The Fashion Jewelry & Accessories Trade Association

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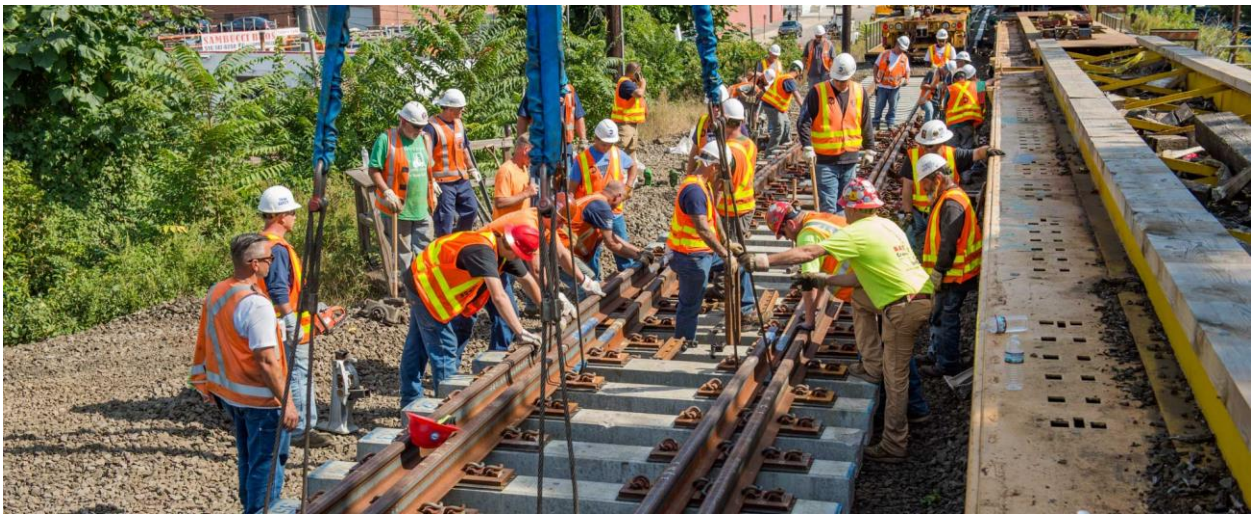
FJATA NEWSLETTER

November 2022 Edition

RAILROAD STRIKE MAY OCCUR AFTER "STATU QUO" PERIODS EXPIRE



Members of the BMWED working on the LIRR expansion switch in 2019

Negotiations with railroad workers continue to rage on as many unions are withdrawing from the tentative agreements made weeks ago. While the agreements were successful in preventing a strike that would have seriously hindered the U.S. supply chain, they were not made binding. Railroad unions are now voting whether or not to officially enter into the agreements, and many are rejecting them.

The Brotherhood of Maintenance of Way Union (BMWED) and the Brotherhood of Railroad Signalmen (BRS) have both conducted votes ending in refusal of the agreement. Though their rejection is an issue, more pressing is the date the "status quo" period of unions expires. In original negotiations with railroad unions, they agreed to a "status quo" period in which worker are unable to strike. The BMWED recently extended this period's ending date from November 19th to December 8th, the same as the BRS. Most of the unions that have yet to finish their votes have a "status quo" period until December 21st. This means the earliest a strike can occur is December 9th.

Union	Members	Ratification Vote	% of total
SMART Transportation Division	37,400	NO	30%
Brotherhood of Locomotive Engineers and Trainmen	24,700	YES	20%
Brotherhood of Maintenance of way Employees	23,900	NO	19%
Brotherhood of Railway Carmen	9,200	YES	7%
Brotherhood of Railroad Signalmen	7,300	NO	6%
IAM District 19	6,600	YES	5%
Intl Brotherhood of Electrical Workers	5,800	YES	5%
Transportation Communications Union	3,800	YES	3%
National Conference of Firemen and Oilers (SUIU)	2,400	YES	2%
American Train Dispatchers Association	1,500	YES	1%
SMART Mechanical Dept	1,400	YES	1%
Int Brotherhood of Boilermakers	500	NO	0%
	124,500		

FJATA has signed onto a letter by the U.S. Chamber of Commerce that will be sent to all members of Congress urging them to act to prevent a strike. On November 28th President Biden and Speaker Pelosi, responding to pressure from industry called on congress to pass legislation to avoid a strike.

