



Office of Commissioner
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UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

**STATEMENT OF
COMMISSIONER ROHIT CHOPRA
JOINED BY CHAIR LINA KHAN AND COMMISSIONER REBECCA KELLY SLAUGHTER**

Regarding the Adoption of the Final Made in USA Rule

July 1, 2021

Today, the Commission has voted to adopt a final Made in USA rule. The final rule reflects a substantial number of comments from the public, which overwhelmingly supported this policy change by the Commission. By formally codifying this rule, the Commission has activated a broader range of remedies, including the ability to seek redress, damages, penalties, and other relief from those who lie about a Made in USA label. The rule will especially benefit small businesses that rely on the Made in USA label, but lack the resources to defend themselves from imitators.

Absent this rule, the Commission would be unable to seek this full set of sanctions. Importantly, this is a “restatement rule,” which affirms longstanding guidance and legal precedent with respect to Made in USA labels – thereby imposing no new obligations on manufacturers and sellers. Because of the stricter sanctions they trigger, restatement rules such as this one will increase fraud deterrence and ensure that victims can be made whole.

Background on the FTC’s Permissive Policy on Made in USA Fraud

For decades, there has been a bipartisan consensus among Commissioners that Made in USA fraud should not be penalized. In my view, this policy posture was in direct contravention of both the letter and spirit of the law Congress enacted.

In 1994, shortly after the North American Free Trade Agreement took effect, Congress enacted legislation to protect the integrity of our national brand by explicitly authorizing the FTC to trigger penalties and other relief for Made in USA fraud, but only after formally codifying a rule.¹ However, the Commission never even proposed one.²

Instead, over the past quarter century, Commissioners implemented a highly permissive Made in USA fraud policy, where violators faced essentially no consequences whatsoever. Even in cases of blatant abuse of the Made in USA label, Commissioners routinely voted to allow wrongdoers to settle for no restitution, no forfeiture of ill-gotten gains, no admission or findings of liability,

¹ See 15 U.S.C. § 45a.

² See generally Statement of Commissioner Rohit Chopra Regarding Activating Civil Penalties for Made in USA Fraud (Apr. 17, 2019), <https://www.ftc.gov/public-statements/2019/04/statement-commissioner-rohit-chopra-regarding-activating-civil-penalties>.

and no notice to victims.³ In adopting this rule, the Commission acknowledges that this longstanding policy was misguided and agrees that the codification of today's final rule is long overdue.

Noteworthy Provisions of the Final Rule

In 2019, TINA.org filed a petition with the Commission to promulgate a rule, given the rampant Made in USA fraud across sectors of the economy. In 2020, the Commission issued a Notice of Proposed Rulemaking and then analyzed a substantial number of comments from producers, consumers, foreign governments, and others.⁴ After considering these comments, the Commission has adopted a rule consistent with the authority granted by Congress in 1994. There are several aspects worthy of brief discussion.

First, the Commission has codified the “all or virtually all” standard, consistent with the FTC’s longstanding Enforcement Policy Statement on U.S. Origin Claims.⁵ This standard covers *unqualified* claims. The Commission must protect the public from deception, and the agency declines to adopt alternative approaches, as explained in the final rule.

Second, the Commission has outlined a definition of “label” consistent with the Commission’s expertise on labeling. While the Commission declines to adopt a definition that includes a list of specific examples, such as restaurant menus, the definition of label does extend beyond labels that are physically affixed to a product. As described in the rule, other depictions of labels are also covered; in some circumstances, labels appearing online may also be subject to the rule.⁶ The Commission declines to cover advertising more broadly, as this is inconsistent with the authority granted by Congress.

Third, there was considerable interest in the rulemaking from farmers, ranchers, and others in the meat and agricultural industry, with the majority of comments arguing in favor of stricter standards. The rule declines to grant an exemption sought by the meatpacking industry, as this would be inconsistent with the Commission’s authority prescribed by Congress under the Packers and Stockyards Act.⁷ However, contemporaneous with the FTC’s vote today, the U.S. Department of Agriculture has announced that it will be conducting a top-to-bottom review of its labeling standard. USDA has previously acknowledged that its “Product of USA” designation may be deceptive. I am extremely grateful to Secretary Tom Vilsack and USDA staff for the action they are taking.

I hope the USDA will study the FTC’s rulemaking record carefully and come to the same conclusion I have: the USDA’s Product of USA standard is misleading and distorts competition

³ Even without a final rule, Commissioners could have sought more in administrative settlements, given that much of the Made in USA fraud detected by Commission staff met the definition of “dishonest or fraudulent” in Section 19 of the FTC Act. 15 U.S.C. § 57b. Instead, Commissioners routinely accepted settlements with no meaningful relief at all.

⁴ The Commission received over 700 comments in response to its Notice of Proposed Rulemaking on Made in USA labeling. *See FTC Seeks Comments on MUSA Rulemaking, Matter No. P074204*, Docket ID FTC-2020-0056 (July 16, 2020), <https://www.regulations.gov/docket/FTC-2020-0056>.

⁵ *See* “Made in USA” and Other U.S. Origin Claims, 62 Fed. Reg. 63756 (Dec. 2, 1997).

⁶ *See* 16 C.F.R. § 323.3.

⁷ *See* 7 U.S.C. § 227.

in the retail market for beef and other products. I also believe that unqualified “Product of USA” claims for meat products are only appropriate when the animal was born, raised, and slaughtered in the United States. Given our shared jurisdiction, I expect that the Commission will deepen its partnership with the USDA and closely coordinate on any enforcement proceeding with respect to retail sales of meat and other products.

Conclusion

The Commission appreciates the substantial public interest in protecting the Made in USA brand. The final rule provides substantial benefits to the public by protecting businesses from losing sales to dishonest competitors, and protecting families seeking to purchase American-made goods.

More broadly, this long-overdue rule is an important reminder that the Commission must do more to use the authorities explicitly authorized by Congress to protect market participants from fraud and abuse. I thank my fellow Commissioners and members of the Commission staff who contributed to the development of this final rule, as well as members of the public for their thoughtful contributions.