

COMMISSION AUTHORIZED

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Comments of the
Bureau of Consumer Protection
Federal Trade Commission

Submitted to the
U.S. Customs Service
Department of Treasury

on

Proposed Regulations Concerning
Country-of-Origin
Marking of Jewelry
(19 CFR 134)

I. Introduction

The staff of the Bureau of Consumer Protection of the Federal Trade Commission (FTC)¹ appreciate the opportunity to submit these comments to the U.S. Customs Service ("Customs") concerning its proposals to expand the labeling requirements for imported Native American-style jewelry.² The proposed regulations would require the country-of-origin to be disclosed in a permanent manner to avoid the removal of country-of-origin labels after importation and prior to sale to the ultimate consumer.³ Customs is proposing the regulations to address the problem of imported jewelry being passed off as Native American products by the removal of the country-of-origin label.

In addition to seeking comment on the Native American-style jewelry marking proposal (option 1), the notice also seeks comment on two alternative regulations: requiring permanent marking on all imported silver and silver alloy jewelry, and all

¹ These comments are the views of the staff of the Bureau of Consumer Protection of the Federal Trade Commission. They are not necessarily the views of the Commission or any individual Commissioner. Questions about these comments may be addressed to Elaine D. Kolish, Assistant Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th Street and Pennsylvania Ave., N.W., Washington, D.C. 20580, telephone: (202) 326-3042.

² 54 Fed. Reg. 6418 (Feb. 10, 1989).

³ Under the current proposal, items would have to be marked by cutting, die-sinking, engraving, stamping or alternatively, by permanently affixing a plastic or metal tag indelibly marked with the country of origin to the item. This proposal would replace existing regulations permitting country-of-origin labels via adhesive labels or string tags, although these methods would still be permitted for jewelry too small to be otherwise marked.

other jewelry in the Native American-style (option 2) or requiring permanent marking on all jewelry (option 3). The rationale for the alternative proposals is that they avoid the issue of having to determine what constitutes Native American-style jewelry. The Customs Service states its preference for the "all jewelry" option on this basis.

As explained in Section II, because of the FTC's interest and experience with these issues, the staff are pleased to provide comments on the regulatory proposal, as more fully described in Section III below. In sum, we believe that the proposal to require permanent marking on only imported items in the Native American style is likely to be the least costly to importers and U.S. jewelry consumers. We urge Customs to consider whether the costs associated with defining the Native American style outweigh the burden on importers and U.S. jewelry consumers. Section IV discusses the cost/benefit analysis.

II. FTC Staff Interest

The FTC is an independent regulatory agency responsible for fostering competition and safeguarding the interests of consumers.⁴ The staff of the FTC, upon request by federal, state, and local government bodies, analyze regulatory or

⁴ 15 U.S.C. § 41 et seq.

legislative proposals that may affect competition or the efficiency of the economy.

The staff are particularly interested in Customs' proposed regulations because the Commission has been concerned about misrepresentation of Native American jewelry for many years. In 1968, the Commission announced an enforcement policy stating that imported simulated American Indian products should not be sold without disclosing the country of origin legibly and in a manner permanent enough to remain on or attached to the products until sold to the ultimate consumer.⁵ More recently, in 1985, the Commission staff assisted the Department of Commerce in preparing a report for Congress about Native American-style products. Our role consisted of providing information to the Department of Commerce about the law enforcement tools available to the Commission to combat deceptive representations.⁶

Staff also provided the Department of Commerce with information about a then planned brochure to educate consumers

⁵ The Commission's Guides for the Jewelry Industry, 16 C.F.R. Part 23, also address country-of-origin issues. Specifically, the Guides state that it is an unfair trade practice to sell foreign made products without disclosing conspicuously the country of origin where the failure to do so would be misleading or deceptive. *Id.* at § 23.3.

⁶ For example, the staff explained that under Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, the Commission can initiate law enforcement actions to stop unfair or deceptive acts or practices in or affecting commerce, such as the material omission of a product's country of origin.

about how to protect themselves from unscrupulous sellers who remove country-of-origin labels. The brochure, called "Buying Native American Jewelry," was subsequently published in April 1986. This publication suggests ways to identify authentic American Indian jewelry, gives tips to detect counterfeits, and provides information about common Indian jewelry terms. To date, more than 35,000 copies of the brochure have been disseminated to members of the public.

