

THE RICHLINE GROUP REPORT

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**“MADE IN THE
USA”
APPEAL TO FTC**

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Abstract

The goal of this paper is to prove how the current Federal Trade Commission (FTC) standard to label a product “Made in USA” puts American manufacturers at a disadvantage, specifically the jewelry industry. Currently the FTC requires that for a product to be considered “Made in USA” it must be “all or virtually all” produced in America. Throughout this paper we seek to prove four primary positions: the current FTC standards are outdated, they are applied unfairly across different industries, they are vastly different than the global consensus, resulting in a loss of American jobs. However, sound policy and the alteration of the current standard can reverse this trend and ensure that jobs are brought back to America. As a result we urge Congress to amend the standard of “all or virtually all” to that of substantial transformation in the passage of the American Jobs Act.

Recommendations

After conducting extensive research we recommend the following three actions:

1.) Implement research into the American Jobs Act

The American Jobs Act is a visible piece of legislation that has the power to restore American jobs. Since the mid 1940's the US manufacturing industry has been in decline, as the manufacturing process has become cost effective to offshore. This dossier will serve the purpose to convince key stakeholders (mainly Congressmen) to vote in favor of the American Jobs Act. With this dossier, we **provide additional** evidence that US jobs and US manufacturing, **in many industries**, can be brought back to the United States with the streamlining of standards across industries in the America. As the Richline Group continues its communications and engagement with the Federal Trade Commission re: the meaning of "Made in USA" it is essential to provide the key stakeholders with the necessary **information to assist in reviewing** toward a decision.

2.) Initiate and Document a Vision to highlight substantial transformation of precious metals.

An additional, demonstrative video will give Richline another layer of research and information to provide key stakeholders involved. The goal is to create an informational video that highlights the substantial transformation process of precious metals. With the completion of the video, there will be a real-time, factory-specific documentary that gold and other precious metals are substantially transformed in the United States.

3.) Provide a dossier of information and reasons for the FTC **to re-review** their standard of "all or virtually all."

We believe that the FTC's standards are outdated. The standards were made in the mid 1990's and the world has changed substantially since then. Globalization has modernized business operations, as goods and services

move more freely across borders. Furthermore, the standards provide preferential treatment to certain industries and clearly put the jewelry manufacturing industry at a global disadvantage. We are providing evidence **that should allow** the FTC **to reconsider harmonizing** its standards to fairly treat all industries within the United States.

History of Made in America

Following September 11th there was a significant sense of patriotism surrounding products that were “Made in USA.” This sensation has since faded, but the intrigue to purchase American products remains significant. This brings into question how Americans view products that are potentially American made. The jewelry manufacturing industry has been unable to capitalize on “Made in USA” marketing due to a **stifling statute administered** by the FTC. In 1997 the FTC enacted the standard of “all or virtually” for products to be considered American. This was passed by a vote of 13-12 which highlights the controversy of the standard when it was passed. This controversy has intensified due to globalization and the nature of products today. As a result, American manufacturing jobs are being offshored to more cost effective countries. Now, we are losing the pride and craftsmanship that once built America. Congress **can address a change** to the current standard to incentivize the restoration of American manufacturing.

Background of the Federal Trade Commission

The Federal Trade Commission (FTC) is the government agency that is responsible for preventing deception and wrongness in the United States regarding transactions between businesses and consumers. The FTC plays a major

role in enforcing that companies are not misleading consumers that a product is of U.S. origin. The FTC initiated a standard in the mid-1990s to determine if a product is of U.S. origin. The standard states that “all or virtually all” of the components of the product are from the United States. The term “all or virtually all” means that the product’s final assembly or processing must take place in the U.S. In addition, total manufacturing cost of the product assigned to U.S. parts and processing plus how far removed any foreign content is from the finished product. The product must meet a threshold of 99% of U.S. content to conform to consumer expectations for a product labeled “Made in USA.”¹ This standard has thus allowed only products with negligible foreign content, or undetermined country of origin, to be considered “Made in USA.”

“Made in USA” in the Jewelry Manufacturing Industry

In the evaluation of a product being “all or virtually all” made in the United States, the cost of the raw materials are examined. In the jewelry manufacturing industry, the FTC makes it challenging for manufacturers to make an unqualified claim (claim able to show “all or virtually all” of the product has been made in the United States) of “Made in USA.” For example, the FTC stated:

“If the gold in a gold ring is imported, an unqualified “Made in USA” claim for the ring is deceptive. That’s because of the significant value the gold is likely to represent relative to the finished product, and

¹ Made in USA Standard. (1998). *Federal Trade Commission - BCP Business Center*, 42.

because the gold – an integral component – is only one step back from the finished article.²”

In other words, the FTC is claiming that gold and other precious metals are not substantially transformed in the United States. Substantial transformation is the manufacturing process that results in a new and different product with a new name, character, and use that is different from that which existed before the change³. Precious metals, like gold and silver, are imported in the form of jewelry components, electronic components, scraps, and investment bars. Gold and other precious metals in electronics help make electronics work and the gold investment bars act as currency. In addition, jewelry manufacturers import precious metals in their raw form. The precious metals from the different goods are then melted and undergo the same chemical refining process – *substantial transformation* – as would newly mined precious metals from the United States to produce jewelry that consumers will wear.

Outdated FTC Standards of “Made in USA”

As mentioned earlier, the FTC created their “Made in USA” standards in the 1990s so that consumers are not misled by false advertisement of products made in the United States. There are three factors that must be taken into consideration when updating the FTC’s standards on “Made in USA.” The three factors are: 1.) The globalization of the world’s economies, 2.) How the country of origin should

² Made in USA Standard. (1998). *Federal Trade Commission - BCP Business Center*, 42.

³ Rethinking "Made in America" in the 21st Century. (2014). *The Trade Partnership*, 24.

not matter for commodities and 3) The use of “Substantial transformation and equivalents throughout the rest of the world..

Today’s Globalized Economy

The FTC’s standards are outdated due to the fact that the United States economy was driven on manufacturing from the 1960s, ‘70s, ‘80s, and ‘90s⁴. However, during that time period, the world was not as globalized as it is today. Since 2000, total manufacturing output in the United States has been on a downward trend due to the fact that companies are outsourcing and offshoring more of their operations. In addition, these companies are receiving raw materials from all over the world because the raw materials are either of better quality or less expensive than found in the United States. Another point to note is that supply chains for many products are completely intertwined across borders. For example, in some cases, Canadian inputs can count as “domestic.”

A product is “made” by designers who conceive it and the workers who arrange for its production⁵. A poll was administered by Harris Interactive Incorporated to get an insight of what Americans think “Made in USA” means. (It is important to make note that Harris Interactive Incorporated is a recognized official market research company used by the United States Government). The poll concluded that a majority of Americans believe “Made in USA” means that the product is manufactured in the USA. In other words, gold manufacturers should be able to

⁴ Federal Trade Commission: Request for Public Comment on Proposed Guides for the Use of U.S. Origin Claims. (1997). *Federal Register*, 62(88), 41.

⁵ Rethinking "Made in America" in the 21st Century. (2014). *The Trade Partnership*, 24.

claim their products as “Made in USA” because the product is being put together in the United States. There should be less emphasis on where the materials are from, and more emphasis on where the final product is processed/manufactured/**substantially transformed**. The value added of the product is where the process takes place. In respect to the jewelry manufacturing industry, it should be allowed to use the claim “Made in USA” because the precious metals used in creating the jewelry are substantially transformed (**from natural resource or currency alternative**) in the United States (Exhibit 1).

Precious Metals are a Commodity

The second factor as to why the FTC’s standards should be adjusted is that gold, silver, and other precious metals are considered commodities.

A commodity is a good that contains the following properties:

1. Usually produced and/or sold by many different companies
2. It is uniform in quality between companies that produce/sell it. In other words, you cannot tell the difference between a firm’s (or country’s) product from another.⁶

In the case of precious metals, **it is prejudicial** that the FTC requires jewelry manufacturers to use the country of origin of gold, silver, and other precious metals that will be used as an input during the refinery process. It is impossible to determine the original country of origin for recycled metals once they are melted

⁶ Moffatt, M. (n.d.). *What Is a Commodity?*. Retrieved from <http://economics.about.com/od/commodityprices/f/commodity.htm>

in the refining process. [Minimally, the refining location establishes the “origin” of the post-refined metal.] As stated in the definition of a commodity, the disparity of precious metals from one country to another cannot be recognized so the country of origin should not matter. Precious metals, as first instance of discovery, are solely a natural resource. The country in which gold, silver, and other precious metals go through the substantial transformation process should, as with international standards, be considered the country of origin. The FTC should consider widening the “Made in USA” standards for manufacturers especially when substantial transformation occurs in the United States. In addition, the FTC should consider widening the percentage of foreign materials that may be allocated to a product especially if the foreign materials used are substantially transformed. This is primarily to account for the increasing globalization and inability to procure 100% of the materials in a product from any one country. Without updating these outdated FTC standards the jewelry manufacturing industry will continue to be at a global disadvantage.

Country of Origin

In order to fully understand how the FTC is hindering the jewelry manufacturing industry, we felt it was necessary to review the policies and procedures of other countries and organizations in regards to country of origin rules relating to substantial transformation in order to accurately assess whether the FTC was out of sync with the “all or virtually all standard.” Through our research, we are of the opinion that the FTC standard has a disruptive effect on global competition and is

putting the Richline Group and the US jewelry manufacturing industry at a significant disadvantage to the rest of the world.

We explored the United States Customs and Border Protection (CBP), the World Trade Organization (WTO), the World Customs Organization (WCO), the European Union (EU), India’s international trade policy, Turkey’s customs laws, and member economies of Asian Pacific Economic Cooperation (APEC) in order to highlight the current (and we believe outdated) standard. A complete list of organization and country rules and regulations are provided in Appendices I-IX.

