

COMMENTS OF THE INTERNATIONAL PRECIOUS METALS INSTITUTE, INC.  
TO THE FEDERAL TRADE COMMISSION  
REGARDING ITS PROPOSED "MADE IN USA" LABELING RULE  
FTC-2020-0056-0001  
MUSA RULEMAKING MATTER NO P074204

To the Federal Trade Commission:

SUMMARY

The International Precious Metals Institute, Inc. (IPMI)<sup>1</sup> appreciates this opportunity to comment on the FTC's proposed "Made in USA" labeling rule with particular reference to precious metal produced from recycled (or "scrap") materials of indeterminate origin.

It is IPMI's view that the FTC misunderstands and misrepresents the science and complexity related to recycling precious metals. Because of their extraordinary value, precious metal bearing scrap is not discarded; virtually all refined precious metals contain recycled metal. The recycling process substantially transforms metal-bearing raw materials into a new product with a new lifecycle. Where the molecules in that new product were first mined—perhaps centuries ago—is indiscernible, ignores reality, and is irrelevant to the manufacturing process.

Consumers are no more deceived by items containing precious metals derived from recycled materials than they are by items containing recycled steel—the most recycled metal in the world. Like precious metals, steel contains a large percentage of scrap, often 100%. The FTC permits United States producers of steel ingots and mill products to apply an unqualified "Made in USA" label. IPMI requests that the FTC permit precious metals refined in the United States to be labeled "Made in USA"—just as it does with steel.

THE FTC GROSSLY OVERSIMPLIFIES PRECIOUS METAL RECYCLING

The FTC details its position on recycled materials as follows:

**Are raw materials included in the evaluation of whether a product is "all or virtually all" made in the U.S.?** It depends on how much of the product's cost the raw materials make up and how far removed from the finished product they are.<sup>2</sup>

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<sup>1</sup> The IPMI is the international trade association for the precious metals industry. IPMI has over 600 members representing every sector of precious metals: banking & trading, jewelry design & manufacture, precious metals refining, precious metals alloys manufacturing, electronics, precious metals mining, precious metals research, numismatics, automotive, petroleum, pharma, catalysis and more. Each sector has significant presence of operations within the USA.

<sup>2</sup> *Complying with the Made in USA Standard*, Federal Trade Commission, <file:///C:/Users/Mike/Documents/Made%20in%20USA/Complying%20with%20the%20Made%20in%20USA%20Standard%20%20Federal%20Trade%20Commission.html>, December 1998

In its example, The FTC states:

**Example:** If the gold in a gold ring is imported, an unqualified Made in USA claim for the ring is deceptive. That's because of the significant value the gold is likely to represent relative to the finished product...<sup>3</sup>

This reflects FTC's lack of understanding regarding precious metals. The extraordinarily high value of gold and other precious metals generally results in the metal value dominating the price of the item in which it is contained. If price is the FTC's standard, then few if any consumer goods containing precious metals can ever be labeled "Made in USA."

The FTC's example goes on to state:

...and because the gold—an integral component—is only one step back from the finished article. By contrast, consider the plastic in the plastic case of a clock radio otherwise made in the U.S. of U.S.-made components. If the plastic case was made from imported petroleum, a Made in USA claim is likely to be appropriate because the petroleum is far enough removed from the finished product, and is an insignificant part of it as well. <sup>4</sup>

This grossly oversimplifies the multi-step, transformative, physical and chemical recycling and refining process required to reuse precious metals. By no means is gold that has been recycled and the refined "one step back" from the finished article.

#### SCRAP CAN BE USED ONLY AFTER IT IS REFINED

To be used in a manufactured product, the precious metals contained in scrap must first be separated and purified to almost 100% pure elemental form at a precious metal refinery. <sup>5</sup> Refining scrap into pure metal is a "substantial transformation" that gives scrap a new lifecycle. Precious metal refiners are the first point in the supply chain at which pure precious metal raw materials have been substantially transformed into a form suitable for use by manufacturers. Therefore, the refinery at which scrap was last refined should be the point of origin. If refined in the United States, refiners should be permitted to designate it as "Made in USA."

