

COMMENTS

“MADE IN AMERICA”: A COMPARATIVE PERSPECTIVE ON COUNTRY OF ORIGIN LABELS FOR MANUFACTURED PRODUCTS IN THE UNITED STATES AND CANADA

I. INTRODUCTION

In the past twenty years the world has seen one of the largest economic changes in modern history: a drastic increase in commodity exports.¹ This change signifies the growth of global trade and demand for goods and merchandise.² Today, economies in developing countries compose more than half of the world's gross domestic product.³ These countries' sudden market and economic growth⁴ is partially due to the business practice of outsourcing.⁵ Outsourcing⁶ moves all or some of a business's production operations to other parts

1. See *When Giants Slow Down*, THE ECONOMIST (July 27, 2013), <http://www.economist.com/news/briefing/21582257-most-dramatic-and-disruptive-period-emerging-market-growth-world-has-ever-seen>.

2. *Id.*

3. *Id.*

4. Throughout the past couple decades, the rise in emerging markets has caused global economic growth to span across the globe, encompassing developed and developing countries. G.A. Res. 65/168, ¶ 17, U.N. Doc A/RES/65/168 (Aug. 1, 2011).

5. See Patrick Dixon, *Impact of Outsourcing Jobs - Economies of Wealthy and Poor Nations*, GLOBALCHANGE.COM, <http://www.globalchange.com/outsourcing.htm> (last visited Oct. 15, 2014).

6. Outsourcing is “[t]he contracting or subcontracting of noncore activities to free up cash, personnel, time, and facilities for activities in which a company holds a competitive advantage.” *Outsourcing*, BUSINESSDICTIONARY.COM, <http://www.businessdictionary.com/definition/outsourcing.html> (last visited Nov. 22, 2014).

of the world.⁷ Outsourcing supports the basic economic theory that lower production costs may result in lower purchasing prices for consumers.⁸ The global nature of today's economy generates a complex legal issue for businesses in determining the origin of a good or commodity.⁹ This issue is further complicated by differing legal jurisdictions.¹⁰

A country of origin is "the country in which a product is wholly obtained or produced, or the country where an article is substantially transformed into another product."¹¹ Outsourcing different stages of production, like manufacturing and assembly, makes it difficult to determine where the final product is actually produced according to law.¹² Many final products contain intermediate goods¹³ that were made or assembled in different countries.¹⁴ Consequently, businesses must look to their jurisdiction's labeling laws, standards, and requirements to determine the product's appropriate country of origin.¹⁵ For example, a business may sell a television that incorporates a screen from one country, contains wiring from another, and uses audio components assembled in yet another. In order for the

7. Dixon, *supra* note 5.

8. See Todd E. Clark, *Do Producer Prices Lead Consumer Prices?*, KAN. CITY FED. RES. 25, 25 (1995), <http://testing.kansascityfed.org/PUBLICAT/ECONREV/pdf/3q95clar.pdf> (suggesting that higher production costs leads to an increase in consumer prices).

9. Conrad Wong, *Proper Identification Required: Marking the Country of Origin in a Global Economy*, SEMA BUSINESS, SEMA NEWS 62, 62 (Sept. 2004), <http://www.sema.org/files/attachments/Government-Affairs-2009-09-SN-Sep04-Country-Origin.pdf>.

10. *Id.*; Peter Chang, *Country of Origin Labeling: History and Public Choice Theory*, 64 FOOD & DRUG L.J. 693, 694 (2009).

11. Wong, *supra* note 9, at 62.

12. See *id.*

13. Intermediate goods are the materials and inputs that are imported by manufacturers that go into their final products for consumption. Shimelse Ali & Uri Dadush, *Trade in Intermediates and Economies*, VOX (Feb. 9, 2011), <http://www.voxeu.org/article/rise-trade-intermediates-policy-implications>. The lowering of trade barriers, the accelerated increase in communication technology, and new organizational innovations have all contributed to the ease of splitting up the production process to the cheapest and most efficiently possible country. *Id.*

14. *Id.*

15. See Wong, *supra* note 9, at 71.

business to attach a country of origin label, it would have to comply with their jurisdictions specific product origin regulations.¹⁶

Country of origin laws and regulations are widespread and vary greatly depending on where a product is sold.¹⁷ Jurisdictions throughout the United States have contrasting laws that business must follow to avoid liability.¹⁸ Hardships and additional costs arise and persist when national manufacturers and distributors are required to adhere to varying laws within the same country.¹⁹ Further, forfeiting the full opportunity to acquire the most accurate knowledge of a product's origin ultimately harms consumers.²⁰

This article examines the faults and shortcomings in United States' country of origin labeling laws and argues for the adoption of a model similar to Canada's.²¹ Part II of this article provides general background information on the different types of country of origin labels and discusses the importance of these labels as it relates to the effect they have on a consumer perception of a product. Part III analyzes California's country of origin statute and examines how one particular court interpreted it. Part IV examines how the Federal Trade Commission regulates origin labels with an "all or virtually all" standard. Part V offers information about the two different criteria Canada uses to control its origin claims. Part VI highlights the flaws of the U.S. system that arise from its lack of uniformity and

16. *Id.*

17. *See infra* Parts III-V (discussing the different standards in California, Canada, and the standards the Federal Trade Commission set). Different governmental agencies, states, and countries throughout the world set various country of origin labeling standards. *See id.* In turn, businesses that attach origin labels to their products must be conscious about where their products are sold, as the location will dictate the applicable legal standard. *See infra* Parts III-IV (discussing the various origin laws in the United States).

18. *See Wong, supra* note 9, at 71.

19. Randy Shaheen, Amy Mudge & Annie Lee, *Made in U.S.A.: Time for a Change?*, THEANTITRUSTSOURCE 1, 5 (Apr. 2012), http://www.venable.com/files/Publication/4a04738c-9b56-4ad3-aec9dc91c9db718/Presentation/PublicationAttachment/3603639b-e99a-4b03-a95e-aaa7fc2040f3/made_in_usa—antitrust_source—4-12.pdf [hereinafter Shaheen et al.].

20. Randal Shaheen, Amy Ralph Mudge, & George Langendorf, *Made in the U.S.A., Except in California*, 28 Advertising Compliance Service 4 (July 7, 2008) [hereinafter *Made in the U.S.A., Except in California*].

21. *See infra* Part VII.

disconnect from consumer perception and the federal standards specific downfalls. Finally, Part VII proposes the United States adopt a country of origin model similar to Canada's. It further offers analysis to particular problems that arise when determining whether or not a product conforms to country of origin laws.

This article does not address United States Customs Service's²² mandatory origin labeling requirements, which primarily oversee foreign origin markings.²³ The U.S. Customs Service requires country of origin markings on all imports into the United States²⁴ to assist in statistical categorization.²⁵ This article discusses the requirements and laws²⁶ that seek to prevent consumer deception due to misleading labels.²⁷

II. COUNTRY OF ORIGIN LABELS

A country of origin label specifies where a product is made and gives consumers information about the product, such as its quality.²⁸

22. 19 C.F.R. § 134 (West 2014). The United States Customs Services is traditionally charged with the duty of overseeing and controlling import and export activities in the United States. Trang Nguyen, *Changes to the Role of US Customs and Border Protection and the Impact of the 100% Container Scanning Law*, 6 WORLD CUSTOMS J. 109, 109 (2012). With the drastic increase in international trade, U.S. Customs is charged with the important task of facilitating this trade. *Id.* However, the scope of their duties is expanding as they now act in the capacity of securing national security through imports in the United States. *Id.* at 110-11.

23. Publisher's Editorial Staff, Corporate Counsel's International Advisor, *Labeling Requirements-Imports*, 278 CORP. COUNS. INT'L ADVISOR ARTICLE I (July 1, 2008).

24. 19 U.S.C.A. § 1304 (West 1999).

25. Craig A. Lewis & Ruoweng Liu, *Will the Real Country of Origin Please Stand Up?*, 21 TUL. J. INT'L & COMP. L. 391, 393 (2013).

26. The legal standards discussed within this article focus on the laws in the United States and Canada that are enforced to protect consumers from deceptive business practices in marketing and advertising. *See infra* Parts III-V.

27. See 15 U.S.C. § 45a (West 1994); CAL. BUS. & PROF. CODE § 17200 (West 1992); "Product of Canada" and "Made in Canada" Claims, *Enforcement Guidelines*, COMPETITION BUREAU CANADA (Dec. 22, 2009), <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03169.html> [hereinafter Canada's Enforcement Policy], for the United States', California's, and Canada's laws that seek to prevent consumer deception due to misleading labels.

28. Jayson L. Lusk, Jason Brown, Tyler Mark, Idlir Proseku, Rachel Thompson, & Jody Welsh, *Consumer Behavior, Public Policy, and Country-of-*

Although other factors such as warranty, brand reputation, and value are often considered significant in consumers' purchasing decisions, country of origin indications may be the most decisive aspect of the product's characteristics.²⁹ Country of origin labels induce "consumer ethnocentrism,"³⁰ which promotes the purchase of domestic-made goods³¹ and gives individuals "a sense of identity . . . [and] feelings of belongingness."³² Consumers within the United States, in particular, place an added value on products that are domestically

Origin Labeling, 28 REV. OF AGRIC. ECON. 284, 285 (2006) [hereinafter Lusk et al.]. Furthermore, researchers have concluded that perceptions of quality signified by country of origin labels are due in part to consumers' prior conceptions of that country's image, and in certain cases, the level of economic development. See Martin S. Roth & Jean B. Romeo, *Matching Product Category and Country Image Perceptions: A Framework for Managing Country-Of-Origin Effects*, 23 J. INT'L BUS. STUD. 477 (1992). Additionally, perceptions such as manufacturing experience through decades of production, "quality of raw material[s]" within a country, and "the level of internal competition" significantly influence the perception of quality a consumer will attach to a product made in a particular country. See Harrychand D. Kalicharan, *The Effect and Influence of County-Of-Origin on Consumers' Perception of Product Quality and Purchasing Intentions*, 13 INT'L BUS. & ECON. RES. J. 897, 898 (2014) (citing M.V. Thakor & Lea Prevel Katsanis, *A Model of Brand and Country Effects on Quality Dimensions: Issues and Implications*, 9 J. INT'L CONSUMER MARKETING 79 (1997)). Thus, it is vital that manufacturers understand the parameters that consumers use when evaluating the quality of goods if they are to include a country of origin label on their product. Kalicharan, *supra*, at 900.

