

[MUSIC PLAYING]

ANDREW SMITH: So I'm going to begin. And then Jim Kohm, our Associate Director of Enforcement will give some details on the logistics, right? Yeah. So I'm Andrew Smith. I'm the Director of the Bureau of Consumer Protection at the FTC. And I wanted to welcome you this morning and thank you for coming to our Made in the USA workshop.

Thanks particularly to all of our panelists for taking the time to participate. And we're looking forward to hearing what you have to say. And thank you to everybody in the audience and everybody watching the webcast. We hope that today's discussion will be lively and informative. And as I'm reading the remarks here so skillfully written by the staff, I'm thinking to myself given the depth of emotion that Made in the USA issues have tended to or engendered over the last several months, I might just settle for informative and maybe not so much lively.

Our job here at the FTC is neither to promote nor to inhibit Made in the USA claims, but instead to make sure that marketers who choose to make these claims are competing based on truthful information. And understanding how consumers perceive Made in the USA claims is vital to fulfilling our mandate. We're holding this workshop because we think it's time to take another look at the issues surrounding Made in the USA claim, specifically how consumers understand Made in the USA, how companies can avoid making deceptive claims, and what the FTC can do to effectively hold accountable companies that mislead consumers.

Although Made in the USA is a straightforward claim, how consumers perceive that claim is anything but straightforward. For example, why did consumers want to purchase products that are made in the USA? Does it indicate that the company follows Fair Labor Standards, or adheres to environmental protections? Does it mean that the product is of high quality? That the manufacturer employs US workers? That the product is safe? That the product is healthy? Maybe all of the above.

Are some or all of these concerns about ensuring that a product is made in the United States? Or are they more focused on ensuring that products made in a particular country of origin are not falsely labeled? And does your analysis change depending on the product involved?

For example, are your expectations different with respect to imported content if I tell you that

this wallet is made in the United States versus this cell phone? The FTC's Made in the USA compliance program goes back to at least 1940 when the Commission brought a case against Falcon Lamp Works based on deceptive Made in the USA claims for flashlights. In the many years since, consumer perception has remained surprisingly consistent. Specifically, based on all the studies that we've seen, consumers have continued to expect products advertised as Made in the USA to have no more than a de minimis amount of imported content. In 1997, the FTC issued its enforcement policy statement on US origin claims after conducting consumer testing, holding workshops, and reviewing thousands of comments.

The 1997 policy statement informed marketers that they should make unqualified claims only for products that are all or virtually all made in the United States. This all or virtually all policy was consistent with the traditional standard that the commission had applied over the years. This policy statement is still in effect. And over the last 20 years, the commission staff has developed a comprehensive Made in the USA compliance program. We've chosen to focus our litigation efforts on egregious offenders, while aggressively working to prevent Made in the USA misrepresentations by providing extensive guidance and informal feedback to any company that seeks it.

By expanding substantial staff resources on business counseling, we've tried to make it easy for US businesses to find ways to promote the good work that they are doing in this country without deceiving consumers. There are also companies which sell products which contain significant US content, but may not meet the all or virtually all expectations of consumers. When these companies claim that their products are made in the USA, the staff provides counseling and issues closing letters on the public record when the company comes into compliance. Each of these letters contains guidance so other companies can avoid the same pitfalls. Staff has issued 154 of these letters since 2010.

For those recalcitrant companies that do not heed our warnings and refuse to promote their products truthfully, the commission brings federal or administrative court actions-- 27 in the past two decades. This program has been largely successful from a compliance perspective-- only two order violation cases in the past 10 years, and a repeat rate of approximately 2% of backsliding among closing letter recipients. But all of these numbers largely omit foreign actors who make false Made in the USA claims and sell into the US through internet marketplace platforms.

These bad actors may be beyond the reach of our current enforcement tools. And I hope that today's discussion will include the role that these foreign sellers and the platforms that host them play in disseminating false made in the USA claims, and how the FTCs enforcement policy can address these new challenges. I want to emphasize that our goal today is not to reach some preordained conclusion. We have an open mind and we're counting on a productive and creative discussion, as well as thoughtful written comments to help the agency make the best fully informed decisions.

Thank you in advance for being here today. These are hard issues and we're counting on your help. Good luck, and let's get started.

[APPLAUSE]

JIM KOHM:

OK, before we get started, what you're going to hear is a cautionary tale. What happens if you spend a decade and a half hiring people smarter than you is you're relegated to telling people where the bathrooms are. So that's my role this morning. By the way, if you need the bathrooms, if you go out that way you can easily get the men's room across the hall. And if you go out that way, to the ladies room across the hall.

I'm serious, that is my highest function today. Please turn off your cell phones. Just a reminder that you can step out if people need to check their cell phones. If you leave the building, I know it was a pain to get in the building-- if you leave the building, you're going to have to come back through security. So that's the bad news.

The good news is unlike our old building-- the building that's old, but the building we used to be in-- we have quite a good cafeteria that's right down the hall. They actually have good coffee. And they are open till 11:00. They're closed from 11:00 to 11:30. So the people who need to get coffee, get it before 11:00. They open up again for lunch at 11:30. And it's pretty good. And you don't have to go back through security.

So most of you I see have lanyards on that you got when you came in. We're trying to be environmentally friendly and save you all as taxpayers money. So please put those back on the table. When you leave them, we'll use them for the next conference.

If there is an emergency-- it's unlikely-- but in the case of emergency, extremely important. If there is an emergency where we need to stay in the building, follow the directions on the PA system. If there is an emergency where we need to leave the building that we'll know from the

PA system, you go out the main Seventh Street exit, take a left, walk down the street, cross the street in front of the church across the street. And that's where we congregate to make sure everybody's safe in case of a fire or something like that.

If you see any suspicious activity, please just let the guards know. They're right outside in the FTC lobby. Today's event is webcast and can be photographed. So just by being here, you're agreeing to have your picture taken to be on the web and for your comments to be public for everybody who's making comments on the panel. The whole idea of the comments is to make sure that we get them for public consumption.

We're going to be following a roundtable format today with questioning of our panelists. So there won't be time for specific questions from the audience either from the web or here. Thank you so much for coming, but we do look forward to your comments. And the comment period will be open after the event. And hopefully today's discussion sparks comments that are thoughtful and then can help us sort through these difficult issues.

We are very big on timeliness. So each thing will start-- each panel will start on time. When we take a break, we will start on time when we come back. So if you're not back, even if your panelists we'll start so that we respect everybody's time. So now, having heard that, you can decide in the future whether it's better to hire people smarter than you are not. I've now performed my highest function, at least according to my staff. And we'll get started with the substantive portion of today. Thank you.

JULIA SOLOMON ENSOR: Good morning, everybody. We're running a little early. So we'll just go ahead and run through the staff presentations. And then if we have time for a little unscheduled break before our first panel, we'll take that then. As many of you know, my name is Julia Solomon Ensor. I'm a Staff Attorney in the Bureau of Consumer Protection Division of Enforcement. I coordinate the Made in the USA program for BCP.

Before I get started, of course I have to remind everyone that any views that I or my colleagues express today are our own and don't necessarily represent the views of any commissioner. OK, so as a frame for today, I thought it would be helpful to provide a little bit of background information about the FTC, generally the law that we enforce in the enforcement policy statement on US origin claims. So by way of background, a little bit of information about the FTC.

We are an independent, federal agency with very broad jurisdiction over almost every sector of the economy. We are the nation's truth in advertising agency. We're the only federal agency with general jurisdiction in the area of consumer protection. Our statutory authority, Section 5 of the FTC Act, declares unlawful, unfair, or deceptive acts or practices.

So there are a couple of key principles to understand when you're thinking about Section 5. And the commission's helpfully issued a policy statement on deception that outlined some of those. The main thing that I remind marketers is tell the truth. If you're telling the truth, you're well on your way to complying with Section 5.

When you dig into that a little bit and think about what that means, you want to avoid a representation, omission, or practice that's likely to mislead a reasonable consumer. And we're talking about representations that are material. When you are analyzing your claims, you also need to make sure that you have a reasonable basis, that you can substantiate any claims that you're making.

So stepping back, first you're making sure that you're telling the truth and you're thinking about what do my claims convey to consumers? And here we're talking implied claims, as well as expressed claims. And then you step back and say, do I have a reasonable basis to back up those claims? Remember, the more specific a claim is, the more likely it is that consumers will understand the claim as the marketer intends.

One concept that I want to make sure that everybody is aware of today is the significant minority concept. When we're thinking about enforcement and deception in Section 5, it's important to remember that a claim need not mislead all or even most consumers to violate Section 5. The deception policy statement explains that a claim or practice that misleads a significant minority of reasonable consumers is deceptive.

The case laws define a significant minority differently over time. But cases have found that this can be as low as 10.5% of consumers net of control. So the reason that I'm emphasizing this is when we're thinking about consumer perception testing, I want you to remember that even if a majority of consumers agree with a claim for the product, it may still violate Section 5 if a significant minority of consumers are deceived.

So if you think about a product that was finished here in the US with some imported content during the manufacturing process, even if 75% of consumers agree that Made in the USA accurately describes that product, if 25% are deceived, that claim violates Section 5.

As Andrew mentioned, in 1997 the commission issued its enforcement policy statement on US origin claims. This helps marketers comply with Section 5 as it applies to US origin claims. It's important to remember that the policy statement is not independently enforceable. It's not a rule or a law. It's guidance based on consumer perception testing, commission precedent dating back to the 40s, and thousands of comments received in the 90s.

We won't go into detail right now about what the policy statement says. I know many in the audience are very familiar with it. But the basics are that for unqualified Made in USA claims-- so we're talking claims like Made in the USA, Manufactured in the USA, Made in America-- any claim like that without additional explanatory information, a marketer must be able to substantiate that the product is all or virtually all made in the USA, that the product has no more than a de minimis amount of imported content. Thinking through that, first the manufacturer should make sure that the product is less substantially transformed in the USA. And then the commission will apply a flexible factors test where we take into account a number of different factors to determine whether any imported content is more than de minimis.

For qualified claims-- and when I say a qualified claim, I mean a claim like assembled in the USA or made in the USA with imported materials-- the marketer first needs to substantiate that there was a substantial transformation in the United States without additional processing overseas. And then the appropriate qualified claim should be carefully tailored to this specific circumstance of the product. Again, remember the more specific the qualification is, the less likely it is that consumers will misunderstand the claim.

I want to briefly mention a provision in the US code 15 USC 45a that we will touch on later today. This is a 1994 law about Made in the USA or Made in America labels. It gives the FTC a little extra authority in this area and says that labels must be consistent with the FTC's decisions and orders issued pursuant to Section 5. This provision also gives the commission some limited rule-making authority, gives us an easier path to rule-making for labels that are covered by this section.

Things to keep in mind is it may be that this section is hemmed in specifically to labels. And there is some case law out there suggesting that it may only apply to unqualified claims. So just keep that in mind. And we'll talk about that later today.

Finally, I also wanted to just mention again the compliance program that we have currently. Of course, the reason we're here today is to talk about whether this is working. So all options are

on the table.

But in the past we've applied a three pronged approach to compliance and enforcement. Our main emphasis has been on business education. Any company that wants to make Made in USA claims can pick up the phone, talk to a staff member, and receive informal staff feedback on their claims. This includes looking at mock-ups. This includes detailed guidance.

We've really tried to avoid deceptive claims on the front end. Of course, that doesn't always work. And so sometimes we find companies that are trying to comply but they make mistakes or they misunderstand the policy statement. For those companies, we've counseled them into compliance and issued closing letters on the public record, as Andrew mentioned, to try to help other companies avoid similar pitfalls.

Finally, we have a targeted litigation program where we bring cases against egregious offenders that either defraud consumers or refuse to work with us. Again, our priority throughout this program is to help companies find ways to promote the good work they're doing here in the US without deceiving consumers in the process. Just a little bit of data-- 154 closing letters since 2010, 27 cases, and two civil penalty actions. So that's where we are today, not necessarily where we'll go in the future. And we're really looking forward to what everybody has to say.

Now I'll turn it over to Shiva.

[APPLAUSE]

SHIVA KOOHI: Hi, everybody. My name is Shiva Koochi. I am an economist here at the FTC's Bureau of Economics. Like Julia, I wanted to note that the views presented here are my own and don't necessarily represent those of the FTC. So today, I'm going to be giving a brief overview of past research that we've done here at the FTC, as well as research of others. And I'll give a brief framework for considerations for future research on the topic.

So the existing consumer research can be divided into two main buckets. The first is the consumer perception bucket. So what do Made in the USA claims mean to consumers? Researchers have used several techniques to get at this question, including copy testing, which is the form of marketing research, as well as survey design questionnaires.

The second bucket of research is how important are Made in the USA claims to consumers

purchasing decisions? Again, a range of techniques have been used here-- surveys, analysis of real world transaction data, as well as more sophisticated forms of economic modeling.

So the consumer perception research that has been conducted in the past has found that there are two main determinants of consumer understanding of Made in the USA claims. The first is the country in which it was assembled, the US or abroad. And the second is the proportion of costs, whether they be parts or labor that were incurred in the US. In general, consumers are more likely to agree with a Made in the USA claim if the product is assembled in the US.

Additionally, as a portion of costs that are from the US increases, consumers are more likely to agree with the claim that the product was made in the USA. So no surprises there. But I thought it'd be helpful to lay that out.

So with regards to the second of these, the portion of costs that are incurred in the US, prior research we have conducted here at the FTC has demonstrated that there are two distinct camps of consumers. The first is the group that thinks that nearly all of the costs or parts must be from the US in order for the product to qualify as one made in the USA. The second group would consider a product to be made in the USA if simply a high degree of the costs or parts are from the US. This second group constitutes the majority of consumers. And just to note that this would be for a product assembled in the US.

So to give you an idea of the relative sizes of these two groups, one of our past studies showed that 22% of consumers would disagree with Made in the USA even if the vast majority of the costs or 90% of the costs were incurred here. On the other hand, 67% of consumers would agree that a product was made in the USA even if just 70% of the cost was incurred here. And 75% would agree if 90% of the costs was incurred here.

So in summary, these two groups disagree about the level of US content that a product must contain in order to qualify as one made in the USA. To answer the question of whether consumers care, researchers have used techniques such as surveys, analysis of real purchasing data. When answering survey questions, respondents often state that they prefer to purchase US made products. For example in a poll conducted in 2012 by the company Harris Interactive, 70% to 75% of US adults said that it was important or very important to buy American for a range of products, such as appliances and furniture.

However, compared to the survey setting, research has demonstrated that country of origin is less important when looking at actual purchasing data. In the real world, consumers can obviously take into account a variety of product attributes. Quality, brand, price, and fit are just some of these. And they tend to place more importance on these other attributes than country of origin when they have a wide variety of factors to consider when making their purchasing decision.

Of course, the importance of country of origin is likely going to be context specific. For example, one study has demonstrated that country of origin is less important when consumers are very familiar with a specific brand. So to conclude, I'd like to lay out some considerations for future research.

First, because respondents often have difficulty articulating what it means for a product to be made in the USA, I would recommend that researchers conduct quantitative research where respondents are presented with specific scenarios about where a product was assembled and the cost breakdown of the parts and labor that went into the product. Second, in general randomized controlled designs are preferable to survey designs, because they can address a variety of biases that may actually impact the results such as yea-saying, preexisting beliefs, and selection into the pool of respondents.

Third, again, it is important to note that consumer perception is likely to differ across products. For example, assuming two products have the same percentage of US parts, consumers might be more likely to agree with made in the USA if one of the products contains raw materials that are not available here in the US. And finally, field experiments could provide useful insight into actual consumer behavior and help validate findings that are found through other techniques listed above.

And just some references of the research that I consulted. And thank you very much. I believe we have a few minutes. I'll leave it up to the team and Julia about whether to continue. Thank you.

[APPLAUSE]

JULIA SOLOMON And we'll post the presentation so you all can check out the references online. We'll post the presentation after the workshop today. So we are running a little bit ahead of time. So we're going to break until 9:05. And then we'll still be running ahead of schedule. So if anybody

ENSOR:

wants to get some coffee or take a quick break, we'll resume at 9:05.

[MUSIC PLAYING]

JULIA SOLOMON OK, everyone. We've got a little bit past 9:05. So we're going to get started. If all the panelists
ENSOR: could please return to the table and we'll get started. Thanks.

HAMPTON OK, good morning. I'm Hampton Newsome. I'm an attorney in the Bureau of Consumer
NEWSOME: Protection. And I'll be moderating this first panel. We're going to talk about consumer research that's been done and also discuss what claims are important to sellers and consumers, and also why they're important.

To start off, why do we go on down the road. If everybody could introduce themselves, let's just go with names and affiliations. Julia, we already know who you are. So we'll skip you.
Clint?

CLINT MORRIS: Clint Morris with Lifetime Products.

MARK HANNA: Mark Hanna, Richline Group, Berkshire Hathaway.

KRISTEN KERN: Good morning, Kristen Kern with the American Apparel and Footwear Association.

JUSTIN Hey, I'm Justin Brookman with Consumer Reports.
BROOKMAN:

ANNEMARIE Annemarie O'Shea-- Walmart.
O'SHEA:

SCOTT PAUL: Scott Paul with the Alliance for American Manufacturing.