#### REFINING IS A DEMANDING TRANSFORMATION PROCESS

The extraordinary value of precious metals precludes their being discarded, so precious metal scrap is nearly always recycled. Refining scrap is a multi-step, physical and chemical industrial process. Each precious metal contained in a complex matrix of metals and impurities must be

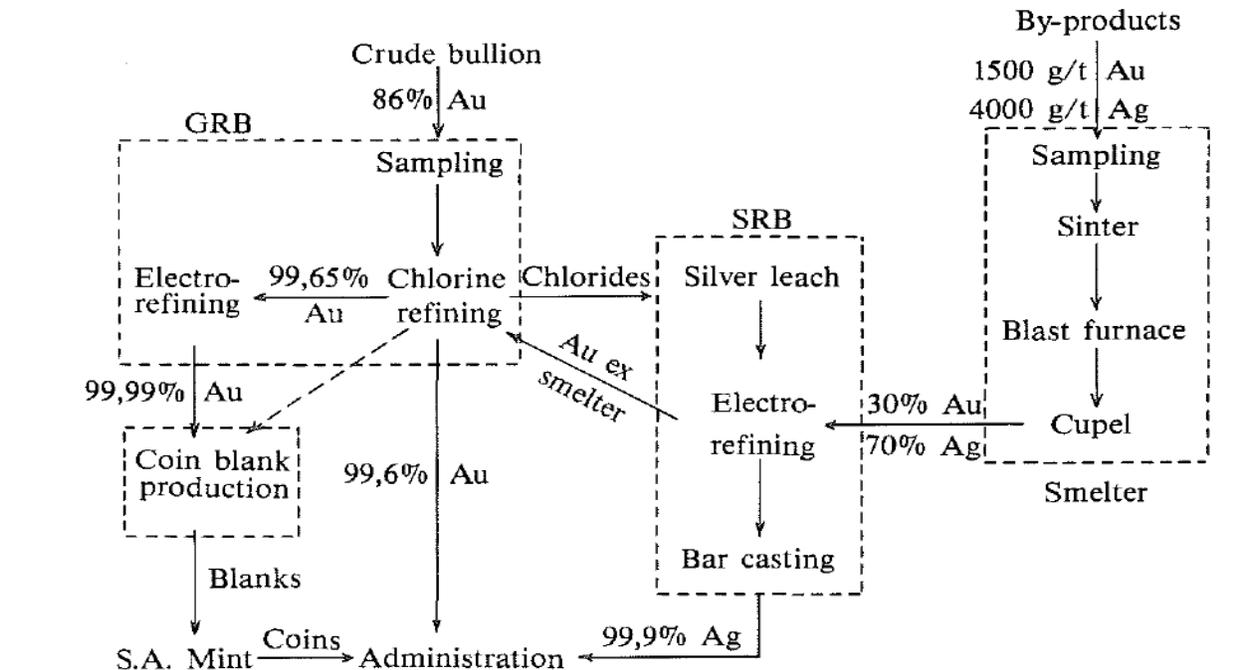
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<sup>3</sup> Ibid