29. Country-of-Origin Marking: Review of Laws, Regulations, and Practices, Inv. No. 332-366, USITC Pub. 2975, at 5-10, 5-12 (July 1996) (Final) [hereinafter USITC].

30. See Terence A. Shimp & Subhash Sharma, *Consumer Ethnocentrism: Construction and Validation of the CETSCALE*, 24 J. MARKETING RES. 280 (1987). [hereinafter Shimp & Sharma]. The term "consumer ethnocentrism" was coined over one hundred years ago and refers to the "beliefs held by . . . [ethnocentric] consumers about the appropriateness, indeed morality, of purchasing foreign-made products." *Id.* Conversely, nonethnocentric consumers assess foreign-made goods based on their tangible characteristics. *Id.*

31. See M. Sukru Akdogan, Sevki Ozgener, Metin Kaplan & Aysen Coskun, *The Effects of Consumer Ethnocentrism and Consumer Animosity on the Re-Purchase Intent: The Moderating Role of Consumer Loyalty*, 2 EMERGING MARKETS J. 1, 1 (2012).

32. Shimp & Sharma, *supra* note 30.

manufactured.³³ Based on a study conducted by The Boston Consulting Group, U.S. consumers are willing to purchase American-made products even with cheaper alternatives readily available.³⁴ This is due in part to perceptions pertaining to the high quality of American-made products, patriotism, and the aspiration to save domestic jobs.³⁵ Further, older Americans tend to value a product's origin even more than younger Americans.³⁶ Consequently, based on consumer preference, there is an incentive for some domestic manufacturers to maintain their operations within the United States.³⁷

Consumer expectations and opinions about the appropriate amount of domestic content sufficient to label a product American-made vary in the United States.³⁸ These opinions differ even further when applied to particular products or industries.³⁹ Consumer surveys suggest U.S. consumers scrutinize country of origin labels when they are attached to vehicles, apparel products, and electronic

33. *U.S. and Chinese Consumers Willing to Pay More for Made in USA Products*, THE BOSTON CONSULTING GROUP (Nov. 15, 2012), <http://www.bcg.com/media/PressReleaseDetails.aspx?id=tcm:12-121840> [hereinafter BOSTON CONSULTING GROUP].

34. *Id.* Many American consumers actively seek out products that are domestically produced and will pay a higher price for these products due to concerns about the health of the U.S. economy. Jeffery M. Jones, *Patriotism, Jobs Primary Motivations for 'Buying American'*, GALLUP (Apr. 30, 2013), <http://www.gallup.com/poll/162110/patriotism-jobs-primary-motivations-buying-american.aspx>.

35. See BOSTON CONSULTING GROUP, *supra* note 33; see also Kate Manfred, Harold Sirkin, & Michael Zinser, *That "Made in USA" Label May Be Worth More Than You Think*, LUXURY DAILY (Jan. 30, 2013), <http://www.luxurydaily.com/that-made-in-usa-label-may-be-worth-more-than-you-think/>; Jones, *supra* note 34.

36. USITC, *supra* note 29. Younger Americans may be habituated in buying products that are produced around the world and the increasing enactment of free trade agreements may decrease the pressure to buy domestically. Jones, *supra* note 34.

37. See Eric Schrenberg, *What Is 'Made in America' Worth?*, INC.COM, <http://www.inc.com/eric-schurenberg/what-is-made-in-america-worth.html> (last updated Nov. 2, 2012).

38. USITC, *supra* note 29; see Request for Public Comment on Proposed Guides for the Use of U.S. Origin Claims, 62 Fed. Reg. 25022-33 (May 7, 1997) [hereinafter Request].

39. USITC, *supra* note 29, at 5-14.

commodities.⁴⁰ Conversely, consumers neglect the labels for commodities such as footwear, toys, and furniture.⁴¹ Additionally, the various types of origin labels that carry indications relating to the exact content contained within products likely also affect consumers' expectations of what the product contains.

A. *Qualified and Unqualified Origin Claims*

Products can have two types of origin labels attached to them: qualified and unqualified. A qualified origin claim is used for products manufactured using parts from multiple countries.⁴² Qualified claims cover a wide range of language on product labels that express in more detail the country of origin for specific parts within the final product.⁴³ For example, manufacturers may include the foreign content percentage or the assembly process's location, such as: "Assembled in America with 20% Foreign Content."⁴⁴ In some instances, qualified claims are attractive to consumers because the claims provide that a part was made in a particular country known for manufacturing high-quality products or subcomponents.⁴⁵ This signifies a comparative advantage⁴⁶ for a country with a reputable industry, such as French wine or Japanese cars.⁴⁷ Qualified claims are appealing to manufacturers as they further promote the quality of their final

40. *Id.*

41. *Id.*

42. Paul Laurenza, *Making A U.S.-Origin Claim: Understanding Critical Distinctions*, WORLD SERVICES GROUP (Jan. 2013), <http://www.worldservicesgroup.com/publications.asp?action=article&artid=5059>.

43. *Id.*

44. *Id.*

45. *Id.*

46. "A country's comparative advantage is the compilation of the inherent qualities that make it better will increase[] its competitiveness in the global marketplace." Kimberly Amadeo, *Comparative Advantage*, ABOUT NEWS, http://useconomy.about.com/od/glossary/g/comp_adv.htm (last visited Nov. 20, 2014). The "large land mass, accessible oil, and diverse population" gave the U.S. its comparative advantage, and thus, "the United States became a global leader in financial services, aerospace, defense equipment and technology." *Id.*

47. Lusk et al., *supra* note 28, at 285.

product and gives them a competitive advantage⁴⁸ over rivals in that industry.⁴⁹ However, when the manufacturer recognizes the value consumers place on goods produced exclusively in one country, such as the United States, a qualified claim may not yield as much benefit as an unqualified claim.⁵⁰

Unqualified origin claims convey representations that a product was wholly or entirely produced within one country.⁵¹ Examples of this are “Made in America” or “Produced in America.”⁵² Different legal jurisdictions use more stringent criteria to determine if an unqualified claim is accurate.⁵³ The added value that consumers attach to unqualified claims⁵⁴ incentivizes manufacturers to adhere to the criteria required under the prohibition of false and deceptive business practices, making a product more marketable.⁵⁵

B. The Manufacturer’s Dissemination of Information

Manufacturers must provide product information to consumers to facilitate the aim of consumer markets.⁵⁶ There exists a direct incentive to supply information about the characteristics of a product, like the country of origin, because it dwindles consumers’ “cost of

48. “A competitive advantage is what distinguishes you from the competition in the minds of your customers.” Kimberly Amadeo, *What Is Competitive Advantage?*, ABOUT NEWS, <http://useconomy.about.com/od/glossary/g/Competitive-Advantage.htm> (last updated Aug. 21, 2014).

49. *See id.*; *see also* USITC, *supra* note 29.

50. *See* Paul Laurenza, *Shedding Light on the FTC’s ‘Made in USA’ Ad Policy*, LAW 360 (Nov. 1, 2013), <http://www.law360.com/articles/484112/shedding-light-on-ftc-s-made-in-usa-ad-policy>.

51. *See Enforcement Policy Statement on U.S. Origin Claims*, FEDERAL TRADE COMMISSION (Dec. 1, 1997), <http://www.ftc.gov/public-statements/1997/12/enforcement-policy-statement-us-origin-claims> [hereinafter FTC Enforcement Policy].

52. *See* Laurenza, *supra* note 42.

53. *See id.*; *see also infra* Part III.-IV.

54. BOSTON CONSULTING GROUP, *supra* note 33.

55. *See* Shimp & Sharma, *supra* note 30.

56. RICHARD POSNER, *REGULATION OF ADVERTISING BY THE FTC* 3 (American Enterprise Institute for Public Policy Research 1973).

search,”⁵⁷ making the product more desirable.⁵⁸ However, the drive of manufacturers to disseminate this information stems from the desire to sell their goods and may encourage them to convey untruthful information.⁵⁹ Therefore, there must be suitable legal means to discourage the disclosure of untruthful material.⁶⁰ The potential for false information calls for scrutiny on the reliance of such statements⁶¹ and puts consumer welfare into the hands of the law and the law’s aim of “filling the equality gap between suppliers and consumers.”⁶² Consequently, the federal and state laws that regulate false representations, like country of origin, will help regulate consumers’ prosperity.⁶³

III. CALIFORNIA’S APPROACH TO COUNTRY OF ORIGIN LABELING AND ADVERTISING AND THE *KWIKSET* DECISION

California’s unfair competition law, codified in the Business and Professional Code section 17200,⁶⁴ seeks to protect the general public as well as competitors from unfair competition and business practices by “promoting fair competition in markets for goods and services.”⁶⁵

57. A consumer’s “search cost” or “cost of search” involves the economic consequence of buying something and does not just include the price of the good. *Economics A-Z Terms Beginning with S, Search Cost*, THE ECONOMIST, <http://www.economist.com/economics-a-to-z/s#node-21529722> (last visited Dec. 26, 2014). A search cost invokes an opportunity cost and is associated with the act of obtaining information regarding a good’s characteristics. *What is a Search Cost?*, WISE GEEK, <http://www.wisegeek.com/what-is-a-search-cost.htm> (last visited Dec. 26, 2014).

