



FJATA NEWSLETTER

April 2022 Edition

SHANGHAI LOCKDOWN AFFECTS GLOBAL SUPPLY CHAIN



The Port of Shanghai as the buildup of containers grows daily

The COVID-19 shutdowns in Shanghai have not only led to unrest and outrage amongst citizens, but to major shutdowns within the global supply chain. Cases began rising in late March and continued into April, now averaging around a thousand new cases a day. An extremely strict lockdown is in place which forces people in their homes, limiting most citizen's ability to work and buy food or supplies. The Shanghai government has only recently spoken with on-demand delivery platforms like JD, the largest retailer in China that offers next day delivery on groceries, clothes, electronics, and a plethora of other items, to allow workers to deliver products to residences. Since many have been surviving on what was left in their pantry at the beginning of the lockdown, this influx of deliveries is long awaited and much needed.

As for the effects of the supply chain, Shanghai homes the largest container port in the world, a major cargo airport, and one of China's biggest manufacturing centers. Needless to say, the effects are huge. Here are some major impacts of this shutdown:

Surrounding Ports: Having to pick up some of the weight of Shanghai's logistical absence, surrounding ports like Zhengzhou, Xiamen, Shenzhen, and Beijing have taken on more shipments than usual. This has caused delays and increased rates for shipping out product. These higher rates are predicted to lower the demand.

Trucking Delays: The delays in the Shanghai trucking industry are due to COVID restrictions. To move between cities or certain zones, truckers now must have a negative COVID test and a special permit that lasts only 24 hours. On top of the time needed to retrieve these items, there are absurdly long traffics jams at the port to verify them. Certain highway entrances in and around Shanghai have reportedly made truckers wait up to 40 hours to pass. Trucking rates, because of the limited supply, have increased.

Manufactures Around Shanghai: Companies that rely on Shanghai’s port to receive parts or tools will likely be unable to refill their inventory. If this is the case, many businesses are at the risk of an involuntary stoppage in production. Rerouting shipments to nearby ports may be effective but due to their increasing delays there will probably be a gap, nonetheless. Additionally, these manufactures should be aware that when Shanghai’s ports reopen “business as usual” will not return until all the backed-up orders are filled. This will take a significant amount of time especially considering orders will continuously be being placed. Even ports that have been operating at full capacity for a year after lockdowns are still dealing with the severe consequences

On April 18, Shanghai’s Ministry of Industry and Information Technology issued a list of 666 business allowed to resume production. These companies, a third of which are chip and car manufacturers and a large portion of the rest biomedicine firms, must abide by the COVID-19 guidelines released two days prior by the Shanghai Commission of Economy and Information. These guidelines require employees to stay in a closed loop system, only allowed to travel between their home and workplace. The city-wide shut down will continue.

Though this gradual reopening appears to be the light at the other end of the tunnel, it must be approached with great caution. Companies manufacturing in Shanghai surely have an abundance of orders and will likely be working overtime to get them filled as fast as possible. When this occurs, there will be an influx of products to be handled at ports around the globe. Despite predictions of a lowered demand of these exports, once the rates and delays simmer down and manufactures regain full operations, there is a strong possibility receiving ports will be hit with an overwhelming about of cargo and can spiral into a position similar to where they were in the beginning of the pandemic.

CONTRACT NEGOTIATIONS OF PORT WORKERS MAY SPARK WEST COAST PORT SLOW DOWNS

In July 2022, the Pacific Maritime Association (PMA) and the International Longshore and Warehouse Union (ILWU) will start negotiating the contracts of 15,000 workers on 29 West Coast ports. Previously, the friction of these negotiations led to work slowdowns, lock downs, and/or strikes. Workers in the past have slowed their work down to moving 5 containers an hour, as opposed to an average 30 containers an hour.

The pandemic related slowdowns made the whole world aware of how vital a smoothly running supply chain is. Ports are now just starting to return to some normalcy and if another shutdown occurs, there may be detrimental effects. This puts the ILWU, and a potential threat to strike, in a good position. Additionally, the unions are aware of the record high financial performance the PMA recently had which they may use as reasoning for a wage increase. If the workers do strike, the Taft-Hartley Act allows a president to force them back to work to maintain the national health or safety. However, the Biden Administration is supportive of organized labor and would likely be in support of ILWU.

Due to these factors, the PMA is not expected to be as resistant to terms the ILWU presents during the contract negotiations. These terms are anticipated to be a significant 10-12% pay increase and better benefits.