Country of Origin/Substantial Transformation	
Organizations and Countries	2 or more products
United States Customs	Last country transformed with distinct name, character, use
World Trade Organization	Last country transformed with distinct name, character, use
World Customs Organization	Last country transformed with distinct name, character, use
European Union	Last country transformed with distinct name, character, use
China	30% of product from country of origin
Hong Kong	25% of product from country of origin
Thailand	50% of product from country of origin
South Korea	35% of the value added from the country of origin
Turkey	Last country transformed with distinct name, character, use
FTC	99% of precious metals from country of origin

The most important aspect of country of origin standards dealing with substantial transformation is that the FTC is failing to adequately consider that their treatment of the jewelry manufacturing industry in the rule of “all or virtually all” is creating a restrictive, distorting and disruptive effect on international trade within the context of the jewelry manufacturing industry by not allowing “Made in the USA” claims consistent with “Made in [any other country]” claims.

As the world has become more globalized than ever before, organizations such as the WTO, WCO, and preferential trade agreements inside of the EU and APEC have labored to streamline country of origin standards relating to substantial transformation in order to harmonize trade and promote efficiency.

Meanwhile as global trade has advanced, the FTC has clung to **the restrictive** view of “all or virtually all” that the raw material must come from the country of origin. For example, China requires the percentage of the value-added raw materials from their country to reach 30 percent or more of the whole value of the new product in order for it to be considered substantially transformed. Hong Kong considers the cost content attributable to local component parts and labor vis-a-vis the total manufacturing cost. The current local cost content requirement is 25 percent. The Certification Coordination Committee has been established to coordinate certification policy and to standardize practices and procedures amongst the certificate-issuing organizations, and to improve the overall efficiency of the certification system. Analyzing the FTC standard of 99% of the material being of domestic origin against just these two countries who are members of APEC highlights how **restrictive** the FTC is on the US jewelry manufacturing industry; unfortunately, our findings weren’t isolated to APEC.

The EU, which has 28 member countries⁷, has made considerable progress towards consensus on country of origin standards relating to substantial transformation. These 28 member countries have non-preferential rules that are used for many kinds of commercial policy measures. These rules stretch from

⁷ <http://europa.eu/about-eu/countries/member-countries/>

anti-dumping duties and trade embargoes to country of origin marking. When two or more countries are involved in the production of goods, the concept of "last, substantial transformation" determines the origin of the goods. The criterion for substantial transformation is expressed in three ways:

- *by a rule requiring a change of tariff (sub) heading in the HS nomenclature;*
- *by a list of manufacturing or processing operations that do or do not confer on the goods the origin of the country in which these operations were carried out;*
- *by a value added rule, where the increase of value due to assembly operations and incorporation of originating materials represents a specified level of the ex-works price of the product.*

We request that the FTC **consider the jewelry manufacturing industry's processes and the value that true, substantial transformation** companies were adding to recycled precious metals and considered the process in the context of promoting global trade based off the consensus of the EU they would not **be so dogmatic** in their position.

Further exacerbation of the FTC standard of "all or virtually all" comes to light when we reviewed CBP standards. The FTC has the authority, but the CBP has a completely different opinion about substantial transformation. According to the CBP, an article that consists in whole or in part of materials from more than one country is considered to be a product of the last country in which it has been

substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

We understand that the FTC and CBP have different missions and objectives. The FTC is concerned with deceptive claims about country of origin, and the CBP is concerned with tariffs and identification of goods originating in other countries. We feel that if the “all or virtually all” standard were reversed for the jewelry manufacturing industry then both agencies would benefit. The FTC would become more harmonized in their definition and viewed as fair by all industries, and CBP would become more proficient in their mission of tariff assignment and identification of goods “Made in the USA.”

INDUSTRY POSITIONS

According to the July 2015 Consumer Reports survey, 77% of Americans say they would rather buy an American-made product than an imported one⁸.

Additionally, according to a survey conducted in 2013 by BCG’s Center for Consumer and Customer Insights not only did the survey find that about 80% of Americans are willing to pay more for products labeled “Made in USA”, about 60% of Chinese consumers are also willing to pay more for products labeled “Made in USA.” Also, more than 50% of the Chinese survey respondents said they prefer to purchase an American-made good to a Chinese-made good of equal price and

⁸ <http://www.consumerreports.org/cro/magazine/2015/07/from-our-president-july-2015/index.htm>

quality. American-made goods have a reputation of quality, dependability, safety, and reliability⁹.

With the ever-increasing globalization of the world, new challenges for industries, governments, and consumers arise. It is becoming more and more challenging to identify a true “Made in USA” product. Manufacturing is extremely complex and companies are having a difficult time proving their “Made in USA” claims. The FTC does not pre-approve advertising or labeling claims and therefore a company does not need approval from the FTC before making a “Made in USA” claim. A manufacturer or marketer may make any claim as long as it is truthful and substantiated. The FTC does not police and seek out false or deceptive “Made in USA” claims. However, third party companies, such Truth in Advertising, Inc. (TINA.org), have a mission to protect consumers against false advertising and deceptive marketing. TINA.org recently investigated and reported to the FTC that Walmart falsely and deceptively used Made in USA labels. “[Our] findings make it clear that Walmart's website is mired in USA labeling errors,” wrote legal director Laura Smith in the letter. “Walmart's use of its USA labels and specifications is false and deceptive, and therefore in violation of the Federal Trade Commission's standards for making U.S.-origin claims¹⁰.” This claim against Walmart does not stand alone. Recently, there have been an increasing number of lawsuits and pending pleas citing that the labeling “Made in USA” is used to falsely deceive consumers. Among those companies being investigated

⁹ <http://www.bloomberg.com/bw/articles/2013-02-25/made-in-the-usa-still-matters>

¹⁰ <http://www.cbsnews.com/news/how-accurate-are-walmarts-made-in-the-usa-labels/>

are Revlon, Inc. (Almay Brand), Anheuser-Busch InBev SA/NV, and Land's End (See Appendix XV for further details).

There is no law requiring manufacturers and marketers to make a "Made in USA" claim for most products. The FTC only requires automobiles or goods made from textile or wool to provide such information, as both industries must abide by a different set of standards. Because of their size and contribution to the United States economy, these industries receive preferential treatment.

Although the FTC does not require most industries to make a "Made in USA" claim, if companies want to make this claim, it must abide by the FTC standards. The standards set by the FTC are not consistent across industries and seem to unfairly **restrict** the jewelry manufacturing industry (See Appendices X-XIV for industry positions). As stated above industries within the United States have a motive to label its products "Made in USA." Many companies and industries have benefitted from the ability to place this claim on their products. The jewelry manufacturing industry within the United States has not been afforded the same opportunities to capitalize on American's desire to purchase American-made products, as it is unfairly held to a different standard than other industries within the United States. In regard, **specifically to the example of Richline Group**, it is essential that consumers know and understand that its finished goods (fine jewelry for example) are substantially transformed through an arduous manufacturing process within the borders of the United States. The actual value of these fine jewelry products is added in the United States. It is important and extremely beneficial for the Richline Group to be transparent with consumers, and for

consumers to understand that the product's value is added in the factories in the United States.

With the growing number of pending lawsuits against incorrectly labeling “Made in USA” goods, and the inconsistent standard across industries, the FTC **needs to reconsider an update its standards.** **We believe the following:**

- The FTC should streamline its process and standards to be uniform across industries, regardless of the industries size **or product.**
- As the world changes and becomes more globalized, the FTC **should** hold all industries to the same standard.
- It is inefficient and a poor use of resources to continuously support or fight lawsuits of false or deceptive advertising/marketing.
- **The FTC, consumers, and American jobs will benefit with an update of the current FTC “all or virtually all” standards.**

US Manufacturing

Based on our research, in recent years, the US manufacturing sector has been attracting increasing levels of interest from politicians and researchers. In this years' State of the Union Address, President Barack Obama referred to “manufacturers” no fewer than seven times. Economic analysts are also devoting more and more interest to the notion of a re-industrialization of the US economy. This is because: in terms of its proportion of nominal GDP, the US manufacturing sector is currently experiencing its most significant recovery in 35 years. The absolute figures confirm that the fast growth enjoyed by the manufacturing sector since 2009 provides little evidence of a lasting resurgence: as of 2012, when it

recorded \$1.68 trillion in real value added, the manufacturing sector has not quite returned to its pre-crisis 2007 level of \$1.69 trillion. According to estimates, nearly 80% of the recovery can be attributed to a rebound in US demand during the recovery. Thus, the bulk of the observed resurgence is simply cyclical¹¹.

Manufacturing employment since the end of World War II has declined by 22% in absolute numbers and from 32% of the total non-farm labor force to 9 percent. Non-manufacturing employment has grown correspondingly. These trends have tracked the composition of GDP but manufacturing employment has also suffered from continuing automation¹².

If the United States were experiencing large-scale reindustrialization, this would be reflected in an expansion of production capacities in the manufacturing sector. As of yet, however, there is no evidence of such an expansion. According to the figures provided by the Federal Reserve, production capacities have been growing by a long-term average annual rate of 2.4% since 1995. However, the annual growth rates for the period from 2010 to 2012, are in part significantly lower than that. As a matter of fact, after decades of continuous, stable expansion, the past ten years have hardly seen any investment in additional production capacities at all¹³.

Moreover, if we look at the current rates of utilization, we find that the manufacturing sector is not under pressure to expand its production capacities.

¹¹ Federal Reserve, 2010

¹² Bureau of Economic Analysis

¹³ Martin Neil Baily and Barry P. Bosworth, 2014

Compared to the long-term average of 79.4% between 1992 and 2007, the average utilization ratio for 2010 to 2012 was under par at 73.7%. The United States has succeeded in slightly increasing its share in the global export market from 8.9% in 2007 to 9.1% in 2011. The manufacturing sector, however, was not among the beneficiaries of this development. According to WTO statistics, the US global export market share for manufactured goods fell from 9.6% in 2007 to 8.4% in 2011.