58. POSNER, *supra* note 56, at 4.

59. *Id.* at 4-5.

60. *Id.*

61. *Id.* at 4.

62. TĂNG THÀNH TRAI LÊ, *PROTECTING CONSUMER RIGHTS* 3 (1987) [hereinafter LÊ].

63. *See id.*

64. CAL. BUS. & PROF. CODE § 17200 (West 1992).

65. Daniel J. Mogin, *California Unfair Competition Law Business and Professions Code Section 17200 in 2 CALIFORNIA ANTITRUST & UNFAIR COMPETITION LAW* § 13.01 (3d. ed. 2003); *In re Morpheus Lights, Inc.*, 228 B.R. 449, 456 (Bankr. N.D. Cal. 1998). On the other hand, the common law tort of unfair competition deals exclusively with injury by a competitor or business adversary and

The law encompasses “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising,”⁶⁶ and is “broadly interpreted to bar all ongoing wrongful business activity in any context in which it appears.”⁶⁷

California has enacted a distinct statute covering deceptive advertising⁶⁸ and U.S. country of origin labels.⁶⁹ Specifically, California Business and Profession Code section 17533.5 (“California’s Origin Law”) makes it unlawful to attach a U.S. country of origin label to a product “when the merchandise or any article, unit, or part thereof, has been entirely or substantially made, manufactured, or produced outside of the United States.”⁷⁰ California sets forth extremely strict requirements that manufacturers must follow if they include a representation that their products were made within the United States.⁷¹ Effectively, to abide by California law, a product with a U.S. country of origin label cannot include any subcomponent in the final product that was produced or assembled outside of the United States.⁷² California’s requirements are far stricter than the Federal Trade Commission’s policy.⁷³ The California Court in *Benson v. Kwikset*⁷⁴ upheld California’s strict standard and declined

requires the injured party to show competitive injury. *Nationwide Mutual Insurance Company v. Dynasty Solar, Inc.*, 753 F. Supp. 853, 855 (N.D. Cal. 1990).

66. § 17200.

67. *People v. Dollar Rent-A-Car Sys., Inc.*, 259 Cal. Rptr. 3d 191, 197 (1989) (citing *Perdue v. Crocker National Bank*, 216 Cal. Rptr. 345 (1985)).

68. CAL. BUS. & PROF. CODE § 17500 (West 1998); 36 AM. JUR. 3D *Proof of Statutory Unfair Business Practices* § 9 (West 1996).

69. CAL. BUS. & PROF. CODE § 17533.7 (West 1961).

70. *Id.*

71. “*Made in America*”: *Qualified Claims and New Class Actions in California*, CROWELL MORING (Nov. 21, 2014), available at <http://www.crowell.com/NewsEvents/All/Made-in-America-Qualified-Claims-and-New-Class-Actions-in-California/pdf>.

72. Adonica Wada, “*Made in USA*”? *Don’t Be So Kwik!*, IMPORTTRADELAW (Aug. 9, 2011), <http://importtradelaw.com/2011/08/09/made-in-usa-dont-be-so-kwik/>.

73. Michael L. Baroni, *Don’t Be Kwik to Claim “Made in USA”*, OC LAWYER (May, 2011), available at http://www.virtualonlineeditions.com/article/Don%27t_Be_Kwik_To_Claim_%22Made_In_USA%22/711371/68231/article.htm.

74. *Benson v. Kwikset*, 62 Cal. Rptr. 3d 284 (2007).

interpreting California's statute in a way that would parallel other origin regulations in the United States.⁷⁵

The Kwikset Company produces locksets including, but not limited to, deadlocks, doorknob sets, and door lever sets.⁷⁶ Between 1996 and 2000, Kwikset attached country of origin labels to these products to represent where the products were made.⁷⁷ The labels read "Made in America," or made parallel indications that their products were produced in the United States.⁷⁸ However, some of these products contained screws and pins that were manufactured in Taiwan and a latch assembly that was sub-assembled in Mexico.⁷⁹

On Defendant's appeal of the constitutionality and applicability of California's Origin Law,⁸⁰ the majority of the appellate court looked to the legislative intent and plain meaning to interpret California's Origin Law and found that the statute refers directly to distinct units or components used in the final product "that is necessary for its proper use or operation."⁸¹ The court found that because the screws and pins were distinct components, integral to the final product, necessary to the proper use and operation of the lockset, and made abroad, the "Made in America" label attached to the product violated California's Origin Law.⁸²

Justice Stills, in his dissenting opinion, argued that the statute should be interpreted in light of "reason and common sense" and the statute's literal meaning should be ignored to avoid absurd results.⁸³ In doing so, he proclaimed that if the merchandise as a whole were substantially made in the United States, the product could carry the "Made in America" label.⁸⁴ He reasoned that the legislature did not attempt to prohibit a domestic origin claim for products with

75. *Id.* at 298.

76. *Id.* at 291.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Benson v. Kwikset*, 62 Cal. Rptr. 3d 284, 289 (2007).

81. *Id.* at 297.

82. *Id.* at 298.

83. *Id.* at 307 (Stills, P. J., dissenting).

84. *Id.*

insignificant foreign input, but rather meant to prohibit a product's substance.⁸⁵

Still, the majority recognized the adverse effects California's Origin Law would have on business, in light of the trend towards industries outsourcing operations to stay competitive, but noted it is not the court's duty to rewrite statutes, only to "interpret the laws in accordance with the expressed intention of the Legislature."⁸⁶ Furthermore, the majority noted two unsuccessful attempts to amend the statute, showing that the legislature knew the effects of California's Origin Law, yet declined to narrow its scope.⁸⁷

On February 17, 2011, California Assemblyman Brian Jones introduced a bill that would harmonize California's Origin Law with the Federal Trade Commission's policy.⁸⁸ Groups such as the Made in the USA Foundation and Made in USA Brand Certification Program endorsed the bill, but in June of 2011, the bill failed 3-2 and California's Origin Law stayed unchanged.⁸⁹

Flashlight manufacturer Mag. Instruments ("Maglight") was also an immense supporter of the bill.⁹⁰ Maglight designs, manufactures, and assembles flashlights in California in an attempt to support American business.⁹¹ But, the company's founder indicated that a single non-domestic O-ring contained within the flashlights they produce prohibits the company from attaching any domestic origin label on the flashlights sold in California.⁹² Maglight is therefore

85. *Id.*

86. *Benson v. Kwikset*, 62 Cal. Rptr. 3d 284, 298 (2007) (citing *California Teachers Assn. v. Governing Bd. Of Rialto Unified School Dist.*, 59 Cal. Rptr. 2d 671 (1997)).

87. *Kwikset*, 62 Cal. Rptr. 3d at 298.

88. *See* Cal. Leg., 2011 Assemb. B. 858, 2011-2012 Reg. Sess. (Cal. 2011).

89. James M. Borneman, *Made in USA: Be Careful in California*, TEXTILE WORLD (July/Aug. 2012), http://www.textileworld.com/Issues/2012/July-August/From_The_Editor/Made_In_USA-Be_Careful_In_California; Katy Grimes, *Who Cares if Its 'Made in U.S.A'?*, CALWATCHDOG.COM (July 4, 2012), <http://calwatchdog.com/2012/07/04/who-cares-if-its-made-in-u-s-a/>.

90. Andrew Edwards, *Bill Would Change 'Made in USA' Law to Favor Manufacturers*, DAILY BULLETIN (Feb. 10, 2012), <http://www.dailybulletin.com/20120211/bill-would-change-made-in-usa-law-to-favor-manufacturers>.

91. *Id.*

92. *Id.*

disadvantaged in the market because their competitors, who outsource the majority or all of operations, can sell their products at a cheaper price.⁹³ Maglight highlights one problem California's Origin Law creates: it could force producers located in the United States to further outsource subcomponents and operations since the California standard is impractical to follow for some manufacturers. More will be discussed in the following sections regarding the issues and downfalls that arise as a result of the California standard.⁹⁴

IV. THE FEDERAL TRADE COMMISSION AND THE "ALL OR VIRTUALLY ALL" STANDARD

At yet another level of protection, the Federal Trade Commission ("FTC")⁹⁵ protects consumers against "unfair or deceptive acts or practices"⁹⁶ that businesses may undertake while advertising their goods.⁹⁷ Pursuant to authority under the Federal Trade Commission Act of 1914 (FTC Act),⁹⁸ specifically section 5,⁹⁹ the FTC has

93. *Id.*

94. *See infra* Part VI.A.

95. President Wilson recommended that Congress institute a trade commission in 1914, and the FTC was then formed to "'aid . . . the enforcement of the Sherman law and to aid the business public as well.'" JERROLD G. VAN CISE, WILLIAM T. LIFLAND & LAURENCE T. SORKIN, UNDERSTANDING THE ANTITRUST LAWS 22-23 (Practicing L. Inst. 9th ed. 1986) (citing S REP. NO. 597, 63d Cong., 2d Sess. 7 (1914)).

96. 15 U.S.C.A. § 45 (West 2006).