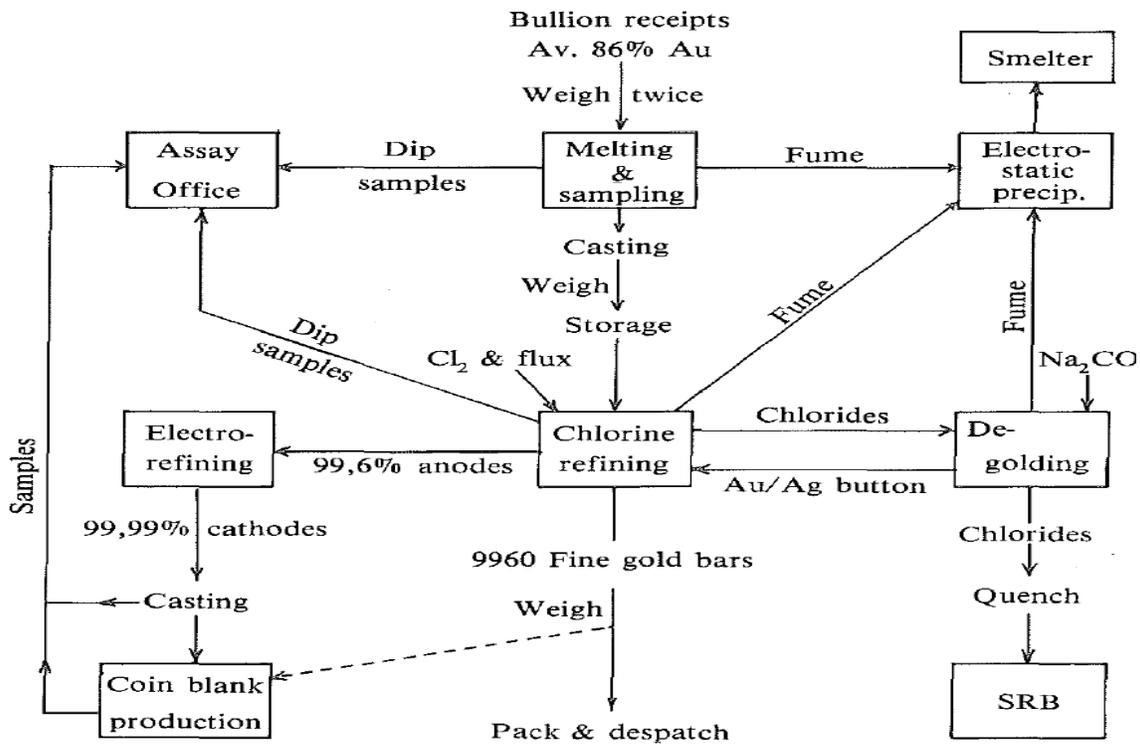
<sup>4</sup> Ibid

<sup>5</sup> Precious metal bullion and scrap in different forms. (link to IPMI website)

separated and refined. Initially, this can require removing inorganic components by incineration, grinding and sifting. The metallics remaining are melted at temperatures well over 2000 degrees Fahrenheit. Subsequently, metals are dissolved in a mixture of strong acids and then further refined via chemical separation techniques and/or electrolytically. Alternatively, molten gold bearing alloys can be purified via infusion of chlorine gas. (see flow chart below). At the end of the process, metal is melted and poured into refinery shapes, such as ingots, bars, billets and grain for sale to industrial users. The flow chart below shows a typical gold bullion refining operation.<sup>6</sup>



<sup>6</sup> Fisher, K.G., "Refining of gold at the Rand Refinery," Chapter 10, p.617-618 of the The Extractive Metallurgy of Gold in South Africa, Volume 2, edited by G.G. Stanley, South African Institute of Mining and Metallurgy, Johannesburg, 2002.



Throughout the refining process, refiners continually representatively sample the metal, then conduct qualitative and quantitative laboratory analysis using sophisticated instrumentation such as inductively coupled plasma spectrometers as well as classical wet chemical and fire assay analysis methods. Minimum purity for jewelry production is typically over 99.95% and for industrial products minimum purity is generally over 99.99% (often over 99.999% or 99.9999% for chemical or electronics applications).<sup>7</sup> In subsequent manufacturing, the metal is re-melted, alloyed with base metals, other precious metals and non-metals, cast and milled into products or parts. Each step in the refining process results in a substantially transformed intermediate or final product in both in chemical composition and physical properties.

#### REFINERS BLEND MINE MATERIAL WITH SCRAP

Refiners are concerned with the concentration of precious metals, with the nature of the substrate, and with the impurities; not so much with the scrap's provenance. The properties of precious metals when refined from scrap do not change, and metal from scrap can be used over and over again. Applications for metal refined from scrap and from mines are the same, and refiners routinely blend mine concentrates with precious metal scrap. Gold atoms in a

<sup>7</sup> Edmund M. Wise. *Gold: Recovery, Properties and Applications*. D. Van Nostrand Company, Inc. 1964.