The rise in the number of people employed by manufacturers in the US is often cited in support of the notion of the sector's resurgence. Between January 2010 and May 2013, the sector hired 507,000 employees (+4.4%), which marks the most significant increase in the sector in 15 years. We must not forget, however, that the US is recovering from a crisis and that many sectors are currently experiencing a rise in employment figures. In fact, contrasted to other sectors such as corporate services (+12.9% between August 2009 and April 2012) and leisure/hospitality (+8.8% between January 2010 and April 2012), the manufacturing sector is comparatively weak. Furthermore, with 12.3 million employees as of April 2013, the manufacturing sector remains far below its pre-crisis employment level (13.7 million as of January 2008)¹⁴.

The 90% of manufacturing that lies outside the computer and electronics industry has seen its share of real GDP fall outside the computer and electronics industry has seen its share of real GDP fall substantially, while its productivity growth has been fairly slow. Although manufacturing's share of total US employment has

¹⁴ Federal Reserve

declined steadily over the last 50 years, recently there has been a large drop in the absolute level of manufacturing employment that many find alarming. After holding steady at about 17 million jobs through the 1990, manufacturing payroll employment dropped by 5.7 million between 2000 and 2010.

Historically, the share of manufacturing employment in the total has declined by about 0.3 percentage points a year. The Congressional Budget Office projects civilian employment to be 159 million in 2023, so if the historical trend were to continue into the future, the implied level of manufacturing employment would be about 10 million, or about 2 million jobs below its current level. Although keeping this historical trend in mind offers a useful perspective, it is of course not set in stone, and there are more optimistic projections. One view is that market forces and new technologies are already aligned to bring about a re-shoring revolution, bringing jobs and production back to the United States. A somewhat different view is that the right set of government policies generate a different future path.

The Trend of Offshoring

Offshoring, also known as offshore outsourcing, is the term that came into use more than a decade ago to describe a practice among companies located in the United States of contracting with businesses beyond U.S. borders to perform services that would otherwise have been provided by in-house employees in white-collar occupations (e.g., computer programmers and systems designers, accounting clerks and accountants). The term is equally applicable to U.S. firms' offshoring the jobs of blue-collar workers on textile and auto assembly lines, for

example, which has been taking place for many decades. The extension of offshoring from U.S. manufacturers to service providers has heightened public policy concerns about the extent of job loss and the adequacy of existing programs to help unemployed workers adjust to the changing mix of jobs located in the United States so they can find new positions.

Developing economies have become the new, low-cost suppliers of a wide range of products purchased by consumers and used as intermediate inputs by producers.

The rapid growth of offshoring—defined as the substitution of imported for domestically produced goods and services—contributed to a ballooning trade deficit and sparked a contentious debate over its impact on the U.S.

manufacturing sector, which shed 20% of its employment, or roughly 3.5 million jobs, from 1997 to 2007. Concerns over employment losses and the trade deficit have prompted a recent spate of government and private sector proposals to revitalize manufacturing¹⁵.

The surge in the imports of manufactured goods—more than 100% from 1997 to 2007— reflects both an increase in the import share of goods for final consumption as well as the import share of intermediate inputs. According to the BEA, the import share of intermediate material inputs used by manufacturers increased from under 17% in 1997 to 25% in 2007. On the one hand, dramatic drops in employment are often taken to portray a sector in decline. The

¹⁵ Gerald Najarian 2011

precipitous decline in manufacturing employment since the late 1990s is evident in Exhibit 2 and is coincident with the rise in foreign sourcing¹⁶.

In the decade leading up to the current recession, manufacturing employment declined by 20%, while manufacturing's share of employment in the economy fell from 14% in 1997 to 10% in 2007 (Exhibit 3). Reflecting plant closures that accompanied the employment declines, the net number of manufacturing establishments fell by 10% from 1998 to 2007. At the same time, the nominal share of manufacturing value added in GDP fell from 15.4% in 1997 to 11.7% in 2007¹⁷ (Exhibit 4).

The evidence from case studies and from comparisons of import prices is consistent with reports of large discounts in the business literature. For example, in 2004 *Business Week* reported that prices of imported goods from China typically were 30 to 50% lower than the prices for comparable products produced in the United States, and that the discounts were sometimes higher¹⁸. The above-mentioned price differentials could be the result of numerous factors, such as labor costs, industrial policy, or disequilibrium in exchange rate markets. For instance, the Manufacturers Alliance of the National Association of Manufactures provides estimates of manufacturing labor costs, adjusted for productivity, for major U.S. trading partners as compared to the United States. Their estimates of large labor cost savings—58–72 percent lower in China and 22–62 percent in

¹⁶ B. Diekmann 2013

¹⁷ Levine 2012

¹⁸ Gerald Najarian 2011

Mexico from 2002 to 2009—are consistent with the large product discounts reported in research and in the business press¹⁹.

The American Jobs Act

The American Jobs Act is a bill that seeks to restore American productivity, especially in the manufacturing sector. The bill would provide tax incentives for corporations that re-shore their operations to bring jobs back to America. There is a very real possibility that an amendment to the current bill to change the standard of “Made in USA” can be changed. Currently, the bill has 79 co-sponsors in Congress from 35 different states. These numbers indicate that there is substantial backing for the bill throughout the country. Therefore, an amendment to the bill would be the best avenue to take in order to change the current FTC standard. If the standard is changed by a written law in Congress then the current battle with the FTC would immediately end. This change would also increase the competitiveness of American business both domestically and globally²⁰.

We know that the American consumer is more inclined to purchase a product that is made in America, but currently there are not enough manufactured goods to satisfy that need. Furthermore, from a global standpoint consumers are also more inclined to buy a product that was made in America because of the superior quality of that product. However, currently most of the manufacturing in America is exported because the U.S. Customs requires the country of origin to be America.

The issue is that with the current strict standards of the FTC it makes more

¹⁹ B. Diekmann 2013

²⁰ <https://www.congress.gov/bill/113th-congress/house-bill/2821/cosponsors>

sense to export goods abroad and pay the corresponding tariff and transportation costs then to sell those goods right here in America as a “generic country of origin. Therefore, through policy we can return American manufacturing through incentivizing American production, which would restore American jobs and the pride of workers and consumer alike.

Conclusion

Throughout this paper we have attempted to highlight several positions that place The Richline Group and other US Jewelry manufacturers at a disadvantage both domestically and globally. The current FTC standard is stringent and outdated because with globalization it is nearly impossible for any manufactured product [especially the raw materials] to be fully from one individual country.

Additionally, we believe that the rules of origin should be applied equally for all purposes and they should be objective, understandable, logical, and predicible. We feel that the rules of origin should not themselves create restrictive, distorting or disruptive effects on international trade. Nor should they should not pose unduly strict requirements or require the fulfilment of a certain condition not relating to manufacturing or processing as a prerequisite for the determination of the country of origin.

Furthermore, the FTC has created exemptions for specific industries which put the jewelry manufacturing industry at an unfair disadvantage. From a global perspective the current FTC standard places American manufacturing at a disadvantage. Because of this America is now losing jobs to foreign states. Given

the research we implore the Congress to follow the steps of the WTO, U.S. Customs, and countless other countries and consider the origin of a product where it was last substantially transformed.

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Exhibits

Exhibit 1 – Steps in Jewelry Manufacturing Process

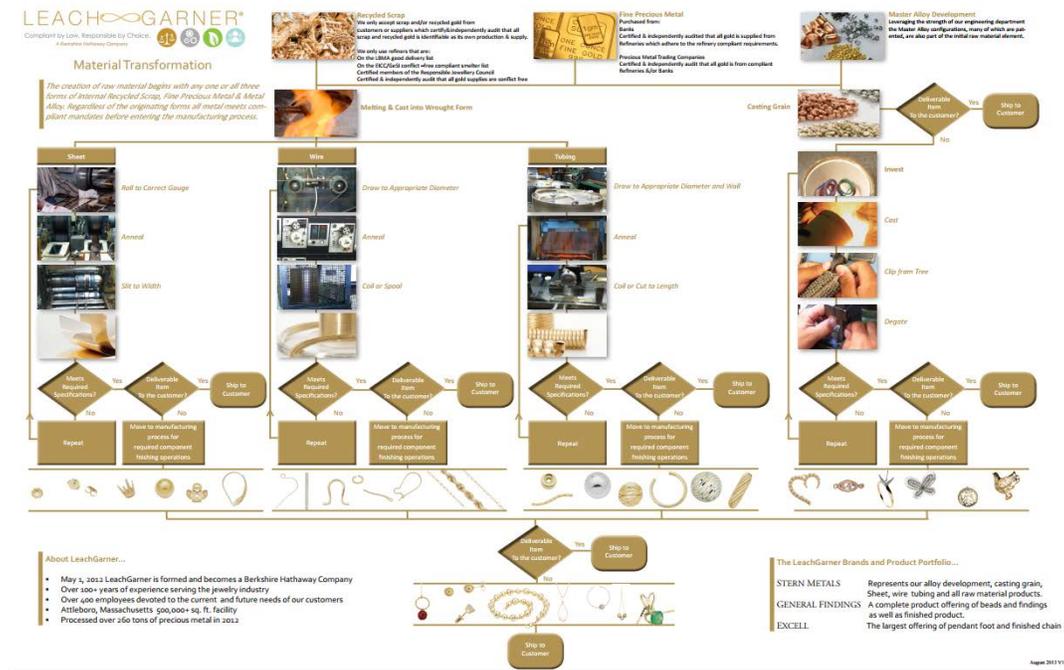
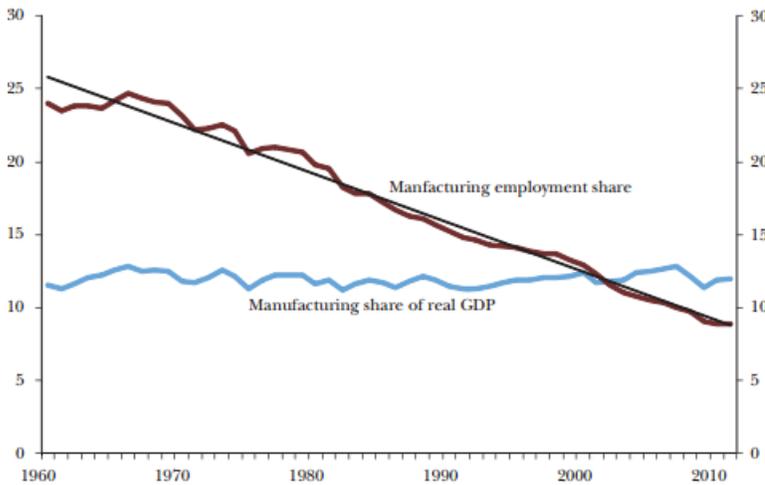


