



## **FJATA NEWSLETTER**

### **January 2023 Edition**

#### **U.S. AND INDIA STRENGTHEN TRADE RELATIONSHIP**



*U.S.-India Trade Forum meeting in New Delhi, Nov. 2021*

Continuing to find alternative trade partners to China, the U.S. is focusing on strengthening ties with India. The countries have announced a new effort to enhance their trade relationship and deepen their economic ties. The goal of this is to create a sustainable and resilient partnership that will withstand current and future global challenges, as opposed to some current U.S. relationships that tend to falter in times of uncertainty.

On January 11, 2023, the U.S.-India Trade Policy Forum meeting was held in Washington D.C. In this meeting, the group discussed focus points of their relationship including the following key takeaways:

- Promotion of labor rights and employee benefits to ensure workforce sustainability, growth, and development
- Discussion of good regulatory practices and plans to implement proper rules and regulations
- An understanding of the environmental implications of trade as well as the approaching industry changes towards clean technologies and sustainable finance
- The importance of strengthening the supply chain, specifically in critical sectors, and reaffirming trusted trading relationships
- Launch of a group focused on digitizing customs procedures to aid trade facilitations
- Introducing financial technology services, such as electronic payments, to expedite trade deals

The TPF meeting also led to discussion on the Generalized System of Preferences (GSP), a program that gives certain countries priority trading with the U.S. by ridding some imports of duties. India was the largest user of this program but had their GSP status terminated in June of 2019 due to an excess of market barriers. At the January meeting, Indian representatives expressed interest in gaining this status back. U.S. representatives said they will reexamine their possible eligibility and consider it. Disagreements within Congress have caused uncertainty of the future of the GSP, as some lawmakers believe requirements should be stricter while others disagree.

Both countries voiced care in common trade disruptors such as restrictions, compliance issues, and IP protections. There was discussion of possible tariff reductions, but no finalized agreements. Going forward, the group plans to meet quarterly to build on their relationship and ensure trade between the countries becomes as strong as possible.

## **DRAFT OF AMERICAS ACT PLANS TO UNITE WESTERN HEMISPHERE**

Senators Bill Cassidy and Maria Elvira Salazar have released a draft of the Americas Act that focuses on inviting Central and South American countries to join the USMCA. This comes as a response to the worsening relationship between the U.S. and China. Looking to lessen Chinese reliance, strengthening relations throughout the western hemisphere opens the U.S. to many alternative manufacturing and production locations.

Since Covid-19 and implementation of Section 301 tariffs, many firms are looking to adjust sourcing both for cost and service reasons. This Act, if effective in gaining cooperation of South American countries, would present a solution to high overseas duties and volatile shipping conditions. Tax incentives, grants, and loans, as well as diplomatic initiatives and an immigration provision that grants a temporary work visa for those engaged in elder care in the U.S., will be given to companies that move their production from China to a country in the Americas Act. Additionally, goods exported from any newly nearshored factory will not face any duties. This presents major financial relief to firms who are used to paying large amounts in tariffs.

The authors foresee the program to essentially pay for itself, as it will primarily be loaning out money and “will only cost make as much as it brings in” as the summary states. With that, they propose \$40 billion be available for loans, grants, lines of credit, insurance, or equity arrangements for the relocating of manufacturing facilities. These funds will be managed by Commerce, and the bill in its entirety will be managed by the International Trade Administration. Much of the seed funding would come from negotiating with other countries to increase their de minimis levels, and if not, raising U.S. de minimis levels to match that of those countries.

Countries interested in becoming a part of the Americas Act will have five years to comply with the stated eligibility requirements. The requirements are listed in the draft and include the absence of any raw materials from counties using forced labor. During these five years, interested countries will still be able to benefit from the Act.

## **GSP AND MTB YET TO BE RENEWED**



*Idaho Senator Mike Crapo, an avid supporter of GSP and MTB renewal, speaking in Washington, D.C. in early 2022*

The Generalized System of Preferences benefits program (GSP) and the Miscellaneous Tariff Bill (MTB) were not renewed in 2022 as some Senators hoped they would be. Both the GSP and MTB effect U.S. greatly. The encourage trade, these programs allow tax incentives to certain countries. Some trade relationships are sustained due to the benefits of these programs. If not renewed, trade with the U.S. may become less favorable and could hurt international business relationships.

Senator Mike Crapo voiced his disappointment of this delay noting how important these programs are to U.S. trade relations. A version of the GSP and MTB renewals were passed in the Senate but have yet to be accepted by the House of Representative. Senator Crapo is optimistic that a Republican majority in the House of Representatives will result in easier passage of the renewals.