THREE COUNTRIES CLEARED FOR ROUGH DIAMOND TRADE

Three countries have been assessed and are now eligible for trade in rough diamonds as defined in the US Clean Diamond Trade Act of 2003. The added countries are Kyrgyzstan, Mozambique, and Qatar, located in Central Asia, East Africa, and the Middle East respectively. They join a list of 57 countries and political entities.

To be cleared for this trade, a country must be in accordance with or maintain a system similar to the Kimberly Process Certification Scheme (KPCS) which sets standards, practices, and procedures to ensure the diamond trading of a country is not funding civil wars or terrorist actions. If a country is not in line with the KPCS, importing and exporting rough diamonds is restricted by the president.

CISA WEBSITE GIVES CYBERSECURITY ADVICE

Cyberattacks can cause great strain and setback for both businesses and individuals. Since organizations of all sizes throughout every industry can be targeted, preventative measure should be taken to reduce damages or possibly avoid an attack overall. The Cybersecurity and Infrastructure Security Agency (CISA) operates a website titled [Shield's Up](#) that contains a plethora of information regarding cyberattacks, how to prevent them, and updates on the industry. The site also lists cybersecurity tools and services from government sources and businesses that are offered for free. Check out the CISA advice on cybersecurity to ensure your business's online presence is protected.



OSRA PASSED IN SENATE



Senators Amy Klobuchar and John Thune, the original sponsors of the OSRA

The Ocean Shipping Reform Act (OSRA) passed unanimously in the Senate earlier in April. This Act, as reported on in the February FJATA Newsletter, attempts to give some of the supply chain relief that is desperately at this time. Some action of the Act include:

- The FMC can register shipping exchanges which would enhance service contract negotiations.
- Demurrage and detention fees must follow federal regulation or penalties will be given. Also, in cases where the reasonableness of a fee is challenged, the burden of proof must be provided by the ocean carrier, no longer the subjected party.
- Ocean carriers can no longer decline to service U.S. exporters for unreasonable purposes.
- Ocean carriers must report quarter to the FMC their total importing and exporting tonnage and 20-foot equivalent units per vessel that ports in the U.S.
- The FMC can self-initiate investigations into ocean common carriers and apply enforcement measures where suitable.

The House and Senate will now discuss this legislation and make alterations where they feel are necessary. Once this deliberation is done, all that is needed is the President's signature and the Act will become law. Regarding potential changes, industry leaders, including FJATA, sent a letter detailing some additions that would be effective in the Act's purpose of building a better supply chain. This included a mandatory minimum service standard for ocean carriers, provisions to prohibit carriers from failing to furnish or causing a contractor to fail to furnish, a rule to allow third party interference in FMC action against carriers, and restrictions prohibiting carriers from declining export booking.

PROP 65 ADDS NEW CHEMICAL

In February 2022, the California Office of Environmental Health Hazard Assessment (OEHHA) added perfluorooctanoic acid (PFOA) to the list of cancer-causing chemicals as denoted by California Proposition 65 (Prop 65). This chemical, most commonly used in carpets, leather, textiles, and non-stick cooking ware, has been listed on Prop 65 to cause reproductive toxicity since November 2017, but is now being added as a cancer causing chemical as well. In line with the process of adding a substance to Prop 65, on February 25, 2023, a “clear and reasonable” warning label will be required on products containing PFOA and on October 25 2023, the chemical will be prohibited from being discharged into sources of drinking water.

CASE APPEALED TO NINTH CIRCUIT SHOWS PROMISE FOR PROP 65 REPEAL

The case *California Chamber of Commerce v. Council for Education and Research on Toxics* (March 17, 2022) challenges the long-debated terms of the California Safe Drinking Water and Toxic Enforcement Act, also known as Proposition 65 or Prop 65. The California Chamber of Commerce ([CalChamber](#)) successfully filed suit in a Californian District Court resulting in a preliminary injunction against new lawsuits challenging Prop 65 warnings for the chemical acrylamide in food and beverages.

This injunction was affirmed when appealed to the Ninth Circuit due to the lack of sufficient evidence that acrylamide is cancerous to humans. Related scientific data has only shown a cancer link in mice, not people. CalChamber claims the chemical is not cancer causing to humans and subjecting it to Prop 65 is blatantly false and therefore in violation of the First Amendment. The District Court upheld this preliminary injunction based on a three-factor test used in the 1985 case *Zauderer v. Office of Disciplinary Counsel*: California did not adequately prove the dangers of acrylamide were accurate and uncontroversial, requiring a label was misleading, and the enforcement of these labels presents a heavy litigation burden on companies using alternative to the safe-harbor warning. New acrylamide lawsuits will now be paused until a final decision has been reached by the District Court.