97. *Id.* The FTC regulates the enactment of legislation that encompasses interstate and foreign commerce. JOHN MAYNARD HARLAN & LEWIS W. MCCANDLESS, FEDERAL TRADE COMMISSION 3 (Callaghan & Co. 1916). Furthermore, the FTC "[is] empowered to prevent those forms of false advertising that had an impact on competition." GEORGE J. ALEXANDER, HONESTY AND COMPETITION 2 (Syracuse University Press 1st ed. 1967). Prior to 1938 the purpose of the FTC Act was to give the FTC an expansive power to regulate anticompetitive behavior among competitors within industries. LÉ, *supra* note 62, at 13. Congress then amended the Act in 1938 to offer more protection to consumers themselves and gave the FTC the authority to regulate business actions that are unfair or deceptive toward the general public. *Id.* at 14.

98. The Federal Trade Commission Act of 1914, 15 U.S.C.A. § 41-58 (West 2014).

99. § 45.

regulated country of origin claims for over seven decades.¹⁰⁰ Generally, to establish a cause of action under the FTC Act, it must be shown that: “(1) there was a representation; (2) the representation was likely to mislead customers acting reasonably under the circumstances; and (3) the representation was material.”¹⁰¹ In 1994, Congress amended section 5 of the FTC Act to specifically address¹⁰² manufacturers who attach “Made in the U.S.A.” or “Made in America” labels to products “to represent that such product was in whole or substantial part of domestic origin.”¹⁰³ The FTC issued guidelines¹⁰⁴ that provide manufacturers with information on how the FTC will enforce and implement origin standards through their authority under section 5.¹⁰⁵ Furthermore, the guidelines expound the principles laid out in previous origin cases and clarify how the law will be enforced.¹⁰⁶

In the mid 1990’s two complaints alleging violations of the FTC Act were issued against New Balance¹⁰⁷ and Hyde Athletic¹⁰⁸ for attaching deceptive origin labels to their products.¹⁰⁹ Following these complaints, the FTC undertook an exhaustive review of its country of origin policy to determine if the standard paralleled consumer perceptions within the context of growing state global interdependence.¹¹⁰ After assessing comments from the public,¹¹¹ the

100. See *Vulcan Lamp Works, Inc.*, 32 F.T.C. 7 (1940).

101. *F.T.C. v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003).

102. 15 U.S.C.A. § 45a (West 1994).

103. *Id.*

104. The guidelines are “administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements.” 16 C.F.R. § 1.5 (West 1967).

105. FTC Enforcement Policy, *supra* note 51.

106. Compare *supra* note 101, with *supra* note 105 (discussing how the FTC will evaluate an origin claim and how the FTC establishes a claim under the Federal Trade Commission Act).

107. *New Balance Athletic Shoe, Inc.*, 61 Fed. Reg. 49,143 (F.T.C. Sept. 18, 1996) (Proposed Consent Agreement).

108. *Hyde Athletic Industries, Inc.*, 61 Fed. Reg. 49,141 (F.T.C. Sept. 18 1996) (Proposed Consent Agreement).

109. See *New Balance Athletic Shoe, Inc.*, 61 Fed. Reg. 49,143 (F.T.C. Sept. 18, 1996) (Proposed Consent Agreement); *Hyde Athletic Industries, Inc.*, 61 Fed. Reg. 49,141 (F.T.C. Sept. 18 1996) (Proposed Consent Agreement).

110. Shaheen et al., *supra* note 19, at 5.

FTC proposed new guidelines that required products containing unqualified U.S. origin claims to be “substantially all made in the United States.”¹¹² The proposal contained two “safe harbors”¹¹³ that, if followed, would allow a product to have an unqualified origin claim without risk that the FTC would challenge the claim’s falsity.¹¹⁴ The first safe harbor provided that if seventy-five percent of the manufacturing costs and the last “substantial transformation”¹¹⁵ of a product occurred domestically, the claim would not be considered misleading.¹¹⁶ The second provides that if the product’s last “substantial transformation took place in the United States, and the last substantial transformation of each of its significant inputs took place in the United States,” the label would also not be considered misleading.¹¹⁷ The proposal, through these two safe harbors, sought to provide certainty to manufacturers who attach country of origin labels to their products.¹¹⁸

After its exhaustive review, the FTC decided to keep the old standard, which limited unqualified country of origin claims to products “all or virtually all”¹¹⁹ produced domestically.¹²⁰ The retention of the “all or virtually all” standard was partly due to a wide-range of comments submitted to the FTC by consumer groups, industries, and government agencies regarding their concerns and

111. “Made in USA” and Other U.S. Origin Claims, 62 Fed. Reg. 63756 (Dec. 2, 1997) [hereinafter *Made in USA Claims*].

112. Request, *supra* note 38, at 25020.

113. A safe harbor is a “[p]rovision in an agreement, law, or regulation that affords protection from liability or penalty under specified circumstances or if certain conditions are met.” *Safe Harbor*, BUSINESSDICTIONARY.COM, <http://www.businessdictionary.com/definition/safe-harbor.html> (last visited Nov. 12, 2014).

114. Request, *supra* note 38, at 25020.

115. The Federal Trade Commission defines a “substantial transformation” as the “manufacturing or other process that results in a new and different article of commerce, having a new name, character and use that is different from that which existed prior to the processing.” FTC Enforcement Policy, *supra* note 51.

116. Request, *supra* note 38, at 25020.

117. *Id.*

118. Request, *supra* note 38, at 25040. The FTC would not challenge origin claims if one of the two proposed safe harbors were met. *Id.* at 25041.

119. See *infra* Part IV, for a discussion of the “all or virtually all” standard.

120. See *Made in USA Claims*, *supra* note 111, at 63758.

opposition to the proposed changes.¹²¹ However, a Congressional Resolution¹²² that sought to abandon the proposed guidelines had the most influence on the FTC's decision.¹²³

The FTC currently evaluates domestic origin claims based on an "all or virtually all" produced standard.¹²⁴ Unlike the two safe harbors in the proposed guidelines, the FTC's current standard has no "bright line test"¹²⁵ to ascertain if a specific amount of foreign content in a product is ample enough to invalidate a U.S. origin label.¹²⁶ Under this "all or virtually all" standard, the final product should only include a *de minimis*¹²⁷ or negligible amount of foreign content.¹²⁸

To determine a product's country of origin, the FTC will look to a variety of factors and analyze each label on a case-by-case basis.¹²⁹ First the FTC will look at the final assembly location, and then it will examine other factors, such as the percentage of foreign and domestic content and the remoteness of the foreign content.¹³⁰ The FTC places great importance on a product's final assembly location because

121. *Id.* One commentator stated that the "concept of 'Made in the USA' has been specific and definite for the last 50 years . . . [and that the FTC should] leave it as it is." *Id.* Another stated that they "are opposed to any change that would increase the percentage of foreign labor or materials in those goods or products bearing the 'Made in the USA' label." *Id.*

122. See H.R. Con. Res. 80, 105th Cong. (1997) (A resolution supported by 226 members of the house for the FTC to retain the "all or virtually all" standard.).

123. Bruce Ingersoll, *FTC Reverses Its Plan to Relax Policy Governing Some 'Made in USA' Labels*, WALL ST. J. A6 (Dec. 2, 1997). A combination of consumer groups, labor unions, and manufactures lobbied congress to oppose the proposed changes, resulting in a resolution signed by two hundred and twenty-six members of the House urging the FTC to retain the "all or virtually all" standard. *Id.*

124. FTC Enforcement Policy, *supra* note 51.

125. A "bright line test" refers to a "judicial rule that helps resolve ambiguous issues by setting a basic standard that clarifies the ambiguity and establishes a simple response." *Bright Line Rule*, THEFREEDICTIONARY.COM, <http://legaldictionary.thefreedictionary.com/Bright+Line+Rule> (last visited Nov. 10, 2014).

126. FTC Enforcement Policy, *supra* note 51.

127. "De minimis" denotes something that is of small importance and that is so small or trivial that the law will not consider it. *De Minimis*, USLEGAL.COM, <http://definitions.uslegal.com/d/de-minimis/> (last visited Nov. 24, 2014).

128. Made in USA Claims, *supra* note 111, at 63765.

129. FTC Enforcement Policy, *supra* note 51.

130. *Id.*

consumers attach major significance to the last country where a product was formed or changed into a new product.¹³¹ The FTC also considers the percentage of manufacturing costs incurred within the United States.¹³² If a high amount of the costs were incurred within the United States, there is less chance that a U.S. origin label will deceive the ultimate consumer.¹³³ Lastly, the FTC examines a product's remoteness of foreign content in connection with the other two factors just mentioned.¹³⁴ Specifically, the FTC examines "how far removed from the finished product the foreign content is."¹³⁵ Nevertheless, the FTC will always require that the product's last substantial transformation occurred in the United States for it to have a valid U.S. country of origin label, regardless of whether the foregoing factors tend to indicate that the product was produced in the United States.¹³⁶

V. THE CANADIAN APPROACH

Similar to the FTC's role in the United States,¹³⁷ Canada's Competition Bureau ("CB") facilitates consumer knowledge and encourages competitive markets through the regulation of origin

131. *Id.*

132. *Id.*

133. *Id.* The business expenditures to be included into calculating the total percentage of foreign and domestic manufacturing costs are also at issue; this article discusses a possible solution to this question by including within this calculation the direct costs associated with accounting principles. *See infra* Part VII.B.

134. FTC Enforcement Policy, *supra* note 51.

135. *Id.* Consumers will view "foreign materials or components [as] 'less significant' . . . when they appear in complex products or are far removed from the finished article." Lara A. Austrins, *A Trap for the Unwary: Use of the "Made in U.S.A." Mark*, CLARK HILL (Nov. 4, 2014), <http://www.clarkhill.com/alerts/a-trap-for-the-unwary-use-of-the-made-in-u-s-a-mark>. The degree of remoteness of the foreign content poses another area of consideration that must be defined to give marketers the advantage of being able to predetermine, to the best of their ability, if the product will conform to the "all or virtually all" standard. *See infra* Part VII.C.