## **FTC ANNOUNCES RULE BANNING NONCOMPETE AGREEMENTS**

On January 5, 2023, the Federal Trade Commission (FTC) announced a proposal of a new rule that would restrict all noncompetition agreements between employers and employees. This rule would make it illegal for employers to enter, attempt to enter, maintain, or suggest obligation to a noncompete agreement with an employee. This is consistent throughout all employees regardless of wage or position. Additionally, any existing agreements of the same kind would no longer be valid. Other employment agreement such as nondisclosures and non-solicitations will not be affected unless they overlap with the functions of a noncompete.

The rule is proposed after notice that noncompetition agreements often lead to exploitative practices through wage suppression and slower industry growth by limiting people's ability to open their own business. The FTC estimates that eliminating these agreements, wages in the industry could increase by around \$300 billion and introduce 30 million new career opportunities.

The FTC is requesting comments on this proposed rule until March 10, 2023.

## **FMC TO PUBLISH A SNPRM IN RESPONSE TO PUBLIC COMMENT**

Last December, as reported by FJATA, the Federal Maritime Commission (FMC) requested comments in response to the Unreasonable Refusal to Deal or Negotiate with Respect to Vessel Space Accommodations. After viewing and considering these comments, the FMC announced they will issue a Supplemental Notice of Proposed Rulemaking (SNPRM) to address said comments.

The Commission received almost 30 comments in December which incited deeper analysis of the issue. The SNPRM, which will also be open to comment, aims to address the comments thoroughly and completely while giving the public an opportunity to respond.

## **BIDEN RENOMINATES DYE FOR FMC COMMISSIONER**

On January 3, 2023, President Biden announced his renomination of Rebecca F. Dye as commissioner of the Federal Maritime Commission. Commissioner Dye was first appointed by President George W. Bush in 2002 and has held the position since. Biden previously renominated Dye in March of 2022 but the nomination was not confirmed by the Senate. Following the Senate's holiday recess, Biden has again nominated her. If confirmed, the term will last until June 30, 2025.



## **\$1.3 MILLION IN COUNTERFEIT GOODS FOUND IN KY**

On January 2, 2023, the Louisville CBP seized a shipment of 4,920 fake Chanel stud earrings. The shipment originated in China and was headed to a Maryland address. The earrings were valued at \$1.37 million, had they been authentic, and are one of many incriminating shipments that arrive at this port. The Louisville CBP has been very effective at intervening with counterfeit goods which is vital to maintaining strong trade.

## **CHINA IMPLEMENTS LAW TO EASE BUSINESS LITIGATIONS**

The Chinese Supreme People's Court issued a new law effective January 1, 2023 titled the Provisions of the Supreme People's Court on Several Issues Relating to the Jurisdiction over Foreign-related Civil and Commercial Cases. This law was enacted to improve civil and commercial lawsuit procedures for both domestic and international cases. The law focuses on properly defending the rights of involved parties while enhancing effectiveness of trials.

Most relevant to U.S. businesses, this law works to promote compatibility with foreign regulations to aid international disputes. The amount of international cases China has increased largely with the pandemic and implementing provisions to assist in those disputes will hopefully ease complications.



## LESSENERED COVID RESTIRCTIONS AND LUNAR NEW YEAR TRAVEL CAUSE COVID CONCERN IN CHINA



*Millions gather across China to Celebrate the Lunar New Year*

Chinese public health officials are concerned that widespread Covid-19 outbreaks will occur during the Lunar New Year, a holiday that incites must travel. Millions of citizens will be traveling from international and domestic locations into the countryside of China where medical facilities are not as equipped to deal with such cases. During the last three years of Covid restrictions, people were discouraged from traveling and gathering with those living outside of their homes for the Lunar New Year. This year is the first in three that the holiday will be able to be celebrated properly, leading to an excess of travel and gatherings.

Along with this immense travel, Chinese authorities recently abandoned their highly criticized zero-Covid policy. This policy strictly limited citizens to their homes, causing economic ruin and nationwide protests. Authorities are also expected to drop previously mandatory quarantining for international travelers which allows citizen to come and go freely despite the country's increasing Covid reports. In response, many countries such as the U.S., Japan, and France have imposed travel restrictions for those coming from China.