C.M. Hoke *Refining Precious Metal Wastes: Gold-Silver-Platinum Metals*. Publisher Metallurgical Refining Co. 2003

L. Manziek. *Precious Metals Recovery and Refining. Proceedings of a Seminar of the International Precious Metals Institute*. 1990

pharmaceutical compound may have been recycled from a bracelet worn by Cleopatra. The last refining iteration begins the new lifecycle afresh.

### METAL FROM SCRAP IS THE SAME AS MINE MATERIAL

Precious metals refined from scrap are chemically and physically identical to precious metal from a mine. Segregating the mine and scrap streams favors larger refiners with redundant equipment and more financial flexibility. For the smaller refiners, lower throughput in each stream would result in idle capacity and would make it more difficult to amortize the required investment.

A new metal lifecycle begins after refining, so scrap's place of origin should be the last location at which it was substantially transformed, i.e., where the scrap was last refined. This reflects the production process and is the premise underlying the American Recovery and Reinvestment Act of 2009 (ARRA) and the requirements of other Federal regulatory agencies.<sup>8</sup>

### CONCLUSION

American consumers well understand the efficiency and benefits of recycling and willingly engage in recycling by separating recyclable materials in their weekly garbage pickup. This includes paper, plastics, steel cans, aluminum, glass, etc. Americans expect that these recycled materials will be made into new products. These recycled products, if manufactured in the US, are entitled to be labeled Made in the USA.

A prime example, well supported by Congress in the ARRA and other legislation, lies in the American steel industry. According to the American Institute of Steel Construction ("AISC")<sup>9</sup>, structural steel that is produced and fabricated in American steel mills is appropriately considered "Made in America." However, such steel is not necessarily produced from iron mined in the USA, but rather is made from steel scrap collected in the U.S. from an undetermined origin. In fact, the industry average for recycled content in domestic structural steel is over 90%, Nearly all American structural steel (98%) is captured at the end of its life and recycled into new American steel products.

Made in America structural steel is no different conceptually than jewelry that is designed and manufactured in the US from recycled gold. Both products constitute a new life cycle, Consumers are no more deceived by jewelry made from recycled gold that is substantially

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<sup>8</sup> Please see previous IPMI comment letter attached as an appendix hereunder: FTC-2019-0063-008, Comments of the International Precious Metals Institute, Inc. to the Federal Trade Commission Regarding Workshop on "Made in USA" Advertising and Marketing Claims.

<sup>9</sup> See: <https://www.aisc.org/why-steel/made-in-america/#:~:text=American%20structural%20steel%20is%20made%20of%20steel%20scrap,90%25%2C%20the%20highest%20of%20any%20building%20framing%20material.>

transformed by U.S. precious metal refineries than by steel ingots and mill products made in American steel mills.

Based upon the fact that recycled precious metals produces a new life cycle for the product, in its final rule, the FTC should confirm the precious metal refinery's location as the point of origin at which metal-bearing scrap is substantially transformed. That is, if refining takes place in the United States, the FTC would find that the precious metals in purified form and products therefrom may properly be labeled "Made in USA."

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Laurence J. Drummond". The signature is written in a cursive style with a large, sweeping initial "L" and a long, horizontal stroke at the end.

Laurence J. Drummond  
Executive Director  
International Precious Metals Institute, Inc.

## APPENDIX

COMMENTS OF THE INTERNATIONAL PRECIOUS METALS INSTITUTE, INC.  
TO THE FEDERAL TRADE COMMISSION  
REGARDING WORKSHOP ON “MADE IN USA” ADVERTISING AND MARKETING CLAIMS  
FTC-2019-0063-0008

To the Federal Trade Commission:

Thank you for the invitation to comment on a matter of central importance to the International Precious Metals Institute (IPMI) and to the precious metals industry. IPMI appreciates the opportunity to submit this comment letter in support of the Federal Trade Commission’s policy to keep pace with economic change.