Exhibit 2

Manufacturing Value Added and Employment as a Share of the Total US Economy, 1960–2011
(in 2005 prices)

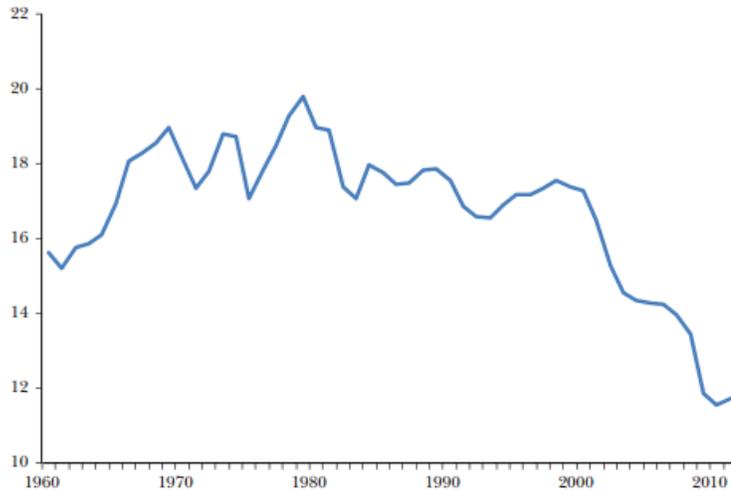


Source: Industry Accounts of the Bureau of Economic Analysis.

Note: Output is measured as value added in 2005 prices, and employment is reported as persons engaged in production (full-time equivalent employees plus the self-employed).

Exhibit 3

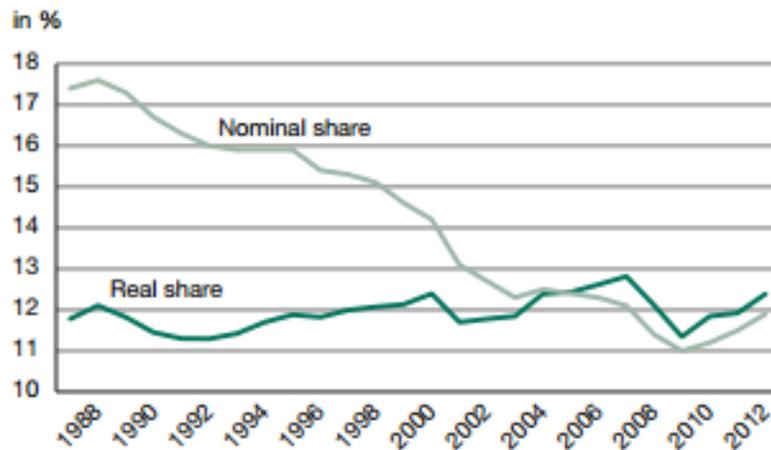
Persons Engaged in Production in US Manufacturing, 1960–2011
(millions)



Source: Industry Accounts of the Bureau of Economic Analysis.
Note: Persons engaged in production are measured as full-time equivalent employees plus the self-employed.

Exhibit 4

Nominal and real shares of manufacturing in total US value added



Source: Bureau of Economic Analysis; own calculations.

Appendix

Appendix I

WORLD TRADE ORGANIZATION:

“Rules of origin” are the criteria used to define where a product was made. They are an essential part of trade rules because a number of policies discriminate between exporting countries: quotas, preferential tariffs, anti-dumping actions, countervailing duty (charged to counter export subsidies), and more. Rules of origin are also used to compile trade statistics, and for “made in ...” labels that are attached to products. This is complicated by globalization and the way a product can be processed in several countries before it is ready for the market.

The Rules of Origin Agreement requires WTO members to ensure that their rules of origin are transparent; that they do not have restricting, distorting or disruptive effects on international trade; that they are administered in a consistent, uniform, impartial and reasonable manner; and that they are based on a positive standard (in other words, they should state what *does confer origin rather than what does not*).

For the longer term, the agreement aims for common (“harmonized”) rules of origin among all WTO members, except in some kinds of preferential trade — for example, countries setting up a free trade area are allowed to use different rules of origin for products traded under their free trade agreement. The agreement establishes a harmonization work programme, based upon a set of principles, including making rules of origin objective, understandable and predictable. The work was due to end in July 1998, and was being conducted by a Committee on Rules of Origin in the WTO and a Technical Committee under the auspices of the World Customs Organization in Brussels. Several deadlines have been missed. The outcome will be a single set of rules of origin to be applied under non-preferential trading conditions by all WTO members in all circumstances.

Rules of origin are the criteria needed to determine the national source of a product. Their importance is derived from the fact that duties and restrictions in several cases depend upon the source of imports. There is wide variation in the practice of governments with regard to the rules of origin. While the requirement of substantial transformation is universally recognized, some governments apply the criterion of change of tariff

classification, others the ad valorem percentage criterion and yet others the criterion of manufacturing or processing operation. In a globalizing world it has become even more important that a degree of harmonization is achieved in these practices of Members in implementing such a requirement.

Rules of origin are used: **(a)** to implement measures and instruments of commercial policy such as anti-dumping duties and safeguard measures; **(b)** to determine whether imported products shall receive most-favoured-nation (MFN) treatment or preferential treatment ; **(c)** for the purpose of trade statistics; **(d)** for the application of labeling and marking requirements; and **(e)** for government procurement.

It is accepted by all countries that harmonization of rules of origin i.e., the definition of rules of origin that will be applied by all countries and that will be the same whatever the purpose for which they are applied - would facilitate the flow of international trade. In fact, misuse of rules of origin may transform them into a trade policy instrument *per se* instead of just acting as a device to support a trade policy instrument. Given the variety of rules of origin, however, such harmonization is a complex exercise.

Agreement on Rules of Origin

Preamble

Members,

Noting that Ministers on 20 September 1986 agreed that the Uruguay Round of Multilateral Trade Negotiations shall aim to “bring about further liberalization and expansion of world trade”, “strengthen the role of GATT” and “increase the responsiveness of the GATT system to the evolving international economic environment”;

Desiring to further the objectives of GATT 1994;

Recognizing that clear and predictable rules of origin and their application facilitate the flow of international trade;

Desiring to ensure that rules of origin themselves do not create unnecessary obstacles to trade;

Desiring to ensure that rules of origin do not nullify or impair the rights of Members under GATT 1994;

Recognizing that it is desirable to provide transparency of laws, regulations,

and practices regarding rules of origin;

Desiring to ensure that rules of origin are prepared and applied in an impartial, transparent, predictable, consistent and neutral manner;

Recognizing the availability of a consultation mechanism and procedures for the speedy, effective and equitable resolution of disputes arising under this Agreement;

Desiring to harmonize and clarify rules of origin;

Hereby *agree* as follows: (Articles 1-9)

Article 9: Objectives and Principles

1. With the objectives of harmonizing rules of origin and, *inter alia*, providing more certainty in the conduct of world trade, the Ministerial Conference shall undertake the work programme set out below in conjunction with the CCC, on the basis of the following principles:

(a) Rules of origin should be applied equally for all purposes as set out in Article 1;

(b) Rules of origin should provide for the country to be determined as the origin of a particular good to be either the country where the good has been wholly obtained or, when more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out;

(c) Rules of origin should be objective, understandable and predictable;

(d) Notwithstanding the measure or instrument to which they may be linked, rules of origin should not be used as instruments to pursue trade objectives directly or indirectly. They should not themselves create restrictive, distorting or disruptive effects on international trade. They should not pose unduly strict requirements or require the fulfilment of a certain condition not relating to manufacturing or processing as a prerequisite for the determination of the country of origin. However, costs not directly related to manufacturing or processing may be included for purposes of the application of an ad valorem percentage criterion;

(e) Rules of origin should be administrable in a consistent, uniform, impartial and reasonable manner;

(f) Rules of origin should be coherent;

(g) Rules of origin should be based on a positive standard. Negative standards may be used to clarify a positive standard.

Appendix II

WORLD CUSTOMS ORGANIZATION:

There is no international definition of Origin, although a distinction is made between two systems: preferential and non-preferential. In the case of preferential Origin, everything is based on bilateral or multilateral agreements. In the case of non-preferential Origin each country applies its own rules, although within some regional economic unions the non-preferential rules are harmonized for all the Member States of the Union concerned.

The WCO, in the International Convention on the simplification and harmonization of Customs procedures (Revised Kyoto Convention), defines rules of origin as “the specific provisions, developed from principles established by national legislation or international agreements ("origin criteria"), applied by a country to determine the origin of goods.”.

The country of origin must not be confused with the country of provenance (i.e., the last country that the goods passed through). The purpose of rules of origin is to determine the “nationality” of a good. The determination of the country of origin is, alongside tariff classification and Customs valuation, an essential factor for establishing the amount of the Customs duties and taxes payable. The origin of a good will also determine, where appropriate, the application of any trade policy measures (quotas, anti-dumping duties, trade embargoes...).