Since the government dropped restrictions, case numbers began to climb. Emergency rooms in bigger cities have been full of Covid patients, mainly elderly people who have lower vaccination rates. Hospitals in the countryside, where many will be traveling to, is much less prepared and experienced with large influxes of patients. Health officials are fearful of Covid outbreaks in these areas and are working to coordinate with hospitals to provide additional resources and transportation services.

## **“INSPIRED JEWELRY DESIGNS” AND THE LAW**

### **Part I – Copyrights**

*The following article was written by Charles A. Whittier of the Whittier Law Group. Mr. Whittier is an attorney of 20+ years standing in the state and federal courts of New York and Texas. His firm specializes in Intellectual Property Law, Commercial Litigation, and International Trade Law. If any FJATA members have legal concerns or would like to discuss the following article further, you are cordially invited to consult with Mr. Whittier by calling (212) 537-9185 or emailing: [charles@whittierlaw.international](mailto:charles@whittierlaw.international).*

Jewelry designs are inspired, original works that are capable of copyright and sometimes trademark registration. The registration of this intellectual property (IP) protects it from being copied or used by an unauthorized party and is the main legal protection against copying, used by all the major jewelry manufacturers (e.g., Tiffany, Cartier, BvLgari, Harry Winston, Buccellati, etc.).

A legal issue arises when a design is “inspired-by” another original work and the holder of a copyright of the original work claims that their IP rights have been infringed. This article will briefly analyze copyright laws as they apply to “inspired-by” designs; as well as how to establish a claim for copyright protection, or a defense against copyright infringement allegations.

#### Copyright Protects Original Works

United States copyright laws protect a plethora of exclusive rights held by creators in their original works produced in a tangible form: for example, jewelry. These rights include exclusive reproduction, distribution, and the right to create additional works derived from that original work.

Anyone other than the copyright owner who reproduces or distributes copyrighted material without the owner’s authorization is an infringer of those copyrights and, therefore, subject to penalties under the law. Since most jewelry items are composed of ubiquitous shapes in the public domain (circles, squares, loops, etc.) most copyright disputes involving these manufactured goods focus on the factual determination of whether the original work that inspired the new design, is itself sufficiently original to deserve copyright protection.<sup>1</sup>

#### Copyright Validity and Protection

As a practical matter for jewelry purveyors, the question is “are the items they are creating and selling in the commercial marketplace legal or illegal goods?”

Although not conclusive, the best evidence of copyright legality is that the design has been registered with the U.S. Patent, Copyright and Trademark Office (USPTO). Creators that register with the USPTO can point to that fact as *prima facie* evidence that they are the rightful copyright owner of the design and have the right to commence a federal lawsuit to protect their rights against unlawful reproduction. The authorized purveyors of those copyright registered designs may also utilize that fact as a strong defense against allegations of infringement by 3<sup>rd</sup> parties.

However, where an “inspired-by” design item is created and sold, but is not registered with the USPTO, a lawsuit may be filed against the creator and/or purveyor of that item, by a registered copyright owner (the plaintiff) claiming infringement of their registered design. In such lawsuits, the defendant must prove, and the court must decide whether the registered design is either unoriginal or not copyrightable.<sup>2</sup> Conversely, where a creator claims that another design work has infringed upon their copyright registered work, they must show that the infringing work is “strikingly similar”<sup>3</sup> or “substantially similar”<sup>4</sup> to their original copyright registered item. This basically means that the infringing item was so similar in its essential features to the copyrighted piece, that the similarity was immediately apparent to the average observer and overshadowed any differences which are only discernable upon closer examination.

Notably then, a purveyor of “inspired-by” jewelry, who deals with items that may be considered to be infringing a registered copyrighted design, must be wary that the court will consider all elements of the “inspired-by” design to determine ‘similarity’; therefore, the creator and the purveyor of the new work must ensure (as far as possible) that elements of their design are different and discernable enough in areas such as size, shape, proportions, geometric arrangements and related aesthetic aspects, from the original copyrighted design that provided their inspiration.

Failure to create enough distinctiveness between the new design and the original inspirational design, will make it likely that a federal court will find that a substantial similarity exists.<sup>5</sup> And where a substantial similarity exists, a breach of copyright has occurred by the “inspired-by” design.

### Copyright Damages Awards

The U.S. Copyright Act provides that a copyright owner whose rights have been violated (the plaintiff) may recover in a lawsuit, either actual damages (real losses including profits) or statutory damages, which can range from \$750 per violated work to \$150,000 per violated work from the violator (the defendant), contingent on the factual circumstances of the case.<sup>6</sup>

Clearly, these damages are potentially substantial, depending on how many works are found to have been infringed upon by the defendant in a particular case.

