



FJATA NEWSLETTER

February 2022 Edition

AMERICA COMPETES ACT RECEVES INDUSTRY WIDE SUPPORT



Nancy Pelosi addressing the America COMPETES Act of 2022

After absorbing both the INFORM Consumers and SHOP SAFE Acts, the Americas COMPETES Act of 2022 has gained more traction and support.

The Communication Cable and Connectivity Association (CCCA) has endorsed the bill and anticipates the promised cracking down on counterfeits will make their industry safer and more efficient. When lower quality cable is installed, connectivity issues arise more often, and consumers become frustrated. Around 70% of all network downtime is reported to be due to problems occurring from faulty cabling. Not only can bad wires be inconvenient to consumers, but they can also be dangerous. When not subject to proper industry requirement, wires can act as a fuse to rapidly spread fumes, smoke, or flames. This can cause major property damage and lead to fatal accidents, especially in large building such as offices or hotels where the wiring is connected from room to room. The CCCA is hopeful that in the event of this Act's passage, the accessibility of faulty wires will reduce, and the safety of consumers will restore.

AFT PRESSED FOR ADDITION TO AMERICA COMPETES ACT

Despite the generally positive reaction to the America COMPETES Act, Americans for Free Trade (AFT) have written a letter to Speaker of the House Nancy Pelosi and Minority Leader Kevin McCarthy urging an addition of Amendment 14 (Kind/DelBene/Scott/Houlihan) and Amendment 98 (Murphy/Walorski) to the Act. These Amendments would effectively reintroduce removal of Section 301 tariffs instated under the Trade Act of 1974 which places duties on Chinese goods. During the pandemic, these tariffs were suspended to cut costs for American business. This suspension was included in the Trade Act of 2021 which passed with a wide bipartisan 91-4 vote.

The AFT, along with their numerous members, believes a reinstatement of the Section 301 exclusion process would largely benefit American business by allowing them, as stated in the letter, better “ability to invest in their companies, hire more American workers, and remain competitive globally”. Also mentioned is the recent letter signed by 141 bipartisan members in support of this exclusion sent to United States Trade Representative (USTR) Katherine Tai. In October, Tai announced an exclusion process for a very limited amount of goods, but the AFT feels the amount is too narrow to make a substantial difference. Adopting Amendments 14 and 98 into the America COMPETES Act will provide the relief AFT feels is necessary in regaining economic strength in a post-pandemic America.

HOUSE VS. SENATE AMERICA COMPETES ACT

After changes made by the House of Representatives, the America COMPETES Act has received much less bipartisan support, passing through the House by a largely Democratic vote of 221-210. The main concern that resulted in such low Republican support is the issues regarding trade policies. While the House and Senate both propose subsidiaries for domestic manufacturing of semiconductors and increasing investments towards science research to combat China, the House’s plan requires more money for an annual \$2 billion towards climate change foreign assistance and funding for the reauthorization of the Trade Adjustment Assistance (TAA).

The final version of the bill will be set after the House and Senate go through their negotiations and come to an agreement. Many are hoping for a swift review in which representatives will be able to compromise and enact this bill sooner than later. Though this is easier said than done, Senator Todd Young, a Republican of Indiana, estimates a resolution by end of May. Young, a co-sponsor of the U.S. Innovation and Competition Act which passed 68-32 in 2021, firmly believes in this Act’s ability to combat China and is eager to see this legislation in action.

This Act will have direct impact on the shipping industry as the following topics are all in consideration:

- Renewal of the Generalized System of Preferences (GSP) benefits program
- Renewal of the Miscellaneous Tariff Bill (MTB)

- De minimis exclusions for China
- INFORM Consumers Act and SHOP SAFE Act (legislation on restricting counterfeit goods)
- Antidumping and countervailing duty laws
- The Ocean Shipping Reform Act (legislation dealing with recent supply chain issues)

MINK FUR FARMING BAN ADDED TO AMERICA COMPETES ACT

An amendment to the Lacey Act has been added to the America COMPETES Act of 2021. The Lacey Act banned the importing and exporting of American minks, and this amendment will further that, banning the sale, possession, procurement, or transport of the species granted it was raised in captivity for fur production. The House of Representatives is currently hearing many potential amendments for the COMPETES Act and passed this mink ban, co-sponsored by Representatives Rosa DeLauro and Nancy Mace, with bipartisan support (262-168).