INFORM CONSUMERS ACT PASSES HOUSE

On November 17, the Inform Consumers Act was passed through the House and is now expected to be signed into law during the lame duck session. The Inform Consumers Act requires high-volume third-party sellers to disclose their names and contact information to consumers on e-commerce platforms. The bill was collectively voted on alongside six other impartial bills, with the group being passed in a landslide vote of 381-39. It will now move on to the Senate for approval as an amendment to the National Defense Authorization Act. We will continue to keep our members informed of any updates as the Inform Consumers Act continues to make its way through the legislative process.

FIRST SALE RULE SAVES U.S. IMPORTERS COSTS

The usages of the CBP's first sale valuations have been helpful for companies struggling to keep competitive prices with high rates on inflation and costs. Traditionally, the price import duties are based on is the price charged between the middleman and the U.S. importer. However, the first sale rule allows importers to base their duties on the price paid between the manufacturer and the middleman, a lower value. This can save importers considerable costs.

To use the first sale rule, importers must meet three primary requirements:

1. The goods must distinctly be destined for the U.S.

2. There must be two bona fide sales between the parties
3. The first sale value must be at arm's length

The CBP has specifically been monitoring the last requirement to ensure the middleman officially took title of the goods, therefore assuming risk of loss, as a part of the transaction. In ruling H316892, a U.S. importer was denied usage of the first sale price because the Hong Kong middleman vendor never assumed full risk or title of the products and was therefore not a bona fide buyer or seller. The importing company ultimately had to value the goods at the price it paid the middleman. If attempting the first sale rule, make sure to clearly define who holds the title throughout the shipping process.

NEW VERSION OF CTPAT HANDBOOK RELEASED BY CBP

The Customs-Trade Partnership Against Terrorism (CTPAT) Trade Compliance program handbook has been updated by the CBP. Released on November first, this second version on the handbook includes revised language surrounding the disclosure benefit and sections covering new requirements, such as forced labor.

CBP RELEASED DRAFTED SCE REQUIREMENT FOR XUAR POSTAL CODE

The CBP has recently posted a draft of the ACE requirement for the Chinese postal code. The ACE requirement will be necessary in two sicarios: 1) when importing the manufacturer's country of origin is China or 2) anytime the manufacturer's country of origin is China and there is a new or updated manufacturer ID. To ensure a smooth transition, the CBP is creating a Trade Support Network where the trade community can discuss concerns, suggested improvements to implementation, and what timeline is necessary for ACE certifications.

The new postal code will alert importers that their goods may have been produced in the Xinjiang Uyghur Autonomous Region (XUAR) of China, which is subject to the Uyghur Forces Labor Prevention Act (UFLPA). When the new system is put in place, ACE users will be notified that a region postal code for the Uyghur region has been provided, and that importers must abide by the rebuttable presumption enforced through the UFLPA when this code is present.

CBP RELEASES REQUIREMENTS FOR CTPAT PROGRAMS

The US Customs and Border Protection has recently released an update to its CTPAT Trade Compliance program. In response to recent criticisms that the previous CTPAT program required difficult self-compliance measures to be taken with very little

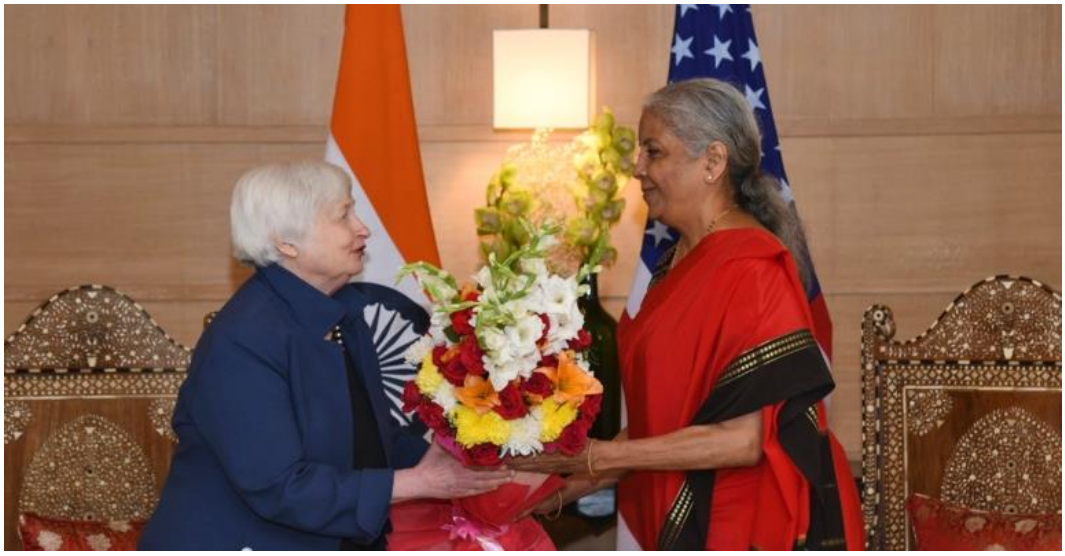
reward, the CBP has promised three tangible benefits to companies that participate in the Importer-Self Assessment (ISA) program for their CTPAT compliance. These benefits include, (1) priority admissibility review; (2) redelivery hold; and (3) permission for detained withhold release orders to be moved to bonded facilities.

