

Statement of Commissioner Christine S. Wilson  
Concurring in Part and Dissenting in Part  
Notice of Proposed Rulemaking related to Made in U.S.A. Claims

June 1, 2020

Today the Commission announces a Notice of Proposed Rulemaking (NPRM) with respect to “Made in USA” (MUSA) labels. It has been more than two decades since the FTC last solicited feedback from the public about the Commission’s Enforcement Policy Statement that addresses U.S.-origin claims in advertising and labeling. I see value in revisiting our MUSA program to ensure that our enforcement approach reflects the realities of doing business in the rapidly evolving marketplace. I see value in revisiting our MUSA program to ensure that our enforcement approach reflects the realities of doing business in the rapidly evolving marketplace. I see value in revisiting our MUSA program to ensure that our enforcement approach reflects the realities of doing business in the rapidly evolving marketplace.

Products are American-made deceive consumers who prefer to buy American-made products, and who may be willing to pay more for these goods. False MUSA claims also may

Recognizing both strong consumer preference and differentiated business strategies, bipartisan Commissioners for more than 40 years have built a comprehensive program to ensure that consumers can trust “Made in the USA” claims<sup>2</sup>

The importance to consumers of “Made in the USA” claims, and the desire of businesses to highlight investments in American labor and infrastructure, may become stronger due to the Covid-19 pandemic. As countries took measures to contain the spread of the novel coronavirus by imposing quarantine orders and shuttering factories around the world, we saw in stark terms the fragility of global supply chains. As our policy makers and businesses consider options to strengthen supply chains, including the repatriation of manufacturing capabilities, it is even more important to ensure that companies making MUSA claims are doing so truthfully. For these reasons, I support both the FTC’s prosecution of MUSA fraud and its consideration of a rule that addressed deceptive MUSA claims on labels, consistent with the authority granted to the FTC by Congress in Section 45a.

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<sup>1</sup> Nearly 8 in 10 American consumers say they would rather buy an American-made product than an imported one, and more than 60

While the goal of ensuring truth in labeling is important, this agency should only expand its regulatory footprint after thoughtful deliberation and in a manner that falls squarely within the jurisdiction granted to the FTC by Congress. Staff upheld its end of the bargain with respect to thoughtful deliberation by holding a workshop to solicit stakeholder input on the wisdom of a rulemaking pursuant to 15 U.S.C. 526(a)(1) and 526(a)(2). At that workshop, stakeholders overwhelmingly voiced support for a MUSA rulemaking so as to .

rules and guides, the Commission has ample landmarks to draft a proposed rule that falls within its jurisdictional boundaries.

Unfortunately, the NPRM defines the term far more broadly than any FTC precedent, and in a way that appears to exceed our statutory grant of rulemaking authority. The NPRM that we issue for comment today will cover not just labels, but all:

“materials, used in the direct sale or direct offering for sale of any product or service, that are disseminated in print or by electronic means, and that solicit the purchase of such product or service by mail, telephone, electronic mail, or some other method without examining the actual product purchased” that include

years, I also support seeking more relief where appropriate (including the case against Williams-Sonoma cited by Commissioner Chopra). I supported the Made in USA Workshop that staff organized in September 2019 and today support consideration of a MUSA labeling rule that aligns with our statutory authority.

To the extent that the proposed rule exceeds the scope of authority granted by Congress to the FTC, however, I dissent. As each member of this Commission well knows, previous forays into areas outside its jurisdictional authority have resulted in swift condemnation from the courts and Congress.<sup>11</sup> I am wary of creatively and expansively interpreting the agency's jurisdiction with respect to rulemaking authority. I disagree with leaving it to the courts to tell us when we have overstepped our bounds, particularly take issue with this strategy at a time when Congress is considering federal privacy legislation that would grant additional rulemaking authority to the FTC. Surgical rulemaking authority under the Administrative Procedure Act would enable the FTC to implement, and to update as necessary, federal privacy legislation. Expansive interpretations of our rulemaking authority will not engender confidence among members of Congress who have already expressed qualms about the history of frolics and detours.<sup>12</sup> Prudence dictates caution, which I fear we have thrown to the wind. But I look forward to feedback on this topic from our stakeholders.

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<sup>11</sup> See Federal Trade Commission Improvements Act of 1980, Pub. L. No. 96-262, 94 Stat. 374 (1980) (reforming the ability of the FTC to promulgate rules by requiring a notice process with public comment and subject to Congressional review). This Act also authorized \$255 million in funding for the Commission and was the first time since 1977 the agency was funded through the traditional funding process after the backlash from Congress over its rulemaking activities. See Center, Earl, et al., "The Effect of the Federal Trade Commission Improvements Act of 1980 on the FTC's Rulemaking and Enforcement Authority" 58 Wash. U. Law Rev. 847 (1980); see also David Beales III & Timothy J. Muris, FTC Consumer Protection at 100: 1970s Redux or Protecting Markets to Protect Consumers?, 83 Geo. Wash. L. Rev. 2157 (2015) (describing the "disastrous failures of the FTC in the 1970s and the 1980s from enforcement and regulatory overreach and quoting Jean Carper, The Backlash at the FTC, WASH. POST, C1 (Feb. 6, 1977) (describing the backlash from Congress to the FTC, after a period of intense rulemaking activity culminating in the agency's being dubbed the "National Nanny"); see also Alex Prope, Privacy and FTC Rulemaking: A Historical Context, IAB (Nov. 6, 2018) (discussing how the FTC's rulemaking history could be influencing Congress). See also Somogr:otvit ovestkinn th7o FT6okii th addvitisswogriaueh atogr vit)36, EMC /Link <</MCID ( a >>