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UNITED STATES OF AMERICA
Federal Trade Commission
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PREPARED REMARKS OF COMMISSIONER ROHIT CHOPRA

On a Motion to Adopt the Final Made in USA Rule

July 1, 2021

When businesses decide where to produce their goods, more and more of them are looking to produce here in the United States so they can sell those goods with a Made in USA label. Studies show that consumers prefer many types of goods that are made in America, and are often willing to pay a premium for it. During my time as a Commissioner, I've had the chance to hear from many honest businesses that produce their products in the United States, who face an unfair competitive environment, and lose out to those who lie on their labels. Enforcement of our truth-in-advertising laws is one of the only ways to stop this rampant abuse.

But, for decades, there has been a bipartisan consensus among FTC Commissioners that Made in USA fraud should not be penalized.

In 1994, shortly after NAFTA took effect, Congress enacted legislation that explicitly authorized the FTC to trigger civil penalties and other relief for Made in USA fraud, but only after formally codifying a rule. However, past Commissioners spanning multiple administrations never even proposed one.

Instead, over the past quarter century, Commissioners implemented a highly permissive Made in USA fraud policy, where violators faced essentially no consequences whatsoever. Even in cases of egregious abuse, Commissioners routinely voted to allow wrongdoers to settle for no money, no admission or findings of liability, and no notice to victims. In my view, this policy was misguided and in direct contravention of both the letter and spirit of the law Congress enacted.

In 2019, TINA.org, an advertising watchdog, submitted a petition requesting that the FTC finally implement the 1994 statute. In 2020, the Commission issued its proposal and then analyzed over 700 comments from manufacturers, retailers, farmers and ranchers, consumers, and even foreign governments. After considering these comments, the Commission has adopted a rule consistent with the authority granted by Congress.

A few points of note about the final rule:

First, the Commission has codified the "all or virtually all" standard, consistent with the FTC's longstanding Enforcement Policy Statement on U.S. Origin Claims. This standard covers unqualified claims, but it is not a mandatory labeling requirement. Importantly, this is a "restatement rule," which affirms longstanding guidance and legal precedent with respect to

Made in USA labels – thereby imposing no new obligations on manufacturers and sellers. Because of the stricter sanctions they trigger, restatement rules such as this one will increase fraud deterrence and ensure that victims can be made whole.

Second, the Commission has outlined a definition of “label” consistent with the Commission’s statutory authority and expertise on labeling. While the Commission declines to adopt a definition of “label” that includes a list of specific examples, such as restaurant menus, the rule’s definition of “label” extends beyond labels that are physically affixed to a product. In some circumstances, labels appearing online may also be subject to the rule. The Commission has declined to cover advertising more broadly, as this is inconsistent with the authority granted by Congress.

Third, it is worth noting the large number of comments regarding agricultural products, including beef. The rule declines to grant a blanket exemption sought by the meatpacking industry. This would be inappropriate given the Commission’s authority prescribed by Congress under the Packers and Stockyards Act. However, it is important to recognize our interagency partner here. Today, the U.S. Department of Agriculture has announced that it will be conducting a top-to-bottom review of its own labeling standard, which allows a “Product of USA” designation even for certain imported beef processed in America. I am extremely grateful to Secretary Tom Vilsack and USDA staff for the action they are taking.

I am especially pleased that the USDA has acknowledged that its “Product of USA” designation may be misleading. I hope the USDA will study the FTC’s rulemaking record carefully and come to the same conclusion I have: the USDA’s Product of USA standard is deceptive and distorts competition in the retail market for beef. I also believe that unqualified “Product of USA” claims for beef are only appropriate when the product was born, raised, and slaughtered in the United States. Given our shared jurisdiction, I expect that the Commission will carefully coordinate with the USDA on any enforcement proceeding as it relates to retail sales of meat. In sum, the FTC’s final Made in USA rule provides substantial benefits to the public by protecting businesses from losing sales to dishonest competitors, and protecting families seeking to purchase American-made goods. The rule will especially benefit small businesses that rely on the Made in USA label, but lack the resources to defend themselves from imitators.

More broadly, this long-overdue rule is an important reminder that the Commission must do more to use the authorities explicitly authorized by Congress, rather than ignoring them. I thank everyone who contributed to the development of this final rule to protect the Made in USA brand and guard against rampant abuse.

With all this in mind, having published a notice of proposed rulemaking in the Federal Register, and having given all interested persons an opportunity to participate in the rulemaking through the public comment and submission process, in accordance with Section 553(a) of the Administrative Procedure Act, I move that the Commission publish the circulated notice in the Federal Register, issuing a final rule related to “Made in USA” and other unqualified U.S.-origin claims, to take effect 30 days after its publication in the Federal Register.