The IPMI is a 42 year old, d 501(c) 3 non-profit, charitable scientific and educational institution. Our members include more than 1,000 companies and individuals from every sector of precious metals: banking & trading, jewelry design & manufacture, precious metals refining, precious metals alloys manufacturing, electronics, precious metals mining, precious metals research, numismatics, automotive, petroleum, pharma, catalysis and more. Each sector has significant presence of operations within the USA.

### “Made in the USA” and Rules of Origin

Over the last twenty years, United States government agencies have adapted their rules of origin to worldwide standards and practices to changing trade patterns and globalization. However, the Federal Trade Commission’s standards on labeling as they apply to precious metals and precious metals products have remained the same. Today, the FTC’s rules and standards diverge—sometimes diametrically—from international trade practices and protocols and from those of other United States government agencies.

The IPMI is therefore responding to the FTC’s request for comment on Made in USA Advertising and Marketing Claims, FTC-2019-0063-0008

Twenty years ago, the Federal Trade Commission (FTC) determined that, to be labeled “Made in USA,” a product must be produced “all or virtually all” in America. The “all or virtually all” standard is far more restrictive than the rules of origin applied by other United States government agencies and used in other countries. It is technically very difficult and costly to achieve.

Manufacturers of consumer products containing precious metals —particularly of jewelry— must now choose between a qualified label as to country of origin or shipping products without indicating their United States origin. Both alternatives have been destructive to American manufacturers and have placed them at a severe competitive disadvantage. American jobs are being lost as a result. And American consumers must absorb the cost without receiving any benefit whatsoever.

The FTC has ruled that goods made with scrap of unknown original mine origin cannot be labeled “Made in USA.” However, the United States Customs Service shares the international standard that the origin of scrap (and mine material) is the country in which it is collected or refined into a product (such as bullion of elemental purity derived from gold, silver or the platinum group metals).

### Customs and Border Protection Rules of Origin

#### **Code of Federal Regulations**

#### **Title 19 - Customs Duties**

Volume: 1 Date: 2012-04-01 Original Date: 2012-04-01 Title: PART 102 - RULES OF ORIGIN  
Context: Title 19 - Customs Duties. CHAPTER I - U.S. CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF THE TREASURY.

(<http://www.gpo.gov/fdsys/pkg/CFR-2012-title19-vol1/pdf/CFR-2012-title19-vol1-part102.pdf>)

#### **§ 102.1 Definitions**

(d) Domestic material. “Domestic material” means a material whose country of origin as determined under these rules is the same country as the country in which the good is produced. (e) Foreign material. “Foreign material” means a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced. (f) Fungible goods or fungible materials. “Fungible goods or fungible materials” means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical. (g) A good wholly obtained or produced. A good “wholly obtained or produced” in a country means:

(1) A mineral good extracted in that country;...

(9) Waste and scrap derived from: (i) Production in a country, or (ii) Used goods collected in that country provided such goods are fit only for the recovery of raw materials; and (10) A good produced in that country exclusively from goods referred to in paragraphs (g)(1) through (10) of this section or from their derivatives, at any stage of production

The first definition § 102.1 (9)(i), says scrap generated from production is domestic to the country in which it was generated. Even if the item being produced is made from foreign-derived raw material, the production scrap generated is domestic to the country in which the product was manufactured.

The second definition § 102.1(9)(ii)—in the context of metals scrap—would be goods collected for further upgrading. For instance, jewelry scrap would be fit only for recovery of gold, silver (and maybe copper) in elemental form, which could then be used as raw materials. Even if all the metal contained in scrap is originally mined in other countries, and even if the scrap is imported from a foreign source, if it is collected in the US to upgrade into raw material, its origin when it is upgraded becomes the US.

In sum, scrap generated in the US or collected for upgrading in the US is domestic material. The prior stages in the supply chain are irrelevant.