PETE WICKS: Pete Wicks, the Homer Laughlin China Company.

BONNIE PATTEN: Good morning, I'm Bonnie Patten with TruthInAdvertising.

HAMPTON Great, thank you. So as Julia discussed, one of our core task in the consumer protection
NEWSOME: arena is to determine whether claims are deceptive. And more specifically, according to the

FTCs deception policy statement, whether the seller is making a material representation that's likely to mislead a reasonable consumer. In short, our job is to prevent consumers from being deceived.

So how can we tell whether a claim deceives consumers particularly with implied claims that may have multiple meanings to consumers? And this is where consumer research or extrinsic evidence like consumer research comes in. And in some cases, consumer testing allows the FTC and sellers who may do it on their own to gauge how consumers will interpret these types of difficult claims. And just to emphasize here, Julia talked about the concept of significant minority. But a claim can violate the FTC Act even if it does not deceive all or most consumers.

The relevant standard is that a claim may be deceptive if a significant minority was deceived. And the commission has found percentages as low as 10.5% sufficient to constitute a significant minority. And the example Julia gave, let's just say that there's a product that has a unqualified Made in the USA claim. The product is wholly assembled in the US with mostly US inputs, but with one major imported input. And during the consumer tests, consumers are asked whether they agree with a Made in the USA claim under this scenario, whether that claim is appropriate for the product.

And let's say further that the results of this hypothetical study show that 75% of respondents agreed that the Made in the USA claim was perfectly fine in this scenario. However, 25% disagreed and believe the Made in the USA claim in this context was wrong and misleading. And because a significant minority, here, the 25% of consumers believe the claim was inaccurate, the unqualified term would likely violate the FTC Act.

So consumer research can be very important in gauging whether claims are deceptive. And during this panel, we're going to talk about those issues. And we also want to explore why marketers and consumers think these claims are important, and what value they put on them in their marketing and outreach. So I'd like to begin with-- we're going to talk about some of the work some of the panelists have done in this area to look at how consumers think about Made in the USA claims. And I'm going to begin with you, Justin.

At Consumer Reports, a few years ago you published some research looking into these issues. And I was hoping you could go into some detail and talk about, among other things, whether you looked at the materiality-- like, how these claims matter to consumers? Whether they're willing to pay more for products that have these claims? And also whether the

consumer attitudes changed depending on product types-- among other things that your research showed?

JUSTIN

BROOKMAN:

Yeah, sure. So Consumer Reports are known for rating products. But also we have a pretty big survey arm. And I think we have next, to the US census, the most robust polling apparatus. And so we periodically work on this issue, Made in the USA. Our last serious look was around 2015. So maybe it's something to be updated.

But I think longitudinally the numbers don't change a whole lot. So in general, I think when asked, 8 in 10 people roughly say that they would prefer to buy an American product. 2/3 say they're more likely to shop in stores that offer Made in the USA products. 77% say they would pay more. And 60% say that they would pay 10% more for made in the USA products.

When you try to drill down into why, I think it's both issues of quality, but also about promoting the American economy come out. So 84% say it's important because they think products are going to be more reliable. 80% say it's important because they think there are better working conditions in the United States. 88%-- again, these numbers are all pretty high-- say it's important because it keeps jobs in America. 87% say it's important because it helps the US economy. And actually, surprisingly, a little bit lower, 62% said because it's patriotic.

It's consistent with other surveys we've done in the past. 2013 we did a similar survey. The numbers were kind of roughly in the same area. 78% would prefer. Again, 60% said they would pay 10% more. Lower number, about 25% say that they would pay 20% more. I guess this is just sentiment analysis.

And I think as Shiva said, what people say is not always reflected in what they'll do. I mostly work in privacy issues. In this area, we see a lot in privacy. Like, people say, we care a lot about privacy. Then they don't maybe always make the most privacy conscious decisions.

That said, I think given recent events and the rise in nationalism, patriotism, what ever we call it, trade tensions with China, concerns about Huawei in the supply chain, I would be incredibly surprised if those numbers went down. Actually, I think they're probably more likely to be higher today than they were when we did our last survey.

HAMPTON

NEWSOME:

OK, so that work focused on how consumers value these claims. Have you all considered looking at how they interpret the claims? Or have you ever done that in the past?

JUSTIN

No, we haven't done that. And in answer to your other question, we have not looked

BROOKMAN: specifically into how they differentiate between whether it's important for our car or for our wallet in the example you say. It didn't seem necessarily intuitive to me, but we haven't done a lot of research into that.

HAMPTON
NEWSOME: OK, great. Thanks. So Scott some of the research on Made in the USA claims highlights the value that people put on the US labor component of the product. And I was wondering if you all have considered this and if you have any thoughts on whether the labor component in manufacturing a part or product may have some impact on how consumers perceive a Made in the USA claim?

SCOTT PAUL: Hampton, thank you very much for the question. I do want to echo Justin's findings and preface it by saying we've done voter survey research from 2010 to 2018. We probably have seven or eight different surveys, both quantitative and qualitative. And included, you know, along with focus groups in cities as diverse as Los Angeles, Phoenix, Silicon Valley area, Austin, and Portland, Las Vegas, Des Moines, Iowa, Milwaukee, Chicago, Columbus, Ohio, Orlando, Florida, Charlotte, North Carolina, Greenville, South Carolina, Richmond, Virginia, New Hampshire, and a couple locations in Pennsylvania as well, and I can speak to some universal truths that we have found regardless of anybody's affiliation.

One is that manufactured goods made in America are overwhelmingly popular. In fact in the most recent survey, 92% had a very favorable or somewhat favorable view of manufactured goods made in America compared to 27% who had a favorable outlook on manufactured goods made in China. When you dig into the reasons, the findings are quite similar to what I think Justin has presented on behalf of Consumer Reports. 80% think that it supports American jobs. 66% thinks that Made in America supports a strong US economy. 63% thinks it is important to our national security. 59% said we can trust the quality of products more in America than those elsewhere. 45% support the Made in America label because they think that it represents better wages and benefits than many other kinds of other jobs in the United States as well.

So that's a bit of the qualitative and quantitative evidence. And I think the thing that struck me is that in these diverse areas, among all sets of people, this was one of the few universal truths that we found that there was overwhelming agreement upon.

HAMPTON
NEWSOME: Mm-hmm. Is this a report that you could submit on the public record for us.

SCOTT PAUL: Absolutely. All of these survey researches are on our website. We'll be happy to direct the staff and commissioners to them. And one other data point I would add, again, among all voting groups-- you know, 74%, 80%, and 84% among Democrats, Republicans, Independents-- ensuring products marked as American made are not just assembled here, but are in fact all or virtually all manufactured here was quite important to the voters surveyed as well.

HAMPTON NEWSOME: OK, great. Thank you. So Mark, you also did some research which was a little different from this in that it drilled into the way consumers interpret certain claims as opposed to how they value. And I was wondering if you could take a little time and go into some of the details of it.

MARK HANNA: Yeah, thank you. You referred a little bit to our study earlier. We did a study about almost three years ago now with Harris Poll. And we were looking to try to really ascertain the perception of the consumer, particularly for precious metals products. And we looked at and we focused it into primarily gold jewelry to bring the focus down. And really what we were aiming to find out is substantial transformation, which is what the rest of the global world in our industry pays attention to, is that recognizable or does the consumer really want every single thing to be in America? Because in the precious metals industry, we're dealing first and foremost when we're talking about cost with the value of the precious metals-- the value of the natural resource.

So that research did show, you know, respecting the significant minority, really did show that 25% or 30% of the American consumer really did feel that everything, including the natural resource, including the gold, had to be part of the final product in order to say it was made in the USA. That 75% we felt was quite strong in terms of recognizing that. And coming back to a little about what you guys were talking about, but the labor component was very important. It was important that the labor was performed. That the actual work of changing something from raw material to finished product was done here the United States.

We talked a lot about the perceived value of the gold or is really 0 from a consumer products point of view. So that really 100% of value comes after that-- comes after that material. I'm not talking about cost. I'm talking about perceived value.

So we looked at that. And then we also looked at the fact that as a company we also export over the world and that there was a great inconsistency that we deal with that when we go outside the country through customs we're made in the USA. Not that phrase, but we're US origin. And so we pick up VATs and duties and everything else.

So the same production from beginning to end might split two ways. Outside the country, we have to be US origin. Inside the country, we cannot be made in the USA. So we felt that was a double harm to our 3,000 employees. And so we were looking. And the answers we got were certainly not conclusive. I don't believe you're going to get 100% agreement with anything, but 93% did think the laws should be harmonized. That, at least within the United States of America, we should be on the same page in terms of what's made in the USA whether we're sent inside or outside.

But overall, the consumer was skeptical. You know, at least 25% of the consumers were skeptical that if there's something introduced to that finished product other than something that originated in the US now, they didn't think it should be made in the USA. So it was a very high reliability study. I think was 98.6. It was done with a very credible organization-- Harris.

We are looking to follow that study up. And really a lot of what I'm here today is going to be a lot of how we might restructure doing that survey once again.

**HAMPTON
NEWSOME:**

And that'll be interesting. If you do that, you know, we'd love to see the results of that study if you do additional work. Just on the panel, is there any impression that the consumer perception of what Made in the USA unqualified claim means? Whether that has changed over time? Just anecdotally, do you all have any indication of that-- anyone? Scott?

SCOTT PAUL:

I would point to our own research, which is obviously just an eight year window. It's been incredibly consistent, which among perceptions on a wide variety of issues is hard to say about many other matters. It's been incredibly consistent. If you go back, I mean, I think the commission has noted itself that particularly after 9/11, there was a surge of interest in made in America and what that meant. And according to a 2012 Boston Consulting Group survey, over 80% of Americans were willing to pay more for American made or assembled products. Virtually all of them say that it's because they want to keep jobs in the United States.

So I mean, it's a consistent high level of support that I think is rare to find among perceptions among the American people today.

**HAMPTON
NEWSOME:**

Anyone else?

MARK HANNA:

Can I say one more thing?

HAMPTON Sure.

NEWSOME:

MARK HANNA: That not Made in America specific or Made in USA specific, but a lot of our current research has been focused on the importance of transparency and responsible sourcing and ethical supply chain and ethical chain of custody. And I think probably all of us as consumer products companies are looking at this very, very carefully right now. And we've seen that grow into the high 40 percentages in terms of people voting that it is one of the top three reasons why they buy something now. And the *Forbes* study that came out recently absolutely confirmed that. They came up with about 44.

Probably one of the most overlooked important aspects of making something in the US and being able to communicate that to the consumer is that it's going to be socially correct. There was not going to be human rights abuses. There was not going to be child labor. There was not going to be armed groups benefiting from it.

And as the importance of responsible and ethical sourcing grows and grows and grows particularly with the millennial consumer, this is an incredibly important selling differentiation point for the goods that you can say you made here. So I just wanted to point that out, because a lot of our research recently has been in that direction.

HAMPTON OK, thank you. Clint, Lifetime has extensive experience in developing these types of claims.
NEWSOME: And I was wondering if you could just share your perceptions on how you see consumers valuing this and how your employees value these types of claims.

CLINT MORRIS: Sure, thank you. So just maybe a little bit of context of Lifetime, we're one of the manufacturers that were invited here. So thank you for the invite and to look at the perspective of manufacturers. We manufacture residential basketball equipment.

So those hoops that you see in people's driveways, that's us. We also manufacture tables, and chairs, and storage sheds, kayaks, paddle boards. We bring in coils of steel and we purchase coils of steel and plastic pellets, and transform those into these products. We bend the steel, coat the steel, make the frames. We make things here in the US with plants both in Utah and in Tennessee with 2,000 employees.

So this is very important to us that we're able to tell people that, yes, we do make things in the US. We use both qualified and unqualified marks for the different products that we

manufacture. And the way we see our consumers and research that we've done, maybe four things that they look for. Number one, consumers, when they see the Made in the USA mark, they're expecting better quality. Number one, better quality.

Second is they're supporting US jobs, which is important. Third, they'll pay a little more, but not much more. And then finally there's the patriotism. But that's kind of down the list as we see it. But those are the four things that we feel that the consumers when they see the Made in the USA mark, what they feel. As far as our workers, I mentioned the 2,000.

It's a badge of honor for them to be able to manufacture this equipment here in the United States. We aren't reassuring jobs. We never left. And so for us to be able to put that mark on our products-- and yes, we're following the FTC guideline for both the qualified and unqualified marks. We're not in the business to deceive consumers. It's not what we do. We want to give them the best quality that they can find from a US manufacturer. And therefore, we use those marks and feel that as a manufacturer, that's what we need to do.

HAMPTON
NEWSOME:

Great. Thank you. Pete, I'd like to ask you the same question. Your perceptions-- you know, why are these claims important to Homer Laughlin.

PETE WICKS:

Thank you, Hampton. And thanks for inviting me. Let me tell you a little bit about Homer Laughlin China Company.

Homer Laughlin is a small company. We have 700 employees. We're in a panhandle in West Virginia and Ohio along the Ohio River. We've been in business since 1871. And to give you a little bit of history on that, we were in business for a year before Susan B. Anthony cast her ballot in Rochester, New York for the President of the United States. We were in business 10 years before the gunfight at O.K. Corral in Tombstone, Arizona.

Made in America is our heritage. Our China company-- and Bonnie just said, look, at that-- funny-- China company. Something like this. We've been in this business for years and years. And we are a China company. We manufacture China here in the United States. We have two businesses. One's retail and one's food service.

Our retail business, we feel it's very important to be made in America. That's our Fiesta brand. Our food service, not so much. There used to be a lot of China manufacturers in the United States. There are two or three large ones left. And we own two of them.

When all our competitors went offshore, they didn't change their backstamp. They didn't

change the name of their China. But they had it manufactured offshore and brought it back to the United States and charged the same amount of money although they had a better margin. We feel we cannot do that. We feel that it's important for our product, especially the retail product, that it continue to be manufactured in America.

We are unqualified made in America. Well, if you're a manufacturer and you're unqualified, the normal person kind of looks at you, what do you mean you're an unqualified manufacturer? If you're an accountant and you say I have an unqualified audit, that's a positive thing. If you're a manufacture and you're unqualified, or you're an employee and you're unqualified, that is a negative. And it's hard to explain that to people when they're not in this business.

A story that I will say from my viewpoint, Pfaltzgraff was a competitor of ours. It was manufactured in York, Pennsylvania. It was a retail product. The owners of Pfaltzgraff and Sons could not take the company over. They sold it. They sold it to Lifetime Brands. Within two years, you did not see that China anymore. It's not a retail product of any strength. It used to be our biggest competitor.

Made in America is our heritage. It's important to our employees to be Made in America.

JULIA SOLOMON And just to clarify, Lifetime Products, it's not the same company.

ENSOR:

HAMPTON See, I got confused on that myself.

NEWSOME:

CLINT MORRIS: No, we talked earlier. Yeah, not us.

HAMPTON Thank you very much. It's very helpful. And glad we cleared that up-- the Lifetime. Annmarie,
NEWSOME: Walmart has a very large Made in the USA initiative. I was wondering if you could talk a little bit about that, the kinds of things that motivate Walmart to do that, and also whether Walmart has done any studies or anything that would be helpful to us for us to know about those issues?

ANNEMARIE Thank you. And thanks also for the opportunity. Walmart, I think, might be unique on this panel
O'SHEA: because it's a retailer. And so we're buying products from all kinds of manufacturers and suppliers.

In 2013, Walmart committed to purchase an additional \$250 billion worth of goods that would be sourced from or grown in, made in the US. And by 2023, that program became known as

investing in American jobs. And the reason why we do that is because that is what resonates with customers, which I think is echoing the research that other folks have done, is that when we hear anecdotally from customers about idea of Made in the US, it really means the value is supporting American jobs, desire to support the economy, helping the economy, the desire to improve the local economy for families. And those are the reasons why Walmart got engaged in this initiative, is to be able to help those communities where we all live. And Walmart certainly has a presence.

So the perception is really this is a way to grow communities and to support American jobs. We haven't done any formal research other than these kind of anecdotal feedback that we get from customers. It's been consistent over the years that what does resonate with our customers, and I think with even non-Walmart customers is this concept of that it's supporting American jobs. And that has been consistent over time.

So the value for Walmart is obviously that we understand that something like this-- this is now older information-- but 85% of American consumers think that it's very important for retailers to have a large assortment of goods that are made in the US.

HAMPTON Now, do you find challenges in communicating with your suppliers on the Made in the USA
NEWSOME: guidance?

ANNEMARIE Well, we as a retailer, we are several steps removed from the process of how something is in
O'SHEA: fact manufactured. And so while we can point to guidelines and we can provide guidance, in the end it's something that we don't have a lot of control over. So we do have our own private brand labels, private brand products. And those, we work closely with our suppliers to be able to add the value of having a logo on the package that says, Made in the US.

We'll probably be getting into this later in the discussion, but that presents a lot of challenges for suppliers. And it's a complicated, costly, time consuming, and in some times you end up with a gray area. And we hear anecdotally that by the time the claim is made and it goes to their lawyers, they're like, ugh, don't bother, because it's complicated to be able to make-- other than if you had the ability to do 100%-- unqualified claim.

HAMPTON Mm-hmm.
NEWSOME:

MARK HANNA: Can I add something for a second?