EU BRINGS CASE AGAINST CHINA TO WTO

Through the World Trade Organization (WTO), the European Commission (EU) has filed a case against the People’s Republic of China after they began denying trade relations with Lithuania. During December 2021, China heavy restriction on importing or exporting goods with Lithuania. After attempts to handle the issue between themselves failed, the EU felt the next step was to request the WTO begin disputing settlement consultations with China.

The evidence brought by the EU will include China groundlessly rejecting the clearance and import applications of Lithuanian goods, as well as pressuring other EU companies to avoid using Lithuania inputs when exporting to China. The WTO will be reaching out to China with a “request for consultations”, which would essentially ask China for more information in hopes a solution between the parties can be reached. If this is not the case, the EU will likely bring the matter for a panel ruling.

CIT LAWSUIT OVER SECTION 301 TARIFFS

On February 1, 2022, a three-judge panel of Mark Barnett, Claire Kelly, and Jennifer Choe-Grove, heard oral arguments in one of the largest cases brought to the Court of the International Trade (CIT). Plaintiffs HMTX Industries and Jasco Products filed complaint that lists 3 and 4a of Section 301 tariffs were imposed in an action of executive overreach.

In July 2018, President Donald Trump enacted Section 301 as an amendment of the Trade Act of 1974. This modification gave additional tariffs on goods imported from China and was a response to China's tax on U.S. goods. Now, the Department of Justice (DOJ) defends this action in court.

The plaintiffs are asking for abolishment of lists 3 and 4a and a repayment of the tax collected with interest. They claim the Office of the U.S. Trade Representative (USTR) overstepped their abilities described in the Trade Act of 1974 by enacting legislation that heightened trade tensions with China and violated the Administrative Procedure Act (APA) which forbids reckless federal rulemakings. Lists 3 and 4a were enacted without an additional Section 301 investigation and despite thousands of negative public comments in the proceedings. The plaintiffs held that maintaining the eligibility of these duties, gives eligibility to any kind of duty for any kind of reasoning.

DOJ lawyers Justin Miller and Elizabeth Speck challenged the validity of this claim because presidential actions are not subject to review. The judges, however, could not confirm that this was a presidential action as there was no signature or proof that Trump had final approval, and a president's direction is not equivalent to a direct order. The DOJ also believes though lists 3 and 4a were a response to China's U.S. duties, they were imposed for the same central goal of eliminating unfair trade practices and are therefore not an expansion of purpose. Speck noted that the tariffs were only added after the U.S. realized China was not going to end their tax and that a response was necessary.

EXPECTED CHANGES IN NLRB STANDARDS

The National Labor Relation Board (NLRB) announced in December of 2021 their plans to review their joint employer standard and independent contract standard. If the review results in changes which many believe to be the case, there will be an impact on employers.

The joint employer standard establishes when one entity jointly employs another entity's workers. This is relevant because under the National Labor Relations Act, when joint employment occurs, if one party is practicing unfair labor practices, both parties are liable. Under the Trump Administration, this standard was only applied to parties that had direct and immediate control over another party's employee terms and conditions of work. President Biden is likely to change the standard to as it was under the Obama Administration, which declares joint employment when there is indirect control or the unexercised right of control over another party's employees.

Independent contract standards are used to determine if independent contractors hired by a company will or will not be considered "employees", therefore concluding if they will or will not be exempt from federal employment laws. When deemed to be employees, contractors have the rights of the NLRA, including the right to unionize. Currently the standards, set by Trump, are applied after examining how much control the company has on the contractor, the skill level of the job, and the payment method. These standards favor businesses and make classifying workers as independent contractors

easier. The expectation is that Biden will reverse this, making the standard of employee status more common.

Also announced was the new collaboration between the NLRB and the Department of Labor (DOL) that will last 5 years from December 2021. The main purpose of the collaboration is to increase information sharing between the agencies, specifically regarding the unlawful activities of unjust pay, retaliation for exercising NLRA rights, discrimination, misclassification of joint employer or independent contractor, and business plans modeled off illicit activity. If one agency's investigation deals will conduct in violation of the other agency's regulations, they have agreed to advise the employee to continue the investigation with the applicable agency. In additional efforts to increase enforcement, the DOL plans to hire 100 new investigators.

