product is *Made in USA,* it should, at the time the representation is made, possess and rely upon a reasonable basis that the product is in fact all or virtually all made in the United States.[12, 13]

A product that is all or virtually all made in the United States will ordinarily be one in which all significant parts[14] and processing that go into the product are of U.S. origin. In other words, where a product is labeled or otherwise advertised with an unqualified *Made in USA* claim, it should contain only a *de minimis*, or negligible, amount of foreign content. Although there is no single "bright line" to establish when a product is or is not "all or virtually all" made in the United States, there are a number of factors that the Commission will look to in making this determination. To begin with, in order for a product to be considered "all or virtually all" made in the United States, the final assembly or processing of the product must take place in the United States. Beyond this minimum threshold, the Commission will consider other factors, including but not limited to the portion of the product's total manufacturing costs that are attributable to U.S. parts and processing; and how far removed from the finished product any foreign content is.

A. Site of Final Assembly or Processing

The consumer perception evidence available to the Commission indicates that the country in which a product is put together or completed is highly significant to consumers in evaluating where the product is "made." Thus, regardless of the extent of a product's other U.S. parts or processing, in order to be considered all or virtually all made in the United States, it is a prerequisite that the product have been last "substantially transformed" in the United States, as that term is used by the U.S. Customs Service — *i.e.*, the product should not be required to be marked "made in [foreign country]" under 19 U.S.C. § 1304.[15] Furthermore, even where a product is last substantially transformed in the United States, if the product is thereafter assembled or processed (beyond *de minimis* finishing processes) outside the United States, the Commission is unlikely to consider that

product to be all or virtually all made in the United States. For example, were a product to be manufactured primarily in the United States (and last substantially transformed there) but sent to Canada or Mexico for final assembly, any U.S. origin claim should be qualified to disclose the assembly that took place outside the United States.

B. Proportion of U.S. Manufacturing Costs

Assuming the product is put together or otherwise completed in the United States, the Commission will also examine the percentage of the total cost of manufacturing the product that is attributable to U.S. costs (*i.e.*, U.S. parts and processing) and to foreign costs.[16] Where the percentage of foreign content is very low, of course, it is more likely that the Commission will consider the product all or virtually all made in the United States. Nonetheless, there is not a fixed point for all products at which they suddenly become "all or virtually all" made in the United States. Rather, the Commission will conduct this inquiry on a case-by-case basis, balancing the proportion of U.S. manufacturing costs along with the other factors discussed herein, and taking into account the nature of the product and consumers' expectations in determining whether an enforcement action is warranted. Where, for example, a product has an extremely high amount of U.S. content, any potential deception resulting from an unqualified *Made in USA* claim is likely to be very limited, and therefore the costs of bringing an enforcement action challenging such a claim are likely to substantially outweigh any benefit that might accrue to consumers and competition.

C. Remoteness of Foreign Content

Finally, in evaluating whether any foreign content is significant enough to prevent a product from being

considered all or virtually all made in the United States, the Commission will look not only to the percentage of the cost of the product that the foreign content represents, but will also consider how far removed from the finished product the foreign content is. As a general rule, in determining the percentage of U.S. content in its product, 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. In other words, a manufacturer who buys a component from a U.S. supplier, which component is in turn made up of other parts or materials, may not simply assume that the component is 100% U.S. made, but should inquire of the supplier as to the percentage of U.S. content in the component.[17] Foreign content that is incorporated further back in the manufacturing process, however, will often be less significant to consumers than that which constitutes a direct input into the finished product. For example, in the context of a complex product, such as a computer, it is likely to be insignificant that imported steel is used in making one part of a single component (*e.g.*, the frame of the floppy drive). This is because the steel in such a case is likely to constitute a very small portion of the total cost of the computer, and because consumers purchasing a computer are likely, if they are concerned about the origin of the product, to be concerned with the origin of the more immediate inputs (floppy drive, hard drive, CPU, keyboard, etc.) and perhaps the parts that, in turn, make up those inputs. Consumers are less likely to have in mind materials, such as the steel, that are several steps back in the manufacturing process. By contrast, in the context of a product such as a pipe or a wrench for which steel constitutes a more direct and significant input, the fact that the steel is imported is likely to be a significant factor in evaluating whether the finished product is all or virtually all made in the United States. Thus, in some circumstances, there

may be inputs one or two steps back in the manufacturing process that are foreign and there may be other foreign inputs that are much further back in the manufacturing process. Those foreign inputs far removed from the finished product, if not significant, are unlikely to be as important to consumers and change the nature of what otherwise would be considered a domestic product.