There are several methods and criteria for determining the origin of a good. While the substantial transformation criterion is universally recognized, the change of tariff classification criterion, the value added criterion and the criterion related to manufacturing or processing operations are also applied.

As the General Agreement on Tariffs and Trade (GATT) does not contain any specific rules governing the determination of Origin, there is wide variation in the practice of governments in this regard.

The Members of the WTO, wishing to ensure that rules of origin did not

themselves create unnecessary obstacles to trade, decided in 1994 to establish the Agreement on Rules of Origin.

The Agreement states that rules of origin must not be used as instruments to pursue trade objectives, and must not themselves have restrictive, distorting or disruptive effects on international trade.

The WTO Agreement on Rules of Origin, concluded as part of the Uruguay Round in 1994, has opened a new chapter in the history of Customs. Until then, there was no global model for the determination of origin, which is one of the cornerstones of trade policy, trade statistics and general macroeconomic analysis.

The WTO Agreement on Rules of Origin sets out important provisions relating to the application and administration of Rules of Origin, providing for the Harmonisation of Non-Preferential Rules of Origin, those Rules of Origin which are not derived from trade regimes leading to the granting of tariff preferences.

By securing transparency in trade policy, this harmonisation is expected to facilitate international trade.

The WTO Committee on Rules of Origin (CRO) and the WCO Technical Committee on Rules of Origin (TCRO) are the two bodies responsible for the full development of this Agreement.

In 1999, the TCRO concluded the technical review of the Harmonized Rules of Origin and these final results were forwarded to the CRO in Geneva for consideration. In 2006, these results are still under consideration by the WTO.

Appendix III

EUROPEAN UNION: NON-PREFERENTIAL RULES OF ORIGIN:

A) General aspects of non-preferential origin

Non-preferential rules are used for all kinds of commercial policy measures, like, for instance, anti-dumping duties and countervailing duties, trade embargoes,

safeguard and retaliation measures, quantitative restrictions, but also for some tariff quotas, for trade statistics, for public tenders, for origin marking, and so on. In addition, the EU's export refunds in the framework of the Common Agricultural Policy are often based on non-preferential origin.

There are two basic concepts to determine the origin of goods namely '*wholly obtained*' products and products having undergone a "*last substantial transformation*".

If only one country is involved the "wholly obtained" concept will be applied. In practice this will be restricted to mostly products obtained in their natural state and products derived from wholly obtained products.

If two or more countries are involved in the production of goods, the concept of "last, substantial transformation" determines the origin of the goods.

In general the criterion of last substantial transformation is expressed in three ways:

- *by a rule requiring a change of tariff (sub) heading in the HS nomenclature;*
- *by a list of manufacturing or processing operations that do or do not confer on the goods the origin of the country in which these operations were carried out;*
- *by a value added rule, where the increase of value due to assembly operations and incorporation of originating materials represents a specified level of the ex-works price of the product.*

C) Determination of the origin of a product

1) Products wholly obtained in a single country:

Goods wholly obtained in a single country in the sense of Article 23 of Council Regulation No 2913/92 are originating in this country.

2) Other products:

When two or more countries are involved in the production of a good, the origin of the good must be determined in accordance with Article 24 of Council Regulation No 2913/92. Article 24 CC states: "Goods whose production

involved more than one country shall be deemed to originate in the country where they underwent their last, substantial, economically justified processing or working in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture".

2.1) Products covered by specific provisions in IP:

It is not always easy to say when these criteria have been met. Thus in some cases for particular goods rules have been laid down in order to determine certain operations carried out on their own that do, or do not, confer non-preferential origin on a product. These rules have been decided upon over the years to clear up particular cases where there has been a need for additional clarity. For some products, other than textiles, the rules are found in Annexes 9 and 11 of Commission Regulation No 2454/93. Annex 9 contains a description how to apply the rules of Annexes 10 and 11. Annex 11 of IPC contains rules in the form of specific working or processing, which must be fulfilled for the products mentioned in that annex.

For textiles and textile articles of Section XI of the Combined Nomenclature (CN) the general rule is that the working or processing carried out on the non-originating materials must result in a classification under another heading of the CN for the products obtained. This rule is known as "*Change of Tariff Heading*" (CTH) (Art. 37 IPC). However, for certain textile products Annex 10 of IPC gives specific processes that must be fulfilled in order to obtain the non-preferential origin. This annex must be read in combination with

Annex 9 of IPC describing how to apply the rules of Annex 10.

Furthermore, certain working or processes never confer non-preferential origin on a textile product obtained, even when the CTH rule is fulfilled. These are known as "*minimal operations*" (Art.38 IPC). The list rules applicable to products covered by specific provisions in the IP are represented in green colour in the table of "List Rules." List rules which are not in green colour in the table are subject to point 2.2) hereafter.

2.2) Products not covered by a specific rule in the IP:

It has been commonly agreed that the origin of a product not covered by a specific rule in the IP should be determined in accordance with the position taken by the EC in the negotiations under the Harmonisation Work Programme, which defines the same concept of "last substantial transformation" (See Harmonisation of rules of origin), the legal basis remaining Article 24 of the CC. In this respect, the definitions and the rules of the "introductory notes to the table of list rules" must apply. The "primary rules" applicable to these products are laid down in the table of "list rules". When a list rule is in green colour in the table, see point 2.1) here above.

2.3) Product covered by a specific rule, but where the application of the said rule has not allowed to determine its origin:

When the normal application of a list rule as indicated in points 2.1) or 2.2) does not allow to determine the country of origin, the so called "residual rules" in the "introductory notes to the table of list rules" must apply.

Appendix IV

PEOPLE'S' REPUBLIC OF CHINA: NON-PREFERENTIAL RULES OF ORIGIN:

OUTLINE OF NON-PREFERENTIAL RULES OF ORIGIN REGIME

China's current non-preferential rules of origin are divided into two categories, import and export;

1. Import Rules of Origin are used for the application of MFN rates, for compiling trade statistics, for marking of origin, for import control, and will be used for anti-dumping duties, countervailing duties, safeguard measures, and tariff quota.
2. Export Rules of Origin are used for export control, for compiling trade statistics and for marking of origin.

BASIC PRINCIPLES OF NON-PREFERENTIAL RULES OF ORIGIN

(a) Import: Where the production of the goods has taken place in several countries/areas,

the countries/areas carrying out the last substantial processes economically, shall be regarded as the original country of the goods. "The substantial processes" means that, after processing, the tariff heading of a product has been changed in the "Customs Import and Export Tariff", or the percentage of the value-added reaches 30 percent or more of the whole value of the new product. "The substantial processes" is used as the basic principle of our current rules and "value-added" criteria is used as supplementary rules.

(b) Export: Products containing imported material or components mainly or finally manufactured or processed within the territory of the People's Republic of China with substantial alterations in the appearance, nature, state or purposes of the imported materials or components. The list of procedures of manufacturing and processing shall be formulated and adjusted by the State Department in charge of foreign economic relations and trade in consultation with departments concerned of the State Council according to the principle of taking the manufacturing and processing procedures as the main body supplemented by the proportion of composition.

LEGISLATION AND OTHER RULES/DOCUMENTS

Legislation

The People's Republic of China non-preferential ROO are embodied in the following legislation: "Provisional Regulations of the Customs of People's Republic of China on Origin of Import Goods" issued by the Director-General of Customs General Administration. "Rules of the People's Republic of China on the Place of Export Goods" issued by the State Council.

Certificates of Origin:

For export, the State Import and Export Commodities Inspection Departments and their branches in various localities, the China Council for the Promotion of International Trade and their branches and other organizations authorized by the State Department in charge of foreign economic relations and trade are responsible for signing and issuing certificates of origin of export goods according to the regulations formulated by the State Department in charge of foreign economic relations and trade.

RESPONSIBILITY FOR CORRECT DETERMINATION OF ORIGIN

The declarant has responsibility for the correct declaration of import. Even after they receive an import permit, they are not free of such responsibility and Customs may, as

necessary, conduct post entry examinations. Customs determines the country/area of origin of a good at the stage of clearance of a good. In principle, the country/area of origin of a good is determined on the basis of a declarant's declaration. Customs, as necessary, verifies the declaration through the examination of submitted relevant documents and inspection of marking of goods. Furthermore, Customs could require the declarant to submit the certificate of origin issued by the exporting country/area's authorities.

RULES OF ORIGIN

Goods Wholly Obtained from a Country (for import):

- (i) Mineral products extracted from its soil and territorial water
- (ii) Vegetable products harvested or gathered in the territory of the country/area
- (iii) Live animals born or raised in the territory of that country/area and products obtained therefrom
- (iv) Products obtained from hunting or fishing in that country/area
- (v) Products obtained by maritime fishing loaded from a vessel of the country/area and other products taken from the sea by a vessel of the country/area
- (vi) Products obtained aboard a factory ship of that country/area, solely from products of the kind covered by paragraph (v) above
- (vii) Scrap and waste collected in that country/area and fit only for remanufacturing and reprocessing operations
- (viii) Goods produced in that country/area solely from the products referred to in paragraphs (i) to (vii) above

OTHER CONDITIONS OR REQUIREMENTS

No other conditions and requirements are provided.

REVIEW PROCEDURES

Any declarant may file a protest if he/she is not satisfied with a disposition concerning determination of origin taken by local customs in accordance with the provision of

"Provisional Regulations of the Customs of the People's Republic of China on Origin of Import Goods." Furthermore, he/she may make an appeal to the Customs General Administration, then to the court according to "Regulations of the People's Republic of China on Import and Export Duties."