This case may have significant impact on the future of Prop 65 and cases surrounding it going forward. Businesses often avoid taking Prop 65 violations to court, despite their illegitimacy, due to how costly and timely the process is. However, if this case is successful, more cases may be brought to challenge other Prop 65 chemicals with similar conflicting scientific debate. Also significant is this case’s implications on First Amendment defenses against environmental, health, and safety warning demands set by government.

FTC BRINGS COURT CASE ON “MADE IN USA” RULE

A court battle has recently begun between the Federal Trade Commission (FTC) and Lithionics Battery LLC, a designer and seller of batteries. The FTC claims the company is in violation of the “Made in USA” rule, created in August of 2021.

This rule tightened the qualifications a product must have to be able to use “Made in the USA” or a similar phrase on labeling. The standard now requires a significant portion of the product’s processing, specifically the final assembly, to take place domestically. Additionally, all or nearly all the components and/or ingredients of the product must be sourced from or made in the U.S.

The FTC alleges Lithionics Battery has advertised their products as American made since 2018. Their labeling includes an American Flag between the words “Made In” and “USA”, which at times is joined by the statement “Proudly Designed and Built in USA”. These kinds of descriptions are on physical products, website, social media accounts, and mail order catalogs.

Despite this outward appearance, the FTC claims Lithionics Battery imports the lithium-ion cells used in all their battery and battery module products, as well as most components in their battery management systems. Goods constructed by mainly foreign materials are, under the “Made in USA” rule, are not eligible to use the labeling Lithionics Battery has been using. If the court finds FTC’s claims of the company’s non-domestic sourcing to be legitimate, the violation of the rule will be valid. The FTC is seeking \$100,000 to settle, an amount that the FTC notes to be three times as large as the profits Lithionics Battery earned from the alleged illegal activity.

Many people applaud the FTC for bringing on this case and see the “Made in USA” rule as a step forward to a more honest marketplace. Especially in times where the U.S. is seeking to promote American based business, consumers are more mindful of who they are buying from. Companies in accurately labeling products as American made, may be taking business away from companies who truly source and produce domestically.

FIRST DETENTION FEE CASE ENDS IN FINES FOR CARRIER

In early April 2022, the FMC launched an investigation into Hapag-Lloyd after receiving complaint they were imposing unfair demurrage and detention fees. On April 22, a U.S. administrative law judge affirmed these claims on the basis of the FMC’s shipping fee rule enacted in May 2020 and fined the ocean carrier \$822,220. This is the first time this rule has been brought to court but will likely not be the last due to the immense amount of complaints towards impractical carrier fees.

This FMC rule states that carriers can only subject cargo containers to demurrage and detention fees if the purpose is to incentivize faster freight movement. If the fees do not serve this purpose, they may be found unreasonable and will be dismissed, sometimes resulting in money penalties as in this case.

The case surrounded that fact that Hapag-Lloyd imposed 14 days of detention charges and refused to remove them despite the drayage provider's request for help to resolve this stagnancy. Hapag-Lloyd did not engage with them to find a solution, and the containers remained at a standstill. The court found the provider made legitimate efforts and that no amount of fees could have incentivized them to return the empty containers. Therefore, these charges were determined to be without valid lawful purpose and are a violation of the FMC rule.

Originally, the FMC sought fines for at least \$16.5 million, but the court significantly reduced this on account of this being the carrier's first case and violation. The FMC asked for such a high penalty to show other carriers they must change their policies or practices to account for the May 2020 rule, or they could face severe consequences.

AAFA FINDS TOXINS IN COUNTERFEIT GOODS

The American Apparel & Footwear Association (AAFA) worked with the lab analysis company Intertek to test 47 counterfeit products for a variety of toxic substances such as arsenic, cadmium, phthalates, and lead. Of the 47 items, 17 failed to meet US product safety standards.

AAFA, like FJATA, pushes against counterfeit goods and promotes legislation presenting long-term solutions, such as the SHOP SAFE Act and the INFORM Consumers Act (now both included in the America COMPETES Act). To gain increased awareness of counterfeiting websites and entities, AAFA is advocating for the USTR to add US platforms to a public list of online platforms known to sell fake goods. Currently, the list is only focuses on overseas platforms, but adding deserving US platforms would formally advise consumers to steer clear of potentially dangerous goods.