136. FTC Enforcement Policy, *supra* note 51. Requiring that the last substantial transformation occur in the United States stems from consumer perception, gathered by the FTC from the public both before and after the proposed guidelines were release. *Id.*

137. *See generally* Canada's Enforcement Policy, *supra* note 27, at 1-6.

claims.¹³⁸ It is primarily charged with administering and enforcing provisions requiring that products “bear accurate and meaningful label information”¹³⁹ under the Competition Act¹⁴⁰ and The Consumer Packaging and Labeling Act.¹⁴¹ These acts provide enforcement guidelines¹⁴² regarding “Made in Canada” and “Product of Canada” labels and strive to give predictability to businesses and ensure a guarantee that labels are not deceptive or misleading.¹⁴³ The CB issues specific criteria companies must meet to attach “Product of Canada” and “Made in Canada” origin labels, which creates a distinction between the two under the guidelines.¹⁴⁴

Labels that do not use the exact “Made in Canada” or “Product of Canada” language are still evaluated according to the guidelines issued by the CB pursuant to the Acts noted above.¹⁴⁵ A label may invoke a similar meaning that is in line with a “Made in Canada” or “Product of Canada” by using a particular group of words, visual images or illustrations, or a certain layout label.¹⁴⁶ In these situations, the CB will invoke a “general impression test,”¹⁴⁷ where it assesses the literal meaning of the language on the label or the impression the

138. *Id.*

139. *Id.* at 1.2.2.

140. The Competition Act, R.S.C, 1985, c. C-34 (Can.).

141. The Packing and Labeling Act, R.S.C, 1985, c. C-38 (Can.).

142. Canada’s Enforcement Policy, *supra* note 27, at 1-6.

143. *Id.* at 1.

144. *See id.*

145. Stephen I. Selznick, *New Rules for “Made in Canada” and “Product of Canada” Claims*, CASSELS BROCK LAWYERS (March 9, 2010), http://www.casselsbrock.com/CBArticle/New_Rules_for_Made_in_Canada_and_Product_of_Canada_Claims.

146. *Id.*

147. Canada’s Enforcement Policy, *supra* note 27, at 3.1.1. The Supreme Court of Canada has held that the general impression test “must be applied from a perspective similar to that of ‘ordinary hurried purchasers’ . . . [and that they] . . . must not conduct their analysis from the perspective of a careful and diligent consumer.” *Richard v. Time*, [2012] S.C.R. 8, ¶ 67 (Can.). This standard invokes a low threshold in determining whether or not the advertising is considered misleading. Imran Ahmad & Chris Hersh, *Supreme Court of Canada’s Impression of Misleading Advertising “General Impression” Test*, CASSELS BROCK LAWYERS (Feb. 29, 2012), http://www.casselsbrock.com/CBNewsletter/Supreme_Court_of_Canada_s_Impression_of_Misleading_Advertising_General_Impression_Test.

label's representation conveys.¹⁴⁸ Initially, the CB will determine if a product's label leaves the impression that the product is made in Canada or is a product of Canada.¹⁴⁹ If so, the good is subjected to the criteria of the label the representation parallels, and is treated as if it bore that label.¹⁵⁰

Alternatively, products that use a "Product of Canada" label must adhere to two conditions to comply with accurate and truthful labeling standards:¹⁵¹ (1) the product was last substantially transformed¹⁵² in Canada; and (2) the product's production cost was "all or virtually all" incurred in Canada.¹⁵³ On the other hand, products that use a "Made in Canada" label must adhere to three conditions to comply with the standards: (1) the product's last substantial transformation occurred in Canada; (2) fifty-one percent of the product's total manufacturing cost was incurred in Canada; and (3) the product includes a suitable qualifying statement.¹⁵⁴

The creation of a distinction between the two labels is a departure from the previous legal standards the CB enforced.¹⁵⁵ Prior to the adoption of the current guidelines in December 2009, and their implementation in July 2010,¹⁵⁶ products that bore the label "Made in Canada" were merely required to meet a fifty-one percent threshold of Canadian content and no other precise phrase was explicitly

148. Canada's Enforcement Policy, *supra* note 27, at 3.1.1. A Canadian flag or the expression "Proudly Canadian" are examples where the CB would likely use the "general impression test."

149. *Id.*

150. *Id.*

151. *Id.* at 3.2.1.

152. "Substantially transformed" is defined by the Bureau as the process in which a good undertakes a significant change in "form, appearance or nature that the good existing after the change are new and different goods from those existing before the change." *Id.* at 2.4.

153. *Id.* at 3.2.1. The CB notes that it will consider no less than ninety-eight percent of costs as "all or virtually all." *Id.*

154. *Id.* at 3.2.2.

155. See C.J. Michael Flavell, *New "Made in Canada" Guidelines*, MCMILLAN (Fall 2010), <http://www.mcmillan.ca/New-Made-in-Canada-Guidelines>.

156. Michael Flavell & Corinne Brule, *New "Made in Canada" Guidelines*, LEXOLOGY (Sept. 20, 2010), <http://www.lexology.com/library/detail.aspx?g=7ab7cb91-61e8-4d10-98e2-62155c0c9846>.

governed.¹⁵⁷ The new governing standards are a drastic change, as now this claim requires an accompanying qualification indicating the product's precise amount of foreign content or the location of specific manufacturing processes.¹⁵⁸ However, manufacturers may find it harder to determine if their products meet the "all or virtually all" standard because of its ambiguity.¹⁵⁹ Additionally, businesses in Canada are required to alter their current labels and packaging to add a qualifying statement.¹⁶⁰ Despite the consequences, the new guidelines raise the standard of a label's accuracy by requiring qualifying statements, and prevent businesses from conveying false or misleading representations to consumers, furthering the CB's goal.¹⁶¹

VI. A FLAWED AMERICAN SYSTEM

Currently, the United States' country of origin laws fail to achieve the objectives that they seek to attain¹⁶²—consumers are not provided with the critical information they may desire when faced with the option of buying a product from one manufacturer or another.¹⁶³ Three suggestions are presented here to fix this issue. First, the United States must unify origin standards for the benefit of both the consumer and manufacturer.¹⁶⁴ Next, the FTC must conduct a new survey to determine consumer perception of American-made products.¹⁶⁵

157. *See id.*

158. *See* Flavell, *supra* note 155. "Indeed, forcing Canadian manufacturers to highlight any degree of foreign inputs is a radical change." *Id.*

159. *See id.*

160. James Blackburn, *Competition Bureau Issues Guidelines for "Product of Canada" and "Made in Canada" for Non-Food Products*, Comment to Advertising & Marketing Review, OSLER (Dec. 2009), http://www.osler.com/NewsResources/Default.aspx?id=1149#Competition_Bureau_Issues.

161. *See* Canada's Enforcement Policy, *supra* note 27, at 1.1.

162. *See* Matthew Bales, Jr., *Implications and Effects of the FTC's Decision to Retain the "All or Virtually All" Standard*, 30 U. MIAMI INTER-AM. L. REV. 727, 742-44 (1999) (discussing the downfalls of the FTC's "all or virtually all" standard); *see also* Shaheen et al., *supra* note 19, at 4-5 (discussing how differing standards in the United States negatively impacts consumers' purchasing decisions).

163. Shaheen et al., *supra* note 19, at 4-5.

164. *Made in the U.S.A., Except in California*, *supra* note 20, at 10.

165. Bales, *supra* note 162, at 742-44.

Finally, the current “all or virtually all” standard must be transformed to avoid unnecessary drawbacks that are created from this standard.¹⁶⁶

A. The Need for Uniformity Across the United States

The United States lacks a uniform country of origin law, which results in different jurisdictions having varying levels of enforcement standards.¹⁶⁷ Compared to the FTC, California’s standard requires a higher domestic content threshold to substantiate a U.S. origin label.¹⁶⁸ While California law prohibits attaching a label to a product that contains any foreign component,¹⁶⁹ the FTC allows such a claim if the product contains only a small amount of foreign content integrated into it.¹⁷⁰ The differing standards within the United States, like California’s, presents problems affecting business costs, consumers’ ability to make informed purchasing decisions, and the domestic unemployment rate.¹⁷¹

First, California’s standard may force a manufacturer to forgo a “Made in America” label entirely.¹⁷² Manufacturers with products containing minimal foreign input will inevitably have to omit a U.S. origin label when selling their products nationwide, even though their label conforms to FTC standards.¹⁷³ Alternatively, if they decide to keep the origin label because it will increase profits based on consumer preference for American-made products,¹⁷⁴ the manufacturer must make additional expenditures to print different

166. *Id.*

167. *See Made in the U.S.A., Except in California*, *supra* note 20; *see also supra* Parts III-IV.

168. Dan Nakaso, ‘Made in the USA’ May Not Mean What You Think, *SAN JOSE MERCURY NEWS* (Dec. 24, 2013), http://www.mercurynews.com/business/ci_24790568/california-lawmakers-consider-changing-standard-made-usa.

169. Shaheen et al., *supra* note 19, at 4.

170. Made in USA Claims, *supra* note 111, at 63765.

171. *See* Shaheen et al., *supra* note 19, at 4-5.

