



August 20, 2018

Mr. Donald S. Clark
Secretary of the Commission
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Re: Hearings on Competition and Consumer Protection in the 21st Century – Topic 1: The State of Antitrust and Consumer Protection Law and Enforcement, and Their Development, Since the Pitofsky Hearings

Dear Mr. Clark,

The Precious Metals Association of North America (PMANA) is grateful for the opportunity to submit comments to the Federal Trade Commission (FTC) regarding its upcoming hearings on competition and consumer protection in the 21st Century. This comment is in response to Topic 1 on “the state of antitrust and consumer protection law and enforcement, and their development, since the Pitofsky hearings”. In relation to Topic 1, we respectfully request that the FTC conduct a comprehensive review of its “Made in USA” standard for labels under the Violent Crime Control and Law Enforcement Act of 1994 (Public Law No. 103-322).¹

Since the “Made in USA” standard was last reviewed in 1997, the FTC has upheld the “all or virtually all” standard for unqualified claims. That is, all or virtually all of a product must originate in the United States, and manufacturers need to be able to substantiate the fact. In the case of jewelry made with recycled precious metals, such a claim cannot be made since the jewelry may contain natural resources that were mined outside of the United States.²

This determination was made in a 2014 FTC advisory opinion which was based, in part, on responses to a consumer perception survey provided by the jewelry industry.

The industry survey found that 92 percent of Americans agree that a “Made in USA” standard should be consistent across all government agencies. Another 90 percent also agreed that the same standard for calling something “Made in” should apply whether it is the U.S. or another country, such as Canada or Japan. In other words, the same standard used by Customs and Border Protection (CBP) for determining origination of imports should be used by the FTC to determine whether a product is “Made in USA”.

Currently, the FTC is the only U.S. agency with the “all or virtually all” standard for determining origination, whereas other federal agencies, including the Department of Commerce, United

¹ 15 U.S.C. § 45a.

² Jewelers Vigilance Committee, FTC Matter No. P074204 (2014)

States Trade Representative (USTR), and CBP follow a different standard for scrap, as defined in 19 C.F.R. Section 102.1. These differing treatments put American jewelry manufacturers at a considerable disadvantage to foreign imports from competing countries.

Through the *Enforcement Policy Statement on U.S. Origin Claims*, the FTC provides guidance on how Section 5 of the FTC Act is applied to “Made in USA” claims. According to the 2014 letter, this guidance is based on public comments received in 1997 and a consumer perception survey conducted in 1995.³ It should also be noted that following the 1995 survey, the FTC proposed ‘safe harbors’ for labelling a product “Made in USA” – including one that required substantial transformation in the United States and 75 percent of total manufacturing costs attributed to the United States.⁴ The ‘safe harbors’ were eventually discarded after the public was invited to comment on the proposed changes.⁵

Over two decades have passed since the “Made in USA” standard received public comment. Since then, innovation, significant international developments, and evolving business practices have altered supply chains – including those of domestic recyclers and refiners who repurpose precious metals scrap for production in the United States. As these changes occur, consumers’ perceptions evolve, as well.

With this in mind, we believe the “Made in USA” standard should accurately reflect consumer perception in 2018 rather than 1997. To reflect these significant changes, and to ensure the continued protection of American consumers and businesses, we respectfully request consideration by the FTC to review its “Made in USA” standard and open a period for public comment on the matter.

Thank you again for the opportunity to provide comments on this important topic. Should you or your staff have any questions, please do not hesitate to email Mitchell Moonier at MMoonier@mwcapitol.com or call or our office at (703) 383-1330.

Sincerely,



Jon Potts
Precious Metals Association of North America

³ Ibid, Jewelers Vigilance Committee, FTC Matter No. P074204 (2014)

⁴ 62 F.R. 25020-01

⁵ 62 F.R. 63756-01