

COMMENTS OF THE  
INTERNATIONAL PRECIOUS METALS INSTITUTE, INC.  
TO THE FEDERAL TRADE COMMISSION  
REGARDING HEARINGS ON “COMPETITION AND CONSUMER  
PROTECTION IN THE 21<sup>ST</sup> CENTURY”  
**PROJECT NUMBER P181201**

SUBMITTED AUGUST 16, 2018

The International Precious Metals Institute, Inc. (“IPMI”) appreciates the opportunity to submit its comments to the Federal Trade Commission (“FTC”) in response to its *Hearings on Competition and Consumer Protection in the 21<sup>st</sup> Century*. ”

Specifically, IPMI’s comments focus on the topic of the “interpretation and harmonization of state and federal statutes and regulations that prohibit unfair and deceptive acts and practices” (Item no. 10 of the notice dated June 26, 2018.)

Background

The IPMI was founded in 1976 as an IRS 501(c)3 non-profit scientific and educational institution. One of its specific purposes is to serve as a liaison between the precious metals industry and government. Our members include more than 1,000 companies and individuals from every sector of precious metals: banking & trading, jewelry design & manufacture, precious metals refining, precious metals alloys manufacturing, electronics, precious metals mining, precious metals research, numismatics, automotive, petroleum, pharma, catalysis and more. Each sector has significant presence of operations within the USA.

Made in the USA and Rules of Origin

Over the last twenty years, United States government agencies have adapted their *rules of origin* to worldwide standards and practices principally as a result of changing trade patterns and globalization. However, the FTC’s standards on labeling as they apply to precious metals and precious metals products have not adapted to such economic realities and have remained unchanged. Today, the FTC’s rules and standards diverge—sometimes diametrically—from those of other United States government agencies.

Twenty years ago, the FTC determined that, to be labeled “Made in USA,” a product must be produced “all or virtually all” in America. The “all or virtually all” standard is far more restrictive than the rules of origin applied by other United States government agencies and used in other countries. It is technically very difficult and costly to achieve. It has been destructive to American manufacturers and has placed them at a severe competitive disadvantage. American jobs are being lost as a result. And it flies in the face of United States laws and treaties.

The FTC has ruled<sup>1</sup> that goods made with scrap (recycled) of unknown original mine origin cannot be labeled “Made in USA.” However, the Department of Homeland Security, Customs and Border Protection (CBP) share the international standard that the origin of scrap (and mine material) is the country in which it is collected or refined into a product (such as bullion of elemental purity derived from gold, silver or the platinum group metals).

### Customs and Border Protection Rules of Origin

The Code of Federal Regulations with respect to CBP rules of origin state as follows:

#### Title 19 - Customs Duties

Volume: 1 Date: 2012-04-01 Original Date: 2012-04-01 Title: PART 102 - RULES OF ORIGIN Context: Title 19 - Customs Duties. CHAPTER I - U.S. CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF THE TREASURY.

(<http://www.gpo.gov/fdsys/pkg/CFR-2012-title19-vol1/pdf/CFR-2012-title19-vol1-part102.pdf> )

#### **§ 102.1 Definitions**

(d) Domestic material. “Domestic material” means a material whose country of origin as determined under these rules is the same country as the country in which the good is produced. (e) Foreign material. “Foreign material” means a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced. (f) Fungible goods or fungible materials. “Fungible goods or fungible materials” means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical. (g) A good wholly obtained or produced. A good “wholly obtained or produced” in a country means:

(1) A mineral good extracted in that country; ...

(9) Waste and scrap derived from: (i) Production in a country, or (ii) Used goods collected in that country provided such goods are fit only for the recovery of raw materials; and (10) A good produced in that country exclusively from goods referred to in paragraphs (g)(1) through (10) of this section or from their derivatives, at any stage of production

The first definition §102.1(9)(i) states that scrap generated from production is domestic to the country in which it was generated. Even if the item being produced is made from foreign-derived raw material, the production scrap generated is domestic to the country in which the product was manufactured.

---

<sup>1</sup> FTC Advisory Staff Opinion issued September 2014 by Julie Ensor, Attorney, Division of Enforcement, to Richline Group, Inc. stating that using the “Made in America” label for jewelry made and manufactured in the U.S. would deceive consumers because the origin of the scrap (recycled) gold used to manufacture jewelry cannot be adequately determined.