Though the changes of the joint employer and independent contract standards are only predictions at this time, employers should prepare for these pro-employee mandates as they are likely to occur. Going forward, the NLRB and DOL will have more capability to enforce regulations which could present issues for employers acting outside of their legal capacity.

NEW FMC COMMISSIONER MAX VEKICH



Max Vekich being sworn in as FMC Commissioner

On February 15, Max Vekich was sworn-in as a FMC Commissioner. Nominated twice by President Biden and now confirmed by the Senate, Vekich's term will end in June of 2026.

During his four terms served in the Washington State's House of Representatives, Vekich chaired the Commerce & Labor, Trade & Economic Development, and Agriculture committees. He also has more than 40 years of experience working as a longshoreman where he joined the International Longshore and Warehouse Union (ILWU), and served as President of ILWU Local 52 and on the ILWU International Executive Committee. Vekich begins his term as Commissioner excited to serve and has the goal of "keep cargo moving".

SUPPLY CHAIN TRACKING IN FASHION ACT AND UFLPA

There has been much criticism surrounding the supply chain tracking required in both the pending New York Fashion Sustainability and Social Accountability Act (Fashion Act) Act and the passed Uyghur Forced Labor Prevention Act (UFLPA). While the goal of these Acts is favorable, mapping imports from their starting point is a difficult and complex task that is a justified worry of businesses.

The Fashion Act requires companies making more than \$100 million in global revenue to develop a social and environmental sustainability report which will outline risks within those areas, include actions to lessen their impact and start a proper system to track their progress. Other requirements of the Act include:

- Businesses must post their goals of climate change mitigation, water management, volume of material use, and the amount of recycled material.
- The average wage of garment workers must be made public knowledge.
- Discloser of half of a company's suppliers, the half being those of higher risk (on a sanctions list or subject to WROs).
- Fines of up to 2% of annual revenues will be placed on companies that make more than \$450 million and have not composed their disclosures. Companies will have a 3-month period before fines are collected to post their findings.
- Consumers have a private right of action to enforce compliance.

Though this Act is believed to have little chance of passing, similar Acts may come about. If put into place, businesses would likely have to alter contracts with manufactures to ensure environmental and labor standards are met. This is an efficient way to ensure legitimacy and even gives opportunity for legal action if requirements are not met, however, changing contracts may risk relationships between parties. This especially applies to situations like this, that ask more from the manufacture.

Nonetheless, businesses are most concerned about the private right of action of consumers. Citizens would be able to take legal action against businesses for not complying, leading to potentially bad publicity and harm to a company's name.

Additionally, the disclosure of suppliers is a worry of businesses for both strategic and practical reasons. Releasing sources could give up a company's competitive advantage, and realistically tracking the supply chain of a business past the first and second tier suppliers is extremely difficult. This research is also asked of businesses in the already newly passed UFLPA.

The supply chain tracking required in the UFLPA is to ensure no goods of forced labor from Xinjiang, China enter the U.S. The Act demands that businesses become aware of each step of their products, down to where the raw materials are extracted from. Arent Fox lawyer Angela Santo wrote about the inconsistencies businesses have faced when trying to comply with the new mandates. The regulations seem to differ port to port, some asking for more information than others. The lack of consistence slows down the movement of goods, creates delays subject to demurrage fees, and cause products to arrive past relevancy. Santos suggests the CBP reveal how they determine legitimacy of

imported goods, and which creditable tools are best for businesses attempting submission to use to avoid issues.

Santos adds that the comment period of the UFLPA is crucial for businesses to have their concerns addressed.

TRACIT SEND OUT FAQ AND FACT SHEET ON SHOP SAFE ACT

The Transnational Alliance to Combat Illicit Trade (TRACIT) has written a Fact Sheet and FAQ list regarding the SHOP SAFE Act and will be distributing them amongst their contacts on the House of Representatives. The goal of this is to relieve any questions or concerns that would prevent this Act from going forth in the America COMPETES Act. The FAQ defines what the Act is and covers what the effects will be on small business across the country. Most answers included reinforcement by a direct quote from the Act. The FAQ can be found [here](#).