HAMPTON Sure.

NEWSOME:

MARK HANNA: The last couple of years we've been Vendor of the Year in our categories with Walmart. And we've put together numerous programs on the idea of Made in the USA, Made in America, the Americana brand, the American Hoop-- many, many things. And we've never launched one. And we've never been able to launch them-- she hit it exactly right-- because Walmart's very diligent about every T crossed and every I dotted. And we keep failing on the ability to prove that all the gold was American mined gold.

And just as I was talking about earlier, this is a very concrete example of a very large opportunity between very good business partners that's not coming to fruition and not benefiting anybody in this country.

HAMPTON OK. And I just was curious, I don't want to step on the other panels. Julia's frowning at me a little bit here. We're off the consumer research a little bit. But I do have a couple of scenarios that I'd like to get--

JULIA SOLOMON In terms of the price premium.

ENSOR:

HAMPTON Oh, in terms of--

NEWSOME:

JULIA SOLOMON And selling.

ENSOR:

HAMPTON Yeah, and Walmart, do you see a price premium issue with the Made in the USA claim?

NEWSOME:

ANNEMARIE O'SHEA: We have seen research not done by Walmart, but others that customers have this expectation that they would pay more for products that are made in the US. But that in fact that the other things like the efficiency, the quickness, the making the shopping easier, and the value of a good deal, that those are things which may override the desire to buy something that's made in the US or labeled as such.

HAMPTON OK, do you have one thought?

NEWSOME:

JULIA SOLOMON Yeah, do you find that products that are labeled Made in the USA sell better than competing
ENSOR: imported?

ANNEMARIE I don't have any research on that. In some ways, it requires two identical things. And we don't
O'SHEA: have that information.

HAMPTON OK, just generally for the panel, Andrew Smith was talking about whether there's a difference
NEWSOME: between a wallet and a cell phone. Does anyone have any information or any experience in seeing whether consumers interpret Made in the USA claims differently for different products? So something like a cell phone, do they approach that differently? Do they have different expectations than they would for other products? Anyone?

ANNEMARIE I can say I think that from feedback we've gotten from customers that there's a strong desire
O'SHEA: to have food and beverages, that those are sourced in the US. But the value of the claim as to whether, you know, for an appliance versus a car versus a cell phone, I don't have any information on that.

HAMPTON So in terms of expectations that, you know, electronics may be typically made overseas or
NEWSOME: something, and so a consumer might have a different approach to that, that's not something that you've see in anything?

ANNEMARIE No.
O'SHEA:

HAMPTON Yeah. Yeah?
NEWSOME:

SCOTT PAUL: Yeah, I would say this issue has come up in the focus groups that we've conducted. And first of all, it's extraordinarily difficult for a reasonable consumer to navigate all of this and to understand supply chains and what goes into the back end of this. So I think that it's a bit of a difficult question to decisively answer.

But I will say also that the expectation, again, was that to earn a Made in America label, it needs to be made here. And with respect to smartphones, I think that there was a lot of disappointment that an option or a supply chain scenario didn't exist. But we certainly didn't get the sense that the label should be in any way altered or weakened to support the supply

chain strategies of global companies.

HAMPTON OK, Justin, you were--

NEWSOME:

JUSTIN

BROOKMAN:

Yeah, I think I would agree that. I mean, frankly, I think I agree with all that. I mean, first, consumers don't have a lot of capacity to think about this a whole lot. They see a label-- oh, cool, made in the USA. They don't think, well, does that mean, like, the chip is made there? What about the process-- where the plastic come from? They're looking at the price. They're making snap decisions. They're not putting a lot of thought into it.

But thinking about the various criteria to care about, I think Annemarie is right. There are some things where it might matter more, right, where it's like safety-- it's going to hurt my children. But even for the ones that don't, people care a lot about jobs in the US economy. So I think it is a pretty high baseline. There might be areas where it spikes and people care a little bit more. But I think any product I think.

I can't imagine there's any product where people go, eh, it's fine for a company to lie to me.

HAMPTON

NEWSOME:

Mm-hmm. Anyone else on this issue of different products? What about the scenario where-- and we're talking about consumer perception here-- the scenario where a foreign company has a subsidiary in the US. So it's for a foreign owned business and they're making the product here. I'm not aware that that scenario has been tested. I don't know if you hear impressions about that. But would that change how whether consumers would agree with a Made in the USA claim for a product made by a wholly owned foreign company?

SCOTT PAUL:

Yeah, I'll just jump in here, because this is, again, an issue that has come up frequently in the focus groups. And there does tend to be brand confusion. I'll just say, like, people assume Levi's are manufactured in the United States, because it is an American brand. The fact is that virtually nothing Levi's makes is manufactured in the United States. People look at the foreign automakers. And there is a bit of a mixed view.

And it depends kind of how close they are to the production. And understand it. But I would say in any case, whether the company is foreign owned or American based, that the labeling standard all or virtually all must be applicable. I think it's worth pointing out that there is an exceptional amount of advertising and marketing that foreign owned companies do to try to say what I would call red, white, and blue washing to persuade people that they are in fact

American. But fundamentally, it's going to be up to the FTC to decide whether the labeling claim meets the standard that has been established.

HAMPTON Mm-hmm. Anyone else with this issue? Yes?

NEWSOME:

KRISTEN KERN: So for us-- we have our own footwear industry-- consumers are very used to their products very visibly showing country of origin. As part of the textile labeling rules, no matter what country it's made in, your textile and apparel product is going to give some country of origin information. So I would pose kind of the opposite scenario here where a consumer is seeing a product that says made in China on it. I don't think the consumer is likely to assume that that product is 100% made in China. Despite the label bearing a household American name brand, they understand that there is quite a bit of content that is from US value.

We've commissioned studies over the past number of years that showed that about 70% of the value, the retail value, the total price of a garment is attributed to US value added activities. That's in marketing, design, product development, a number of different areas that are happening in the United States, as well as in a number of cases some manufacturing happening here in the United States. So for a consumer to look at a garment that says made in the USA but perhaps had some input on the front end of the product done by a foreign company is quite similar to the reverse scenario in which our American companies are producing abroad, but the American company is the one inputting quite a bit of a value of the product with US jobs. And I think the consumer understands that.

HAMPTON Could you go into a little more detail about the studies or the surveys that you've done? And
NEWSOME: the kinds of things that you've looked at in some of the other results?

KRISTEN KERN: Yes, so that's part of our US global value chain coalition work. That's a study that uses a bit of proprietary company information as far as where the value of a product comes from, as well as validating that information in things like the amount of US jobs in our industry, as well as the salaries there to attribute value to US jobs that directly go towards creating these products. And we have that information published through this coalition.

HAMPTON OK. What about the scenario where, let's say you have-- this questions about whether the
NEWSOME: company is kind of reshoring jobs or the opposite. And let's say there are two companies that have exactly the same breakdown in terms of domestic and foreign costs. Let's say 60-40. But one used to have a lot of jobs in the US, and they've gone the other way. And then the other

company is reshore jobs. Do you think that would change the consumer perception of the Made in the USA claim?

Is that a scenario you hear from consumers about? Or do you have any information about that? Anyone? Yeah?

SCOTT PAUL: I would say that consumers love the idea of reshoring jobs. And again, that is a universal truth. I don't know if there is any opposition to that. I would submit, however, that I don't think companies deserve to be graded on the curve here. That the labeling standard is the labeling standard. And if they want to add additional marketing information about the jobs that they reshored, that's entirely what they're purview. But I don't think that should fundamentally change the standard or the enforcement of the label.

JULIA SOLOMON We don't disagree with you. The specific question that we're trying to drill down into is whether consumers would understand Made in USA claims for the two products differently. So because our standard, of course, is consumer perception. That's the standard that we have. So the question that we're really trying to get at is faced with these two scenarios, would consumers have a greater acceptance for an unqualified or differently qualified claim in one versus the other? Have you all seen any evidence of relative consumer understanding of these two scenarios?

SCOTT PAUL: Not that specific scenario. That's very specific.

JULIA SOLOMON Sure. Yeah.

ENSOR:

SCOTT PAUL: But again, I mean are you contemplating an enforcement regime that would treat those companies differently even though they have the same content? Because that raises a whole bunch of interesting questions.

JULIA SOLOMON Well, our standard is consumer perception. So we have to enforce consistent with consumer

ENSOR: perception. And if there's a difference in consumer perception for these two products, then that would certainly affect how we have to enforce given the regime that we have.

HAMPTON And these questions go to-- for future research, I mean what are the kinds of things to look at?

NEWSOME: Is it important to look and see whether consumers have a different perception when there are different products? Or different scenarios with what's happening with the ownership or

whatever. Are these relevant? Are these things that should be looked at? Maybe not.

And these are just questions about-- are there things that we haven't thought about that would impact how consumers interpret the Made in the USA claim? So Pete?

PETE WICKS: I have a comment on that. Again, I get asked a lot what does Made in USA mean to me? And my reply is made in the USA is what made USA. If you go to Akron, Ohio, why is Akron, Ohio there? It's rubber. Goodyear was there. Firestone was there.

Detroit, Michigan is automobiles. Memphis. Well, why is Memphis such a big city down there along the river? It was where the cotton was sold from the south. Any community you go to in the United States, ask the question, why is this community here? And you're going to get an answer.

Somebody manufactured something here. This was a crossroads where something was sold, et cetera. Made in America is what made America. You have to reshore jobs here. To me, ownership in the company, it's more important to be back here in the United States and elsewhere. Look at the philanthropic moneys that have come from ownership of companies throughout the United States.

Every one of you know there's our Canadian library somewhere. In Pittsburgh, we have a Frick Park. Eventually, the people that run these companies or the families that own these companies, somewhere along the line, it comes back in the United States. So number one, I think company ownership and making onshores, it's more important to have a company that makes 40% product here and imports 60% but is owned here than vice versa. And that's something that as a country we ought to consider.

HAMPTON Bonnie, you had?

NEWSOME:

BONNIE PATTEN: Yeah, I would just add I think with a 60-40 split you're not looking in a unqualified claim, right. We're already at the qualified claim level.

JULIA SOLOMON We're just trying to figure out whether there would be a difference in how consumers would
ENSOR: think about two relatives scenarios where you have a company that's traditionally been here in the United States, has employed a lot of folks in the United States, maintains some manufacturing functions here and sends some overseas. Would consumers think about a

claim for that product differently than a product where the company has done all of their manufacturing overseas and has worked aggressively to bring jobs back?

BONNIE PATTEN: I think, though, it's a hypothetical that depending on the devil in the details, right, did they offshore because the widget factory they needed burnt down or went out of business, or a competitor bought it and then they had to go offshore? I mean, I think you would have to boil that scenario down to that specific instance. And how do you do that with a \$20 trillion economy?

JULIA SOLOMON You make a really interesting and helpful point. And what we want to know is what are those
ENSOR: details that are relevant to consumers. Is it the fact that something is no longer available in the United States? What are those details that consumers care about that would affect how they think about the claim? So if you all have any research or information about that, that's really of high interest to us.

JUSTIN I actually would push back a little bit and say that actually the details don't necessarily matter
BROOKMAN: that much. I find the question counterintuitive. I mean, I think the Made in the USA label is not a statement of the derivative of Made in the USAness. It's not a statement about how Made in the USA-- how much it's changing or not. It's a statement about whether this shirt is made in the USA or not.

And so again, people don't think about it a whole lot. But even if they thought about it for a minute, I don't think that idea would come up to them. So I don't think it's necessarily important to drill down too much into the why. I think it's more important to have clear baseline, bright line rules to set expectations. And I think that level of-- like, no consumer is going to be having that mental conversation.

JULIA SOLOMON What we grapple with is we hear a lot from consumers what you panelists have told us, that
ENSOR: Made in USA is about American jobs. That it really is important to invest in communities. That consumers want to see jobs coming back to the country. So we want to know is that reshoring of jobs, is that prioritization of making sure that there is additional opportunity in this country-- something that people are thinking about when they, you know, either agree with or disagree with it's claim.

JUSTIN Reshoring of American jobs is great. And they will get their press released. And they will get
BROOKMAN: their local news coverage. And fine, build it up all you want. But if you're still only 60% American products, I mean, again, I think that's silly, Scott. Like, you're going to, what, enforce

less?

Again, the label itself is about this particular shirt and if this shirt is made in the USA or not. And so we can think about what the right mercantilist approach is to try to bring more American jobs here, that's fine. But I think this is a strange backdoor way into doing it that to say that individual expectations about particular products, we should have a different assumption around what people are thinking about it. Because they're not.

JULIA SOLOMON But we have to, because we enforce in accordance with consumer perception. We have this
ENSOR: deception-based standards. So if people perceive different products differently and different standards differently, we have to enforce differently because that's the law we have-- Section 5.

JUSTIN Sure. Yeah, totally. I'm just saying they almost certainly don't. I mean, again, it's about the
BROOKMAN: shirt.

JULIA SOLOMON And we want to get to evidence-- like, hard evidence. Has anybody done the testing?
ENSOR:

SCOTT PAUL: Let me just add one thing. No, we haven't done the testing for that. But I can tell you how a survey would turn out.

JULIA SOLOMON Yeah. Great.
ENSOR:

SCOTT PAUL: Obviously, if a consumer was presented with the information that a company is reshoring jobs is going to feel more favorable towards that company. OK, I mean, that's based on years of survey research. And a company, as Justin suggested, is going to trumpet the fact that they've reshored the jobs. A company that is essentially lowering its content, that consumer is going to have no way to know about it unless they've gone out of their way to conduct that research.

And I am more than a reasonable consumer. I'm an educated consumer. And it is really damn hard to find that information. So I don't think that you would ever find a real world scenario where there is a single consumer that has access to the information that you're looking for. I think it's a question that is going to be unanswered.

JULIA SOLOMON It doesn't really matter whether they have access to the information or not. It's just if they were
ENSOR: presented with the story of the product, would the claim match with, you know, their

perception? So that's not exactly the question. But we do have to keep coming back to the law we have right now, which is Section 5, the Enforcement Policy Statement, is tied to deception, tied to consumer perception.

So our main question on this panel today is, is there any additional specific research on consumer perception? Has consumer perception changed over time? Is there specific research that shows that different products are viewed differently? And if consumers had that information about the reshoring jobs are the taking jobs away, would they feel differently about the claim? Those are the types of questions for the panel today.

CLINT MORRIS: Yeah, just a thought-- we don't have research on that. But if it was as a marketer in manufacturing put in this spot, if we were doing that in this hypothetical example, I wouldn't want to tell everybody. Look what we're doing. We're bringing this back. It's exciting. But the only way really to tell everyone is that mark on the package. And so that's our only vehicle.

Now to be able to change hearts and minds of everybody, that is, we don't have enough money in the marketing budget to be able to do that. So it would be very difficult to tell that detailed story to everybody. So we have to rely as a marketer on the label itself.

So again back to what consumers perceive that label to be, it's our only vehicle to do that.

HAMPTON Other than Mark, does anyone on the panel have any plans to do any research in the future?

NEWSOME: And can you share any details about it? And then I'll ask Mark to--

MARK HANNA: I think from our point of view, yes, we're willing to do more research. We're a little concerned about the conclusions drawn from the first research, because we thought that they were selected. And so I think we'd want to have an understanding upfront in terms of what success looks like in terms of validated, reliable output from the report. So I just do have one more thing to sum up what Clint said very early on about good work.

In our company description, we talk about making every single part in our Massachusetts facility with 1,000 people and 300,000 square feet. And every one of those parts then goes to our other divisions and we make everything from there. We can take this entire discussion all the way through our labor force and our recruiting.

And it comes back to the reshoring that you were just talking about. Yet, our employees don't get the pride of seeing that label, Made in the USA. They do it. They make it. They know it.

Everyone knows we do it all there. And there's other people who are here from the industry. That one facility supplies the parts and the basic materials-- sheet, wire, tubing that everyone else makes something from. So it's very much at the center of an industry. And yet, we can't use the label. Even though every single thing we do is USA done made labor, except we can't prove where the metals come out of the ground. So I know Julia, I'm a broken record with this.

But I think when you talk about reshoring, reshoring it is very much about pride. It's very much about pride as a company. It's very much about the pride for those workers. That they are coming back here to be an American fabricator of products that eventually someone is going to be proud of in quality and human rights. And I think this continues to be the debate that we have between internal and external, between labeling where we make it and actually making it. So it's my soapbox and I'm sticking to it.

JULIA SOLOMON I appreciate that. And we'll talk more about qualified claims as a potential solution to some of these problems later on. But for now, I want to ask the panelists whether you have done any consumer perception testing of qualified claims. And if there's a consumer perception reason that we're not seeing more of a shift to qualified claim that might do the two things that we're talking about here-- tell the story of what you're doing in the US without running the risk of deceiving consumers in the process. So for Mark, you know, what obviously comes to mind would be something like Made in the United States of gold of unknown origin or of recycled gold from something.

MARK HANNA: Gold from God.

JULIA SOLOMON Have you all tested any of these qualified claims?