In addition to experience with Native American jewelry issues, the FTC staff have substantial experience with other country-of-origin disclosure issues. Pursuant to statutory directives, the Commission has issued regulations requiring country-of-origin disclosures for textile, wool and fur products.⁷ In implementing the Commission's responsibilities in these and other areas, the staff have developed substantial expertise in analyzing disclosure issues.⁸

⁷ 16 C.F.R. Parts 300, 301, and 303.

⁸ For example, the staff have used their expertise to submit comments to the Department of Agriculture and the Bureau of Alcohol, Tobacco, and Firearms (BATF) at the Department of Treasury concerning advertising and labeling disclosure regulations for products ranging from meat food products (Food Safety and Inspection Service, Docket No. 86-049P, filed Nov. 8, 1988) to light alcoholic beverages (BATF Notice No. 659, filed Nov. 15, 1988).

III. Proposed Regulations

The Customs Service initiated the proposed regulatory changes because of allegations that imported Native American-style jewelry was being passed off as authentic by removal of the required country-of-origin label. The allegations were documented by the Department of Commerce in its report, titled "Study of Problems and Possible Remedies Concerning Imported Native American-Style Jewelry and Handicrafts," which was transmitted to Congress in July 1985. In response to the report, in 1986 the Customs Service solicited comment on an interpretive rule that all imported Native American-style jewelry be marked permanently with the country of origin.⁹

Customs now proposes to issue a country-of-origin marking requirement as an amendment to 19 C.F.R. Part 134, Customs Regulations.¹⁰ Because of the change from an interpretive rule to an amendment, as well as the addition of two options that expand the scope of the regulations, Customs is again seeking comments. Specifically, Customs has requested comments that will

⁹ 51 Fed. Reg. 25574 (July 15, 1986).

¹⁰ This change was precipitated at least in part by the Omnibus Trade and Competitiveness Act of 1988. Pub. L. 100-418 (Aug. 23, 1988). This Act requires the Secretary of the Treasury to issue, within one year of enactment, regulations requiring "indelible and permanent country-of-origin marking, to the greatest extent possible, on all imported Native American-style jewelry and Native American-style arts and crafts."

help it weigh the costs and benefits of each of the options before taking final action.¹¹

IV. Cost/Benefit Analysis

In our view, regulatory efforts should focus on the problem that has been identified relating to Native American-style crafts. Further, we note Congress' legislative mandate is limited to directing Customs to issue permanent marking regulations for Native American-style goods. However, the presumption for narrow, focused regulation, addressing the identified problem, might be overcome if it could be demonstrated that it would be more efficient and less costly overall to regulate more broadly under either option (2) or (3). If there is no substantial evidence of benefit to consumers from the broader regulatory options, we believe the added regulatory compliance costs should be limited to the area where there is documented consumer deception and unfair competition (Option 1).¹²

¹¹ Customs also seeks information that would, in a practical way, help it distinguish Native American-style jewelry imports from other jewelry imports. Our comment suggests asking for assistance from experts in this area.

¹² Further, because of the difficulty of identifying targets and bringing enforcement actions once the goods have entered commerce, we favor Customs focusing its regulatory and inspection efforts on ensuring that Native American-style imports are properly and permanently marked with the country of origin.

In considering the various options Customs has proposed, we attempted to estimate some of the costs that would be involved in marking jewelry permanently. We also tried to assess the benefits of each option. Our analysis provides an outline of the relevant costs and benefits we have identified.

A. Costs of the All Jewelry Option (Option 3)

The information we have obtained from industry representatives and others suggests that permanent marking is far more costly than the marking methods currently permitted. Our understanding is that at present many importers print adhesive country-of-origin labels in the United States, ship them overseas, and have them applied there. Although we do not have any specific cost figures for these operations, it appears that this marking method is less expensive than permanent marking methods. For example, dies are needed for marking jewelry, and such dies range in cost between \$25 to \$250.¹³ Although dies also could be used to print labels, the cost of dies for marking jewelry are likely to be higher in the range.¹⁴ Further, the number of dies a company would need for its products would probably vary according to the number of different shaped items produced by the company.

¹³ Richard Murphy, Division Manager, M.C. Smith Co. (a die-manufacturing company), Providence, R.I.

¹⁴ For simple labels it is more likely that a less expensive printing process photo offset plate would be used.