In this analysis, raw materials[18] are neither automatically included nor automatically excluded in the evaluation of whether a product is all or virtually all made in the United States. Instead, whether a product whose other parts and processing are of U.S. origin would not be considered all or virtually all made in the United States because the product incorporated imported raw materials depends (as would be the case with any other input) on what percentage of the cost of the product the raw materials constitute and how far removed from the finished product the raw materials are.[19] Thus, were the gold in a gold ring, or the clay used to make a ceramic tile, imported, an unqualified *Made in USA* claim for the ring or tile would likely be inappropriate.[20] This is both because of the significant value the gold and the clay are likely to represent relative to the finished product and because the gold and the clay are only one step back from the finished articles and are integral components of those articles. By contrast, were the plastic in the plastic case of a clock radio that was otherwise all or virtually all made in the United States found to have been made from imported petroleum, the petroleum is far enough removed from, and an insignificant enough input into, the finished product that it would nonetheless likely be appropriate to label the clock radio with an unqualified U.S. origin claim.

V. Qualifying U.S. Origin Claims

A. Qualified U.S. Origin Claims Generally

Where a product is not all or virtually all made in the United States, any claim of U.S. origin should be adequately qualified to avoid consumer deception about the presence or amount of foreign content. In order to be effective, any qualifications or disclosures 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 the effectiveness of the qualification, will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent.

Within these guidelines, the form the qualified claim takes is up to the marketer. A marketer may make any qualified claim about the U.S. content of its products as long as the claim is truthful and substantiated. Qualified claims, for example, may be general, indicating simply the existence of unspecified foreign content (*e.g.*, "Made in USA of U.S. and imported parts") or they may be specific, indicating the amount of U.S. content (*e.g.*, "60% U.S. content"), the parts or materials that are imported (*e.g.*, "Made in USA from imported leather"), or the particular foreign country from which the parts come ("Made in USA from French components").[21]

Where a qualified claim takes the form of a general U.S. origin claim accompanied by qualifying information about foreign content (*e.g.*, "Made in USA of U.S. and imported parts" or "Manufactured in U.S. with Indonesian materials"), the Commission believes that consumers are likely to understand such a claim to mean that, whatever foreign materials or parts the product contains, the last assembly, processing, or finishing of the product occurred in the United States. Marketers therefore should avoid using such

claims unless they can substantiate that this is the case for their products. In particular, such claims should only be made where the product was last substantially transformed in the United States. Where a product was last substantially transformed abroad, and is therefore required by the U.S. Customs Service to be labeled "Made in [foreign country]," it would be inappropriate, and confusing, to use a claim such as "Made in USA of U.S. and imported parts."[22]

B. Claims about Specific Processes or Parts

Regardless of whether a product as a whole is all or virtually 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. This category would include claims such as that a product is "designed" or "painted" or "written" in the United States or that a specific part, *e.g.*, the picture tube in a television, is made in the United States (even if the other parts of the television are not). Although such claims do not expressly disclose that the products contain foreign content, the Commission believes that they are normally likely to be specific enough so as not to convey a general claim of U.S. origin. More general terms, however, such as that a product is, for example, "produced,"or "manufactured" in the United States, are likely to require further qualification where they are used to describe a product that is not all or virtually all made in the United States. 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.

The Commission further concludes that, in many instances, it will be appropriate for marketers to label or advertise a product as "Assembled in the United States" without further qualification. Because "assembly" potentially describes a wide range of processes, however, from simple, "screwdriver" operations at the very end of the manufacturing process to the construction of a complex, finished item from basic materials, the use of this term may, in some circumstances, be confusing or misleading to consumers. To avoid possible deception, "Assembled in USA" claims should be limited to those instances where the product has undergone its principal assembly in the United States and that assembly is substantial. In addition, a product should be last substantially transformed in the United States to properly use an "Assembled in USA" claim. This requirement ensures against potentially contradictory claims, *i.e.*, a product claiming to be "Assembled in USA" while simultaneously being marked as "Made in [foreign country]." In many instances, this requirement will also be a minimum guarantee that the U.S. assembly operations are substantial.

C. Comparative Claims

U.S. origin claims that contain a comparative statement (*e.g.*, "More U.S. content than our competitor") may be made as long as the claims are truthful and substantiated. Where this is so, the Commission believes that comparative U.S. origin claims are unlikely to be deceptive even where an unqualified U.S. origin claim would be inappropriate. Comparative claims, however, should be presented in a manner that makes the basis for the comparison clear (*e.g.*, whether the comparison is being made to another leading brand or to a previous version of the same product). Moreover, comparative

claims should not be used in a manner that, directly or by implication, exaggerates the amount of U.S. content in the product, and should be based on a meaningful difference in U.S. content between the compared products. Thus, a comparative U.S. origin 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.