ENSOR:

MARK HANNA: I mean, I can answer a little bit from my day job, which is marketing, that we want a simple direct message that the majority of consumers are going to understand. And really your discussion about unqualified is very appropriate. Because as soon as you start adding details of we're the best except maybe not this and maybe not that, as a marketer, it's really distorting the message you want to give about a quality, value conscious long life product. And to have to divert and say, oh, by the way, the gold came from, which we probably still don't know-- but it came from someplace other than the US.

JULIA SOLOMON Have you tested that? Is that something you would consider testing?

ENSOR:

MARK HANNA: The answer is really, no. I mean, so yes it's a lot of broad opinion from the executives within the industry, not just me. But, no, you're right, there's been no specific research done to see how bad that perception is. No, that's fair. I would say that's fair in the next bit of research.

HAMPTON OK, anything else? Julia, you have any more questions you want to--

NEWSOME:

JULIA SOLOMON Sorry. Go ahead. I didn't mean to interrupt your panel.

ENSOR:

HAMPTON No. Any other thoughts?

NEWSOME:

SCOTT PAUL: I did want to say we'll likely have another survey sometime in the first half of next year. Just along the lines, I mean you've given us a couple of ideas. We don't do consumer testing. We do much more survey kind of research. But you've certainly provided us with some interesting ideas to further the conversation.

HAMPTON OK.

NEWSOME:

KRISTEN KERN: I think understanding, of course, that consumer perception is the root here, we would just put forward that there are additional factors we think that just need to be considered there. To us a claim like Made in the USA would be pretty objective, have clear rules of the road, a percentage of content plus a substantial transformation in the United States, information that we can point consumers to so that they can be educated as to what this claim means when they see it on a garment. I've talked to our members who say we will not put the FTC website as to an explanation of what Made in the USA is on our website to help consumers understand this claim because it's not clear enough to the consumer to understand what that claim means on their product. But if the FTC had a page for consumers that said Made in the USA means 51% of content and a substantial transformation happened in the United States, a consumer can say I know what I'm getting. This is a clear claim for me.

So for us, that objective piece of information as to what the claim is is sort of its own pillar in this conversation next to consumer perception in addition to consumer perception. We don't want the consumer to be misled by what it is that we're selling either. We just want to make

sure that for both the consumer part and the industry part there is just clear rules of the road as to what this claim means. And consumers can decide from there if that meaning is what they are interested in.

HAMPTON OK. All right, well if there are no other thoughts why don't we go for a break. Yeah?

NEWSOME:

JULIA SOLOMON Let's just list a few other things briefly that we'd be interested in seeing some research about.

ENSOR: So we're also very interested in whether it matters to consumers if particular raw materials are not available in the United States. So unavailability is something that's of interest. We're also interested if there is a variation in consumer perception depending on the sales platform. So that's something that's of interest to us.

We're curious, as we alluded to before, about when there's variation among competitors, is that something that's relevant to consumers? So qualified claims, difference in consumer perception for different products, competitor information, platform and unavailability are all things that would be very helpful and interesting for us to learn more about.

HAMPTON OK. All right, so why don't we take a break. And we'll meet back here at 10:20. Thank you.

NEWSOME:

[APPLAUSE]

[MUSIC PLAYING]

JULIA SOLOMON Yeah, Yeah. No, I'm just so please. OK, everybody. Welcome back. We're ready to start the

ENSOR: next panel. If all the panelists could please take your seats.

OK, it actually smells good. So before my assistant director Laura jumps in here, we have one cleanup question from the last panel on consumer perception that we wanted to ask. So a lot of times in the discussion about Made in USA claims, you know, people tend to think there's

this binary it's either made in the USA or made in China. And the question that we were wondering is, does it matter if the imported content or the overseas process takes place in another country?

So for example, if consumers think Made in the USA is about quality, would it matter if the imported content like for a watch is like a Swiss movement or something like that that falls into that same bucket of what people might traditionally think of as a quality input for a product. So does the country of the foreign process matter when we think about consumer perception?

MARK HANNA: Can I have a shot at that one?

JULIA SOLOMON Please.

ENSOR:

MARK HANNA: What's the perception of made in Italy when it comes to jewelry? Pretty good, huh? Pretty high. You see all the best department stores and all the best jewelers advertising made in Italy. It doesn't come close to having to stick to the same standards we do. It's just simply last significant operation performed in the country of Italy.

So if we're going to compete and create the Made in the USA label competitive from a quality point of view and a perception point of view, we need to be able to state that. And we need to be able to be competitive and not worry about the material. Worry about the absolute labor that went into creating this. The thinking it, designing it, sketching it, building it, that's the strength of American business. And yet if you put Made in USA right now versus made in Italy, I think you get a perception of made in Italy as a higher quality perception.

JULIA SOLOMON I hear what you're saying, Mark. And we're certainly going to get into-- what Mark's talking

ENSOR: about is a custom substantial transformation standard for imported products versus--

MARK HANNA: I'm always talking about transformation.

JULIA SOLOMON Yes, so we will definitely get into that a little bit later. But in terms of the origin of the imported

ENSOR: content, the specific question is whether you think or you have testing about how consumers perceive claims based on the location of the imported content. So you know if it's like a leather couch that's made in the USA with Italian leather or something like that, would a consumer perceive that differently than if it's Made in USA with a Chinese leather or something like that. Is there any evidence? Or does anybody have any thoughts on that?

JUSTIN I mean, I think I disagree with Mark. I think it makes sense they might care more about-- there might be quality differentials indicated by that. Let's say Switzerland or Italy compared to China or Bangladesh. And then they might care about it more-- if, again, we're potentially an adverse country in a trade dispute and we're concerned about national security or logistics. But as far as them understanding it, right, I don't know that actually it's going to matter that much.

JULIA SOLOMON ENSOR: Let me put it slightly differently, do you think there would be a consumer tolerance for a higher level of imported content if that imported content comes from a country that the consumer perceives as creating something of equal value or equal quality to what's being done in the US?

JUSTIN BROOKMAN: Sure. Yeah, they are more likely to be more tolerant of it. Though, again, it can be dependant on what they care about, right? If it is about patriotism and jobs, maybe they wouldn't. But I also don't expect that means that they would expect different labeling standards for stuff coming from Switzerland versus coming from China.

JULIA SOLOMON ENSOR: But again, you know it's all tied into consumer perception. So if perception is different, then we have to enforce differently. So that's the reason I'm asking the question.

JUSTIN BROOKMAN: But perception is not about whether I like it more or not. It's about Swissness or Chineseness, right?

JULIA SOLOMON ENSOR: Well, it's about do you disagree with a claim if it has one particular scenario behind the product versus the other? So specific to is the consumer perception different? So let's be super concrete, would consumers, say-- if we're talking about an Italian input or a Swiss input or something like that, would a consumer be more likely to tolerate a claim for 10% imported content versus 5% imported content for Chinese content. Is there a difference there? And I'm just throwing out numbers.

Of course, the commissions never set any particular standard with respect to percentage of imported content. But that's the kind of question that I'm thinking about.

MARK HANNA: I'll give you one example. Right now, the Stamping Act relates to our category. Its country of origin must be stamped on the products. Or there must be a label attached to it or affixed to it with country of origin for every place except the USA. If it's actually made here-- I got to be careful about how I say that-- but if we actually did it here, you put nothing on it. The Stamping Act says you don't have to put anything on it because you did it here. Just think how much

better it would be if you did put it on there, right?

Then you're quality perception, your quality reality, your social conscience-- but the Stamping Act itself so, eh, you don't have to put anything on it if you're in the USA. Any other country, you've got to put it on.

JULIA SOLOMON Gotcha. So the question that we're thinking about here is materiality. Does it matter to consumers in these different scenarios? But in any event, it doesn't sound like there's necessarily testing that's been done on this particular question. But it's another issue that's of interest to us moving forward.

With that, I don't want to take any more time away from Laura.

LAURA KOSS: Yes, hi. I'm Laura Koss. I'm an Assistant Director in the Division of Enforcement. And we have to spend a lot of the morning discussing that the FTC's authority is grounded in preventing consumer deception. So without a consumer congressional mandate otherwise, as Julia has been emphasizing, and Hampton as well, consumer perception of claims is what has to guide our enforcement program. And then as we saw from Shiva's presentation and we've also been repeating, the enforcement policy statements all or virtually all standard is based on consumer perception evidence, which suggests that consumers would likely be deceived by an unqualified claim for a product that contains even a very small amount of foreign content even if the products are assembled by US labor.

So yes, the strict standard reflects consumer perception. And that guides our enforcement program. But at the same time, we've heard from various commenters that rigorously enforcing that all or virtually all standard might have problematic policy implications. So what I want to focus on in this panel is when companies are actually doing business under this current policy, under the all or virtually all standard, what are their challenges in terms of-- and we'll get into job creation and innovation, in terms of willingness to make claims and to get useful information to consumers, and other challenges that businesses have. So Scott, I'm going to start with you.

And I know that AM's stated mission is to strengthen American manufacturing. So I want to get your thoughts on companies that have US employees, their manufacturing products in the US, but those products also contain foreign content.

SCOTT PAUL: Thank you for the question. I think our experience suggests that there is value in the strong

definition of the label of all or virtually all. And I say this for the following reasons, from a policy perspective, it's important in the public procurement market for companies that are engaged in that. We've seen the evidence of consumer perceptions, which hasn't changed over time about what the expectation is. And so it's critically important to maintain the standard for the integrity of the label as well. I mean, when we ask consumers or voters who are consumers what the label means to them, it is very evocative. It evokes strong feelings.

And there are other issues that certainly come into it, like quality, patriotism, sustainability, building local communities, and jobs. But above all else, I think they feel very concerned if there is some tinkering or some mislabeling of things. And so I have no doubt that in some particular industries where there aren't well-developed domestic supply chains, that is much more challenging to earn that designation, again, I don't think that most consumers, or even a significant minority of consumers, are willing to grade companies on the curve here. I mean, they have a certain expectation.

And the companies that are adhering to that expectation, whether it's steel companies, or textile companies, or other manufacturers use that label to set themselves apart in the marketplace. I think of Homer Laughlin here as well. And it is important for those manufacturers who have chosen-- who have chosen-- to both stay in the United States to support the jobs and to maintain that very high standard, it's important to them to maintain that as well. Because it is a differentiation in the marketplace that's valued by consumers.

LAURA KOSS: So Tim, I know that when Clint was here he talked a bit about your manufacturing process in the last panel. But if you could discuss your experience with the all or virtually all standard, and whether that has affected your company's business decisions, if at all?

TIM SCHADE: Sure. As Clint mentioned, I don't know that we're unique. But I think we are somewhat rare. We are highly vertically integrated. And so we will take steel coil and plastic pellets-- most of our products are plastic and steel-- we'll take them from the very beginning and we break them down at our facilities here in the US into the different parts that we need to make our final product. That's generally what we do. We don't make everything, but that's the majority of what we do.

And so when we start looking at what it means to be made in America or made in the USA, we have 2,000 people in the US who work every day to do those things, to engage in those processes, to change things from very rudimentary inputs to very specific things. And then we

have to add sometimes some very minimal parts-- fasteners and things like that.

So when we make decisions on how we label things, I mean, we measure benefit, cost and risk. That's how we do things. And so as Clint mentioned, we have products that we make an unqualified claim on. We have products that we make qualified claims on. And when we make those decisions, we just have to look at what is the benefit of actually making an unqualified claim? What's the benefit of that qualified claim?

And the perception panel talked a little bit about what that means. Although, we didn't have a lot of answers, I guess. And then we say, well, what's the cost of trying to move from one to the other to try and move up the chain? And then again, what's the risk? I think there was some discussion from Ms. O'Shea about trying to manage that supply chain and how difficult that can be sometimes.

And so you look at what can I get from making my unqualified claim? What's the cost of doing that, not just monetary costs, but the cost of managing it and monitoring it, and all those other things? And then what's the risk of what happens if something goes awry in one of those processes?

And so we go through that all the time. And for a vast majority of our products we make a qualified claim for those reasons, not because we don't think our stuff's made in the US, because frankly we do. But the all or virtually all standards is there. There are state standards that are there. And based on the risk of running afoul of some of those things, we decide to play safe in some cases.

We've put ourselves in the same boat as other people who aren't doing the same things that we are, right, who are importing 30%, 40%, 50% of their things and saying that it's made in the US. It has US imported parts. We play on the same field as those people play on, despite the fact that we have 2,000 people here that take things from steel coil, plastic pellets, and make a product. But that's the way we make those decisions.

And we have to comply. We know we have to comply. We won't make a deceptive claim. So when we make decisions on where things get made, and how they get made, and how they get marketed, I mean, all those very complicated factors come into a very binary decision that says is it made in the US? Is it not made in the US? And it's hard to come sometimes assimilate those things.

LAURA KOSS: All right, that's very helpful. We're going to get into a little more about issues with different laws, state laws, and also qualify claims in a little bit. So Pete, I want to turn to you. Hi, Pete.

PETE WICKS: I'm here.

LAURA KOSS: So you mentioned, you know, you talked a lot about your long term presence-- the company's long term presence in the United States. And what comes to mind from us is that we frequently hear from companies that say, you know, we're aware of the all or virtually all standard. You know, the FTC said what it is. And it's based on consumer perception. But that if consumers could come and actually spend a day in our facility, then they would come away thinking that based on what's actually happening in our facility, that that product was made in the USA, even though it might incorporate some foreign content.

So I wanted to get your thoughts specifically about that.

PETE WICKS: Well, first of all, we've been making the product in the United States before the FTC came into being. Secondly, we take a pile of dirt, we mix it with water, and different minerals. And we manufacture China. Nobody has asked me what percent of your raw materials are foreign? Where do you get your feldspar, nepheline, and cyanide? As a company in the United States, we're going to get our raw materials at the least expensive place we can get it. There are a lot of raw materials we cannot get in the United States anymore. It used to be we could get them if they went off shore because our industry has died. There's not a lot of people making China in the United States.

But you have to see the company, see that we have 37 acres under roof, 700 employees, you have to see that we have a hundred, if not thousands of processes that we go through, and that's the essence of making, of manufacturing. If you look up made, it's past participle, make means to manufacture, put together, or do something. It has nothing to do with foreign raw material content. Nobody asks us that.

I think the main thing is you see what the people do and the transformation of that product from a pile of clay to a plate, first of all, there's a big physical transformation that takes place. It's the same as looking at graphite versus a diamond-- the crystal structure. Both graphite and diamonds are carbon. But they're made differently under heat and pressure. And our heat transforms our product-- plus all the steps in between. So I don't know if that answers your question.

LAURA KOSS: Thank you, Pete. That's helpful.

MARK HANNA: What he said.

LAURA KOSS: OK, what he said. All right, Kristen, AAFA's comment in the Bollman hats case-- the FTC's Bollman hats case notes that the AFA has shown interest in increasing US manufacturing. In the last panel you talked about US value that's been added to manufacturing. I'm curious how the all or virtually all standard has affected that pursuit or whether that's taken into consideration?

KRISTEN KERN: Yeah, so first-- and based on both that comment and feedback from our members-- as far as we're concerned, the all or virtually all language provides virtually no guidance to our members on how to determine these claims on their products. And that's really what we get to in this Bollman hat comment. We also mentioned the one step removed rule, which doesn't really define what that one step in the manufacturing process is.

When we're looking at our garments, you can go back to the fabric production for a product as the one step back unless it's a knit garment, in which case it goes back to the yarn to meet that one step. And so the two things focus on different parts of the manufacturing process. Something like fabric production is probably less important in the manufacturing process than something like finishing or dyeing of a fabric. So back to the comment then, our feedback from members is really just that defined content and substantial transformation is what we're looking for and what our membership is looking for in the definition.

LAURA KOSS: So first of all, I just wanted to ask you if you could make public the report that you mentioned on the value chain. The value chain would be interesting to have on the record. And I think what you're talking about is a good segue way to another point that I want to explore. And that is whether the all or virtually all standard impacts decisions for marketers on whether and how they make claims? And whether the standard is or isn't perhaps chilling origin claims or information about origin that might be useful to consumers?

So when you talk about the ambiguity in the standard and that uncertainty that manufacturers have, how do they deal with that uncertainty in terms of making claims-- in terms of making Made in the USA or other origin claims?

KRISTEN KERN: Yeah, so it obviously depends on the company. In some cases, that ambiguity pushes them towards making a qualified claim, because that's a safer alternative for them. Even if they, as

Pete mentioned, look at their supply chain and feel very strongly that any consumer looking at this would see a Made in America, they still feel that to avoid issue that qualified claim is the better route for them. And in some cases, it prevents a claim entirely. For lack of understanding, you know, I might interpret virtually all as 75%. And someone else might interpret that as just a simple majority of 51%. And knowing that all it takes is a 10% misunderstanding on the part of consumers to create an issue around that claim can cause a chilling effect for our members in choosing what type of labeling to put on the product, even though from their perspective the country of origin of their products is the USA.

LAURA KOSS: And Annmarie in the last panel you talked about challenges that your suppliers have. And you specifically mentioned gray areas. And I wanted to hear from you a little bit about what do you perceive or what do you hear from your suppliers in terms of what those gray areas are and what are the costs that they face in order to address those.

ANNEMARIE O'SHEA: Yeah, what I was speaking about is I think that our suppliers, and even suppliers who are manufacturers, that it's a long process. I think that this doesn't come up as much in the all or virtually all category, because I think people in those, they say it's 100%. And it's more black and white to say, in their minds at any rate, it has to be 100%. But the difficulty comes in to tracing when you have a qualified claim. And most suppliers, I think, are obviously trying to do it correctly and do the analysis correctly.