172. *Id.*

173. *Id.*

174. Jones, *supra* note 34. Research shows that Americans prefer to purchase domestic-made products over imported ones to support the American job market and economy. *Id.*

labels for the same product to comply with each state's standard.¹⁷⁵ This choice creates drawbacks for consumers, as the increased production cost of the product will likely be passed down to the consumer,¹⁷⁶ reflected in the final purchase price of the product.¹⁷⁷

Second, a strict standard, such as California's, will effectively decrease consumer knowledge and prevent consumers from making educated purchasing decisions.¹⁷⁸ Manufacturers who fabricate products with large amounts of domestic input, but whose products still contain minimal foreign content, cannot use an unqualified origin claim and may be inclined to increase the amount of foreign content due to its cheaper price.¹⁷⁹ Consequently, manufactures will divest consumers of origin information all together, resulting in the inability to differentiate between products containing varying quantities of U.S. content.¹⁸⁰ A more lenient standard affords consumers, who value U.S. products, the ability to distinguish between products with a high amount of U.S. substance and those without.¹⁸¹

Lastly, California's standard may be untenable to manufacturers and may act as a disincentive for them to keep their production processes domestic because foreign production is cheaper.¹⁸² Moving business operations overseas directly and negatively impacts the U.S. job market.¹⁸³ Logically, unifying the California and the FTC standard would allow manufacturers to remain within California and the United States, maintaining and even generating domestic jobs.

175. *Made in the U.S.A., Except in California*, *supra* note 20, at 10.

176. "Economic reasoning suggests that the chain of production should link movements in producer prices to subsequent movements in consumer prices, so that changes in producer prices will lead changes in consumer prices." Clark, *supra* note 8, at 25.

177. *Made in the U.S.A., Except in California*, *supra* note 20, at 10.

178. *Id.* at 6-7.

179. *See id.* at 6.

180. *See id.*

181. *See* FTC Enforcement Policy, *supra* note 51.

182. *See* Shaheen et al., *supra* note 19, at 4-5.

183. Josh Fredman, *Questions about Outsourcing and Unemployment*, THE HOUSTON CHRONICLE, <http://work.chron.com/questions-outsourcing-unemployment-4514.html> (last visited May 3, 2015).

Outside California, many states lack statutes specifically addressing origin labels.¹⁸⁴ Arkansas's Deceptive Trade Practices Act¹⁸⁵ omits any standards involving products with origin labels.¹⁸⁶ Likewise, Maryland's Unfair or Deceptive Trade Practices statute¹⁸⁷ provides no language indicating the proper standard for origin claims.¹⁸⁸ And New York law simply defines a "mark of origin" as "the place or country in which an article of merchandise was manufactured, packed, assembled, grown, or produced."¹⁸⁹ National manufacturers face difficulty when confronted with the conflicting and differing standards that varying states set.¹⁹⁰ The lack of uniformity may result in a label conforming to the FTC's standard, but violating California's standard, and having no standard whatsoever in other states.¹⁹¹ In this instance, manufacturers are forced to decide whether to include a product origin label and run the risk of violating certain states' standards or omit the label entirely.¹⁹²

B. The Need for a New Survey Depicting Consumer Perception on a Product's Origin in Light of Current Global Economic Realities

In 1997, the FTC considered numerous comments and concerns about amending the origin-labeling standards.¹⁹³ The public comments included remarks from people both opposing and accepting the standards, along with arguments for an even more lenient standard

184. James R. Robie, Kyle Kveton, & Leah K Bolea, *Courts and the Federal Trade Commission Have Both Found that A Bright-Line Rule Defining "Made in USA" Remains Elusive*, 31 L.A. LAW. 25, 29 (Dec. 2008) [hereinafter Robie et al.].

185. ARK. CODE ANN. § 4-88-107 (West 1971).

186. *See id.*

187. MD. CODE ANN., Com. Law § 13-303 (West 1975).

188. *See id.*

189. N.Y. GEN. BUS. § 392-c (Consul. 1967).

190. Robie et al., *supra* note 184, at 29.

191. *Id.*

192. *See supra* Part II (discussing benefit of selling American-made products in the United States).

193. Made in USA Claims, *supra* note 111, at 63756.

than the proposed amended ones.¹⁹⁴ However, the FTC was not persuaded and the “all or virtually all” standard was kept in place.¹⁹⁵

While the majority of comments submitted depicted consumer perception that aligned with the “all or virtually all” standard, many discussed how the proposed guidelines paralleled current global economic realities.¹⁹⁶ Although some argued that lowering the standard would lead to a decrease in domestic jobs,¹⁹⁷ in many instances U.S. jobs would be retained.¹⁹⁸ Today’s global economic existence makes it impractical and sometimes impossible for some manufacturers to meet the current FTC standard.¹⁹⁹ Certain subcomponents or materials essential to the production of goods are simply not available through U.S. suppliers, compelling manufacturers to seek resources abroad.²⁰⁰ Ultimately, these manufacturers are disadvantaged in the market place because they are prohibited from attaching a U.S. origin label even when they make every effort to use all domestic components.²⁰¹

A new study of consumer perceptions should address how much foreign content consumers will allow in a product to still consider it “Made in the U.S.” Consumers should be given percentages of foreign and domestic content in products to assist in determining the appropriate amount of foreign content permitted in American-made products. The comments, which the FTC reviewed in the 1990’s and ultimately lead to the proposed two safe harbor rules, depicted foreign content percentages consumers were willing to view as acceptable in

194. *Id.* at 63757-65. One commenter stated, “If a product is only partially made in our Country, I want to know.” *Id.* at 63758 n.24. Another stated that the proposed guidelines would “afford the opportunity for hundreds of thousands of American workers to see their contributions in factories throughout the United States create products which will appropriately carry the unqualified designation as having been ‘Made in America.’” *Id.* at 63761 n.56.

195. Made in USA Claims, *supra* note 111, at 63756.

196. *Id.* at 63760.

197. *Id.* at 63758; *but see id.* at 63760 (“A number of commenters disputed the claim by supporters . . . that lowering the standard would lead to fewer jobs in the United States.”).

198. *See* Made in USA Claims, *supra* note 111, at 63760; *see also supra* Part VI.A.

199. Bales, *supra* note 162, at 742-44.

200. *Id.*

201. *Id.*

light of economic realities.²⁰² The FTC should adopt a specific percentage threshold to give manufacturers the appropriate tools to create a strategy within the advertising and marketing realm and provide consumers with the exact amounts of foreign and domestic content within a product.

Calculating accurate foreign and domestic percentages may pose an added strain on business,²⁰³ but it decreases the potential for consumer deception.²⁰⁴ Imposing the duty to inquire and define the origin of products' subcomponents and materials is relatively reasonable because of consumer protection policies and the benefits domestic origin labels receive.²⁰⁵ Due to the willingness of Americans to buy American products, the effect of a domestic origin label results in business receiving an increase in total sales, customers, and profits.²⁰⁶ Thus, including unqualified claims should demand the

202. Request, *supra* note 38, at 25035-38. For example, in the 1995 "FTC Attitude Survey," sixty-seven percent of respondents considered a product "Made in America" when the domestic content was set at seventy percent and foreign content at thirty percent. *Id.* at 25037. The FTC Attitude Survey presented participants with scenarios that depicted the amount of domestic and foreign content within a product. *Id.* The participants were then asked whether or not they agreed with a "Made in America" label being attached to the product. *Id.* at 25035.

203. Many commentators who submitted concerns to the FTC in regards to their proposed guidelines noted that calculating content percentages would impose further costs upon manufacturers. *Id.* at 25028. For example, The Joint Industry Group and Polaroid stated that attempting to calculate percentages "would require companies to conduct detailed internal cost analyses in order to accurately determine the exact domestic content for their products." *Id.* They also recognized that companies would have to monitor "changes in a producer's sourcing patterns . . . the price for a given material, and variances in depreciation." *Id.*

204. *See infra* Part VII.B.

205. Consumer protection laws seek to safeguard the rights of consumers and protect against sellers who employ unconscionable or deceptive business tactics. *See* KAN. STAT. ANN. § 50-623 (West 2013) (promoting the policy of "protect[ing] consumers from suppliers who commit deceptive and unconscionable practices"). Under Washington's Consumer Protection Act, conduct is actionable when it has an impact on the public interest. *Sato v. Century 21 Ocean Shores Real Estate*, 681 P.2d 242, 244 (1984). There, conduct is deemed to have an impact on the public interest when "the defendant by unfair or deceptive acts or practices in the conduct of trade or commerce has induced the plaintiff to act or refrain from acting." *Id.* The FTC acts for the purpose of furthering the public interest. *See* ALEXANDER, *supra* note 97, at 14.

206. *See* Shimp & Sharma, *supra* note 30.

most precise depiction of content and origin because of the privileges that come with it.

The global economic marketplace is currently growing.²⁰⁷ This progression presents an opportunity and a need to reassess consumer perception on origin claims.²⁰⁸ The previous evaluation was undertaken over fifteen years ago.²⁰⁹ Since then, the economy has morphed into a system that requires the inclusion of more global inputs for goods.²¹⁰ This change is due in part to the comparative advantage of industry abroad.²¹¹ To stay competitive in today's market, manufacturers need to obtain parts and materials at the cheapest price possible, or else face the possibility of having to sell products at a higher cost than their competitors.²¹² The growth of this economic reality over the past fifteen years illustrates the need to reconsider the consequences of the current FTC standard and conduct a current consumer perception survey regarding origin claims and products' foreign content.