### Evaluating Your Legal Position

**If you are the holder of a registered copyright for a jewelry design, then your main pursuit is protection and enforcement. You want to protect your design and enforce your rights by making sure that you:**

1. “Broadcast” the design, in other words advertise it in the media and over the Internet. Inform other designers and the jewelry industry that you have a new, original, copyrighted design for use under license. This will help your enforcement case later if a copycat designer tries to claim that their design was inspired by other influences apart from your work, you can counter that it is highly likely that the infringer was indeed familiar with your widely advertised work and copied it;

2. Retain a competent IP attorney. If you do find out that a design you have copyrighted is being copied without license, your attorney can start the process of protecting your copyrights and ensuring that if the infringing party is found liable, you will receive the maximum amount of damages possible;
3. License your design. If you have a copyright registered design that is popular, offer to license the design and/or elements of it to manufacturers of jewelry for a negotiated fee. The true worth of a copyrighted jewelry design is the money it creates from the sale of jewelry based on that design.

**If you are the manufacturer or purveyor of jewelry which is “inspired-by” other jewelry designs, you know or suspect to be under copyright registration, make sure that you:**

1. Retain a competent IP attorney to examine your “inspired-by” design. The attorney will review with you the design elements of your creation and the original work it was “inspired by” and can suggest ways to help you distinguish your design from the copyrighted work, that will likely be accepted by the court in case of a lawsuit.
2. Inform your attorney immediately, if you are sued or even threatened with a lawsuit by a party owning a copyright, who alleges you are infringing. An IP attorney will be able to ascertain if the plaintiff has any legitimate claims, and if so, the best way for you to proceed to protect your interests, minimize any damages, and perhaps successfully assert your right to continue to use your disputed design.
3. Have an IP attorney file copyright registrations for your original designs, even if they are inspired by other possibly copyrighted works. If the distinction between your design and the other work is substantial enough, your copyright registration will legally armor you against lawsuits claiming that your design is infringing another; and will substantially shift the burden of proof against the party bringing such a suit against you.

*Part II – Trademark Issues in International Trade will be in FJATA’s February issue.*

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<sup>1</sup> 37 C.F.R. § 202.1

<sup>2</sup> See *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 346 (1991)

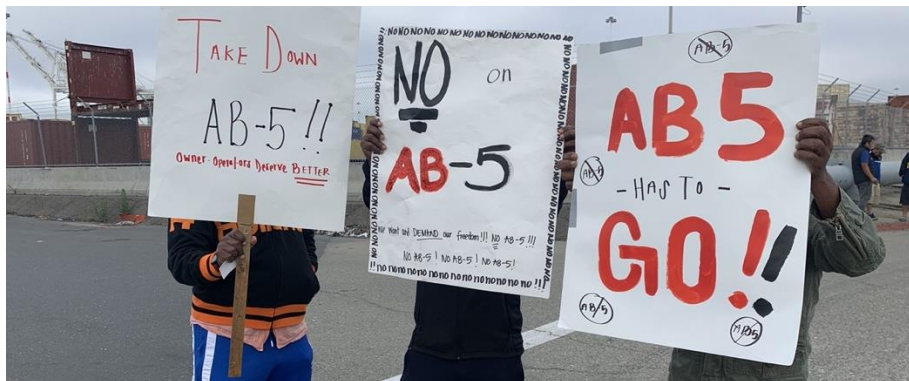
<sup>3</sup> *PPS, Inc. v. Jewelry Sales Representatives, Inc.*, 392 F. Supp. 375 (S.D.N.Y. 1975).

<sup>4</sup> *Van Cleef & Arpels Logistics, S.A. v. Landau Jewelry*, 547 F.Supp.2d 356 (S.D.N.Y. 2008). <sup>5</sup> *Severin Montres, Ltd. v. Yidah Watch Co.*, 997 F.Supp.1262, 1265 (C.D. Cal. 1997).

<sup>6</sup> 17 U.S.C. §504(a).



## CTA REFUTES AB5 IN PRELIMINARY INJUNCTION



*Independent truck drivers protesting AB5 in Oakland, California in July 2022*

The California Trucking Association (CTA) continues in their efforts to stop California's Assembly Bill 5 (AB5), a bill that would make it more difficult for workers and truck drivers to qualify as independent contractors as opposed to employees. The CTA has long been opposing this rule as it would require many independent truck drivers to become full employees, limiting their abilities to choose their hours, routes, and vehicle.

