Complying with the Made in USA Standard

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Introduction

The Federal Trade Commission (FTC) is charged with promoting deception and unfairness in the marketplace. The FTC has jurisdiction over most business practices affecting commerce and prohibits false or misleading claims that a product is of U.S. origin. Traditionally, the FTC has required that a product advertised as being "made in USA" or "of U.S. origin" meet its "all or virtually all" standard.

In 1997, following consumer research and public comments, the FTC published an Enforcement Policy Statement on U.S. Origin Claims. Many aspects of that Policy Statement (or a parallel business rule) seek to make all unqualified Made in USA claims under the "all or virtually all" standard and those who want to make such claims should refer to that document. This guide provides a brief summary of the Commission's Made in USA Enforcement Policy Statement and its implications for marketers.

In August 2021, the FTC finalized the Made in USA Labeling Rule, this Labeling Rule, available at 16 C.F.R. Part 323. This Labeling Rule codifies the "all or virtually all" standard for products and services. Marketers are now subject to civil penalties if they use an unqualified Made in USA label on a product that is not "all or virtually all" made in the U.S., including its components.

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 and Border Protection (CBP) 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 FTC's staff's view of the law's requirements. It is not binding on the Commission. Links to the Made in USA Policy Statement and the Labeling Rule can also be found at www.ftc.gov/made.

Basic Information About Made in USA Claims

Must U.S. content be disclosed on products sold in the U.S.?
Under other specific laws, U.S. content must be disclosed on automobiles sold in stores, and on textile, wool, and fur products. Marketers should consult those laws and their implementing rules for more information. The FTC does not ordinarily require disclosure about the amount of U.S. content. However, manufacturers and sellers 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 Statement and the Labeling Rule.

What products do the FTC's Made in USA Policy Statement and the Labeling Rule apply to?
The Made in USA Policy Statement and the Labeling Rule apply to all products and services sold in the U.S., except for those specifically subject to country of origin labeling by other laws.

CBP may impose marking requirements on products exported to other countries, and those other countries may also have their own country of origin marking requirements. As a result, importers and exporters should check with the countries to which they are exporting, regarding their marking requirements.

What kinds of claims does the Made in USA Policy Statement cover?
The Made in USA Policy Statement applies to all marketing 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, email, or social media.

A Made in USA claim can be express or implied. Examples of express claims include "Made in USA," "This products was American made," "Made," "Manufactured in USA," or "Built in USA."

In identifying implied claims, the FTC focuses on the overall impression the advertising, labels, or promotional materials convey. Consumers may draw various inferences from a given set of marketing references (for example, U.S. flags, outlines of U.S. maps, or references to U.S. locations or manufacturing facilities) that a product is of U.S. origin when by themselves, or in combination with other phrases or images.

- **Example:** A company promises its product is an iron that features a manager describing the "have America quality" of the iron and pictures of the company's factory in Pittsburgh. Unless there is express representation that the company's product is made in the U.S., the overall — or net — impression that the ad conveys is that the product is made in the U.S., or "made in America."

What kinds of claims does the Labeling Rule apply to?
The Labeling Rule applies to labels on products that make unqualified Made in USA claims. It also applies to any online or other mail order marketing claims that indicate or imply that an item is being labeled or sold in Made in USA.

Brand names and trademarks

Ordinarily, the FTC will not consider a trademark or business name of an American brand name or company to be a Made in USA claim. For example, the name "Made in America" or "American Apparel" is not a qualified U.S. origin claim on a package label or a non-prominent way on a shirt of U.S. origin or a Made in USA label.

- **Example:** A company's trademark advertised as well known in U.S. company. The fact that the company is headquartered in the U.S. also is widely known. Company prepackages its for-foreign-market product promotional items in Asian cartons. Assuming that the trademark 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 products lines

Manufacturers and marketers should be careful when making claims about a product line, that a product line is U.S. origin. CBP has provided one model in CBP's letter ruling some types of products may be treated as made in the U.S. according to the "substantial transformation" test.

Does the FTC oppose Made in USA claims?
A company doesn't need approval from the FTC before making a Made in USA claim and the FTC doesn't pass upon advertising or labeling claims. As with most other advertising claims, a manufacturer or marketer may make claims as long as they have a reasonable basis.

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 Made in USA Policy Statement and in the Labeling Rule, 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 the final assembly or processing of the product occurs in the United States, all significant processing that goes into the product occurs in the United States, and all or virtually all ingredients or components of the product are made and sourced in the United States. That is, the product should contain no — or only a negligible amount of — foreign content.

What substantiation is required for a Made in USA claim?
The Made in USA Policy Statement and the Labeling Rule state that a product's Made in USA, it must have — and must be able to — substantiate that it meets the rule's standard. This means a marketer must have reasonable competent and reliable evidence to back up the claim that its product is "all or virtually all" made in the U.S.