In addition to the expenditures to obtain needed dies, significant costs could be incurred in applying the dies to items. In the United States, the labor costs for hand stamping are estimated to be between 15 to 25 cents per item,¹⁵ although abroad the costs could be higher or lower.¹⁶ In countries with extremely low wage rates the costs might be as low as one to two cents an item,¹⁷ while in higher wage countries the costs might be higher than those in the U.S. Since the volume of jewelry imported into the United States is very large, the aggregate costs (of marking all jewelry) to the manufacturers, and ultimately to consumers, will be substantial even if the costs per piece are modest.¹⁸ Further, in some instances the act of stamping the items (if the alternative of affixing a metal or plastic tag permanently is not feasible) may damage the item,¹⁹ in which case its value would be reduced and the effective cost of stamping would be increased. Finally, we also learned that at

15 Alfred M. Weisberg, Vice-President and Chairman of the Board, Technic, Inc. (a manufacturer of electroplating chemicals, and equipment), Providence, R.I. Before the die can be applied, the item must be secured in a proper "seat" thereby increasing the complexity of the operation.

16 Although adhesive labels and string tags are applied by hand too, the operation is simpler and therefore less costly.

17 See note 15, supra.

18 Precious metal jewelry imports alone amounted to \$1.9 billion in 1986. Costume jewelry imports totalled \$570 million. 1987 U.S. Industrial Outlook, Washington, D.C., U.S. Department of Commerce, 1987, p. 45-3.

19 See note 24, infra. (The European community contends that some jewelry may be impaired by marking requirements).

least some foreign manufacturers probably do not have the equipment that would be needed to mark items permanently.²⁰ Thus, capital expenditures might be required to comply.

B. Costs of the All Silver Jewelry Option (Option 2)

The option requiring that all silver jewelry be marked permanently also appears to increase costs. Although Native American craftsmen work in a variety of styles and techniques, including some very modernistic styles, we can expect that it will be the more traditional styles that sellers will try to pass off as authentic goods. According to staff at the Indian Arts and Crafts Board at the Department of Commerce, only a small amount of imported silver jewelry could likely be passed off as Native-American jewelry. Based on import figures, we can expect more than 1.3 million dozen pieces of jewelry to be affected by a requirement to mark all silver jewelry.²¹ We estimate that hand stamping could cost up to \$3.9 million annually on this volume of silver jewelry imports.²² This amount, less the costs that paper labels would have cost, could increase the prices consumers pay.

20 Richard Murphy, see note 13, *supra*.

21 According to staff at the Department of Commerce, 1,329,929 dozen pieces of silver jewelry were imported in 1983. The figure was more than 1.5 million dozen pieces in 1987.

22 This estimate assumes stamping costs of \$.25 per item and 1.3 million dozen items. It does not include the costs of dies or of stamping equipment.

C. Other Costs of the Broader Options

Finally, another factor that should be considered, although it is difficult to quantify, is the effect of options (2) and (3) on trade relations. A potential cost of adopting the option to require permanent marking for all jewelry, and to a lesser extent the all silver jewelry option, might be to aggravate trade relations. Because trade plays a major role in increasing competition and keeping prices low for consumers, increased trade tension, which might disrupt trade, could severely harm consumers.²³ The specific risk is that foreign countries could

²³ In February 1989, Dr. David Tarr of the Bureau of Economics of the FTC published a staff report titled, "A General Equilibrium Analysis of the Welfare and Employment Effects of U.S. Quotas in Textiles, Autos and Steel." This report concluded that tariff barriers such as quantitative restraints (QRs) the U.S. has imposed limiting the amount of imports from certain countries, result in substantial costs to consumers. For example, QRs imposed in the automobile, steel and textile and apparel industries are estimated to cost consumers \$20.9 billion per year (based on 1984 values). Report at p. 1. Other literature estimates that the cost to consumers of existing trade restrictions exceeds \$55 billion annually. Hufbauer, G., and H. Rosen, Trade Policy for Troubled Industries, Washington, D.C., Institute for International Economics, 1986. Moreover, costs to consumers vastly exceed the wages of any jobs saved. In some cases, trade restrictions actually cost jobs as domestic firms take advantage of trade restrictions to raise prices. Winston, C., et al., Blind Intersection, Washington, D.C., Brookings Institution, 1987, pp. 61-67. A March 31, 1989 Bureau of Economics submission to the International Trade Commission titled "Effects of U.S. Import Restraints on Manufactured Products: General Equilibrium Results," which assessed the effects of QRs on steel (and other) imports estimated, for example, that there would be 14,600 fewer workers in industries (not counting the auto industry) that use steel as an input, as a result of U.S. import restrictions on steel. Submission at p. 7. The literature also shows that consumer losses are not evenly distributed; the poor typically bear a much higher burden in