207. *Modest Trade Growth Anticipated for 2013 and 2015 Following Two Year Slump, 2014 Press Releases*, WORLD TRADE ORGANIZATION (Apr. 14, 2014), http://www.wto.org/english/news_e/pres14_e/pr721_e.htm#_ftnref2. For the past two decades the global increase in gross domestic product has been averaged 5.3%. *Id.* The World Trade Organization expects global exports and imports to modestly rise within the next two years. *Id.*

208. Globalization, the movement of manufacturing operations overseas, makes it more difficult for consumers to understand the country of origin of particular goods. Vytautas Dikčius & Gintarė Stankevičienė, *Perception of Country of Brand Origin and Country of Product Manufacturing among Lithuanians and Emigrants from Lithuania*, 1 *ORG. & MARKETS IN EMERGING ECON.* 108, 109 (2010).

209. Shaheen et al. *supra* note 19, at 5.

210. *Id.*

211. Amadeo, *supra* note 46. "A person has a comparative advantage at producing something if he can produce it at a lower cost than anyone else." Lauren F. Landsburg, *Comparative Advantage, Introduction*, LIBRARY OF ECONOMICS AND LIBERTY, <http://www.econlib.org/library/Topics/Details/comparativeadvantage.html> (last visited Feb. 10, 2015).

212. See Panos Mourdoukoutas, *The Unintended Consequences of Outsourcing*, FORBES MAG. (Dec. 9, 2011), <http://www.forbes.com/sites/panosmourdoukoutas/2011/12/09/the-unintended-consequences-of-outsourcing/>.

C. The Negative Impact of the “All or Virtually All” FTC Standard

The FTC’s retention of the “all or virtually all” standard failed to solve critical problems surrounding origin claim issues in the United States and echoed negative repercussions already existing.²¹³ The standard is ambiguous²¹⁴ and puts manufacturers in a position where they are uncertain if their product’s composition will conform to the current standard. It seeks to define what products support domestic jobs.²¹⁵ However, a negative effect might have occurred: companies may have an incentive to take more of their production abroad.

First, the “all or virtually all” standard does not give an exact basis for manufacturers to decide if attaching a domestic origin label will unlawfully deceive or mislead consumers.²¹⁶ The FTC acknowledged there is no clear or precise avenue to determine if a certain product will coincide with the current standard.²¹⁷ Although the FTC dictates factors that it considers when challenging the legitimacy of an origin label, manufacturers are still forced to play a guessing game as they market their goods and advertise towards American consumers.²¹⁸ As a result, costs will inevitably rise, as more time and money is put toward this determination.²¹⁹

Furthermore, and similar to the adverse effect of the strict requirements in California, the FTC standard also has the potential to pressure manufacturers to move operations outside the United

213. Bales, *supra* note 162, at 742-44.

214. See FTC Enforcement Policy, *supra* note 51.

215. *Id.*

216. The FTC indicated that the agency would not set a bright line rule or standard through specific percentages because “[it] is likely to be illusory and no single percentage standard will be appropriate for all products in all circumstances.” Made in USA Claims, *supra* note 111, at 63765. The FTC claims that foreign percentages “may not reflect the true extent of foreign content” in a product because cheaper labor and cheaper parts may not reflect the exact amount of foreign production. *Id.* at 63765 n.93.

217. FTC Enforcement Policy, *supra* note 51.

218. See *id.* (discussing costs that determine content percentage, the remoteness of foreign inputs, and the site of final assembly).

219. Although the FTC provides different factors that they will consider when analyzing origin claims, a marketer must devote time to consider the criteria of an unqualified origin claim and “[should] possess and rely upon a reasonable basis that the product is in fact all or virtually all made in the United States.” *Id.*

States.²²⁰ In many cases, manufacturers are not able to meet the FTC standard because they must look to other nations for supplies not available in the United States to construct their products.²²¹ When these companies know or reasonably conclude that they will not meet the standard, they are presented with the incentive to outsource a larger part of their manufacturing and assembly processes.²²² Although they will not be able to use an origin label, they are able to lower the price of their products, which consumers have indicated is a large determination in their purchasing decisions. The outsourcing of production processes will predictably lead to a decrease in U.S. jobs. Thus, the choice to keep the current standard may lead to the very harm the standard sought to prevent—the decrease of American jobs.

VII. THE CANADIAN APPROACH AS A MODEL FOR THE UNITED STATES

Canada's origin standards present a model that would improve the objectives of the United States' origin laws.²²³ The FTC must set levels of appropriate foreign content within American-made products, set the formula to determine how to calculate content percentages, establish how far a manufacturer must look back in their inputs, and create specific regulations for industries who are inevitably unable to conform to U.S. origin laws.

A. Staggered Levels of Percentage Content

The United States should create a distinction between the language used in different unqualified claims and issue a specific domestic content percentage with each, similar to Canada's system, so consumers will have a more detailed depiction of a product's origin.²²⁴

220. See Bales, *supra* note 162, at 744-43.

221. See *infra* Part VII.D. Specific industries are unable to purchase materials or subcomponents that are essential to the manufacturing of their final products. See *infra* Part VI.D. As a result, the use of these foreign materials and inputs prohibits the product from having a valid U.S. origin claim. See *infra* Part VII.D

222. Shaheen et al., *supra* note 19, at 5.

223. See *id.* at 4-5

224. This distinction would allow consumers to perceive the amount of domestic content within the good and will enable them to differentiate products from one another. Currently, the use of the "all or virtually all" standard only offers

Canada's enforcement guidelines set forth definitive origin standards that present advantages to both consumers and manufacturers, which would also bring positive outcomes for the United States. A "Product of Canada" label denotes that the total domestic direct costs of the product is ninety-eight percent or greater, while a "Made in Canada" label only requires that fifty-one percent of the costs are incurred in Canada.²²⁵ Canadian consumers who value products that facilitate domestic jobs through domestic production may look to both labels and easily identify what product has a higher domestic content. A distinction in the United States could similarly convey the amount of domestic content in a product based on certain labels, which would provide more information regarding a product's origin. For example, if the FTC sets an extremely high level percentage for a "Product of U.S.A." label, the label would illustrate that the product is almost entirely made in the United States. Conversely, a "Made in U.S.A." label would illustrate the domestic content is still very high, yet less than a product with a "Product of U.S.A." label.

Adding percentage based country of origin labels in the United States will allow consumers to make purchasing decisions that reflect the added value each individual associates with the production costs incurred within the United States.²²⁶ If a consumer wishes to support U.S. industry, the staggered levels represented through percentages will provide more information than the "all or virtually all" standard.²²⁷ The consumer will ultimately have to balance their desire to support U.S. industry with the temptation of lower purchase prices

consumers one level of product information: a U.S. country of origin label only shows consumers that the product has a de minimis or negligible amount of foreign content.

225. Canada's Enforcement Policy, *supra* note 27.

226. See Richard A. McCormack, *Country-Of-Origin Labels Could Change Consumer Behavior and Revive U.S. Manufacturing*, TECHNOLOGY NEWS (March 16, 2012), <http://www.manufacturingnews.com/news/country-of-origin-labels-316121.html> (United States' consumer's value environmental and employment conditions).

227. The current FTC standard only provides consumers with information on goods that contain a small or negligible amount of U.S. content. See FTC Enforcement Policy, *supra* note 51; see also *supra* Part IV. If a model were adopted that set forth differing labels, corresponding to different content percentages, consumers would be able to tell, within a certain range, how much domestic content went into manufacturing each good they buy.

of similar products with different origin labels. The percentages must come from current consumer perception and the FTC must declare what each label represents through guidelines, similar to the Enforcement Policy issued in the late 1990's.²²⁸

Although Canada's country of origin labels require a qualifying statement to be attached to products in certain situations,²²⁹ the model proposed above would render this requirement irrelevant. If a qualifying statement were not required for a fifty-one percent domestic content threshold, the label would mislead consumers because there would exist an opportunity for similar products to bear the same label when they indeed contain a significant difference in the amount of domestic inputs.²³⁰ Here, however, precise and varying levels of acceptable foreign and domestic content amounts would limit the variation of these percentages. It would appropriate a small range of suitable content levels for each label and would ensure similar products with the same label contain a similar amount of foreign content. For example, if a "Made in the U.S.A" label required that the good contain between sixty and seventy percent of U.S.-sourced content, products that attached this label would be within a reasonable range of likeness regarding the product's composure.²³¹ Thus, consumers would be able to identify the products' composition without the need for a qualifying indication if various percentages are associated with different labels.

228. See FTC Enforcement Policy, *supra* note 51.

229. Canada's Enforcement Policy, *supra* note 27. Qualified claims indicate the specific amount of domestic content, or will indicate if any specific part of the manufacturing process occurred outside of the country where the product is claimed to be made. See *supra* Part II.A. For example, the marketer may include that the assembly occurred or the materials were purchased from another country.

230. For example, without a qualifying statement one product could contain fifty-one percent of domestic content, while another similar product may contain ninety percent. In both cases, the same label could be used without being deemed deceptive or misleading.

231. See Request, *supra* note 38, at 25051. By following this model, the FTC should determine the consumer perception of what would be considered reasonably similar as it relates to the amount of foreign and domestic content levels. Consumer perception consists of consumer opinion and what would be deemed appropriate and fitting for a particular product to be labeled American-made.

B. Calculating a Percentage of Content

The FTC must give manufacturers the precise production costs that will constitute the domestic and foreign percentages. Setting particular labels that correspond with specific percentages of content does have a few drawbacks,²³² but it furthers the policy goal of increased consumer knowledge. Matching a specific percentage to a particular label requires guidelines for manufacturers to follow. The guidelines will help manufacturers determine the exact percentage of domestic and foreign content in their products and will give their consumers a more precise picture of where the product was made by conveying this information with the correct label. To accomplish this, a rule must be set to inform manufacturers of what business costs to will go into the determination.