TRACIT's Fact Sheet, discusses the harm caused by counterfeiting, how illegal goods steal from the U.S. economy, and how that has increased greatly with the popularity on online shopping. This Sheet can be found [here](#).

6 STATES PRESENT BILL TO COMBAT SALE OF STOLEN GOODS

Legislators in California, Florida, Massachusetts, New Hampshire, Ohio, and Washington have proposed bills to stop online sales of stolen goods. These bills would force marketplaces to obtain and share identifying information of their high-volume marketplace sellers. They have defined high-volume marketplace sellers as sellers who in any continuous 12-month period of the last 2 years, sold 200 or more discrete products online which accumulated a gross revenue of \$5,000 or more.

The information that would be required from the sellers includes banks account number, name (or a government document of a representative of the seller), business tax or taxpayer identification number, email address, and telephone number.

This is comparable to the INFORM Consumers Act which has been added to the America COMPETES Act and is anticipated to be included in the final version. The INFORM Act, which would be enacted nationally, also requires the same information from high-volume third-party sellers which are similarly defined as vendors who made in a continuous 12-month period, 200 or more discrete sales accumulating \$5,000 or more.

SENATE VERSION OF OSRA

The Ocean Shipping Reform Act (OSRA) passed through the House in December of 2021, and the Senate has now begun drafting their version with cosponsors Senators Amy Klobuchar and John Thune. The Act, which passed with huge bipartisan support, works to increase the authority and abilities of the Federal Maritime Commission (FMC),

specifically making it harder for ocean carriers to reject American exporters and place large fees on shippers. Here are some details to be included in the bill:

- The FMC would be required to enforce new rules prohibiting ocean carriers from denying U.S. export opportunities for unwarranted reason.
- Ocean common carriers would give mandatory quarterly reports to the FMC detailing their total import/export carrying capacity and twenty-foot equivalent units (loaded or empty) per vessel that port in the U.S.
- The FMC would be able to launch investigation into potentially unlawful business conduct of carriers and relieve those issues with the appropriate enforcement.
- Shipping exchanges would be able to be registered by the FMC which would enhance service contract negotiations.
- Before imposing demurrage and detention fees, carriers must gain certification requirements.

Some industry leaders are hesitant to believe further regulations on shipping carriers will make real impact on the current supply chain issues, and claim this bill, as the House left it, is very close to interfering with the free market. Nonetheless, there is much anticipation and hope that this legislation will result with a decrease in shipping delays and a more equal relationship between shippers and carriers.

REQUEST FOR COMMENT ON DETENTION FEE REGULATIONS

The Federal Maritime Commission (FMC) will soon be posting a request for comment on potential new legislation regarding demurrage and detention fees. This discussion comes after many complaints from lawmakers and shippers of unfair fees imposed by ocean carriers. The bill plans to make implementing fees a more regulated process, preventing unnecessary.

The FMC seeks comments from industry leaders on the following issues:

- If shippers should be notified of the fees within a certain time frame, as shippers have had confusion on the validity of their fees due to undefined timeframes. There are conversations about applying similar ruling to fee refunds.
- If the rules should blanketly apply to both vessel and non-vessel operating common carrier, or if there should be specifications depending on the entity.
- If ocean carriers should be required to give specific and clear reasoning for charges, as a large portion of complaints are due to the vagueness of these charges.
- How bills should be calculated, and if there are exceptions for unanticipated events that may cause delays.

Once the pre-rule is published, the 30-day comment period will begin. Specific dates to come.

FMC COMMISSIONER ISSUES STATEMENT

On February 15, the Commissioner of the FMC, Rebecca Dye, issued a statement on how shippers can most efficiently submit their complaints regarding demurrage and detention fees. In the statement, she clarifies the distinction between complaints and potential legal violations that would need to be investigated. There are also multiple links included that lead to the FMC website and provide information helpful in determining which kind of complaint to pursue and what details are needed to do so.

Additionally, Dye mentions her and the Commission's ongoing efforts to clarify procedures through the issuance of these statements, as well as holding a webinar in the near future.

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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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