CONTACTS

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Appendix V

HONG KONG: NON-PREFERENTIAL RULES OF ORIGIN:

OUTLINE OF NON-PREFERENTIAL RULES OF ORIGIN REGIME

Being a free port, Hong Kong imposes no origin requirement on imported goods except where origin marking is concerned. Hong Kong's rules of origin are devised and administered to facilitate customs clearance of Hong Kong exports. The origin requirements for marking and trade statistics purposes are equally applied on exports.

BASIC PRINCIPLES OF NON-PREFERENTIAL RULES OF ORIGIN

Goods involving multiple country processing and/or materials are deemed to be substantially transformed in Hong Kong if they have undergone a manufacturing process(s) in Hong Kong which has changed permanently and substantially the shape, nature, form or utility of the basic materials used in the manufacture. Processes such as simple diluting, packing bottling, drying, simple assembly, sorting or decorating, etc. are not regarded as genuine manufacturing processes. Where the manufacturing process alone does not suffice to express substantial transformation, the Hong Kong cost content attributable to local component parts and labour vis-a-vis the total manufacturing cost will be considered in a supplementary manner (mainly applied to electronic and electrical products). The current local cost content requirement is 25 percent for the products concerned.

LEGISLATION AND OTHER RULES/DOCUMENTS

Origin Marking Origin marking (for imports and exports) is governed by the Trade Description Ordinance, Chapter 362 of the Laws of Hong Kong. It stipulates that in relation to description of goods, goods shall be deemed to have been:

- (i) Manufactured in the country in which they last underwent a treatment or process which changed permanently and substantially the shape, nature, form or utility of the basic materials used in their manufacture except when the Director-General of Trade stipulates otherwise; or
- (ii) Produced in the country in which they were wholly grown or mined.

Certificate of Origin The issue of certificate of origin by the Hong Kong Government Trade Department is governed by the Export (Certificates of Origin) Regulations of the Import and Export Ordinance, Chapter 60 of the Laws of Hong Kong. The issue of certificates of origin by the Government Approved Certificate issuing Organizations (GACOs) is governed by the Protection of Non-government Certificates of Origin Ordinance, Chapter 324 of the Laws of Hong Kong. Other publicly available documents interested parties can obtain information on Hong Kong's rules of origin through Trade Circulars issued by the Hong Kong Government Trade Department or make enquiry to the Trade Department Certification Branch and the five Government Approved Certification Organizations (GACOs). The Government Approved Certificate-issuing Organizations are:

- The Hong Kong General Chamber of Commerce;
- Federation of Hong Kong Industries;
- The Chinese Manufacturers' Association of Hong Kong;
- The Indian Chamber of Commerce, Hong Kong; and
- The Chinese General Chamber of Commerce.

RESPONSIBILITY FOR CORRECT DETERMINATION OF ORIGIN

Importers are responsible for lodging the necessary documents for clearance of goods through customs as required by relevant ordinances and regulations. For all imports, since

Hong Kong is a free port with no tariffs, there is no need for origin determination except only when an origin marking offence is concerned. The origin of imported goods is required to be indicated on import declarations for trade statistics purposes. Similarly for all exports, an origin indication is made on the export declaration for statistical purposes.

For those exports under a Certificate of Hong Kong Origin (CHKO), origin determination is made by either the Hong Kong Government Trade Department or one of the five GACOs in deciding whether a CHKO is issuable. Application for certificates of origin for exports should be made before exportation of the goods concerned.

RULES OF ORIGIN

The introduction and revision of the Hong Kong origin rules are an administrative arrangement undertaken by the Hong Kong Government Trade Department and the Certification Coordination Committee (CCC). The criteria for determining origin are:

- For wholly-obtained goods, they must be natural produce of Hong Kong which have been grown or mined in Hong Kong.
- There is no special provision for definition of "wholly manufactured goods" in Hong Kong.
- For manufactured goods involving multiple country processing and/or materials, they must be the product of a manufacturing process(es) in Hong Kong which has changed permanently and substantially the shape, nature, form or utility of the basic materials used in the manufacture. Where the manufacturing process alone does not suffice to express substantial transformation, the Hong Kong cost content attributable to local component parts and labour vis-a-vis the total manufacturing cost will be considered in a supplementary manner. The current local cost content requirement is 25 percent. The Certification Co-ordination Committee is established to co-ordinate certification policy and to standardize practices and procedures amongst the certificate-issuing organizations, and to improve the overall efficiency of the certification system. It is chaired by the Assistant Director-General of the Trade Department responsible for certification of origin matters and attended by representatives of all GACOs, the Customs and Excise Department and the Industry Department.

OTHER CONDITIONS OR REQUIREMENTS

There are no other conditions or requirements.

REVIEW PROCEDURES

In case where Hong Kong origin status is not granted to a particular good, the affected party may make written request or representations to the Trade Department for reconsideration or clarification.

CONTACTS

Ms. Anita Tse, Principal Trade Officer, Certification Branch, Hong Kong Government Trade Department, 3/F, Trade Department Tower, 700 Nathan Road, Kowloon, Hong Kong, Tel: _____, Fax: _____

Appendix VI

THAILAND: NON-PREFERENTIAL RULES OF ORIGIN:

Thailand does not formulate preferential rules of origin (ROO) for exports but merely implements the rules as applicable (GSP, GSTP, ASEAN PTA and CEPT).

As it is not necessary to include ROO relating to the Generalised System of Preference (GSP) as these are part of the UNCTAD booklet on GSP, the information on ROO of GSTP and ASEAN PTA and CEPT can be expressed in brief and simple terms as follows.

A value-added criterion is employed as the basis of the substantial transformation test under the preferential system of GSTP and ASEAN PTA and CEPT.

The GSTP (Global System of Trade Preferences) is employed among developing countries and least developed countries of the Group of 77. ASEAN PTA (Preferential Trading Arrangements) and CEPT (Common Effective Preferential Tariff) are employed among ASEAN member countries. Variation in Rules of Origin The same value-added basis is applied in GSTP and ASEAN PTA and CEPT. There are a few minor differences as follows: GSTP is employed among developing countries and least developed countries of the Group of 77, while ASEAN PTA and CEPT are employed among ASEAN member countries.

Under the GSTP, a product is deemed to originate from the exporting country of the Group of 77 if at least 50 percent of its content originates from that exporting country. The 50 percent local content requirement refers to a single country and 60 percent local content requirement refers to cumulative GSTP content.

Under ASEAN PTA and CEPT, a product is considered to originate from ASEAN member countries if at least 40 percent of its contents originates from any ASEAN member countries. The 40 percent local content requirement refers to both single country and cumulative ASEAN content. Structure and Application of Thailand's Tariff

Thailand's preferential rates of duty are applied for GSTP and ASEAN PTA and CEPT imports. Thus, goods imported and not entitled to preference will pay the normal or general rate of duty.

LEGISLATION AND OTHER RULES/DOCUMENTS

Legislation: As preferential ROO are already prescribed in each preferential system of GSP, GSTP, ASEAN PTA and CEPT, Thailand therefore does not find it necessary to formulate any legislation and preferential ROO applying to preferential exports.

Other Publicly Available Documents: The GSTP handbook prepared by UNCTAD and the manual of ASEAN PTA and CEPT prepared by ASEAN Secretariat are available for exporters.

RESPONSIBILITY FOR CORRECT DETERMINATION OF ORIGIN

The Department of Foreign Trade, Ministry of Commerce is responsible for the issue of Certificates of Origin for a product exported under GSP, GSTP, ASEAN PTA and CEPT and is responsible for the assessment of the origin of that product before exporting. The invoice as well as the other documents of exportation, such as the air waybill and bill of lading, are used for the application of Certificates of Origin for the above mentioned exports

RULES OF ORIGIN

Goods originating in a preference country may be divided into two categories as follows:

- A.) Wholly Obtained Goods - These goods are entirely grown, extracted from the soil or harvested within the exporting country or manufactured there exclusively from any of these products.

B.) Goods partly manufactured in the Country - There are two conditions to preference entitlement for goods partly manufactured in the preference country as follows:

1. The last process of manufacture must be performed by the manufacturer in the preference receiving country and;
2. Not less than 50 percent of the value of the exported product must be made up of local content for single country content and not less than 60 percent for cumulative content under the GSTP scheme and not less than 40 percent of the value of the exported product must be made up of local content for both single country and cumulative content under ASEAN PTA and CEPT schemes.

DIRECT SHIPMENT PROVISIONS

Direct shipment is required by GSTP and ASEAN PTA and CEPT.

OTHER CONDITIONS OR REQUIREMENTS

There are no other conditions or requirements.

REVIEW PROCEDURES

UNCTAD is responsible for maintaining review procedures under GSTP while the ASEAN Secretariat is responsible for ASEAN PTA and CEPT.

CONTACTS

Trade Preference Division, Department of Foreign Trade, Sanamachai Road, Bangkok
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Appendix VII

SOUTH KOREA: NON-PREFERENTIAL RULES OF ORIGIN:

OUTLINE OF NON-PREFERENTIAL RULES OF ORIGIN REGIME

Korea has introduced and operated its rules of origin since joining the Annex D.1. and D.2. of the International Convention (Kyoto Convention) on the simplification and harmonization of customs procedures in 1991. Article 31-4 of the Foreign Trade Law is a basic reference for the rules of origin for all non-preferential purposes. Specifically, the

rules of origin are applied equally for all commercial policy instruments such as MFN rates, anti-dumping and countervailing duties, safeguard measures, origin-marking requirements, any discriminatory quantitative restrictions, government procurement and trade statistics. This Article and its subordinate regulations provide that the origin of imported goods should be determined on the basis of the criteria for wholly produced goods and substantial transformation. Such regulations were notified in the full English version to the WTO in accordance with the Agreement on Rules of Origin in April 1995 (see WTO G/RO/N/1/Add.1).