But in the end, it is the electric fence of getting it wrong that stops them from actually making the claim. So the cost that's involved I think in figuring it out, the time that's involved, and then at the end realizing, eh, this may not be worth it. So in the end, they wouldn't make the claim. And that has been some of the comments that we get from suppliers.

LAURA KOSS: And you mentioned that you distinguish between your private label and also from manufacturers that are not in your private label. I'm just curious how you monitor products that aren't private label.

ANNEMARIE O'SHEA: We rely on the suppliers and the manufacturers to handle it. We don't have visibility into it. So have they specifically said to you that they're avoiding claims because they're concerned about overzealous enforcement?

ANNEMARIE O'SHEA: Most I think of what I'm aware of relates to our private brand manufacturers. Because we don't have any role in the claims that are made by the national brands or the non-Walmart brands.

LAURA KOSS: OK. Mark, I know that this whole issue about the ability to make a claim with the all or virtually all standard, I know this has been something that you've mentioned as a particular concern in the jewelry industry. So I wanted you to take some time to describe what's going on from your perspective?

MARK HANNA: I think first I say I'm not always representing Berkshire Hathaway. But I'm also representing most of the organizations from the entire industry-- Jewelers of American manufacturing jewelry for the CEOs that are here. So we're looking at 182,000 workers in this country in the jewelry industry. And we're looking at not a single collection Made in the USA precious metal product. It can't be done according to the laws.

Yeah, there's some out there and you'll see it. But they're probably be living in sin. They just don't know that the materials had to be part of it.

And I think that we feel that we have been subjugated to a non-competitive standard in terms of, again, we're going to come back to the worker pride, and equality, and social responsibility. So we're constantly looking to find an answer that is common ground with understanding the consumer need for not being deceived in any way. And we think that common ground should eliminate natural resources, because we don't feel that the materials-- you heard a lot of the surveys. It's about labor. It's about, did it happen here? It's about supporting jobs. It's about supporting communities. And all of that happens regardless of those materials.

So it's very hard to explain to a general group of 30,000, that they-- going to a Parts Convention, Jewelers of America, it's very hard to explain to them why they can't call things that they dreamt and they sketched, and they thought of, and they polished, and they did it by hand, and they delivered it personally that that's not made in the USA. It just seems that there could be a common ground which protects the consumer from any type of harmful misunderstanding without it being the severe penalty it has been.

LAURA KOSS: Scott, what do you think?

SCOTT PAUL: So I wanted to ask the question back to you. I assume any company at any time could pick up the phone and ask you for guidance on whether a claim would be virtually all or all before they make it. Is that correct?

LAURA KOSS: Yeah, we're available. We don't pre-approve claims.

SCOTT PAUL: Sure. But you can provide some guidance?

LAURA KOSS: Absolutely. And we do it all the time.

SCOTT PAUL: Yeah. Yeah, absolutely. So there is obviously information on the manufacturer side about if someone is to pursue it, how to make that claim. I think what we find, and I'm familiar with a couple of cases here-- one on the retail side and one on the manufacturing side-- where I've seen entrepreneurs start up from nothing with the intent of making an all or virtually all-- in fact, someone made an online platform and a bricks and mortar store platform in Western New York, the Made in America store. 100% standard. It has to be 100% Made in America to get it.

He has his own kind of chain of custody. His certifications that he does. And it's damn hard to get into that store, but he maintains that. He's grown it. It's grown substantially. He's added four or five stores. He's added an online component. It is a wildly successful.

And the intent was to emphasize 100% Made in America products. And the message I'm trying to convey through that is that, again, this is an important designation that has to be earned. And it is what consumers expect. And I don't know that it's wise to conform policy to globalized supply chains.

Because if there is intent there, you can make it happen. American Giant, which was a startup, I guess, fashion provider, started with sweat pants. And it has expanded dramatically. You know, its founder intended to have essentially an All-American supply chain. The company has grown wildly because of that.

So there are some fast growing companies that have staked a claim on all or virtually all with that intent. And that's what consumers expect. And so I think weakening that in some way certainly is going to minimize the efforts that the companies that have met that standard, have met both the consumers and met to their own workforces as well.

LAURA KOSS: OK, so thank you. So one of the other challenges that we hear a lot of people who are doing business under this current policy is that they have to deal with other policies. So whether it's a state law, or you know, Mark will get into customs, I want to focus a little bit on what the tensions are in complying with the all or virtually all standard when you're dealing with a universe of other laws and policies. So Tim, I'm going to start with you. If you could please describe your experience about complying with the law in California.

TIM SCHADE: Sure. Until, I don't know how recently, but until relatively recently, the standard in California was all-- any part, any component. So for a company like ours, where we sell on a national basis and don't have any control over where people distribute our products once we give it to them, that became the de facto standard that the all or virtually all standard was completely irrelevant, frankly, because we had to comply with the California standard. And so our claims under that regime were much different.

Now that that has changed, California made an attempt to create a better standard. I guess it's open to debate about whether they did that. In my opinion, I don't think they clarified anything. I think they made maybe the waters even a little bit more muddy. But relevant in a different way than what it is now, because now it's based on a percentage and whether things are available in US.

It comes down to an enforcement issue there, I think, whether or not they have citizen enforcement in California. So you have a different factor, a different dynamic going on. But having one national standard-- and this is something that we've tried to push for, tried to get some preemption legislation through the US Congress just to regulate interstate commerce so that we didn't have to worry about one state taking over-- I think that would be something that would be helpful for us.

For somebody like the Made in the USA store who sells in a very local place, it's maybe not as big a deal. But any more-- people who sell online, you have to factor in the California thing. And there are instances where you can comply with California and not comply with the FTC-- 100%.

LAURA KOSS: So is that because of the percentage-based standards? I mean, can you give some examples of how there might be a deceptive claim under the FTC standard if you're complying with California?

TIM SCHADE: Sure, I mean the California statute is based solely on availability. Availability of the product, that's one of the things. But also percentage of-- percentage, I don't know if it's percentage cost, percentage of value. I don't know what the language is, but there's a percentage standard. And it doesn't take into account the things that the FTC does with respect to the importance of the component to the particular product. So you could absolutely have the percentages that California wants, but have a very important component under the FTC standard that is less than the percentage. And now you're going to file the FTC for all or

virtually all standard, but you would be in compliance with the California standard.

Having dual standards makes things more complex frankly than I think they need to be. But that's California.

LAURA KOSS: Thank you. So Pete, my understanding is that you also sell some of your China to the federal government. And so when you're selling for government procurement purposes, you're dealing with the Buy American Act. And I wanted to hear a little bit about whether there's any tension in navigating both the all or virtually all standard and then the Buy American Act.

PETE WICKS: No, because we've always been made in America. Our government business, we don't get our fair share of government business. The law doesn't work. Just an example of why I say the law doesn't work and the Berry Amendment was just redone, and I'm not a lawyer. I don't know all this stuff.

We sell probably \$1.5 million to the government. And if you take a large restaurant chain with 250 restaurants, we'll sell them \$5 million worth of China annually. And that tells me if you take a look at all the government installations and buildings, there's ways to get around the government buying from American manufacturers. This hurts us a lot. It has hurt us a lot. We're Made in America. That's just the bottom line. And we tell people that we're one of a few, but we don't get the government business.

So whatever laws you all make, they don't seem to work to the benefit of the people that are trying to make it.

LAURA KOSS: Do you use different marketing materials when you're selling your China to the government?

PETE WICKS: No, we have just one.

LAURA KOSS: Mm-hmm.

PETE WICKS: Now when we sell to the government, a lot of it's decorated. We decorate to their specifications. We have, I don't know, we have government contracts that we go by. But the government will say-- and this is off the subject. So I just won't get into it.

LAURA KOSS: All right, well, thank you.

SCOTT PAUL: I would just say just briefly on that, there are many manufacturers who do specify that their goods are buy American compliant if they're big players in the procurement marketplace and

they also have commercial kind of non-governmental lines as well. And they make that designation because, as you pointed out, it is a different standard. And it depends on the agency too, and the type of product that's involved. And for specialty metals and textiles, and for other sorts of purchases, there are an array of different standards that the government has set through both law and regulation.

I would point out that the trend has been over the last couple of years to harmonize that upwards, to harmonize that standard upwards. That's the direction that it's going.

LAURA KOSS: So in other words, meet the all or virtually all standard for--

SCOTT PAUL: It's not a all or virtually all. But for instance in the transit space, it's moving up over time from 60% up higher as well. I think it gets to 70%? 70%. But it's moving in the upward direction.

LAURA KOSS: OK. And Mark, I know you're going to have a lot to say about this subject, because you hinted out there.

MARK HANNA: I'll be good.

LAURA KOSS: Well, we want to hear what you have to say. So I know you talked about your issues with exporting. And obviously, we'll talk more about the substantial transformation standard in the last panel. But now if you can focus on, again, the tensions in marketing products for export versus more--

MARK HANNA: I think, first all, there's two other regulatory things that we deal with. The one I mentioned earlier, which is US customs that really has a different perception of whether we made goods here or not. When we file all-- don't do that. That's a basic custom form. You can't read that, I know.

But it says 100 of goods are manufactured in the USA. That's probably the same lot of goods that we were sending to Kay Jewelers that we couldn't call Made in the USA. Every document we file, shipping our goods out of the country, we declare US origin. So that's the first conflict. And it's an important conflict for us.

The second one is that Dodd-Frank 1502 deals with gold, precious metals. It deals extensively with conflict minerals. But what it deals with is tracked and traced origin materials to be sure they're not coming from anyplace bad. They allow an initial point of origin in this country to be the recycler or the refiner.

And we feel strongly that that is a traceable, enforceable point of origin for precious metals materials without worrying about whether it came out of Queen Elizabeth's ring or a mine in South Dakota. We think there is a very finite compromised position that allows precious metals to start a US recycler or a US refiner. And from that point on, the legitimately all or virtually all. So those are the two primary regulatory agencies that we deal with where we see opportunity or issues.

LAURA KOSS: And as part of your future consumer perception exploration, will you be looking into the recycled gold issue?

MARK HANNA: Actually, to you guys credit you asked me to do that in the last panel. So yes, recycle has become a much bigger topic. I mentioned earlier a response from an ethical sourcing. I think you'll see that many, many very ethically sourced companies, retailers now, are advertising recycled product.

And so recycle will be a very important part of it in trying to get the understanding of other than the blue bin you put out in front of your house for the garbage guys, what does recycling mean to you? So yes, we will.

LAURA KOSS: OK, so I want to make sure that I give both Justin and Bonnie a chance to weigh in. And specifically on strategies to balance these policy concerns. And again, we've been hammering this over and over again. But everything depends on from our perspective in terms of enforcement, how do consumers perceive these claims?

So does consumer education have a role here? In other words, would it be helpful in helping consumers understand the complexity of this issue, the realities of manufacturing. If we were to do consumer education here, what messages would be important to convey?

And I guess we'll start with Bonnie since we haven't had a chance to hear from you yet?

BONNIE PATTEN: All right, well, tina.org doesn't really take a firm position on what the standard should be. But what we do to try and educate consumers is publicize what's happening in the marketplace when companies are violating it. When we see deception. When the FTC has closing letters, we write about it.

So our position more is that there is a law in place and that it needs to be a level playing field, and that every company needs to abide by the law. And when we find that they're attempting

to deceive consumers, that's when we get involved. And we publish ad alerts, we do investigations, we'll be on social media press releases-- anything we can do to show consumers that they're being deceived with the laws that exists at present.

LAURA KOSS: And Justin, do you have any thoughts?

JUSTIN Yeah, it's really hard to educate consumers around deeply complex issues. You know, we try.

BROOKMAN: We have our magazine. We have our members. And we write about this issue occasionally. And people are really interested and engaged. And they find a lot of things surprising.

Yeah, I think there could be some value to the more standardization or simplification of particular claims. In general, in marketing, I think there's a lot more discussion these days around dark patterns. This company that's using really iffy statements. And again, if it's online, they have ability to conduct infinite AP tests and use artificial intelligence to see what consumers respond to more often. And so I think there could be some value to being the FTC in general.

But specifically about these kind of claims, they want to consider being more prescriptive about saying, here's these words-- and these are for qualified claims too-- mean x, y, and z. And then over time that can guide consumer expectations around what to expect. I've heard a lot from the panelists here today, there is a lot of uncertainty right now as far as what they can say, what they're not, and their competitors getting away with stuff. And so again, maybe, I think the FTC might need to lay down some more extensive bright line rules for this sort of thing.

LAURA KOSS: Right. Again, for us, we have to work with what consumer perception is. We're not necessarily-- well, it's a good point. Does anybody else have any thoughts on consumer education in general and what kind of messages would be useful to convey to consumers in this area?

All right, well, that leaves us plenty of time to talk about another area that I think is really important in this. And we've hinted at the margins about the use of qualified claims, even though we've been focusing primarily on making an unqualified Made in the USA claim. You know, as we mentioned, we talked to companies all the time. And we frequently counsel them that it doesn't have to be black or white. There's plenty of ways to use a qualified claim. The more specific you are, the better.

But this way consumers can be aware of all the work and all the processes that are happening

in the United States, even if your product has imported content. So qualified claims are a way to convey information truthfully and accurately to consumers. But I want to talk about some of the, at least what I hear sometimes, is the hesitation that marketers have or that manufacturers have in making qualified claims. So first I think, Tim, I want to hear from you whether being able to make an unqualified claim makes a difference to you and why?

TIM SCHADE: You know, I'm not certain. And I think we talked earlier on the earlier panel, there was no real data on what the difference between those two claims are. However, I mean, we always want to make an unqualified claim where we can. I think just from Lifetime's perspective, we would love to make an unqualified claim. It has to comply. It has to not be deceptive. So that's the primary consideration. But we would like to make that claim.

And this is about people making qualified-- this is not the view of Lifetime. This is my personal view. I think there's some conflict between whether that's a watered down claim-- whether that claim is watered down simply because you qualify and they don't know exactly what that means.

Or do people see the flag and really kind of ignore maybe the verbiage that goes along with it that qualifies that thing. I don't know what the answer to that is, but unqualified claims I think have power. And there's a reason why they have value. But I think that we have to be accurate. And I do think there's value in a qualified claim also. Maybe not as much, but it would be great to have some consumer perception evidence to see what those differences are.

LAURA KOSS: Absolutely. We'd love to see that consumer perception evidence. And Mark, you said in the last panel that you thought that qualified claims distort the message and that marketers really want to have a, what you called, a simple message. Why is that? And what do you believe to be the challenges from a marketing perspective and making up--

MARK HANNA: As a product marketer or as a brand marketer, you want the message to be as clear, simple, and short as you can to make your point. And as soon as you start to qualify, you're starting to go down from 100% positive attention to 90%, to 80%. You're telling the consumer that it's great, but, and but, and but. And as a marketer, it really is a very bad brand building, acknowledgment building, response building way to approach it. I don't think there's any marketing book ever written on you could do it with qualifiers.

So I'm giving you my personal belief, but I also managed hundreds of millions of brands. And

we try to make maybe a tagline. The tagline has got to be contributory. Aside from that, it's a very simple message.

And I believe qualifiers, and I know that the retailers I work with, because we've been through this numerous times, believe that qualifiers are a nonstarter as far as advertising the products.

LAURA KOSS: OK. And Annemarie, you talked about the qualified claims that Walmart uses. And I know that there's a number of qualified claims on Walmart's site. So can you address any challenges, if you have them, from a retail perspective on monitoring those? And how you go about that?

ANNEMARIE O'SHEA: So as a retailer again, because we are sort of just passing through the claim that's made by the manufacturer of the supplier, we don't monitor them. The ones that we would be concerned about are the ones which are going to be where Walmart is a private label or a private brand. And on those claims, we give guidance to suppliers as to how a claim could be made. And we have it on our website and it's a website for our suppliers.

And we find that we try to do it through flow charts to explain here's the questions that you should be asking, here's the things that you need to take into account. And then if it meets certain criteria, there's a logo that we would like or allow suppliers to use. Nobody has to use it. As I said in the very beginning, we hear from customers that they want to be able to buy products that are made in the US. And so if they're able to meet those standards, it's great to have it.

We also emphasize to suppliers that if you're going to be able to do it, don't hide it on the back, because the customer may not turn the package around. So it's something that you do want to have prominent. But in the end, it is the information that's within the suppliers knowledge and not ours. And so other than these kind of broad guidelines, we don't have other steps around it.

LAURA KOSS: So my understanding is that Walmart, the qualified claims, they're based on a percentage standard. Why did you do that?

ANNEMARIE O'SHEA: That was set up to provide clarity. And I think Mark had a similar point, it was to make it from the customer's perspective, to make it clear what it is that we're talking about. So there'd be some kind of a standardization that the customers would be able to see what it meant as to what the qualifier was. So standard qualifiers across based on this analysis of cost, and transformation, and the other factors.

LAURA KOSS: So Kristen, similarly, you mentioned again in your comment for the Bollman hat case, you mentioned that marketers, or that people, have difficulty even understanding how to make a qualified claim. And that there's a lot of ambiguity there. What have you been hearing from people in terms of why are they struggling with even making qualified claims?