In addition to these tangible benefits, the new CTPAT Trade Compliance Handbook also includes a range of new forced labor compliance requirements such as: risk-based business mapping; evidence of implementation; code of conduct agreement; due diligence and training; maintenance of remediation plan; and shared best practices with CTPAT Trade Compliance program members.

In order to be considered for the CTPAT Trade Compliance program eligibility, importers must meet the following criteria: Be an existing Tier 2 or 3 CTPAT member with no previous violations; A US or Canadian based importer; Have two years of importing experience; Have no CBP financial debt; and Have completed a Memorandum of Understanding and Program Questionnaire. CTPAT Trade Compliance members are expected to work methodically with the CBP to identify security breaches in the supply chain, develop resolute security measures, and implement a range of practices to maximize security.

The fully detailed guidelines containing all of the updated requirements and benefits of the CTPAT Trade Compliance program can be found here.

U.S. LOOKS AT INDIA AS A POTENTIAL TRADE PARTNER



U.S. Treasury Secretary Janet Yellen and Indian Finance Minister Nirmala Sitharaman conversing at the G20 Summit on November 11th

While the U.S. greatly values globalization, the country is prioritizing building relationships with countries that present less risk of trade disruptions. This includes disruptions stemming from differences in human rights ethics, geopolitics, and physical barriers. U.S. Treasury Secretary Janet Yellen recently spoke on the risks of relying heavily on one source for imports, the two most concerning being Russia and China. Yellen states how a strategy is developing to “diversify away from countries that present

geopolitical and security risks to our supply chain" which will "create redundancies in our supply chain to mitigate over-concentration risks."

In line with this strategy, the U.S. will deepen ties with trusted trade partners of both developing and advanced economies. A primary partnership the U.S. is exploring is with India. Many companies looking to remove themselves from China may expand in India due to rapid developments being made and the large population size. The U.S. International Development Finance Corporation is investing in many different projects in India including microfinance and renewable energy. This will expand India's ties to the global supply chain and allow industries to grow.

There are some hesitations to this partnership, largely stemming from India's rejection of the trade pillar within the Indo-Pacific Economic Framework. This pillar is expected to discuss digital trade, trade facilitation, agriculture, labor rights, and competition. Other doubters of this partnerships find that the U.S. and India share fundamental differences in certain trade issues and believe that the U.S. does not have the proper economic leverage needed to compel India to negotiate or compromise. Gaining this leverage would be achieved only by tariff relief or a reinstatement of the Generalized System of Preferences, though it is doubtful the U.S. government would implement either of those suggestions.

THE COSTS OF PROP 65

The California Office of Environmental Health Hazard Assessment (OEHHA) continues to add more chemicals to California's Proposition 65 (Prop 65). The original Prop 65 was made in 1989 and listed 26 chemicals; today bill has swelled and lists 950 items and counting. Most chemicals such as PFOA and PFOS have been added due to the risk of cancer or reproductive harm they present. Products containing any chemicals from Prop 65 are restricted from being manufactured, distributed, or sold in California.

For businesses, Prop 65 disputes can be costly. Penalties may reach $2,500 a day per violation. Additionally, when taking claims to court, losses usually result in coverages of the opposition's financial costs. When the OEHHA restricts new chemicals, businesses must modify how they test their products, as well as edit the warning labels used. This can be time consuming and expensive. Warning labels must comply with the regulation of the OEHHA, and if the font, sizing, lettering, etc., is not up to standard, civil enforcement suits may develop. It is no uncommon for businesses to spend hundreds of thousands of dollars on Prop 65 compliance and violations. Understanding and being aware of the supply chain of products is crucial in knowing what chemicals may be present in a company's goods.