BASIC PRINCIPLES OF NON-PREFERENTIAL RULES OF ORIGIN

Article 63-5 of the Enforcement Decree of the Foreign Trade Law provides that in cases where two or more countries are involved in the production of goods, origin should be conferred to the country where the last substantial transformation has been carried out through the production processes, resulting in adding new characteristics to the goods. According to Article 3-7-6 of the Foreign Trade Regulations issued by the Minister of Trade, Industry and Energy, whether or not substantial transformation has occurred is generally determined on the basis of the change of subheading rule, with the exception of 30 items to which ad valorem rules are supplementarily applied.

LEGISLATION AND OTHER RULES/DOCUMENTS

Legislation: Legislative provisions for rules of origin are as follow: Article 31-4 of the Foreign Trade Law (Criteria for Determining Country of Origin) Article 63-5 of the Enforcement Decree of the Foreign Trade Law (Criteria for Determining Country of Origin). Article 3-7-6 of the Foreign Trade Regulation (Country of Origin of Imported Goods) issued by the Minister of the Trade, Industry and Energy. The Ministry of Trade, Industry and Energy is the responsible authority for the above legislations concerning rules of origin, and such legislation is implemented by the Korea Customs Service.

Other Publicly Available Documents: The revision of rules of origin is published and noticed in the Daily Trade, which is a daily periodical for traders. Another publicly available document is the HS Synthetic Manuals published by the Korea Customs Institute.

RESPONSIBILITY FOR CORRECT DETERMINATION OF ORIGIN

The responsibility for the correct clearance of goods through customs is imposed on the importer. The head of the customs office confirms the country of origin of the goods on the basis of the relevant documents submitted by the importer in accordance with the aforementioned legislation. Generally, confirmation of origin is made at the time of the clearance of goods, and it is also possible to confirm the origin of goods before or after clearance if importers or interested parties request origin confirmation in accordance with related procedures. In case of origin confirmation, the certificate of origin issued by the exporting country's competent authority is normally used in declaring the country of origin of goods. In exceptional cases, however, the head of the customs office may request that the importer present other evidence documents for confirmation of the origin.

RULES OF ORIGIN

Wholly Produced Goods: The following are considered as goods wholly produced in one country:

- Mineral, agricultural and vegetable products produced in the country
- Live animals born or raised in the country
- Goods obtained from hunting or fishing in the country
- Fish and other goods taken from the waters by a vessel of the country
- Scrap and waste from manufacturing or processing operations in the country
- Goods manufactured or processed in the country or its vessels from the goods referred to above. Korea's definition of wholly produced goods is interpreted so as not to permit any imported content, including imported packaging materials. In Korea's rules of origin, however, packaging is a minimal operation, so that it does not affect the status of the wholly produced goods, even if imported packaging materials are used for the goods

Substantial Transformation: In cases where two or more countries are concerned in the production of goods, origin is conferred to the country where the last substantial transformation has been carried out through the production processes. Substantial transformation is considered to have occurred when the following requirements

are satisfied: (This criteria is applied for all non-preferential purposes.)

(i) Criteria of change in tariff classification: It is considered that substantial transformation has occurred when the HS subheading of the goods produced by using imported materials is changed from the HS subheading of the imported materials used for production of the goods through the manufacturing or processing operations of the goods.

This simple change of subheading rule is applied for the origin determination of all imported items, and to export for 30 items to which ad valorem criteria is applied. The reference for the criteria is the 1996 version of the HS Nomenclatures.

(ii) Ad valorem percentage criteria: For origin determination of imported goods, ad valorem criteria is applied to 30 items, all of which are mechanical and electronic goods. The value-added threshold is 35 percent of the price of the goods. The formula is as follows:

(a) For 30 items, origin is conferred to the country where 35 percent or more of the value-added of raw materials or components used in the production of the relevant goods was generated.

(b) The percentage of the value-added is the ratio of the aggregate price by origin of the raw materials or components used in the production of the relevant goods, to the import price of the goods.

(c) The nominator is the summation of the price by origin of the raw materials or components used in the production of the goods, which is calculated on the basis of the ex-factory price (in case of local supply) or FOB price (in case of foreign supply) per purchased unit.

(d) The denominator is the import price of the imported goods, which is calculated on an FOB basis.

(iii) Any other special provisions: Accessories, spare parts and tools are considered to have the same origin as that of the machine, appliance, apparatus or vehicle on the condition that they are presented together with the machine, etc. The same principle is applied to packing and packaging materials and containers.

OTHER CONDITIONS OR REQUIREMENTS

Basically, the country of origin of imported goods is recognized only if the goods are directly shipped and brought into Korea from the country of origin without passing through any other country.

REVIEW PROCEDURES

The Ministry of Trade, Industry and Energy operates administrative review procedures. Where the declared country of origin is denied, the affected parties may use the procedures by way of the Korean Customs Service.

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Appendix VIII

TURKEY: NON-PREFERENTIAL RULES OF ORIGIN:

CUSTOMS LAW No.4458 of 27/10/1999

SECTION 1

Non-preferential origin of goods

ARTICLE 17- Articles 18 to 21 define the non-preferential origin of goods

for the purposes of:

- (a) applying the Turkish Customs Tariff with the exception of the measures referred to in Article 15 (3) (d) and (e);
- (b) applying measures laid down by the Council of Ministers other than the tariff measures relating to trade in goods,
- (c) the preparation and issue of certificates of origin.

ARTICLE 18-1. Goods originating in a country shall be those wholly obtained or produced in that country.

2. The expression 'goods wholly obtained in a country' means:

- (a) mineral products extracted within that country;
- (b) vegetable products harvested therein;
- (c) live animals born and raised therein;
- (d) products derived from live animals raised therein;
- (e) products of hunting or fishing carried on therein;
- (f) products of sea-fishing and other products taken from the sea outside a country's territorial sea by vessels registered or recorded in the country concerned and flying the flag of that country;
- (g) goods obtained on board factory ships from the products referred to in subparagraph (f) originating in that country, provided that such factory ships are registered or recorded in that country and fly its flag;
- (h) products taken from the seabed or subsoil beneath the seabed outside the territorial sea provided that that country has exclusive rights to exploit that seabed or subsoil;
- (i) waste and scrap products derived from manufacturing operations and used articles, if they were collected therein and are fit only for the recovery of raw materials;
- (j) goods which are produced therein exclusively from goods referred to in subparagraphs (a) to (i) or from their derivatives, at any stage of production.

3. For the purposes of paragraph 2, the expression 'country' covers that country's territorial sea.

ARTICLE 19- Goods whose production involved more than one country shall be deemed to originate in the country where a new product manufactured or goods underwent economically justified last substantial transformation and an important stage of manufacture.

ARTICLE 20- Any processing or working in respect of which it is established, or in respect of which the facts as ascertained, create the impression, that its sole object was to circumvent the provisions applicable by Turkey to goods from specific countries, shall not be deemed to confer on the goods thus produced the origin of the country where it is carried out within the meaning of Article 19.

ARTICLE 21- 1. Submission of the certificate of origin shall be optional. However, it shall be obligatory to produce the certificate of origin proving that the goods are originated in a contracting country to an agreement or are deemed so due to the transformations and operations to which goods were subject within that country where a tariff reduction would be claimed to be benefited on the basis of the certificate of origin in accordance with the provisions of international and bilateral agreements.

2. In cases other than paragraph 1, the rules and principles regarding the submission of certificate of origin and not asking for a certificate of origin in respect of the value, origin, description or nature of the goods, shall be determined by regulation.

3. The form and content of certificates of origin shall be determined by regulation by taking into consideration the international arrangements.

4. Notwithstanding the submission of the certificate of origin, the customs administrations may, in the event of serious doubts, require any additional proof.

Appendix IX

INDIA: NON-PREFERENTIAL RULES OF ORIGIN:

Self-Certification of Originating Goods

2.61 Approved Exporter Scheme for Self-Certification of Certificate of Origin.

(i) Currently, Certificates of Origin under various Preferential Trade Agreements [PTA], Free Trade Agreements [FTAs], Comprehensive Economic Cooperation Agreements [CECA] and Comprehensive Economic Partnerships Agreements [CEPA] are issued by designated agencies as per Appendix 2B of Appendices and Aayat and Niryat Forms. A new optional system of self-certification is being introduced with a view to reducing transaction cost.

(ii) The Manufacturers who are also Status Holders shall be eligible for Approved Exporter Scheme. Approved Exporters will be entitled to self-certify their manufactured

goods as originating from India with a view to qualifying for preferential treatment under different PTAs/FTAs/CECAs/CEPAs which are in operation. Self-certification will be permitted only for the goods that are manufactured as per the Industrial Entrepreneurial's Memorandum (IEM) / Industrial License (IL)/Letter of Intent (LOI) issued to manufacturers.

(iii) Status Holders will be recognized by DGFT as Approved Exporters for self-certification based on availability of required infrastructure, capacity and trained manpower as per the details in Para 2.109 of Handbook of Procedures 2015-20 read with Appendix 2F of Appendices & Aayaat Niryaat Forms.

(iv) The details of the Scheme, along with the penalty provisions, are provided in Appendix 2F of Appendices and Aayaat Niryaat Forms and will come into effect only when India incorporates the scheme into a specific agreement with its partner/s and the same is appropriately notified by DGFT.

Appendix X

TEXTILE INDUSTRY

As stated by the FTC on its website, “Textile Fiber Products Identification Act and Wool Products Labeling Act - Require a ‘Made in USA’ label on most clothing and other textile or wool household products if the final product is manufactured in the U.S. of fabric that is manufactured in the U.S., *regardless of where materials earlier in the manufacturing process (for example, the yarn and fiber) came from.* Textile products that are imported must be labeled as required by the Customs Service.²¹”

The jewelry manufacturing industry (specifically gold) is not held to this same standard. **For example**, also stated on the FTC website “If the gold in a gold ring is imported, an unqualified ‘Made in USA’ claim for the ring is

²¹ <https://www.ftc.gov/tips-advice/business-center/guidance/complying-made-usa-standard>

deceptive. That’s because of the significant value the gold is likely to represent relative to the finished product, and because the gold — an integral component — is only one step back from the finished article.”