The Rules of Origin support these conclusions:

§ 102.11 General rules... The country of origin of a good is the country in which: (1) The good is wholly obtained or produced; ...

#### U.S. Trade Agreements

United States trade agreements adhere to the US Customs rules of origin. For instance, in the North American Free Trade Association, in Chapter Four, Rules of Origin, Article 401: Originating Goods, states: ...a good shall originate in the territory of a Party where

a) the good is wholly obtained or produced entirely in the territory of one or more of the Parties, as defined in Article 415;

b) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification set out in Annex 401 as a result of production occurring entirely in the territory of one or more of the Parties, or the good otherwise satisfies the applicable requirements of that Annex where no change in tariff classification is required, and the good satisfies all other applicable requirements of this Chapter...<sup>10</sup>

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<sup>10</sup> [ Note by IPMI: In the context of this letter, “good” refers to metal in the form of bars, grain or sponge in elemental form and products made from such refined metal. As a reasonable standard of “elemental” purity, we would apply the fineness (purity) standards required by the CME, Inc., a public exchange on which precious metals are traded. The CME deliverable fineness standards are:

Gold: 99.5%

Silver: 99.9%

### American Reconstruction and Reinvestment Act of 2009

Under the American Reconstruction and Reinvestment Act of 2009 (“ARRA”), a product is American made if it is substantially transformed in the U.S.A. “Substantial transformation” occurs when you change a good’s character or use. A product’s country of origin is where its “character or use” is changed; not where the product’s commodity raw materials came from. Worldwide, the country of origin is where metal was last refined, not where scrap or mine materials come from. The FTC’s standard is the exception.

Both American metals refiners (that produce bullion) and product manufacturers (that produce finished goods), should be able to apply the “Made in USA” label if they meet the “substantial transformation” standard.

1. Refining precious metals transforms scrap and mine materials in a complex process from impure materials that cannot be used, to useable purified bullion.
2. Fabricating the bullion into jewelry and an array of precious metals products requires a subsequent series of challenging design and manufacturing steps,

### Substantial Transformation Standard

“Substantial transformation” is the standard employed under the Buy American Act in the ARRA—already part of our laws. It is the standard Federal agencies use to determine that steel and iron are American made.<sup>11</sup> It is a practical international standard, applied by countries competing against the United States and (with the exception of FTC) by United States Government. It is the standard used by the United States Customs Service and under U.S. trade agreements. And it is the standard applied by the Department of Defense and all the other Federal agencies.

FTC is alone among our federal agencies in applying the “all or virtually all” standard.

### Conclusion

The “all or virtually all” standard currently applied by the FTC to the Made in USA label is inconsistent with the standards applied by other U.S. governmental entities and the country of origin standards embodied in U.S. trade agreements. The “all or virtually all standard flies in

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*Platinum*      99.95%

*Palladium*      99.95% ]

<sup>11</sup> A strict interpretation of the FTC’s “all or virtually all” standard could arguably preclude products produced from recycled steel (by definition American made under the Buy American Act) from being labeled “Made in USA”. It is estimated that 85% to 90% of the steel used today in the US is recycled. Applying the “all or virtually all” standard to preclude American made products such as automobiles and appliances from being labeled “Made in USA” would be contrary to both the BAA and the ARRA. The substantial transformation standard should apply consistently to all products for purposes of the “Made in USA” label.

the face of current global trade practices and the beneficial and encouraged use of recycled materials. It is destructive to American manufacturers and has placed them at a severe competitive disadvantage. American jobs are being lost as a result, and American consumers are absorbing the higher cost of meeting the standard.

We urge the Department of Commerce and the FTC to apply the substantial transformation standard, as do other Federal agencies and cited in both the Buy American Act of 1933 and the American Recovery and Reinvestment Act of 2009.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Laurence Drummond". The signature is written in a cursive style with a large, prominent initial "L".

Laurence Drummond  
Executive Director  
International Precious Metals Institute, Inc.