Earlier this month, the CTA placed a renewed bid for a preliminary injunction of AB5, claiming that it is preempted by the Federal Aviation Administration Authorization Act (FAAAA). The CTA alleges that AB5 hinders the ability of firms to provide motor carrier services and prevents them from hiring workers. These rights are protected in the FAAAA, a federal law, which should take precedence and therefore dismiss the bill. The FAAAA also prohibits states from enacting laws that effect prices or services offered by motor carriers.

In January 2020, an injunction blocked enforcement of AB5 and in April 2021, a Ninth Circuit began investigating the case. U.S. District Judge Roger Benitez ruled that the AB5 and FAAAA do conflict, however the rest of the panel maintained that while the bill increases costs for employers, it does not have a direct effect on their services. The CTA countered that the bill would have a direct impact on their services because it would make hiring truck drivers, the people performing the services, much harder. They added that truck drivers are fiercely independent workers, and many would change industries before being an employee. If this occurs, trucking companies will be forced to offer less services leading to a slower movement of goods.

Though they are prepared to stand by AB5, the California Attorney General's Office is currently reviewing the preliminary injunction.

## **NEW LAWS IN NY TO RESTRICT PFAS**

Many laws limiting the use of PFAS are being implemented in 2023. PFAS are manmade chemicals that have been widely used in many products since the 1940s. Nicknamed “forever chemicals”, these chemicals do not breakdown naturally and can be cancerous. Despite this, they are regularly used in products that are heat, oil, stain, grease, and water resistant and it is reported that the vast majority of American have some sort of PFAS in their bloodstream already. The following are three regulations recently enacted by the New York Department of Environmental Conservation (DEC):

- Beginning December 31, 2022, the DEC implemented a maximum allowable concentration of two parts per million (ppm) of 1,4-dioxane in household cleaning and personal care products, as well as a 10 ppm limit for cosmetic products. 1,4-dioxane is a PFAS used as a chemical stabilizer and commonly found in chlorinated solvents. This chemical has been found in groundwater throughout the U.S., specifically Long Island, and is very costly to clean up. The DEC is hopeful these new regulations will lessen the exposure of this chemical.
- The DEC implemented a prohibition on intentionally added PFAS in paper-based food packaging that is intended to have direct contact with food. This restriction began effect on January 1, 2023, and is a part of the Hazardous Packaging Act.
- Taken effect on January 1, 2023, the DEC enacted limitations on the sale of children’s products containing intentionally added benzene, asbestos, or tris (1,3-dichloro-2-propyl) phosphate in the state. Additionally, the Toxic Chemicals in Children’s Products (TCCP) law requires disclosure of certain chemicals when present in children’s products. The DEC will release the list of which chemicals need to be disclosed soon.

## **FJATA SIGNS LETTER TO USTR ON SECTION 301 TARIFFS**

FJATA and many other trade associations sent a letter to USTR Katherine Tai to comment on the China Section 301 tariffs. The USTR had asked for comments to review these tariffs after the four years of their presence. The letter strongly opposes the tariffs and lists their two main faults: the tariffs have failed to achieve their job and instead have harmed American businesses, consumers, and U.S. competitiveness.

The letter was sent on January 17, 2023, and was signed by 177 fellow trade associations.

## 2023 TRADE SHOW AND MARKET WEEK DATES

**JANUARY MARKET WEEK:** January 9 - 12  
**PROJECT** New York: January 23 - 25  
**PGA SHOW:** January 24 - 27  
**NY NOW:** February 5 - 8  
**FEBRUARY MARKET WEEK:** February 6 - 9  
**MAGIC** Las Vegas: February 13 - 15  
**PROJECT** Las Vegas: February 13 - 15  
**MAGIC** New York: February 21 - 23  
**PROJECT** Tokyo: March 15 - 16  
**MAGIC** Nashville: April 26 - 27  
**MAY MARKET WEEK:** May 1 - 4  
**AUGUST MARKET WEEK:** July 31 - August 3  
**DESTINATION MIAMI BY COTERIE:** July 8 - 10  
**MAGIC** Las Vegas: August 7 - 9  
**PROJECT** Las Vegas: August 7 - 9  
**SOURCING** Las Vegas: August 7 - 9  
**MAGIC** New York: September 19 - 21  
**SOURCING** New York: September 19 - 21  
**NOVEMBER MARKET WEEK:** November 6 - 10

## 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](mailto:executive_director@fjata.org).

### The Executive Committee

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