(continued...)

interpret increased marking and inspection procedures by Customs as an effort to exclude or increase the cost of imported jewelry under the guise of a consumer protection policy at a time when trade tensions are already high. Although it is difficult to assess the likely cost to consumers of increased trade tension in the jewelry area, it is worthwhile noting that stamping of precious metal jewelry imports has already attracted attention from the European Community as a U.S. trade barrier.²⁴ United States exports of jewelry, which amounted to \$225 million in 1986, could be jeopardized by retaliatory foreign trade barriers.²⁵ It is also possible that U.S. exports of other products might be affected.

²³(...continued)
proportion to their income. Hickok, S., "The Consumer Cost of U.S. Trade Restraints," Quarterly Review (of the Federal Reserve Bank of New York) (Summer 1985), pp. 1-12.

²⁴ The European Community has published a list and description of practices that it considers to be trade barriers erected by the U.S. to impede imports from Europe. The 1988 Report on U.S. Trade Barriers, Washington, D.C., European Community Office of Press and Public Affairs, 1987. This report (at p. 10) includes a discussion of current U.S. jewelry marking regulations. It states, in part: "Small items of jewelry do not lend themselves to marking. In many cases even the indication of the gold and silver content, as required by other acts and regulations, can only be embossed with great difficulty. Further marking of the articles in question would very often lead to impairment of the pieces of jewelry." The European Community has asked that jewelry be exempted from marking requirements for the reasons listed in the report.

²⁵ Costume jewelry exports accounted for \$70 million and precious metal jewelry exports accounted for \$155 million. 1987 U.S. Industrial Outlook, Washington, D.C., U.S. Department of Commerce, 1987, p. 45-3.

In summary, it appears that imposing additional costs for all imported jewelry or all silver and silver-like jewelry, regardless of its relationship to the Native American style, will raise consumer prices. In addition, the broader options risk increased consumer costs from heightened trade friction.

D. Benefits of the Broader Options

There appears to be little corresponding increased benefits for consumers from these two broader options. The documented consumer problem is in Native American-style jewelry; hence, a regulatory program that goes beyond this area would provide little additional benefits to consumers. However, there could be benefits for Customs. By requiring all jewelry or all silver and silver-like jewelry to be marked permanently, Customs could avoid the costs of defining the Native American style.²⁶ Although the number of items subject to inspection would increase, Customs might have lower inspection costs under a broad, more easily interpreted regulation.²⁷ However, to ascertain whether Customs

²⁶ The broader options also might benefit manufacturers by eliminating uncertainty about what items need to be marked permanently (although there invariably would be disagreements about whether items are small enough to be eligible for an exemption). However, if the Native-American jewelry option were chosen, manufacturers might obtain nearly the same benefit by seeking advisory opinions from Customs about items that might be the subject of a dispute.

²⁷ If determining what items must be marked permanently is a difficult, time-consuming task, from Customs' point of view, there could be inspection efficiencies from the broader options.

would actually incur costs or obtain benefits would depend on the scope of the inspection protocol that Customs adopts.

To the extent Customs reduces its regulatory costs, there could be benefits to consumers in terms of tax savings. We urge Customs to consider, however, whether its savings will offset the additional costs to importers, and hence consumers.

V. Conclusion

We recognize that defining the Native American style, and limiting the regulations to this area may require additional effort by Customs to refine its regulations. If Customs decides to define the Native American style, we suggest that it explore whether the Indian Arts and Crafts Board or other experts could provide assistance in this regard.

Finally, to help control potential abuses, the FTC staff intend to continue disseminating the brochure "Buying Native American Jewelry" to interested individuals and to recommend enforcement actions in appropriate circumstances. The FTC staff also would be pleased to cooperate with Customs officials in preparing guidelines for inspectors, or in other ways, if it would be helpful.