KRISTEN KERN: Yeah, so first of all I'll just start by saying what Tim said. Our companies, their first choice is to make that unqualified claim. It's understandable and clear to consumers. There may be a place for qualified claims-- you know, in cases where the product doesn't meet a clearly defined unqualified made in the USA standard. But just as an example of a qualified claim, if I make a textile apparel product in the United States, but I have to import the fabric, and I use Italian fabric, my claim is going to be made in the USA of imported or Italian fabric. If I make that same product in Mexico with same fabric, the product is just going to say made in Mexico on it.

So I would kind of pose a question to that scenario of is that deceptive? Does that imply that the product is made with Mexican fabric? If I had to qualify my US made product that it's made with Italian, or imported leather for fabric, or whatever the import is, does that imply something different about my product, which for textile regulations has to say made in Mexico on it, but does not then say of imported fabric or inputs on it?

So I think just the differences there-- the differences in international standards, the differences even within the US federal government, different definitions of made in the USA is what leaves companies kind of grappling with how to make an unqualified claim. And then even from there, how to make the qualified claim. And then whether to make that qualified claim.

If they have to say Made in US of unknown origin whatever input, well, how does the consumer perceive that? And is it even worth it to my company to make such a claim that could, you know, contingent upon consumer data indicating this, but that could reflect more negatively on the product because of naming something as an unknown content. So just a lot of factors there.

LAURA KOSS: OK. And Bonnie, you mentioned qualified claims as part of the conversation. Are there any kinds of qualified claims that you think would be particularly useful to consumers? Or just in Tina's work, have you seen anywhere that you think are more informative than others?

BONNIE PATTEN: Well, as a general matter, I think one of the great things about marketing and advertising is the

information that you can convey to consumers. And I think consumers very much value that and appreciate it. So for consumers that, you know, anecdotally that are communicating with us, the qualified claim is very important. Where they get incredibly upset is when they're duped. They see the giant flag. It's all wrapped up. And then in gray tiny print somewhere is the qualifier. And they don't see it till they get home or after they've made the purchase.

So the only way I think that the qualified claims work obviously is if they comply with the law and it's clear and conspicuous. It's right up there with the part that says Made in the USA. And then gives more information. But I think it has value for consumers. And I think they appreciate the honesty the companies that use the qualified claims are providing to them.

LAURA KOSS: All right, well, I think we're just about out of time.

MARK HANNA: Well, could I have one segue to Annemarie's?

LAURA KOSS: Sure. Quickly. Very quickly.

MARK HANNA: Our brand of carat gold jewelry at Walmart is called Simply Gold.

LAURA KOSS: OK, any consumer perception? Focus groups?

MARK HANNA: But explaining to you where the gold comes from is not so simple.

LAURA KOSS: No, not so simple.

LAURA KOSS: All right, well thank you everybody. Thanks for the very helpful comments. Do we have a break? Or do we go straight through?

JULIA SOLOMON No, thank you Laura. We will break for like three minutes. And then we'll start at 11:15, which
ENSOR: puts us right back on schedule.

[APPLAUSE]

[MUSIC PLAYING]

JULIA SOLOMON That's right, let's get back to it. If all the panelists could please take your seats. And we will
ENSOR: start with the final panel today on remedies and enforcement approaches.

All right, so in our previous sessions today we talked about consumer perception and policy

considerations the FTC should take into account when we analyze US origin claims. In this last session, I want to take the remaining time that we have today to consider how to balance all the concerns that have come up today when devising an enforcement program in this area.

As you know, the FTC's current enforcement program, which is grounded in a full monthly review of every complaint the FTC receives in this area-- thank you Lashanda-- consists of a mix of informal staff counseling for companies that make errors, that don't fully understand consumer perception in this area, and targeted enforcement actions against companies that defraud consumers or refuse to work with us. For companies that make mistakes, particularly companies that do employ US workers or perform certain processes in the US, our approach has been to work with those companies, to counsel them into compliance without the need for formal enforcement action.

As part of that process, we often work with companies on qualified claims that would help the companies promote the good work that they're doing in the US without deceiving consumers in the process. In the past, we've really focused our litigation efforts on egregious offenders. These are companies that either intentionally deceive consumers or companies that refuse to work with us. Many, not all, of these enforcement actions have been in administrative court cases that result in injunctive relief with the threat of civil penalties for companies that violate orders.

In addition to this formal and informal enforcement work, as we've alluded to throughout the session today, we do provide a large amount of informal staff counseling. That's really our big focus is to try to avoid deception in this area before it arises. We make ourselves very available to anybody that wants to talk through these issues to try to figure out ways that companies can promote their products and stay within the law in this area.

We're now here to discuss whether we should continue our program or whether we should change course in the future. Bearing in mind, again, that our statute is the FTC Act and our mission is to prevent consumer deception, I want you to know that all ideas are on the table today. I want to start with talking about any problems with our current approach. And then we can move on to potential solutions. Let's first talk about enforcement with respect to US companies. And then we'll reserve some time at the end for talking about strategies to deal with overseas bad actors that sell through US platforms.

So let's start out by talking about how we're doing. Is there any particular aspect of our current

approach, the mix of informal staff counseling and targeting enforcement that's worth keeping? We'll throw it up into the group. And don't everybody speak up at once. OK, um--

SCOTT PAUL: Julia, I mean, obviously staff counseling before an issue arises is, I mean, prevention saves all sorts of headaches. And so clearly that's something that could be continued. I think that's a different question than what's the right enforcement mechanism, which I'll be happy to comment at the right time.

JULIA SOLOMON Sure. And from our perspective, it's all wrapped in. You know if we can avoid enforcement on the back end by ramping up communication and education on the front end, that's very valuable. And bearing in mind limited staff resources, that that's something we've certainly focused on. So are there problems that you all see in our current approach, are they with litigation strategy? Is it case selection? Is it something else?

What are the problems?

MARK HANNA: You really want me to talk?

JULIA SOLOMON Anybody can talk.

ENSOR:

MARK HANNA: So from an enforcement point of view I think, again, I'm being very specific to our industry. So I apologize for that. But there is no way to know the original origin of 90% of the gold in the world. This ring could have been Queen Elizabeth's and it's been recycled and recycled. So the only place we actually know for a short period of time the true mined origin whether it's the USA or not is when it first comes out of the ground. And it's going to lose track after that. And it does for us.

So I don't see any real strength of enforcement if the burden of proof was on either of us in order to really be able to say that that gold did or didn't come out of the ground in the USA. Other than a certain limited amount, if you tracked the gold that came out of the mine today and tomorrow, you tracked it very specifically and segregated it-- and there's a lot of that that is happening and blockchain is providing some of it-- but overall, the vast majority is I don't believe it's enforceable. I don't believe it's trackable. I don't believe there's a proof possible as to where it really originated.

So it's specific. So I apologize. But that's my primary concern.

JULIA SOLOMON I think it's transferable. And I just want to make sure that I understand the point. So in your
ENSOR: mind the problem with enforcement here is that we're looking too far back in the manufacturing chain. And there should be some point at which we stop looking or the manufacturers no longer have an obligation to trace back further.

MARK HANNA: Yeah, you're looking to the very beginning of the supply chain-- all the way to totally upstream to the mines. And I think that my point earlier is that if you look to refiners and you look to recyclers, they're very established points. They can be within the US. It would be trackable. It would be enforceable. It would have invoice documentation.

And so I'm suggesting, yes, there is an answer. But the current answer of tracking back to the mines is really not enforceable.

JULIA SOLOMON And so there I would once again reiterate that if there were consumer perception testing
ENSOR: showing that there were a point in the manufacturer's chain where consumers no longer cared or where it wasn't relevant to their purchasing decisions, that would be something that we would certainly have to look at when we're enforcing. So I really encourage--

MARK HANNA: Just so you guys know, she made that suggestion to me a while ago. And it's 100% right. It is true.

JULIA SOLOMON Sorry, Hampton?

ENSOR:

HAMPTON I was going to say what you were going to say, Julia.

NEWSOME:

JULIA SOLOMON Oh, that's good we're on the same page. I have some specific questions for Scott and Justin.

ENSOR: But before I jump to you guys, is there anybody else that wanted to--

PETE WICKS: Yeah, just one comment. Why don't you look at industry specific. If all the jewelry manufacturers force the same problem and you've got 180,000 people that work in the United States and none of their products made in the United States, that's an injustice to that group of industries, is it not?

JULIA SOLOMON I hear what you're saying. And again, our job is to enforce consistent with consumer

ENSOR: perception. And you may very well be right that if the jewelry industry or other similarly situated people tested the very specific scenario that they have, but they've got all of these people here

in the United States, there might be a point where it's no longer material to consumers that the gold is of unknown origin or whatever it is. So again, I'm going to keep encouraging consumer perception testing. Because enforcement policy statement is what it is. But it's only meant to be guidance that helps manufacturers comply with Section 5.

In any situation if there's consumer perception evidence showing that consumers perceive a claim differently for a particular product or in any particular scenario, then we would enforce consistent with that consumer perception. Scott and Justin, both of you have submitted comments in conjunction with recent enforcement actions. And I think the specific concern that you both brought up was a concern that our actions are not providing adequate deterrence. But from my perspective, it seems to me our recidivism rates are pretty low. We've had two civil penalty actions. We have pretty low reports on back slides of closing letter recipients.

So I want to drill down on whether your concerns about general or specific deterrence and what's giving rise to that concern?

JUSTIN

BROOKMAN:

Yeah, so I'm definitely concerned about the lack of consequences when someone actually gets caught here. And it's probably a issue more of general deterrence, right? It's an \$18 trillion economy. A lot of stuff coming into our country. You guys bring a couple dozen cases a year.

You catch old references to competitors living in sin. It's often really hard to detect. I mean, I had not studied the area thoroughly, but I would pause that you're not getting most of it with your two dozen cases a year. And so when you do catch somebody, and especially when there is intent, like it's clear flagrant violations, there need to be consequences, right? When you get caught skipping the subway fare, you don't pay nothing. And you don't pay \$2 just to pay back what you stole.

There's consequences. You should pay considerably more. And in the cases you bring, there really isn't. So we filed comments on the Patriot Puck and the backpack, the Sandpiper case. And look, you got your hamstrung, right. You have limited resources. You don't have general penalty authority. Though, there may be some ways to get some for some of the Made in the USA claims.

But there are maybe equitable remedies you could be getting, like discouragement. Make them give over the money that they made from selling these fraudulent pucks.

JULIA SOLOMON And I do want to talk about the specific remedies a little bit later on. But for now, I want to
ENSOR: focus on the inadequate deterrence problem you've observed. So what you're saying is there are probably other companies out there that are committing fraud and they're not deterred. But from where I sit, you know, it's pretty rare the complaint or the information that I receive about companies that are committing out and out fraud.

I mean, Patriot Puck, which was a case where the company was, you know, selling wholly imported pucks as Made in the USA. In the many years I've been doing that, that is very, very rare. Most of what I see is companies that do some thing in the United States, but don't know exactly how to promote it. They might have stepped over the line a little bit. Can you tell me more about where you're seeing this fraud and where we should be looking?

JUSTIN
BROOKMAN: Yeah, I mean, I think it's because it is really hard to detect, right? And so when someone gets caught, they should suffer. And I think someone who is thinking about breaking the law sees the Patriot Puck settlement and says, well, heck, even if I get caught, which I probably won't, all I gotta do is sign an order not to do it again. And it's a very strong chance it's not going to happen. I think that's create an incentive for people just to-- yeah, yep, there's no consequences. Why not?

Which is why when we do survey work around this, a lot of people don't trust Made in the USA claims. 23% of people in our survey is like just don't buy it, right? And so I think there is certainly a perception and maybe it's because there aren't consequences when something goes wrong that people can't really trust what people are telling them.

JULIA SOLOMON I hear you. And it's my job if we're not doing a good job in deterring, we need to know about
ENSOR: that. We need to fix it. I just need to understand more about where this fraud is occurring. You know, where are all these people that aren't being deterred and how can we find them? You know, so--

JUSTIN
BROOKMAN: Yeah, so I haven't studied the marketplace. So I don't know how much there is, right? But it seems implausible that 24 instances a year is the tip of the iceberg. It's the tip of the tip.

JULIA SOLOMON OK, Scott?
ENSOR:

SCOTT PAUL: Yeah. I'll echo a lot of with Justin said and also say with respect we realize limited resources and you have some guidance. But we also think there's a lot of room for improvement as well.

And I want to cite a couple of cases. We ourselves filed a case with respect to Element Electronics and its fraudulent advertising of televisions that were alleged to be assembled in the United States. We bought them for our office.

We wanted a Made in America office. And the TV, the packaging itself was an American flag with American workers. And it says America matters. And then it says in smaller print, assembled in America. And a *Wall Street Journal* reporter went into the factory and said there's not even substantial transformation taking place. At the end of this, there was a closing letter. Element had to change some of its advertising tactics.

But that was it. There was no restitution that was available for anyone. And I am certain any reasonable consumer who would have seen that packaging would have assumed that this was a almost holy hate in America product. It was unmistakable. It's the same with Patriot Puck. The name itself.

And unless there is a much harder edge to clearly fraudulent cases like this, I mean the folks who are violating aren't going to self-confess to you. And it is a matter of finding that perfect combination of an educated consumer, or a competitor who's been harmed, and who wants to bring it to your attention. And I would argue that's obviously an inadequate methodology to bring more cases to your attention. There needs to be more focus on that.

But we don't believe that there has been adequate deterrence. And you're right on the recidivism. So when you do intervene, that is true. But that is a small amount of American commerce that is touched. And there are these other cases where there are very clear violations that I would argue with intent, not like, well, we didn't know. I mean, with intent.

And I think the enforcement has to be much more vigorous in most of those instances.

JULIA SOLOMON We want to hear about those instances. And I encourage anyone that's in the audience today, **ENSOR:** if you are aware of fraud in this area in the marketplace, you know, our doors are always open, and we want to hear about it. So we can't do anything, like you said, if we don't know about it. That's very helpful.

Bonnie, I think you wanted to talk on this topic as well?

BONNIE PATTEN: Yes, on the recidivism rate, I think you're not catching them all. And obviously you have limited resources. And I'll give you an example, New Balance, they got a consent order in 1996. Since at least 2009, they've been making unqualified Made in the US claims. And when they make

those claims, what they're saying is that their sneakers have 30% or less foreign component parts by value.

JULIA SOLOMON They have that qualification?

ENSOR:

BONNIE PATTEN: If you look on their Instagram page, you won't find it. It's an unqualified claim. You can buy the sneaker without ever seeing that qualification. They've been doing that since at least 2009.

When California was changing its law, the Judiciary Committee when it was talking about the FTC standard, said that the FTC standard allows for negligible foreign source. And then as their example, they cite New Balance sneakers are made roughly 70% domestic sources. And the FTC allows them to advertise Made in the USA.

So when companies are allowed to get away with this, it has a tremendous impact on the marketplace, and perhaps even an impact in how other states define how they make their Made in the USA claims. With regard to closing letters, Tina.org has brought many examples to FTCs attention where they don't work.

Walmart got a closing letter. We found a hundred more examples of deceptive Made in the USA claims. Target, same thing, got a closing letter. We found more examples. And just most recently, Williams-Sonoma. Within a year, we found 800 deceptive marketing claims.

I think these are sophisticated companies. They have lawyers. They know what the standard is. And they know that a closing letter means nothing. It's just follow the law and then nothing happens. We need a better deterrent.

JULIA SOLOMON Anybody else want to weigh in on problems with the current approach before we get to specific

ENSOR: changes moving forward?

KRISTEN KERN: Just quickly, since Scott brought up the counseling services that the FTC provides, I think the second necessary piece of that would be binding determinations premarket that could be made about a Made in the USA claim on a product. If the company can know definitively based on the product, based on the claim that this is going to be an acceptable claim, that provides a level of certainty that then allows them to sell that product confidently. And knowing that their consumer, per the definition of FTCs consumer perception, will not be deceived by that claim.

I would be interested to know what changes between the time when a company makes the decision or would ask the FTC, can we make this claim on this product? And then actually putting the product on the market and that claim showing up on the product, you know, what the disconnect is there as to why there can't be that determination provided definitively and binding ahead of time.

JULIA SOLOMON ENSOR: So just to pause briefly there. Of course, we don't pre-approve claims. There is a process in place where companies can request advisory opinions from the commission that's discretionary. You know, it's at the commission's discretion. They can decide to act or not act. And it could take a very, very long time.

I'm not aware of any advisory opinions that have been issued in this area in the years that I've been working on this program. That is a process that's available. In general, companies find it more expedient to just get some informal staff feedback on their claims. But I want to make sure that people are aware that that process does exist.

Well, so the main thing that we need to figure out then is what we need to change moving forward. I've talked with our panelists, with some other folks, and we've identified at least two possible paths here. So we could keep the enforcement policy statement or its successor, because of course, the policy statement is tagged to consumer perception. So if consumer perception is changed, the policy statement must change. And then enforce pursuant to Section 5 with some changes to litigation strategy.