The second definition §102.1(9)(ii)—in the context of metals scrap—pertains to goods collected for further upgrading. For instance, jewelry scrap would be fit only for recovery of gold, silver (and maybe copper) in elemental form, which could then be used as raw materials. Even if all the metal contained in scrap is originally mined in other countries, and even if the scrap is imported from a foreign source, if it is collected in the US to upgrade into raw material, its origin when it is upgraded becomes the US.

In sum, scrap generated in the US or collected for upgrading in the US is domestic material. The prior stages in the supply chain are irrelevant.

The Rules of Origin support these conclusions:

§ 102.11 General rules... The country of origin of a good is the country in which: (1) The good is wholly obtained or produced; ...

### U.S. Trade Agreements

United States trade agreements adhere to the US Customs rules of origin. For instance, in the North American Free Trade Agreement, in Chapter Four, Rules of Origin, Article 401: Originating Goods, states: ...a good shall originate in the territory of a Party where

a) the good is wholly obtained or produced entirely in the territory of one or more of the Parties, as defined in Article 415;

b) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification set out in Annex 401 as a result of production occurring entirely in the territory of one or more of the Parties, or the good otherwise satisfies the applicable requirements of that Annex where no change in tariff classification is required, and the good satisfies all other applicable requirements of this Chapter...<sup>2</sup>

The Harmonized Tariff Schedules of the United States (2015) are consistent with both the generalized rules of origin as well as U.S. Trade Agreements. For example, Section 7112 of the HTS which pertains to jewelry imported into the U.S. for recovery of precious metals is defined as waste and scrap and not subject to duty as such materials are “fit only for the recovery of the metal content or for use in the manufacture of chemicals.”

### American Reconstruction and Reinvestment Act of 2009

---

<sup>2</sup> In the context of these comments, “good” refers to metal in the form of bars, grain or sponge in elemental form and products made from such refined metal. As a reasonable standard of “elemental” purity, we would apply the fineness (purity) standards required by the CME, Inc., a public exchange on which precious metals are traded. The CME deliverable fineness standards are:

Gold:	99.5%
Silver:	99.9%
Platinum	99.95%
Palladium	99.95%

Under the *American Reconstruction and Reinvestment Act of 2009* (“ARRA”), a product is American made if it is substantially transformed in the U.S.A. “Substantial transformation” occurs when you change a good’s character or use. A product’s country of origin is where its “character or use” is changed; not where the product’s commodity raw materials came from. Worldwide, the country of origin is where metal was last refined, not where scrap or mine materials come from. The FTC’s standard is the exception.

Both American metals refiners (that produce bullion) and product manufacturers (that produce finished goods), should be able to apply the “Made in USA” label if they meet the “substantial transformation” standard:

1. Refining precious metals transforms scrap and mine materials in a complex process from impure materials that cannot be used, to useable purified bullion.
2. Fabricating the bullion into jewelry and an array of precious metals products requires a subsequent series of challenging design and manufacturing steps,

### Substantial Transformation Standard

“Substantial transformation” is the standard employed under the Buy American Act in the ARRA—already part of our laws. It is the standard Federal agencies use to determine that steel and iron are American made.<sup>3</sup> It is a practical international standard, applied by countries competing against the United States and (with the exception of FTC) by United States Government. It is the standard used by CBP and under U.S. trade agreements and in the HTS. And it is the standard applied by the Department of Defense and all the other Federal agencies.

FTC is alone among our federal agencies in applying the “all or virtually all” standard.

### Conclusion

The ‘all or virtually all’ standard currently applied by the FTC to the Made in the USA label is inconsistent with the standards applied by other U.S. governmental entities, specifically the country of origin standards employed by CBP as codified in the CFR and the country of origin standards embodied in U.S. Trade Agreements. The ‘all or virtually all’ standard flies in the face of current global trade practices and the beneficial and encouraged use of waste and scrap and recycled materials. The current standard is destructive to American manufacturers and has placed them at a severe competitive disadvantage. American jobs are being lost as a result.

The IPMI urges the FTC to apply the substantial transformation standard as set forth in both the Buy American Act of 1933 and the American Recovery and Reinvestment Act of 2009.

---

<sup>3</sup> A strict interpretation of the FTC’s “all or virtually all” standard could arguably preclude products produced from recycled steel (by definition American made under the Buy American Act) from being labeled “Made in the USA”. It is estimated that 85% to 90% of the steel used today in the US is recycled. Applying the “all or virtually all” standard to preclude American made products such as automobiles and appliances from being labeled “Made in the USA” would be contrary to both the BAA and the ARRA. The substantial transformation standard should apply consistently to all products for purposes of “Made in the USA” label.