COUNTERFEIT GANCINI BELTS SEIZED BY CHINESE AUTHORITIES



Counterfeit items imitating the Ferragamo brand, including a poor replica of their iconic Gancini belt

On April 26, 2022, Chinese authorities found hundreds of counterfeit luxury belts during a warehouse raid in the Zhejiang Province. This raid came after collaborative efforts from Chinese police, Amazon, and Italian luxury fashion firm Salvatore Ferragamo. The belts were imitating Gancini belts, one of Ferragamo's most iconic pieces, and would have been distributed globally through Amazon for \$300 each.

Ferragamo and Amazon began a relationship with the hopes of reducing the counterfeits hurting their companies and reputations. In early 2021, they filed a joint lawsuit against four defendants that offered or attempted to offer products infringing on Ferragamo's trademark on Amazon's site. While this case was ruled in their favor, counterfeiting continues to be an issue.

Ferragamo has stated that 22,000 products from social media and 130,000 products from online marketplaces were taken down for imitating their brand in 2021 only. The increased cooperation from law enforcement, like the Chinese police, has been huge in making real efforts to find and stop these counterfeiting operations from continuing. Ferragamo reported that because of this participation, 450,000 physical fake goods were seized in 2021.

Amazon has been criticized in the past for their lack of acknowledgement and discipline towards counterfeit sellers on their site but has since made efforts to revert this notion. In September 2020, Amazon stopped allowing anonymous sellers and now requires vendors to publish a name and address. They also offer two services for brands to use to protect their names: brand registry and Project Zero. Amazon's brand registry is free and allows owners of trademarks to report violations of that trademark. Their Project Zero program gives companies the option to remove fake listings themselves. For companies to access this feature, they must prove that when identifying counterfeit listings in the last 6 months they were at least 90% accurate. Ferragamo uses both services to protect their brand online.

FMC VIDEO ON HOW TO SUBMIT COMPLAINTS

The FMC has posted an instructional video on how members of the trade community can properly file complaints. The video found [here](#), gives a thorough explanation of the kinds of complaints they hear and what the protocol is for submitting them properly. The types are broken down into three categories, as seen in the table below:

Issue:	Type of Complaint:	Who to Contact:
Looking to report a violation without recovering damages or settling a dispute.	Report of a violation.	An Area Representative
Looking to resolve a singular dispute quickly and are flexible on the resolutions.	Help to find a commercial solution.	Consumer Affairs & Dispute Resolutions Services (CADRA); to reach them email complaints@fmc.org
Looking to have your dispute heard by an adjudicator and are not flexible on the resolutions.	Filing of a small claim or formal complaint.	Visit FMC.gov or contact the Office of the Secretary at secretary@fmc.org

The video goes into much deeper detail, explaining what information should be given when contacting the respective party, what the expected next steps are, and the purposes of each complaint. The FMC hopes this information will ease any confusions and make the process much easier.

FJATA SIGNED LETTERS TO LEGISLATORS

This month, FJATA signed onto two letters urging government leaders to act in favor of legislation and partnerships that would not only minimize the current supply chain disruptions, but also implement operations to maximize industry efficiency going forward. Here is a list and details of the letters we supported this month:

1. FJATA signed a [letter](#) to Maria Cantwell, Peter DeFazio, Roger Wicker, and Sam Graves which expresses appreciation for having passed the OSRA in little time, but also requests attention to possible additions. The specific additions are listed in the “OSRA PASSED IN SENATE”. This was sent on April 20, 2022 and signed by 78 other trade associations.
2. This [letter](#) was distributed amongst attendees at the International Anti-Counterfeiting Coalition’s Anti-Counterfeiting Conference held at the end of April

in Washington, DC. Signed by 19 other businesses and associations, this [letter](#) urges the addition of the SHOP SAFE and INFORM Consumers Act into the final draft of the America COMPETES Act. These Acts would advance the America Act by introducing legislation that establishes a more honest, safe, and competitive marketplace.

LEGISLATIVE STATUS

Click [here](#) to view a list of bills affecting our industry and any action that has occurred.



Our Mission - We continue our leadership role in legislative issues and advancing internationally recognized, sensible standards for the jewelry and accessories industries on behalf of our members.

Thanks for reading. Have any questions? Email us at executive_director@fjata.org.

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