Companies have an ongoing obligation to review their claims and substantiation to make sure they remain accurate. If something changes and the company no longer has a reasonable basis to support its Made in USA claim (for example the company begins sourcing parts overseas), the company must update its marketing material.

What factors does the FTC consider in 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 FTC then considers other factors, including how far back in the product's manufacturing process does the processing, parts and processing, how far removed any foreign content is from the finished product, and the importance of the foreign content to the product's form or function.

Costs don't tell the whole story. 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 value. Conversely, some costs may be low for foreign parts, or there may be foreign content (processing or parts) is more than negligible, and, as a result, unqualified claims are inappropriate.

- **Example:** A company produces watches at a plant in Nevada using mostly U.S. parts and also some foreign parts. The watches are then sent to Switzerland for the addition of a dial and the company uses inexpensive Swiss movements in its watches. Movements accounting for a small proportion of the costs to make the company's watches, but without the movements, the watches can't tell time. Because movements are essential to the watches' function, unqualified Made in USA claim is likely deceptive.

Does the FTC require that a product be made in the U.S. from American-made inputs, or American-made components?
No. The FTC does not require that a product be made from American-made components, or that the parts and processing, has the required any foreign content in the finished product, and the importance of the foreign content to the product's form or function.

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No. In its purchase order, a company states: "Our company requires suppliers to certify the percentage of U.S. content in products supplied to us. If you are unable or unwilling to make this certification, we will not do business with you." The company's purchasing agent responds: "We certify that our ___ is not at least ___ % U.S. content." CBP says that the company can fill in the name of the product and its percentage of U.S. content. The company generally could rely on a certification that is in response to the company's specific request for information.

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 determine if the product's final assembly or processing has been concluded in their assessment of foreign costs. Foreign content unprocessed prior to the manufacturing processes other will not be significant to consumers that consider that a direct part of the finished product or the product's overall function or performance.

Example: The silicon used in microchips within a computer is an early input into a computer's manufacture and likely is considered a large or small portion of the finished product's overall value. On the other hand, the wood in a new computer desk that a wooden table is a direct and significant input into the computer's manufacture, but the wood's value is unlikely to be a substantial portion of the finished product's overall value. Wood is not a significant input.

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 is a gold ring is imported, an unqualified Made in USA claim for the ring is deceptive. Because the gold is the only part of the ring that is removed material from the finished product, and because the gold — a raw material component — is only one step away from the finished product, the gold's value is a significant portion of the ring's overall value.

Additionally, if a qualified claim mentions "U.S. parts," the marketer should be prepared to substantiate those parts are "all or virtually all" Made in USA.

Finally, if a product of foreign origin that, is then, is more substantially transformed abroad, manufacturers and marketers also should make sure they satisfy CBP's marking rules and regulations that require such products be marked with a foreign country of origin.

- **Example:** A company designs a product in New York City and wants the designers to a factory in Bangladesh to make the product. The company's designers "make a sample." The company's specifications state would be a basic substitute consumer to believe that the white cotton shirt is made in the U.S. The company's factory in Bangladesh, the company's factory in Poland and the product is of Polish origin, and the company's factory in the U.S. is a place of other specific processing claims are "Based in U.S. Printed in Turkey." Hand-carried in U.S. Made in Mexico." "Designed in U.S." Painted and Fired in U.S. Made in Germany."

- **Example:** A company advertises its product, which was invented in Seattle and manufactured in Bangladesh, as "Created in USA." Such a deceptive because consumers will likely interpret the term "Created" as the "invention" of the product in the U.S. Blocks like these are unlikely to convey a message limited to a process. Nevertheless, additional qualification is necessary to the product is made in Bangladesh, and the United States.

Manufacturers and marketers should be cautious about using general terms, such as "Combined," "Created," or "Manufactured" in the U.S. Blocks like these are unlikely to convey a message limited to a process. Nevertheless, additional qualification is necessary to the product is made in Bangladesh, and the United States.

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 is not "all or virtually all" made in the U.S. Qualified claims can be express or implied. Examples of express qualified claims of U.S. origin are "Made in USA" or "Product assembled in USA from foreign parts" or "Made in USA from imported parts."

When is a qualified Made in USA claim appropriate?
A qualified Made in USA claim may be 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 qualifiers may imply more domestic content than was actually used to manufacture the product, the FTC's Made in USA Policy Statement, and the Labeling Rule, discourage using the phrase by a significant amount of U.S. content or U.S. processing. If qualified Made in USA claim, the un-qualified claim, must be substantiated.