D. U.S. Customs Rules and Qualified and Comparative U.S. Origin Claims

It is possible, in some circumstances, for marketers to make certain qualified or comparative U.S. origin claims (including claims such as that the product contains a particular amount of U.S. content, certain claims about the U.S. origin of specific processes or parts, and certain comparative claims) even for products that are last substantially transformed abroad and which therefore must be marked with a foreign country of origin. In making such claims, however, marketers are advised to take care to follow the requirements set forth by the U.S. Customs Service and to ensure, for purposes of Section 5 of the FTC Act, that the claim does not deceptively suggest that the product is made with a greater amount of U.S. parts or processing than is in fact the case.

In looking at the interaction between the requirements for qualified and comparative U.S. origin claims and those for foreign origin marking, the analysis is slightly different for advertising and for labeling. This is a result of the fact that the Tariff Act requires foreign origin markings on articles or their containers, but does not govern claims in advertising or other promotional materials.

Thus, on a product label, 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.[23] As a result, under Customs regulations, a product may, for example, be properly marked "Made in Switzerland, finished in U.S." or "Made in France with U.S. parts," but it may not simply be labeled "Finished in U.S." or "Made with U.S. parts" if it is deemed to be of foreign origin.

In advertising or other promotional materials, the Tariff Act does not require that foreign origin be indicated. The Commission recognizes that it may be possible to make a U.S. origin claim in advertising or promotional materials 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. 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. Marketers who wish to make U.S. origin claims in advertising or other promotional materials without an express disclosure of foreign manufacture for products that are required by Customs to be marked with a foreign country of origin 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 implied, as well express, material claims that consumers acting reasonably in the circumstances take from the representations. Therefore, the Commission encourages marketers, where a foreign-origin marking is required by Customs on the product itself, to include in any qualified or comparative U.S. origin claim a clear, conspicuous, and understandable disclosure of foreign manufacture.

Endnotes

1. 15 U.S.C. § 70.
2. 15 U.S.C. § 68.
3. 15 U.S.C. § 69.
4. 49 U.S.C. § 32304.
5. For goods from NAFTA countries, determinations are codified in "tariff shift" regulations. 19 C.F.R. § 102.
6. For a limited number of goods, such as textile, wool, and fur products, there are, however, statutory requirements that the U.S. processing or manufacturing that occurred be disclosed. *See*, *e.g.*, Textile Fiber Products Identification Act, 15 U.S.C. § 70(b).
7. 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).
8. 49 Fed. Reg. 30,999 (1984); *reprinted in Thompson Medical Co.*, 104 F.T.C. 648, appendix (1984).
9. This assumes that the brand name does not specifically denote U.S. origin, *e.g.*, the brand name is not "Made in America, Inc."
10. For example, a legal trademark consisting of, or incorporating, a stylized mark suggestive of a U.S. flag will not, by itself, be considered to constitute a U.S. origin claim.
11. 15 U.S.C. § 1451 *et seq*.
12. For purposes of this Enforcement Policy Statement, "United States" refers to the several states, the District of Columbia, and the territories and possessions of the United States. In other words, an unqualified *Made in USA* claim may be made for a product that is all or virtually all manufactured in U.S. territories or possessions as well as in the 50 states.
13. In addition, marketers should not represent, either expressly or by implication, that a whole product line is of U.S. origin (*e.g.*, "Our products are Made in USA") when only some products in the product line are, in fact, made in the United States. Although not the focus of this Enforcement Policy Statement, this is a principle that has been addressed in Commission cases both within and outside the U.S. origin context. *See*, *e.g.*, *Hyde Athletic Industries*, FTC Docket No. C-3695 (consent order 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.*, FTC Docket No. 9268 (consent order December 2, 1996) (same); *Uno Restaurant Corp.*, FTC Docket No. C-3730 (consent order April 4, 1997) (complaint alleged that restaurant chain represented that its whole line of thin crust pizzas were low fat, when only two of eight pizzas met acceptable limits for low fat claims); *Häagen-Dazs Company, Inc.*, FTC Docket No. C-3582 (consent order 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).

14. The word "parts" is used in its general sense throughout this enforcement policy statement to refer to all physical inputs into a product, including but not limited to subassemblies, components, parts, or materials.

15. It is conceivable, for example, that occasionally a product imported into the United States could have a very high proportion of its manufacturing costs be U.S. costs, but is nonetheless not considered by the U.S. Customs Service to have been last substantially transformed in the United States. In such cases, the product would be required to be marked with a foreign country of origin and an unqualified U.S. origin claim could not appropriately be made for the product.