And I think these are some of the things that Justin and Scott were raising in their comment. Or we could make a rule in this area. So let's start first with a thought about keeping the policy statement and maybe changing litigation strategy. And so Justin, I think you hinted at this before in terms of thinking about different kinds of relief we should be seeking in these cases.

JUSTIN BROOKMAN: Yeah, I mean if you do have the ability to seek expert relief in court. Like things like restitution I think makes sense, right? You made money off of this product which confused X number of consumers. You should be at very least forced to give that up. And I think that's probably true even if you think it's a mistake, right? They didn't think about it well. There was no intent to defraud people. They kind of did.

But there are consequences for mistakes. It's like Section 5 has no intent violation there. There needs to be some degree of consequences for actions, which by in large they are

today. Even when you bring the cases, which I think Bonnie points out, you don't always. There are other things too.

You know, should there be notices? Should people be forced to advertise that this happened, right? That would also, a, raise public awareness about the potential that maybe they are being defrauded. Maybe give them a chance to get their money back and to get a refund. We also have some strict liability cost and also goodwill hit. Some people know, yeah, whoever did these sort of things, which confused people. And they mislabeled things as Made in the USA.

I think there's like a suite of things that should be considered. I don't think that your two options are either or. I think that you can work on a rule which would give you penalty authority. But also, like, sometimes penalties might not be appropriate. But maybe restitution, or notice, or something else might be.

But I think the FTC should not be hamstringing itself to not use the arrows it has in its quiver today because of the under deterrence effect.

JULIA SOLOMON So I wanted to get into this question of equitable monetary relief a little bit here, because it's something that I struggle with in these cases. So let's think about a backpack. And let's say the backpack was falsely marketed as Made in the USA. Well, the backpack still works as a backpack. It's a nice backpack. People might have bought it for reasons other than the Made in the USA claim.

How do we figure out what the appropriate amount of monetary relief would be?

JUSTIN BROOKMAN: I mean, it's equitable. So you have a fair amount of discretion. I mean, you do. I mean, it's not just about what the marginal product add value ad was to each consumer. It's also a question of fairness. And so I think rather than get too wound up in it-- and again, most of these things are negotiated settlements. And so you have the ability to tell them why you think they deserve to pay X amount. And it's a question of negotiated settlement.

JULIA SOLOMON Well, I'm not sure that's right. I think if we start going into federal court, I'm not sure we're always going to be in a position where there's no negotiated settlement. I think I need to be prepared to explain to the court what the right measure of relief would be.

JUSTIN BROOKMAN: Yeah, and you can point to various attributes. And again, for a companies like Patriot Puck, where it was in the name, or it was a very salient feature of it, that's a factor for consideration. But looking at the profits they made from you. How much money did they make from selling

these products? How much revenues did they make? Maybe you don't get all of it back.

But I think because you cannot say for certain what every single purchaser, how much of it went into them, I think you can't just throw up your hands and say, well, we don't know, right? Bureau of Economics, they'll spend two years on it and they'll figure something out. No, that's insufficient. I think you need to try to do best choice, best efforts at making a fair articulation of what they should be forced to pay over for defrauding consumers.

JULIA SOLOMON So since you did comment specifically on our Sandpiper case, of course, in that case, the company was also making some very amendment compliant 100% Made in the USA products. How do we factor that in when we're thinking about this type of relief?

JUSTIN BROOKMAN: I'm sure Williams-Sonoma sells some very nice, like, frying pans too, right? The fact that we're not breaking all the laws is not relevant for consideration. I mean, focus on the things that they've done wrong. Focus on the things that they mislabeled and say these 800, or whatever number of products it is, that we're sold, again, I'm not saying that none of them would have been sold, but for this incorrect designation. But still, I think there's plenty of bad activity you can point to that made the money, right?

JULIA SOLOMON Makes perfect sense. I hear what you're saying. Scott, I want to let you weigh in on this too.

SCOTT PAUL: Sure. Thank you. And I'm sure with respect to restitution and methodology that there's a path forward. I mean you look at data breach settlements and things like that, I mean, where no one's data may be used. So they may in fact not be directly harmed, but they're exposed. And you know, they can be compensated as a result of this. And there's various factors that go into that.

So I don't think that's an impossible question to answer. I think there's a lot of guidance that's available. There's also specific guidance that you still have in authorities under Section 5 to utilize. And as we stated in our comments on Patriot Puck, they should be utilized. The discouragement, the restitution are good possibilities.

We also believe that admissions should be considered as well. Because admissions then would unlock other possibilities for consumers that have been harmed that aren't available to them now or competitors as well who have suffered as a result of the fraudulent behavior. And so I think you should look at those.

And obviously, you weigh that based on the amount of harm that has been done to the extent that intent can be engaged or not engaged. I mean, something like Patriot Puck, it's pretty clear what the aim was. So there's a lot of tools in the toolbox that have gone unutilized for decades and should be utilized.

JULIA SOLOMON Right. So of course we can ramp up the remedies that we're seeking here. You know when
ENSOR: we're talking about admissions, that's something that would have to come through a settlement of course. But all of these increased relief, of course, is going to require more staff time, more resources. It's going to lead to fewer cases.

If we're in court, we're litigating, we've asked somebody for an admission-- you know when you put an admission in a document for settlement, that it's a whole different type of a discussion that you're starting there. When you put monetary relief in, it's a whole different type of discussion. So we can certainly ramp up on all these remedies, but that means that instead of doing two or three of these cases a year, maybe we're doing one every two years or something like that. Is that an acceptable trade-off?

BONNIE PATTEN: Get more lawyers.

JULIA SOLOMON Well.

ENSOR:

SCOTT PAUL: I was going to say, we'll be happy to work to increase your appropriations for that purpose. I don't know that it has to be a question of either or. But I will also say that vigorous, strenuous enforcement in high profile cases probably has a much greater deterrent impact than the sorts of settlements or the closing letters that have been offered so far.

JULIA SOLOMON I mean, I just don't know about that. Because, I mean my own, and again, of course, today, I'm
ENSOR: only speaking as myself, but it seems to me that if we're out there sending a message a couple of times a year, hey, we're on the beat. You do this, we're going to catch you. And then if you do it again, there is significant civil penalties. And of course, there's a PR hit every time we do a case. I mean, to me, that seems like it should have a deterrent effect in the marketplace.

Whereas if I'm locked into litigation that goes over several years, you guys may have seen the commence case which was in federal court. We got mired in discovery disputes in that case,

which took a lot of time. You can see all of that. It's all part of the public record. I mean, these are all trade offs that we have to make.

HAMPTON NEWSOME: And I'd like to just add, is this something that you'd like to see FTC prioritize over some of the other things we work on? I mean, there is a resource issue. And I'm just curious where your thoughts are on that?

BONNIE PATTEN: From tina.org's perspective, no, we want our cake and eat it too. We want everything.

JUSTIN BROOKMAN: I've been sympathetic to the resource issues. And I've certainly testified several times y'all need resources in all divisions. You need a lot more people. Your what, like, half the size you were in 1980. And the economy is, like, three times as large. And it's a shame. And you also need the full panoply of remedies and other things too. So you're hamstrung. And I totally get it.

That said, I would say I would rather see five meaningful settlements/cases per year instead of 20 no fault, don't do it again, tisk, tisk.

JULIA SOLOMON ENSOR: Well, I mean we're already doing the best we can with three settlements a year.

BONNIE PATTEN: I'd also bring up, I mean, there are states that I'm sure are willing to pitch in on that. Like you did with Stanley Works, that there are other resources you may be able to rely on that could help in this arena.

JUSTIN BROOKMAN: I'm sorry, then one good case instead of three.

JULIA SOLOMON ENSOR: Gotcha. So just before we start talking about potential rulemaking, you know, we've talked about monetary damages, notice to consumers, and admissions. Is there other relief that we should be seeking in our cases?

MARK HANNA: Can I just add that the admissions that Dodd-Frank has a pretty strong deterrent and it's enforced by the FCC. So its public companies. But it's a note to your financial statement and clear notice on your corporate website for any violations. And speaking for us as a pretty visible public company, that was probably the single greatest teeth in the entire Dodd-Frank act was the requirement that that's what you're facing are you found guilty in some way. So there might be something to that without gigantic time and cost that can be utilized.

So I can send you that clause if you want. It's quite strong.

JULIA SOLOMON Sure. Anybody else? OK, well--

ENSOR:

JUSTIN BROOKMAN: Naming individuals, too, is another thing. I mean, again, they're more likely to fight. And I understand it's some high profile cases recently that was a problem. But also, like, it matters, right? And again, the case law there is pretty good for you, right? Though, I understand that the settlement-- the company's going to fight back more even if the law is on your side.

JULIA SOLOMON Great. So some of our panelists have raised the possibility that we might need a rule in this area. So I want to talk about do we need a rule? And if we do, what would it say? So Bonnie obviously you submitted a petition arguing that the FTC should make a rule. Why?

BONNIE PATTEN: I guess I would say the more appropriate question would be why wouldn't the FTC want a rule to defend American manufacturing and protect consumers? To add to Justin's point, it would be another arrow in your quiver to use at your discretion and only in appropriate cases when you thought it was the case to bring it on. Maybe something like a Patriot Puck. Congress did not mandate or prescribe what the standard for Made in the USA would be with this rule. That's up to the FTC.

And that can change over time. And I think that although we've had all this discussion about that definition, having this Made in the USA rule and the penalty switch is very separate from the definition. And they don't need to be tied together. So why does Tina want a rule?

I think labels matter, as we found out. Made in the USA labels matter. And it should be protected.

I think in the 25 years since Congress authorized the FTC with this rulemaking authority, things have only gotten worse. We have online marketplaces that are used all the time. And I think now is the time that you need this.

JULIA SOLOMON And can you just get really just specific for the record. What are the specific benefits that you see coming from the rule?

BONNIE PATTEN: I think it would have a tremendous deterrent effect. I think it would change the cost benefit analysis when someone thinks about engaging in deceptive Made in the USA labeling. And I think it will send a message to everybody that you can no longer just simply be ignorant of the

law. That it's up to you to either call the FTC, or hire a lawyer, or read what you should be doing in the first place so that other businesses that are doing the right thing, like Lifetime Products, are not made victims by a bunch of other companies that are just willy-nilly deceptively using Made in the USA labels.

JULIA SOLOMON Well, let's talk generally-- and I want to hear from everybody-- if the FTC were to make a rule, **ENSOR:** what should that rule say? Yeah, Mark?

MARK HANNA: I'm a same soapbox forever, but worldwide globally substantial transformation is the rule. That for global competition, substantial transformation is the rule. For global enforcement, substantial transformation is the rule. For the American Reconstruction and Buy American Act, substantial transformation was the rule.

So I think there needs to be some consideration. I'm not abandoning where we are with this, because I think where we are is good. But some consideration to looking at the safe harbors or the alternatives of substantial transformation as part of the definition and part of the acceptable documentation to be able to do this. And there's a lot of definitions out there. Of course, you know I was going to say this, go to substantialtransformations.com. You know, that's my appeal.

I think that we see it all over the world. We have factories in 19 different countries. And we just like a fair hearing on the sense of looking at substantial transformation inclusion to what you're doing now.

JULIA SOLOMON So I'm sure you are probably aware that in the 90s, the FTC did propose an alternative to the **ENSOR:** current policy statement that provided a safe harbor for double substantial transformation. That proposal we received thousands of comments. We heard from all corners that the proposal was no good.

Do you think that consumer perception has shifted? Is there a change that would support that?

MARK HANNA: You're looking at a totally different global competitive aspect. You're looking at pre-Amazon. You're looking at-- I've looked into it. Of the 13 congressmen on that, only two of them still even exist. We have a different point in time now. And I think we have a different global economy now.

We have direct sell to consumers. I mean, the point on the web is very important in terms of

what's happening. It's becoming 22% of the economy. And so I think that it's time to look at a worldwide standard. I think you look at the enforceability as part of that, obviously. Again, I'm somebody who would say this, but I'd like to see it opened up and the idea of a safe harbor not be so much the percentages like they used to be, but be the ability to substantiate through substantial transformation.

HAMPTON Mark, I assume you're recommending this whether we do a rule or whether we change the
NEWSOME: enforcement policy, right? You're saying--

MARK HANNA: I'm kind of looking at go from definition, to rule, to enforcement.

JULIA SOLOMON OK, what do others think? What would a rule say? What standard would we employ?
ENSOR:

SCOTT PAUL: Julia, you know the assumption I think reading back through the record of the 90s was that we're in a newly globalized world after NAFTA. And it's time to update the standard. Obviously, that fell flat with policymakers. You know, there was overwhelming opposition to it among policymakers, as well as among the commenters. I think you would find the same thing today. I mean, it is true, as Mark indicates, that supply chains are more globalized. I don't think the consumer perception has changed at all.

In fact, I think it's just as strong, if not stronger now than it was then in terms of what they expect. So if there were to be a rule, I would tread very cautiously if you're contemplating weakening that virtually all or all standard. And it's not based on a dramatic change in consumer perception among a substantial minority, much less a majority, where I think there is strong evidence that the perception is the same. I think the rule could serve a purpose in terms of, again, if there's guidance on more aggressive enforcement action to serve as a deterrence, that that could be of some value depending on how it's structured of course. But you also have existing authorities to utilize, we believe, as well.

JULIA SOLOMON Do you all think that a rule that incorporated the all or virtually all standard would be helpful
ENSOR: without additional guidance? I mean, I hear a lot from people, like, all or virtually all, who knows what that means? So just dropping it in a rule, would that help?

JUSTIN I mean, I kind of come from where Bonnie is. The most important thing is it gives you the
BROOKMAN: ability to get penalties, which is incredibly important for deterrence. I mean, it's a crying shame the FTC does not have it more broadly like every state attorney general does. So I think just,

yes, putting the existing standard in a rule would be incredibly helpful for that purpose. I share some of the concern about going-- I would echo what Scott says around devolving to substantial transformation, because, again, a consistency, I mean, setting aside the politics of it, I'm not sure it's just based on consumer expectations.

That said, I'm definitely open to-- I think some of the commentators made some very thoughtful points about some areas where it could be tweaked and clarified in certain ways. And so I think as a consumer advocate, I'm definitely open to being fair, and reasonable, and thoughtful about what that might look like, as long as we're not dramatically changing the rule to be inconsistent with what folks as we've all heard think.

JULIA SOLOMON Thank you.

ENSOR:

HAMPTON What specifically do you have in mind in terms of these tweaks? I mean, just--

NEWSOME:

JUSTIN I mean, I would want to think more carefully about what exactly those tweaks would be. And
BROOKMAN: we can work and we can file comments and think about that. My primary focus has been on the enforcement side for egregious violations. But as a policy making exercise, I've heard a lot of people saying there's this lack of clarity. And so I think that, yeah, there are probably ways to provide more clarity.

JULIA SOLOMON Thank you. Does anybody else want to speak on this, what a potential rule should say?

ENSOR:

KRISTEN KERN: Just briefly to reiterate what Mark said, we fully agree that substantial transformation is our end goal for what we would ideally see in a rule like this. But first just to again reiterate what I've been saying, which is that clarity is the first piece. I won't say regardless of what the rule says, but the clarity is the most important part that companies can-- you know, maybe they want to make the claim. But there's a percentage on value and they're not qualified to make that claim, at least they understand what the FTC envisions when they say virtually all.

MARK HANNA: The bridge might be all or virtually all the value add. Because I think everything you've heard from maybe all the studies is about that recreation by American labor to make something different from what it started out.

JULIA SOLOMON Thank you. Now, I have a very specific question going back to that provision that I mentioned

ENSOR: during my discussion at the very beginning of the session today. And that's 15 USC 45a. As I mentioned, this provision gives the FTC some limited authority to promulgate a rule on Made in USA labels by a procedure that's a little bit less cumbersome than the rulemaking procedure we otherwise have to use.

And so I was interested in whether the speakers today think that a rule developed within the parameters of 45a-- so possibly only applying to labels and possibly only applying to unqualified claims-- would be good enough?

BONNIE PATTEN: I can start. I don't think that you need to read 45a in that limited way. But even if the FTC were to define it that narrowly, I think it would have benefit. And I would hope that when you define label, that you would look to other agencies, for example, like the FDA, who has defined label incredibly broadly. So they include the website, weblogs, pamphlets. They're not just looking at the back of a bottle anymore given the online marketplace.

So that it can have a greater impact. However, I do think you're right, you're going to miss some deceptive marketing claims if you do that. And I'll give you an example. Mercedes Benz had a sprinter van that they were marketing in a multimillion dollar national ad campaign as built in the USA. There's no labels on the commercial van. So the only thing you really had in sum and substance was this national ad campaign.

So I think if you do narrow the way you read this section that it may be the case that that kind of example would fall outside of it.

JULIA SOLOMON Does anybody else have any thoughts on 45a? You know, it's a somewhat technical--

ENSOR:

JUSTIN Yeah, I'm not a legal expert on that particular issue. I think it's good enough. I think none of

BROOKMAN: this can be good enough, given your resource constraints and some of the other policy limitations in the FTC. But I do think it would be better than not. And it would be incredibly helpful for at least some subsidiary cases.