Prop 65 NOTICES BPA-CONTAINING ATHLETIC APPAREL

In yet another case of the increasing scrutiny surrounding PFAS compliance, the Center for Environmental Health (CEH) recently tested a range of textile products across the industry for PFAS contents and found several brands to be in violation of Prop 65 regulations. After detecting a lineup of BPA, PFOS, and PFOA chemicals in a variety of brands selling women's athletic apparel, the companies found in violation of Prop 65 were issued legal notices by the CEH due to the lack of warning labels on their products. The results of the CEH's textile testing found that some products were 22 times over the permissible level of BPA contents under Prop 65. Due to the dangers presented to the reproductive system when exposed to these chemicals, this level of BPA substances in clothing that is typically worn for long periods of time after sweaty workouts is particularly concerning. The legal notices issued by the CEH ordered these athletic brands to remove all bisphenols and warned consumers to limit their usage of these products until changes have been made. These violations join the growing list of PFAS related legal actions that have been filed across the country. In just the past two months, eight violation notices have been issued for products such as bibs, bath pillows, jackets, golf umbrellas, fabric shower liners, crib mattress pads and tablecloths. Companies must be sure to review PFAS contents of their products and ensure their labels sufficiently warn consumers of any potential exposure in order to meet the standards of Prop 65.

PROP 65 ONGOING FIGHT FOR CONSUMER SAFETY

In September, the annual Proposition 65 Clearinghouse Conference took place in San Francisco to gather stakeholders and discuss the current state and future direction of the notorious law. At the conference, a diverse panel of hundreds of legislators, environmentalists, manufacturers, retailers, chemists, and plaintiff and defense attorneys discussed what it meant to effectively enact legislation in the public's interest and determined what steps should be taken to continue to prioritize consumer safety. The panel's philosophy was that when one product is found to be in violation of Prop 65, it sets a precedent for a whole line of products to reformulate their manufacturing methods to adopt safer substances to minimize the risk to consumers. The far-reaching effect of just one violation or regulation will reshape the entire retail and manufacturing industry in order to institute safer practices at all levels of the supply chain for the ultimate benefit of consumers.

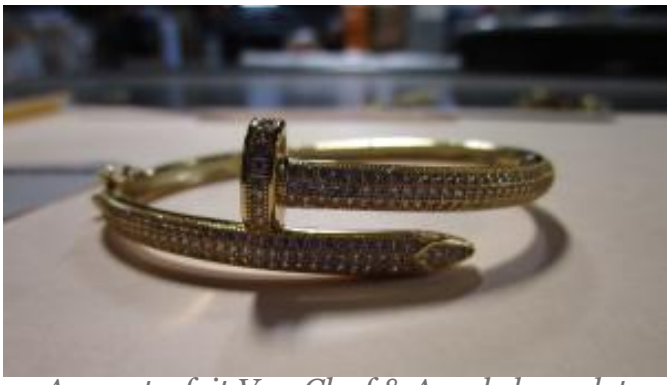
The conference also led discussions regarding the standards of Prop 65 complaints and whether any individual would be permitted to file a case. Some panelists argued that only those who have proven sufficient understanding of Prop 65 should be allowed to file a complaint, while others opposed such restrictions on the basis that Prop 65 complaints must be available to all individuals to ensure full industry transparency and widespread impacts.

As of now, the current standards for a class action lawsuit are as follows. The plaintiff/s must:

- Have claims or defenses
- Be able to lawfully and effectively protect the interests of the class in the matter
- Have suffered equitable losses as all of the class members
- Not have conflict of interest with class members

COUNTERFEIT GOODS SEIZED IN LOUISVILLE

On October 26th, Louisville CBP seized a package of counterfeit goods arriving from Hong Kong, addressed to a New York corporation. The shipment contained 2,074 pieces of knock-off designer brand jewelry imitating names such as Chanel, Van Cleef & Arpels, and Cartier. After further investigation, the Manufacturer's Suggested Retail Price (MSRP) totaled $2.51 million, had the products been genuine.



A counterfeit Van Cleef & Arpels bracelet seized during the October raid

REI JOINS LONG LIST OF PFAS CONSUMER FRAUD LAWSUITS

REI headquarters in Kent, Washington

In the most recent case of a growing series of PFAS related prosecution, a consumer fraud class action lawsuit was filed on October 28 against outdoor clothing company REI for their products' alleged PFAS contents. Despite marketing their products as environmentally safe and sustainable, REI is being accused of intentionally including unreasonable amounts of PFAS chemicals in a variety of their waterproof outdoor apparel and knowingly withholding that information from consumers – a violation of California's consumer protection and manufacturing laws. REI is facing

charges on the following counts: Violation of state consumer protection laws and the federal Magnuson-Moss Warranty Act; Breach of warranty (implied and express); Fraud (actual and constructive); Fraudulent inducement; Money had and received; Fraudulent omission or concealment; Negligent misrepresentation; Unjust enrichment; and Negligent failure to warn consumers of the harmful PFAS contents. The plaintiffs in the case have requested certifications to obtain classification of a nationwide class action lawsuit seeking coverage for damages, fees, costs, and medical monitoring.