It is unfair to say that the gold ring is “only one step back from the finished article.” As discussed above, the transformation of gold into a finished fine jewelry product is a complex process with many steps. The standard set by the FTC is prejudice against the jewelry manufacturing industry. Since consumers are willing to pay more for American-made products, they should know and understand that the substantial transformation process of gold at Richline’s manufacturing factories in the United States is a lengthy and arduous process. The substantial transformation of gold as a raw material into a piece of gold jewelry is where the value added steps happen. The actual value of these fine jewelry products is added in the United States, in Richline’s factories, and is not “only one step back from the finished article.” It is important and extremely beneficial for the Richline Group to be transparent with consumers, and for consumers to understand that the product’s value is added in the factories in the United States.

New Balance, for example, makes the claim, “Where the domestic value is at least 70%, we label our shoes Made in the USA²².” If the jewelry manufacturing industry were able to make this same claim, the Richline Group would then be able to legally stamp its products with a “Made in USA” label.

²² <http://www.newbalance.com/made-in-usa-1/>

Currently, the jewelry manufacturing industry is held to the “all or virtually all” standard set by the FTC, as the domestic value is not a labeling criteria available to Richline and the industry. An updated FTC standard will greatly benefit the jewelry manufacturing industry.

Appendix XI

PETROLEUM TO PLASTIC TRANSFORMATION

The FTC website compares the substantial transformation process of gold to that of petroleum. “By contrast, consider the plastic in the plastic case of a clock radio otherwise made in the U.S. of U.S.-made components. If the plastic case was made from imported petroleum, a Made in USA claim is likely to be appropriate because the petroleum is far enough removed from the finished product, and is an insignificant part of it as well.”

PlasticsEurope describes the transformation process as follows:

“Plastics are derived from organic products. The materials used in the production of plastics are natural products such as cellulose, coal, natural gas, salt and, of course, crude oil. Crude oil is a complex mixture of thousands of compounds. To become useful, it must be processed. The production of plastic begins with a distillation process in an oil refinery. The distillation process involves the separation of heavy crude oil into lighter groups called fractions. Each fraction is a mixture of hydrocarbon chains (chemical compounds made up of carbon and hydrogen), which differ in terms of the size and structure of their molecules. One of these fractions, naphtha, is the crucial element for the production of plastics. The two major processes used to produce plastics are called polymerisation and polycondensation, and they both require specific catalysts. In a polymerisation reactor, monomers like ethylene and propylene are linked together to form long polymers chains. Each polymer has its own properties, structure and size depending on the various types of basic monomers

used. There are many different types of plastics, and they can be grouped into two main polymer families: Thermoplastics (which soften on heating and then harden again on cooling) and Thermosets (which never soften when they have been molded)²³.”

While this process is clearly a substantial transformation from petroleum to plastic, the substantial transformation of recycle gold and other precious metals into fine jewelry (or, coins sent to the US Mint) undergoes a similar number of steps. This is another example of how the jewelry manufacturing industry is held to an unfair standard set by the FTC and puts the industry at a global disadvantage.

Appendix XII

WOOD

Another industry to take a look at is the substantial transformation process of wood. Let’s take a look at an example of the production of a wood chest by a furniture manufacturer located in Greenfield, Indiana. This particular wood chest used for this example has been wholly designed within the United States, however the wood chest is made from US and imported components from Malaysia. As stated on the bill of materials for the wooden chest, 40% of the materials are of US origin. The production of the wood chest occurs in the Greenfield, Indiana factory with a skilled, trained worker at each step of production. After the assembly of the wood chest is completed, it undergoes a quality control review, which happens at the plant in Indiana.

In the final determination, Customs Border Protection (CBP) has concluded that, based upon the facts presented, the wood chest, assembled in the

²³ <http://www.plasticseurope.org/what-is-plastic/how-plastic-is-made.aspx>

U.S. from parts made in Malaysia and the U.S., is substantially transformed in the U.S., such that the U.S. is the country of origin of the finished article for purposes of U.S. government procurement²⁴.

If the substantial transformation of the wood chest were held to the same standard as the substantial transformation process of fine jewelry manufacturing, the wood chest would not have the US origin label. This is another example of the unequal standards across industries. Furthermore, this examples illustrates the necessity to change the standards as set by the FTC to focus more on the value added and process by which the transformation happens, not solely the origin of the materials.

Appendix XIII

AUTOMOBILE INDUSTRY

The automobile industry does not claim, “Made in USA,” it claims “Assembled in USA.” The automobile industry abides by the American Automobile Labeling Act (AALA), which lists the final assembly point, source of engine and transmission, and which countries supplied 15 percent or more of the vehicle’s equipment^{25, 26} The FTC states,

“American Automobile Labeling Act — Requires that each automobile manufactured on or after October 1, 1994, for sale in the U.S. bear a label disclosing where the car was assembled, the percentage of equipment that

²⁴ http://www.cbp.gov/bulletins/Vol_44_No_16_Title.pdf

²⁵ <http://www.nhtsa.gov/Laws+&+Regulations/Part+583+American+Automobile+Labeling+Act+%28AALA%29+Reports>

²⁶ <http://www.consumerreports.org/cro/magazine/2015/05/what-makes-a-car-american-made-in-the-usa/index.htm>

originated in the U.S. and Canada, and the country of origin of the engine and transmission. Any representation that a car marketer makes that is required by the AALA is exempt from the Commission's policy. When a company makes claims in advertising or promotional materials that go beyond the AALA requirements, it will be held to the Commission's standard.²⁷”

Harley Davidson is a perfect example of an automobile that is “Assembled in USA.” The company is an iconic American motorcycle company where motorcycles are sold in the United States, but are not actually “Made in USA.” While Harley Davidson has factories in the United States, it also has plants all over the world including Germany, Italy, Taiwan, Japan, and Mexico. The parts are shipped to the plants located in the United States where the actual assembly happens. With the globalization of the world, it is near impossible to determine where all components of an automobile originate. To help consumers understand how American a car is every vehicle has to display a parts-content window sticker. This AALA label can be deceiving and is often a rough approximation. The exact country of origin is difficult to trace because vehicle parts only trace back so far. Similar to recycled gold, the country of origination is also very difficult to identify, as the country is origin is only traced back so far.

Appendix XIV

FOOD INDUSTRY

²⁷ <https://www.ftc.gov/tips-advice/business-center/guidance/complying-made-usa-standard>

The law does not specifically require that the country of origin statement be placed on the principal display panel (PDP), but requires that it be conspicuous. If a domestic firm's name and address is declared as the firm responsible for distributing the product, then the country of origin statement must appear in close proximity to the name and address and be at least comparable in size of lettering (FDA/CBP (Customs and Border Protection) Guidance and Customs regulation 19 CFR 134)²⁸. A few examples of “Made in USA” labeling on food products include CK Mondavi Wines, Daddy’s Seasonings, Mastermind Vodka, Tito’s Vodka, Maker’s Mark Bourbon Whiskey, Yuengling Brewery and Upfront Foods. A few examples of pet food companies with “Made in USA” labeling are Dogs Love Kale and Kent Pet Group²⁹.

Appendix XV

EXAMPLE OF LAWSUIT CLAIMS

Anheuser-Busch InBev SA/NV

In July 2015, AB InBev was accused of misleading consumers. The company labeled its Busch beer as Made in USA when the company used imported hops to produce the beer. Complying with the Made in USA labeling standards is increasingly challenging across industries. The ruling of this lawsuit

²⁸<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm064872.htm#origin>

²⁹ <http://madeinusa.net/clients/our-clients>

is pending, however this mislabeling incident can prove to be costly to InBev moving forward.

Revlon, Inc. (Almay brand)

In May 2015 Truth in Advertising, Inc. accused Revlon, Inc., specially the Almay brand of cosmetics, for falsely advertising and deceiving customers. Almay is questioned for making an “implied, unqualified claim that its products are made in the United States of America.” Almay refutes this assertion and argues that its ‘Simply American’ campaign “reflects and truthfully communicates Almay’s brand values of authenticity and American beauty.” Almay further argues that all of Almay’s products are *formulated and tested* in the United States (in Almay’s laboratories in Edison, NJ and Princeton, NJ). Finally, Almay states that it can satisfy the criteria established by the FTC for such claims (See FTC Enforcement Policy Statement on U.S. Origin Claims, 62 FR 63760, 63755 (Dec. 2, 1997); see also FTC Guidance: Complying with Made in USA Standard (Dec. 1998))³⁰.

Lands End

In October of 2014, a class-action lawsuit was filed against Lands’ End for allegedly falsely marketing some of its apparel as Made in the USA. The plaintiffs claim that Lands’ End misleadingly labeled the Kids To-be-tied Plain Necktie as made in the USA when, in reality, its parts – such as the fabric and

³⁰ Ltr-fron-A-Gerber-to-L-Smith

thread – are manufactured outside of the U.S. and the necktie itself is made in China. (*Oxina et al v. Lands’ End, Inc.*, Case No. 14-cv-2577, S. D. CA.).

In June of 2015, a federal judge dismissed this class-action lawsuit against Lands’ End finding, among other things, that:

- The plaintiff does not have standing (i.e., a proper basis) to bring the claims regarding products that she did not purchase because the complaint does not include enough detail to determine if the un-purchased products are similar to the necktie plaintiff did buy; and
- The complaint did not allege that the phrase “Made in U.S.A.” or other similar language appears on the necktie itself or on its container, as required to show a violation of California law³¹.

³¹ <https://www.truthinadvertising.org/lands-end-made-usa-claims/>