The FTC received various input regarding appropriate domestic and foreign percentage calculations.²³³ Some commentators believed content percentage should be based on hours of labor and should exclude overhead, marketing costs, and financing.²³⁴ Others argued that percentages should include the cost of development, engineering, and profits received.²³⁵ The most practical and easily applicable standard, however, should only require manufacturers to factor the direct costs of manufacturing into the percentage determination.²³⁶ This standard would require manufacturers to look into the amount of labor used in various countries to create and assemble the product, materials acquired to produce the product, and direct manufacturing

232. See Request, *supra* note 38, at 25028. The FTC noted that domestic and foreign content percentages would not adequately provide an accurate depiction of content if specific percentages were used because domestic content will vary due to changing material costs, varying employment wage rates, and fluctuations in exchange rates. *Id.*

233. See *id.* at 25029.

234. *Id.*

235. *Id.*

236. The FTC notes in its enforcement policy that in calculating manufacturing costs businesses should use a good's inventory cost because these terms are used in harmony with account principles. FTC Enforcement Policy, *supra* note 51, at n.16. Inventory costs include "the cost of manufacturing materials, direct manufacturing labor, and manufacturing overhead." *Id.*

overhead incurred during the production process of the product.²³⁷ These three factors directly relate to the process of manufacturing and producing a specific commodity, while factors such as profit, shipping, and accounting services are further removed from the process and should not be considered when determining a product's foreign content.²³⁸ There was a broad variety of commentators expressing their opinions on what costs are to be included in the late 1990s,²³⁹ and any new study of consumer perception should also include a section on what costs should be examined to calculate the percentage of domestic and foreign content. This will further align the overall standard with what consumers are willing to allow as domestic and foreign inputs.

C. Remoteness of Foreign Content

The FTC needs to determine how far back a manufacturer must look to discover the origin of a particular product in order to effectively reform country of origin laws in the United States.²⁴⁰ Looking "one-step-back" would only require a manufacturer to ascertain where the completed input was produced,²⁴¹ whereas a "two-step-back" analysis forces a manufacturer to look where the subcomponents of the input were produced.²⁴² For example, in the context of an automobile, would it be adequate to merely inquire where the engine was made?²⁴³ Or should the automobile

237. Request, *supra* note 38, at 25044. Direct manufacturing costs are expenditures that are distinguishable from different products, such as the cost of raw materials or the labor that was used to produce a specific product. See Rosemary Peavler, *Direct and Indirect Costs and Their Effect on Pricing Your Product*, Money, ABOUT.COM, <http://bizfinance.about.com/od/pricingyourproduct/a/Direct-And-Indirect-Costs-And-Their-Effect-On-Pricing-Your-Product.htm> (last visited Dec. 27, 2014). On the other hand, indirect manufacturing costs include expenditures that affect the entire company, such as advertising and accounting services. *Id.*

238. See Peavler, *supra* note 237.

239. Request, *supra* note 38, at 25029.

240. See *id.* at 25030.

241. *Id.* A one-step-back inquiry requires manufacturers to look to where the direct intermediate good was produced. *Id.*

242. *Id.*

243. See *id.* at 25049-50.

manufacturer be required to determine where the subcomponents of the engine were produced, such as the pistons and spark plugs?²⁴⁴

The FTC received a large number of comments indicating a one-step-back inquiry would suffice.²⁴⁵ Commentators contemplated that a two-step-back inquiry would be “unduly burdensome and [that it would be] impractical to require manufacturers to make inquiries beyond the suppliers from whom they purchase materials or components.”²⁴⁶ Thus, a one-step-back inquiry is reasonable in most cases because it is challenging for manufacturers to obtain origin information from suppliers.²⁴⁷ A manufacturer, however, should inquire past one-step-back when he or she has knowledge that the specific input contains a large amount of foreign content or the amount of foreign content is significant, as it relates to the overall percentages of foreign and domestic content.²⁴⁸ Although possible drawbacks²⁴⁹ to the one-step-back approach exist, anything past this inquiry is likely to be oppressive to sustain.

244. *See id.*

245. *Id.* at 25030. One commentator expressed that the anything beyond a one step back analysis is too burdensome since the “net effect on American employment and quality of product would in the vast majority of cases be *de minimis*.” *Id.* at 25030 n.109.

246. *Id.* at 25030. A comment submitted by Footwear Industries of America indicated that at two-step inquiry into inputs origin would be infeasible because “[s]uppliers often buy inputs from a variety of sources, depending on market conditions, and do not keep track of which inputs go into which end product.” *Id.* at 25030 n.108.

247. *Id.* at 25030.

248. *See* FTC Enforcement Policy, *supra* note 51, at n.16. The FTC’s enforcement policy noted, “they should look far enough back in the manufacturing process that a reasonable marketer would expect that it had accounted for any significant foreign content.” *Id.*

249. Request, *supra* note 38, at 25030. Dynacraft Industries noted in a comment that a “one-step-back” inquiry “could lead to circumvention of the standard by, for example, permitting an unscrupulous party to restructure sourcing to purchasing through middlemen in the U.S. and claim the part if of U.S. origin.” *Id.* at 25030 n.110. Similarly, the American Hand Tool Coalition noted that “such an approach would be subject to manipulation and ‘would conflict with consumers’ understanding” of domestic origin claims. *Id.* at 25030 n.111.

D. Industry Specific Regulations

Congress should create specific legislative regulations for particular industries that have difficulty conforming to these standards based on the unavailability of U.S. suppliers.²⁵⁰ Specific regulations for automobile and textile labeling in the United States already exist and other regulations may be needed to resolve confusion and difficulties arising within other distinct industries, as it relates to the availability of domestic inputs.²⁵¹ The state of manufacturing in the electronics industry provides a compelling argument for industry specific regulation.²⁵² There, it is not feasible and nearly impossible for a manufacturer to conform to the FTC standard and create a product that is built with all or nearly all U.S. content.²⁵³ Individualized regimens for certain industries should require a lower threshold of domestic content because inputs for certain products are unavailable or impracticable to obtain through U.S. suppliers.²⁵⁴ However, manufacturers should be required to exhaust all plausible avenues to acquire U.S. content before they are allowed to integrate foreign inputs while still conforming to U.S. origin laws.²⁵⁵ Specifically, manufacturers in these industries should incorporate U.S. substitutes when available, even if the final domestic content will be higher than the percentage threshold set by the exemption in place.²⁵⁶ This approach presents an incentive for manufacturers in these industries to keep as much of the production process within the United

250. Bales, *supra* note 162, at 749.

251. 49 U.S.C. § 32304 (West 1994) (The American Automotive Labeling Act defines terms and provides regulations automotive manufacturers must follow when selling cars, such as requiring the manufacturer to include the country of origin for the engine and transmission.); 15 U.S.C. § 70 (West 1958) (The Textile Fiber Products Identification Act provides definitions for varying types of fibers that are used when labeling textile goods.).

252. See Request, *supra* note 38, at 25025.

253. Bales, *supra* note 162, at 745. Packard Bell Electronics echoed this concern in a comment submitted to the FTC: “it is impossible to obtain the volume of U.S.-made components necessary to support large manufacturing operations.” Request, *supra* note 38, at 25025 n.43.

254. Bales, *supra* note 162, at 745.

255. *Id.* at 746.

256. *Id.*

States because a U.S. origin label gives them a competitive advantage.²⁵⁷

VIII. CONCLUSION

Country of origin label laws in the United States fail to maximize the benefit these labels are meant to provide. To the contrary, they create many drawbacks for businesses and consumers. First, the FTC's retention of the "all or virtually all" standard forces manufacturers to predict whether or not the volume of domestic content within their products will comply with this ambiguous standard.²⁵⁸ Ultimately, businesses are required to analyze the imprecise country of origin factors in order to anticipate whether or not their product will comply with the law. Furthermore, consumer knowledge is depleted in many cases because manufacturers find it impossible or impracticable to conform to the standards.²⁵⁹ Specifically, these manufactures have an incentive to move additional operations overseas to use cheaper alternatives, preventing consumers from obtaining any origin information due to the absence of any label.

Second, the lack of a uniform country of origin standard within the United States echoes similar effects that come with the FTC standard's ambiguousness: manufacturers are forced to spend more capital on printing different labels for different legal jurisdictions and domestic jobs are lost due to the movement of manufacturing operations. California's Origin Law strictly confines manufacturers who label their products American-made to buy every input from U.S. suppliers, in order to comply. This standard forces business abroad and decreases consumer knowledge.

Canada's model, set forth by its Competition Bureau, illustrates a possible, plausible, and predicable avenue the United States can follow to increase consumer knowledge and further business and consumer interests. Specifically, creating distinctions in labels for products that contain differing amounts of foreign content will increase consumer knowledge and decrease the likelihood of deceptive origin labels. Associating and enforcing varying foreign

257. See Shimp & Sharma, *supra* note 30.

258. See *supra* Part VI.A.

259. See *supra* Part VI.C.

content percentages that are linked to specific labels will provide consumers with the most accurate product information that would include foreign content, parts, or subcomponents. Ultimately, the United States needs to implement a similar regime to eliminate ambiguities for businesses and give consumers the power to make more informed purchasing decisions. Additionally, the FTC needs to issue another type of consumer survey that will allow it to formulate a plan consistent with consumer perceptions relating to the various aspects that make up country of origin laws.

*Stuart Smith**

* J.D. Candidate 2016, California Western School of Law. I would like to thank my family, girlfriend, and friends for their love and support throughout all my endeavors in life. They are truly my inspiration and my foundation. Also, I would to thank professors Michael Dessent and Roberta Thyfault for their invaluable assistance and direction throughout this writing process and in my education.