This lawsuit joins a long list of jurisdictional actions taken over the past year as the retail and manufacturing industry increasingly faces scrutiny of PFAS regulations. Despite the immediate enforcement of a range of burdensome regulations in just the past few months alone, legislatures and consumers are showing no mercy to the supply chain industry as manufacturers and retailers navigate these new guidelines. Some recent and ongoing cases to monitor as these defining proceedings continue to unfold include the following:

- Cosmetics industry:
  - *Brown v. Cover Girl*, New York (April 1, 2022)
  - *Anderson v. Almay*, New York (April 1, 2022)
  - *Rebecca Vega v. L'Oreal,* New Jersey (April 8, 2022)
  - *Spindel v. Burt's Bees*, California (March 25, 2022)
  - *Hicks and Vargas v. L'Oreal*, New York (March 9, 2022)
  - *Davenport v. L'Oreal*, California (February, 22, 2022)
- Feminine hygiene products:
  - *Gemma Rivera v. Knix Wear Inc.*, California (April 4, 2022)
  - *Blenis v. Thinx, Inc*., Massachusetts (June 18, 2021)
  - *Destini Canan v. Thinx Inc.*, California (November 12, 2020)

As public health groups and environmentalists continue to push legislators for increased PFAS scrutiny, it is imperative that companies remain vigilant of PFAS regulations and ensure they are in full compliance to avoid any unnecessary fines and violations. Should inadvertent violations take place, companies must ensure their legal teams are prepared to defend lawsuits for PFAS regulations across all fifty states.

MARCO RUBIO RESPONDS TO ATTEMPTS TO WEAKEN UFLPA

On November 2nd, Senator Marco Rubio released a letter he wrote to the Commercial Customer Operations Advisory Committee (COAC) after hearing of their advocacy to weaken the UFLPA, an Act in which Rubio is a lead proponent of. Rubio reports how COAC promoted that data collected from vessel manifests should be confidential and "trusted" importers should be notified early on when the CBP begins to suspect a violation of the Act.

While the UFLPA may present some challenges, the Act is necessary to stop human rights violations. FJATA supports the UFLPA and condemns any efforts to dilute the purpose of the Act.

COMMENTS OPEN FOR SECTION 301 EXTENTION

The USTR is asking for comment on a potential extension of Section 301 tariffs. Comments can be made from November 15th to January 17th and should related to one of the following issues:

- How effective are the tariffs in weakening the technology transfer, intellectual property, or innovation of China's operations?
- Are there other actions or modification that could be more effective in reaching those objectives?
- Are there goods not subject to tariffs that should be?
- Have parts imported for U.S. manufacturing been subject to higher duties due to the Section 301 tariffs?

Additionally, the USTR would like comments on how these tariffs are effecting the U.S. economy, consumers, domestic manufacturing, technology, workers, small businesses, and supply chain resilience and recovery.

FMC ANNOUNCES NEW GENERAL COUNSEL

The Federal Maritime Commission (FMC) has announced Phillip "Chris" Hughey to be the General Counsel of the FMC and a member of the Senior Executive Service. This role includes providing legal advice and recommendations on regulatory and policy matter to the Chairman and Commissioners, as well as managing the Office of the General Counsel's attorneys.

Hughey earned a J.D. and L.L.M. degree from Cornell before gaining his MPA from Harvard in 2007. This career begins with then years at the FMC, first as an attorney then Deputy General Counsel. After spending his next four years at the Federal Election Commission, Hughey served as a Foreign Service Officer from 2012-2022 where he practiced diplomacy at postings in Brazil, Kuwait, and Madagascar.

Through his career, Hughey has argued cases before the U.S. Supreme Court, the U.S. Court of Appeals for DC and Fourth Circuits, and the U.S. Court of Appeals for the Central District of California. FMC Chairman Daniel Maffei welcomes Hughey and believes his vast experiences as a litigator and prior FMC engagements will be a huge asset to the organization.

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.

The Executive Committee

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