TIM SCHADE: One just very brief comment. I think that clarity is probably the primary goal here. If the FTC decided or determined at some point that labels included some of these other things, which again, I don't know whether that's a good thing or a bad thing. I don't have an opinion that. Sufficient notice to the public, right, so that we have clarity and the time to adapt, as opposed to, well, we didn't think it was at some point, and nobody was acting as if it was, and now all of

a sudden I'm in an enforcement action where it is, I think that would be problematic obviously.

JULIA SOLOMON Thank you for all of your thoughts on these questions. I really appreciate of course,

ENSOR: everybody's perspectives. So if we moved forward with a rule-- some of the panelists have alluded to the possibility that a rule could provide that violators are subject to civil penalties for a first offense. Scott and Justin, I wanted to ask you if you think this is a good idea. I think I have an idea where you may be going. But Scott, let's start with you.

SCOTT PAUL: I'll keep it simple, yes.

JULIA SOLOMON OK, Justin?

ENSOR:

JUSTIN Yeah, but I mean, again, you don't need to extract maximum penalties for every single case, right? I mean, a, it can give you more leeway in negotiations, which is incredibly important given your limited staff and you'd be outnumbered. But in some cases, penalties will be appropriate will be \$16,000 for a confused person? Probably not. But it's having that legal right is incredibly important to you.

BROOKMAN:

JULIA SOLOMON OK, so I want to hear from some of the manufacturing people on this. So you know, Tim, Pete.

ENSOR: You know, I want to hear about whether introducing civil penalties would affect your marketing decisions?

PETE WICKS: None, whatsoever.

TIM SCHADE: Yeah, it wouldn't make a difference for us.

JULIA SOLOMON Got it. Bonnie, do you have any thoughts on whether civil penalties would benefit or harm

ENSOR: consumers?

BONNIE PATTEN: I think it could only benefit consumers. I mean, again, it's discretionary. And so the FTC would only use this when they thought it was appropriate and necessary. And I think we can look to ROSCA as an example of that. ROSCA was enacted in 2010. And the FTC didn't use ROSCA until four years later. So I think that from what we've heard, consumers are willing to pay more and select goods that are Made in the USA. So when they've been harmed by deceptive advertising, I think that it would be appropriate for there to be a penalty.

JULIA SOLOMON Annemarie, what about you?

ENSOR:

ANNEMARIE

It wouldn't really have any effect. I think the damage is done to the consumer if there's a problem with a claim. And so that's really the focus that you want to lose the customer, you lose the customer. So the behind the scenes of if a company were subject to discouragement, or penalties, or anything else, I don't think it would have an effect. Or rather I should say it wouldn't have a deterrent effect on complying with the law.

JULIA SOLOMON Kristen, what about your membership?

ENSOR:

KRISTEN KERN:

So, no, is the short answer. Again, I think this is just not the first step for us. You can't update the enforcement policy of a rule that we don't have a clear definition around. So until that update has been made and the standard has been revisited, I don't think it makes sense to jump to enforcement and civil penalties.

JULIA SOLOMON

OK. Well, so we touched about this a little bit in the context of federal court actions. But again,

ENSOR:

I want to think here about how we would measure potential civil penalties, what factors we should be thinking about. And you know given that in general the products that we're talking about here are products that still function as advertised and we don't have always a clear handle on what proportion of consumers bought the products because of Made in USA or some other attribute, so I'd like to hear any thoughts that you all have about appropriate measures for civil penalties.

BONNIE PATTEN:

Well, I think just to push back on that a little-- I mean, I read this in a court case. I can't take credit. But the example, you know, there's chicken, and then there's kosher chicken. And if someone deceptively market's something as kosher chicken and then it turns out to be chicken, the value of that chicken is 0 to someone trying to keep kosher, right? Even though in both instances, it's sort of like your backpack.

You know, you think you're buying a Rolex watch and it turns out to be counterfeit. The watch may still work. But there is a big difference in the value to the consumer. And so I think it has to happen on a case by case basis. But I think it's absolutely doable. I mean, unfortunately in the law we measure really tough things, like how much is an arm worth? Or the death of somebody.

So while it might not be easy, I think it's absolutely doable. And I think it's an appropriate task

to be undertaken.

JUSTIN

Yeah and I mean in some ways, it's easier than disgorgement. Disgorgement, you're trying to apportion how much money they made directly from this bad behavior. Penalties are about justice, right? And so you factor in all sorts of things-- judgments that are about ability to pay. How naughty was it on the scale of naughtiness? How much value is left to the consumers? Is it 0? Is it some degree less?

What's the deterrent effect? That's something you absolutely have to consider. But there's no, like, magic alchemy to it. Again, if a judge were considering, he would consider all these things. There's no, like, economic formula that you'd need to input into to come up with the right answer. And nor should the FTC be so constrained in either a settlement or to court in demanding penalties from a wrongdoer.

SCOTT PAUL:

You know, I would argue that there has been harm. And even if it's only 10% of consumers or 11% who have gone out of their way to spend time researching all of the options and have purchased this, you know, there's a direct harm to consumers there. And there was fraudulent marketing, or advertising, or deceptive. And there are methods available for compensation. I mean, I think Justin pointed some of these out.

And I looked back to the data breach settlement. I mean if you've been a victim of a data breach, you might never be affected. But you are entitled to some restitution there. And there are penalties involved, because the company did not do what it was supposed to do. And it's similar here.

And the design of the data breach case is also you want to prevent this from happening in the future. You need a penalty that is strong enough that can deter future occurrences-- not only recidivism, but also other fraudulent or deceptive advertising practices.

JULIA SOLOMON

Anybody else want to speak on measure of civil penalties? OK, I want to talk about whether there are downsides to having a rule. So Mark, I want to start with you. How do we balance the concerns that you've raised about chilling legitimate claims. Are there costs in your view to making a rule?

MARK HANNA:

It's a hard question. Obviously, there's lost opportunity costs in terms of being able to make a market which we believe we could make very legitimately without the requirement of origin of raw materials. So that's a pretty big number. Just with Walmart alone, the potential is very,

very, very large. So when the law changed in 1997, we lost a \$50 million a year home shopping network show called USA gold. We weren't even close to being able to do all we can do now as far as documentation.

So there have been very real costs, very real revenue hits. But I think that if I had to pinpoint one thing, I think we're the most hurt is having a couple thousand US workers not able to start to see the benefits of their work and have the pride in that they're an American worker who made an American product in every possible way and they can't be recognized. So I go to the personal pride as the single biggest cost detriment we've had.

JULIA SOLOMON And I want to make sure that I'm hearing this right, but what I think I'm hearing from the
ENSOR: manufacturers on the panel-- and it could be that we just have particularly law abiding, wonderful panelists-- but what I hear you saying is whether it's a rule or whether the enforcement policy statement, you know, you still have that opportunity cost. And there's not really a significant difference whether it's in the form of a rule or enforcement pursuant to Section 5. Is that a fair analysis of what you're saying?

MARK HANNA: I mean, to me, enforcement is any hit to our reputation. So I think that I said it all, you're seeing the most important asset you have that goes through marketing, to finance, to operate as your reputation. And this is one we would never fool with. So we're passing opportunity because we would never be the slightest bit outside of this rule and offer that to the consumer or to our customers.

JULIA SOLOMON Tim, do you have any thoughts?

ENSOR:

TIM SCHADE: I mean, we'd like to think obviously we're law abiding. I don't think the analysis for us would be identical. You know, we take the policy, the FTC policy statement seriously. It's absolutely how we conduct ourselves. If you took that exact statement and made it a rule with a civil penalty, it wouldn't change our analysis. We don't want that attention. We don't want to be a foul of the law. We always try and be above board on everything.

So for us individually, it wouldn't change our analysis at all.

JULIA SOLOMON So you've mentioned today that some of your competitors might not be as scrupulous as you
ENSOR: are. Do you think that if this policy statement were dropped into a rule, do you think it would change anything with your competitors?

TIM SCHADE: I would like to think not. I mean, again, I don't know. We would certainly be the person. We would be the company to bring it to the FTCs attention. And I feel comfortable that they would take the action that would give us in that case the relief that we were looking for. You know, elimination of somebody who's making a deceptive claim. And then we would absolutely monitor. And if they started doing that again, we would again use the tools that are available to us now, bring it to the FTCs attention. I have confidence that that would be an issue that would be addressed.

So I think that currently, for us, it doesn't make a difference. And I feel comfortable with the enforcement. Whether a rule would be better or worse, I guess I don't know that way.

JULIA SOLOMON Pete, any thoughts?

ENSOR:

PETE WICKS: Not really, because we know where our competitors manufacture. And they don't say they're manufacturing here.

JULIA SOLOMON So non-issue. So Kristen, you're the only person on the panel really that represents interests that are already covered by a rule. So you've got the Textile Act and textile rules. Do you see a difference in compliance and in clarity to marketers based on your membership that is covered by rule versus membership that isn't?

KRISTEN KERN: Right. So most, almost probably every single one of our members, if not all of them, are subject to the textile rules for labeling of their products. And even still with that rule as it is, we receive some confusion from members in most cases, like, very specific areas of the rule with how to comply with those things. So even in the cases of the rule, there are issues with clarity, which, again, just sort of brings us back around to the same point, which is no matter how we arrive at the ends of companies clearing up whatever the standard or definitions are, we would like to get there on this rule, or definition, or enforcement, or any process it looks like.

JULIA SOLOMON Thank you. Does anybody else want to speak on potential downsides to having a rule? OK, so

ENSOR: I want to make sure that we devote some time now to thinking about, you know, today we've mostly been talking about how to deal with companies that are here in the US. And we've talked about various enforcement strategies to keep them on the right side of the law. But now I want to take some time to talk about the harder question, which is what to do with respect to overseas sellers that use online marketplaces.

You know, obviously we have some jurisdictional limitations. There are limitations imposed by the Communications Decency Act. But I want to hear from you about whether this is a problem, whether you're seeing fraud by overseas marketers. And what we can do about it. So Kristen and Scott, can you talk about what your membership is seeing. Is this a problem?

SCOTT PAUL: Yeah, just very briefly for consumers, and we, like our website, we've become a source for a lot of consumers who are interested in Made in America. One of the consistent complaints we get is the lack of transparency or the deception they get from online purchases from these types of marketplaces. And it is pervasive. It is absolutely pervasive. And I mean when we've examined kind of what is the recourse for this other than kind of haggling with the online retailer, there's not a lot that can be done.

And it's deeply frustrating. I mean, we'll expand upon this in formal comments to you. But this is extraordinarily challenging for American manufacturers who are trying to do the right thing and who are doing the all or virtually all and who face stronger labor and environmental standards in the United States and other things. And it's a highly deceptive practice that's been damaging. We have to sharpen the tools to deal with that. There may be a policy response that's necessary to do that. But we'll be happy to expand upon that more in formal comments to you.

JULIA SOLOMON I look forward to that. And let me narrow in just a little bit more. So I want to distinguish two
ENSOR: problems that we see on these marketplaces. So there is a problem that we've heard about counterfeit goods. And that's different from the problem that I want to talk about here today, which is specifically false Made in USA claims made by unscrupulous companies that are located overseas. Is this a problem that you're seeing, Kristen?

KRISTEN KERN: So in any case of competitors who are not necessarily inclined to follow the law in the way that our members are, that's undermining the honest business that companies are doing. So that is a concern. But as far as our priorities, when we talk online marketplaces, and especially international sellers, counterfeits is the number one thing that comes to mind for us. And this is much lower on the list for us.

JULIA SOLOMON Gotcha. Well, Annemarie, obviously you're very unique on this panel as Walmart has a
ENSOR: marketplace. So let's start with, do you have overseas sellers on your marketplace?

ANNEMARIE Walmart does have a marketplace. It's primarily US-based. And we have a very, very small
O'SHEA: number of overseas sellers. The platform, we think of it as a closed platform, because for

example, you couldn't go home today and get an account and start selling on Walmart marketplace. We have a vetting process for our sellers. And we have certain requirements.

One of those requirements is that they have operations in the US. And so that, today, at any rate in our current marketplace, we have a very limited number of non-US sellers. And so again, tightly focusing on the question of false or deceptive origin claims, putting aside the question of counterfeits and tightly focusing on that, have you received complaints about false origin claims?

ANNEMARIE Nothing has ever come to my attention.

O'SHEA:

JULIA SOLOMON OK, so one proposal, and again, I'm directing this question to you, Annemarie, since you all
ENSOR: have a platform, one proposal that I've seen to combat this issue, if it is an issue, is to force disclosure of country of origin along the lines of what is done under the Textile Act. So force disclosure for all products of country of origin, whether it's the foreign country of origin or US country of origin. Would that help or do you think it would cause additional confusion? Or what do you think. What's your perspective as a platform operator?

ANNEMARIE It would be a piece of content that would be supplied by the seller or the manufacturer. So if
O'SHEA: you had the requirement on those sellers to put in the country of origin, you would have all of the same issues that you would have as you do in a brick and mortar world. So I think it would be driven by what's useful for a consumer and as to whether a seller today chooses to put that information on their listing or not. So in terms of whether it would help or not, I think the fact that it's an online environment wouldn't change the existing problems that are in the brick and mortar world.

JULIA SOLOMON Gotcha. So is your experience different at all-- so I'm thinking now about item information that
ENSOR: is required to be disclosed versus item information where companies can make optional disclosures. Do you see differences in instances of deception or confusion in forced disclosure versus optional disclosure?

ANNEMARIE No. No, I don't think. I mean I think the whole point of any content that you have on the
O'SHEA: website is to be able to sell a product. So you put in information as a seller that you think is valuable to the customer. So the things that matter are things like the images and the size, the color, the attributes of a product that are valuable to the customer.

So if it was a forced requirement to have a country of origin, I would think that would only be because customers are requesting that. I don't have any information one way or the other if they are or not.

JULIA SOLOMON Thank you. Justin, what responsibilities should US companies have to combat these types of claims?
ENSOR:

JUSTIN Yes, it's a really hard issue. Like you said, Section 230, the Communication and Decency Act's platform is pretty broad. Immunity, and there's lots of talk about whether that needs to be revised somewhat in response to, like, rampant online abuse and harassment or misinformation, but I've been thinking about a lot from the fraud perspective, right. And there is the recent *Wall Street Journal* story about all sorts of fraudulent products being sold through Amazon. And we did a study on how there's lots of ratings fraud on Amazon and other platforms.
BROOKMAN:

I don't know how much of this issue is for Made in the USA claims. But it's definitely an important hard policy issue. And I think maybe 10 years ago, I think there would be less interest in revisiting Section 230. And now I think there's a fair amount that right now big platforms need more incentive to police their platforms. You have the right to do it under Section 230 today. You don't have any obligation.

And I think there need to be some policy leaders to push companies to be doing more in terms of reasonable intervention or monitoring of some sort. I do think, still, platforms today can make design choices that somewhat kind of take ownership for what their potentially fraudulent members are doing like to the extent that Amazon is labeling something-- Amazon Choice, right, that kind of takes a little bit more ownership of that, and I think could start to wander into Section 5 territory. If you have a policy, like, everything on this platform is Made in the USA and it is not, then you're taking ownership of that. And there may be, again, some potential for FTC intervention today. But to the extent that they're just disclaiming everything, I think it's going to have to take a change in the law.

JULIA SOLOMON Bonnie, what do you think. Is there a legal solution here?
ENSOR:

BONNIE PATTEN: I wish there was. I agree with everything Justin said. I mean, I think we'll all be watching the Third Circuit in how they deal with the Amazon case. And that might be telling and give us a pathway. I think on these online marketplaces, as Justin was saying, if the Amazons of the

world are profiting from the deception, then I think there might be an avenue here for the FTC to look in on that. But ultimately, I think there are issues with how strict the CDA is right now. And so I don't know how you deal with this.

I think it's a really, really tough issue.

JULIA SOLOMON Does anybody else want to speak about this issue of unscrupulous marketers overseas? OK, **ENSOR:** well that was the last question on my list. So I want to thank all of our panelists for taking the time to be here today. And I'll turn it over to Jim to wrap this up.

JIM KOHM: Given my competencies, I'll keep this extremely short. And I know people want to get to lunch. Thank you very much. This was a really interesting conversation that sometimes at the FTC we've had situations where people each give a speech and it's not as useful. But there was a tremendous amount of useful information from everybody on the panel. To be honest, not that everything everybody said was useful. But I think there was some useful stuff from absolutely everybody on the panel.

And I think at some point during the conversation every single one of you said something I hadn't thought about before. So that really makes today and what we're doing helpful. What I'd encourage you to do is, and those people who are watching online, the folks in the audience, and everybody here, and I think several of you have made these points, is if this sparks thoughts, you know, this difficult conversation, there's some interesting things like how do you interpret what a label is? What do you do in a CDA kind of situation? As you go back and think about those, we are very interested in the resource question, right.

And I appreciate Justin bringing it up, because that's not a reality we can ignore, right. We have X resources. We have a very broad mission. So we really want to hear from you. You know if one case with more relief is really better than three cases, or one case every two years as opposed to three cases every year, that's a completely reasonable thing. And we'd like to hear that balance. But we are faced with a balance.

So we have to deal with that. And we want to know what you think, because those are important questions. So thank you all for being here. This is really, really important. And I know a lot of these issues are really difficult. Stay in touch. And please comment. And anybody who wants to stay, the cafeteria is quite good. Take care. Thank you.

[APPLAUSE]