16. In calculating manufacturing costs, manufacturers should ordinarily use as their measure the cost of goods sold or finished goods inventory cost, as those terms are used in accordance with generally accepted accounting principles. Such costs will generally include (and be limited to) the cost of manufacturing materials, direct manufacturing labor, and manufacturing overhead. Marketers should also note the admonishment below that, in determining the percentage of U.S. content, they should look far enough back in the manufacturing process that a reasonable marketer would expect that it had accounted for any significant foreign content.

17. For example, assume that 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, which constitutes 50% of the total cost of manufacturing the lawn mower, is bought from a U.S. supplier, which, the lawn mower manufacturer knows, assembles the engine in a U.S. factory. Although most of the parts and the final

assembly of the lawn mower are of U.S. origin and the engine is assembled in the United States, the lawn mower will not necessarily be considered all or virtually all made in the United States. This is because the engine itself is made up of various parts that may be imported and that may constitute a significant percentage of the total cost of manufacturing the lawn mower. Thus, before labeling its lawn mower *Made in USA*, the manufacturer should look to its engine supplier for more specific information as to the engine's origin. For instance, were foreign parts to constitute 60% of the cost of producing the engine, then the lawn mower would contain a total of at least 30% foreign content, and an unqualified *Made in USA* label would be inappropriate.

18. For purposes of this Enforcement Policy Statement, the Commission considers raw materials to be products such as minerals, plants or animals that are processed no more than necessary for ordinary transportation.

19. In addition, because raw materials, unlike manufactured inputs, may be inherently unavailable in the United States, the Commission will also look at whether or not the raw material is indigenous to the United States, or available in commercially significant quantities. In cases where the material is not found or grown in the United States, consumers are likely to understand that a *Made in USA* claim on a product that incorporates such materials (*e.g.*, vanilla ice cream that uses vanilla beans, which, the Commission understands, are not grown in the United States) means that all or virtually all of the product, except for those materials not available here, originated in the United States. Nonetheless, even where a raw material is nonindigenous to the United States, if that imported material constitutes the whole or essence of the finished product (*e.g.*, the rubber in a rubber ball or the coffee beans in ground coffee), it would likely mislead consumers to label the final product with an unqualified *Made in USA* claim.

20. Nonetheless, in these examples, other, qualified claims could be used to identify truthfully the domestic processing that took place. For example, if the gold ring was designed and fabricated in the United States, the manufacturer could say that (*e.g.*, "designed and fabricated in U.S. with 14K imported gold"). Similarly, if the ceramic tile were manufactured in the United States from imported clay, the manufacturer could indicate that as well.

21. These examples are intended to be illustrative, not exhaustive; they do not represent the only claims or disclosures that would be permissible under Section 5 of the FTC Act. As indicated, however, qualified claims, like any claim, should be truthful and substantiated and should not overstate the U.S. content of a product. For example, it would be inappropriate for a marketer to represent that a product was "Made in U.S. of U.S. and imported parts" if the overwhelming majority of the parts were imported and only a single, insignificant part was manufactured in the United States; a more appropriate claim would be "Made in U.S. of imported parts."

22. On the other hand, that the last substantial transformation of the product takes place in the United States may not alone be sufficient to substantiate such a claim. For example, under the rulings of the U.S. Customs Service, a disposable razor is considered to have been last substantially transformed where its blade is made, even if it is thereafter assembled in another country. Thus, a disposable razor that is assembled in Mexico with a U.S.-made blade and other parts of various origins would be considered to have been last substantially transformed in the United States and would not have to bear a foreign country-of-origin marking. Nonetheless, because the final assembly of the razor occurs abroad, it would be inappropriate to label the razor "Made in U.S. of U.S. and imported parts." It would, however, likely be appropriate to label the razor "Assembled in Mexico with U.S.-made blade," "Blade made in United States, razor assembled in Mexico" or "Assembled in Mexico with U.S. and imported parts."

23. 19 C.F.R. § 134.46. Specifically, this provision provides 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, and those words, letters or names may mislead or deceive the ultimate purchaser as to the actual country of origin of the article, 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.

    In a *Federal Register* notice announcing amendments to this provision, the Customs Service indicated that, where a product has a foreign

origin, any references to the United States made in the context of a statement relating to any aspect of the production or distribution of the product (*e.g.*, "Designed in USA," "Made for XYZ Corporation, California, U.S.A.," or "Distributed by ABC, Inc., Colorado, USA") would be considered misleading to the ultimate purchaser and would require foreign country-of-origin marking in accordance with the above provision. 62 Fed. Reg. 44,211, 44,213 (1997).

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