- **Example:** A marketer is assembled in U.S. The assembly necessarily significant work and constitutes a "substantial transformation" in terms used by CBP. All the crosswitch ringers parts, including the crystals, diodes, and electronic displays, are imported. The marketer's ad states that such as the handset's crosses and the plastic cutoff press are manufactured in the U.S. Because the cost of the U.S. manufacture is a small portion of the total cost of the product. Because the cost of the U.S. manufacture is a negligible component to the value of the product, a claim on the bracket that it is "Made in USA and Imported Parts" is deceptive. A claim that the "Made in U.S. from imported Parts" is deceptive if the product is not made in the U.S.

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 component was made in the U.S. may be deceptive if the product's final assembly or other process or parts, but the general manufacture of the product, is not made in the U.S. Limited claims are fine.

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Comparative Claims

Comparative claims must be truthful and substantiated, and presented in a way that makes the basis for the comparison clear. Marketers should be careful when making claims that compare U.S. origin to foreign versions of the same products. These claims frequently describe the U.S. product as the product and not based on a meaningful difference in U.S. content between the compared products.

- **Example:** A company boasts online, "We are more U.S. content than our competitors." The manufacturer assembles the phones in the U.S. from American and imported components and can substantiate the difference between the U.S. content of its phones and that of the other manufacturer's phones is significant. This comparative claim is not deceptive.

- **Example:** A product is advertised as being "made in America and made in U.S. content as before." The U.S. content in the product has been increased from 5 percent to the previous amount, which is present 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 is negligible.

Assembled in USA Claims

A product that includes foreign components may be called "Assembled in USA" without qualification when the principal assembly takes place in the U.S. and the assembly is substantial. For the "principal" assembly to qualify the product as "substantial transformation" and thus be deemed U.S. origin, the U.S. that's only a simple "screwdriver" assembly in the U.S. of foreign components may a final step at the end of the manufacturing process, it doesn't constitute a "substantial" assembly qualifying for the "assembled in USA" claim.

- **Example:** A team increase component of all domestic parts except for the cable sheathing. Furthermore, screw-on caps and "Tips" are imported and assembled in the U.S. Because the U.S. "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., and are substantially transformed some CBP's standards and may be marked with a foreign country of origin. An "Assembled in U.S." notice would further qualification is deceptive.

The FTC and Customs and Border Protection (CBP)

What is CBP's jurisdiction over country of origin claims?
Under the Tariff Act of 1930, as amended, products must be marked with a foreign country of origin (for example, "Made in Japan"). When an imported product incorporates material from a processing from more than one country, CBP considers the country of origin to be the last country in which a "substantial transformation" took place. Marking requirements are based on the percentage of equipment that originates in the U.S. and Canada, the names of countries other than the U.S. and Canada contributing some of the overall value of the product, and the extent to which the entities within the carline, and the country of origin and assembled. Any manufacturer or importer should check with CBP to see if CBP has issued a ruling on a particular product's country. When a company orders orders a manufacturer or importer, the manufacturer, the manufacturer, and the National Highway Traffic Safety Administration's rules.

The Buy American Act? requires preference for Made in USA products in government procurement. For more information, review the Buy American Act of 41 U.S.C. Chapter 10. The most recent version of the Federal Acquisition Regulations includes the amount of domestic content products must have to be considered Made in USA for procurement purposes.

What To Do About Violations

What if I suspect noncompliance with the FTC's Made in USA standard or other country of origin marking?
Information about possible illegal activity falling into law enforcement officials larger companies whose practices affect many consumers. Consumers can report fraud, deceptive practices, and other problems to us at ftc.gov/complaint. If you know about import or export fraud, fill a complaint with CBP. Examples of fraudulent practices involving imports include referencing a required foreign country of origin on a product, contents, or invoice with purchaser, belief or affirmation that the product is not substantial or a Made in USA and selling it below a product with a required country of origin.

If you suspect a violation of the Made in USA Policy Statement or the Labeling Rule, you can report a complaint. Or you can contact your local or state law enforcement agency. Consumers can also report to the Better Business Bureau (BBB) at bbb.org. BBB maintains information about the truth and accuracy of national advertising.

Finally, the Lanham Act gives every person (such as a competitor) who is damaged by a false designation of origin the right to sue the party making the false claim. Contact a lawyer for advice on private rights of action or an appropriate course of action for you.

For more information
The FTC works to prevent fraudulent, deceptive, and unfair practices that target businesses and consumers. Learn business tips and best practices at BusinessLaw.ftc.gov. We also provide guidance at Business.ftc.gov to help companies comply with the law. Visit ftc.gov/tips for more information about consumer protection laws and how to report problems. Follow the organization on the Internet by going to ftc.gov/blog, ftc.gov/tips, or ftc.gov/appropriateforbusiness to stay current on recent cases and other enforcement. Subscribe to the FTC's Business Blog.

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 activity of federal agencies based on small business comments and recommends Regional Fairness Boards. 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.

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