



FJATA NEWSLETTER September 2022 Edition

AB5 CONTROVERSY RAGES ON AS OOIDA IS APPROVED AS AN INTERVENOR



An anti-AB 5 protest outside of the Port of Oakland in July 2022

The California Trucking Association’s (CTA) legal opposition to California’s Assembly Bill 5 (AB 5) continues to truck along. Most recently, California legislators approved a request to intervene by the Owner-Operator Independent Drivers Association (OOIDA).

The OOIDA felt that since the case has not moved past the pleading stage and because the outcome has most significance to them and their members, they should be able to intervene. California Attorney General Rob Bonta opposed this view claiming the motion, which comes two and a half years after the original filing, is untimely and should therefore be rejected. He mentions the motion comes after the CTA filed three different complaints, the preliminary injunction, and the state’s multiple motions to dismiss.

Judge Roger Benitez of the US District Court for the Southern District of California approved OOIDA’s intervene on the basis that the Commercial Clause, one of the two main core arguments of the suit, had not been made. Secondly, Benitez recognized the significance and influence the decision of this case will have on their organization.

For background, AB 5 went into effect in January of 2020 but has been opposed by the CTA since its announcement in 2018. The bill increases the required characteristics of an independent contractor, therefore making it more difficult for an employer to classify workers as independent contractors.



Under this bill, workers are assumed to be employees and will have to prove their status as an independent contractor with the three prong ABC Test. Though being classified as an employee gives workers health benefits, minimum wage, expense reimbursements, paid sick time, and other benefits, this status also limits flexibility and schedule control.

The CTA argues that because this bill will have a significant impact on prices, routes, and services, it is preempted by the Federal Aviation Administration Authorization Act (F4A) and should therefore not be applied to the trucking industry. In 2020, the lower court agree and granted a preliminary injunction which blocked AB5 enforcement on truckers. This decision was then overturned by the Ninth Circuit Appeals Court and the preliminary injunction was lifted. The CTA's efforts to have the US Supreme Court review the case failed. As for what happens now, the CTA is continuing their original lawsuit and their fight against AB 5 remains ongoing.

CALIFORNIA BILL TO ENHANCE ONLINE SAFETY FOR CHILDREN MOVES FORWARD

The California Age-Appropriate Design Code Act has passed 33-0 in the California Senate then was advanced by the State Assembly after a 60-0 vote. Now waiting on approval for California Governor Gavin Newsom, this Act works to create a safe online environment for children. Focusing largely on social media sites, creators of digital platforms would be required to research the possible harmful effects of new products and provide privacy guardrails for children. This includes giving the option for children to opt out of data collection. To ensure accountability is held, companies would be subject to civil fines if violations occur. These fines could range up to \$7,500 per child or teen affected.

Representatives of social media companies such as Facebook, TikTok, and Twitter, the businesses that will be directly impacted by this legislation, are against this bill. They argue this legislation could disrupt advancement in this industry, infringe on free speech, and would have little to no success in actually protecting consumers.

Assemblymember Buffy Wicks (D) and Assemblymember Jordan Cunningham (R) propose this legislation hoping it will catch on throughout the country and ensure platforms prioritize the safety of children over commercial interests and financial opportunity. Similar bills have failed passage due to legislators' interest in a more encompassing bill that includes privacy for all users, however, states are growing tiresome of waiting for a federal standard on this issue to be passed.

The California Age-Appropriate Design Code Act is now waiting for approval from California Governor Gavin Newsom. Despite unanimous votes in the Senate and Assembly, Newsom has yet to share his opinion or give an indication if he will pass the act into law.

CALIFORNIA BAN ON PFAS IN COSMETICS

Following suit in nationwide scrutiny on PFAS-containing products, California legislators have recently approved a bill to ban the sale of beauty and personal care products that contain PFAS chemicals. If signed into law by Governor Newsom, the ban would go into effect January 1, 2025 to give cosmetic companies adequate time to adjust to new regulations and establish any necessary compliance measures. In accordance with California legislatures' recent trend of PFAS bans, it is very likely that this bill will be approved by the Governor by the end of the month. It is crucial that all sellers and manufacturers along the cosmetic supply chain remain vigilant of upcoming regulations and evaluate their own PFAS liabilities to avoid any unexpected penalties in the future.

Though California is the first state to completely ban the use of all intentionally added PFAS substances in cosmetic products, it is without question that a range of regulations are to come across the nation. However, Environmentalists' full blown crackdown on a wide range of advantageous chemicals has not been met without dispute. Industry representatives are arguing against the broad nature of the legislation on the basis that it is far too encompassing to chemicals that do far less harm than good. Hydrofluoroolefins (HFOs), for example, a more environmentally friendly alternative to aerosol propellants which is currently being used to counteract climate change, are a popular chemical in beauty products whose utility is being unnecessarily threatened by this vague legislation.

It is unclear at this time whether industry members will be able to attain an exemption for HFOs, and similarly harmless chemicals. The fact of the matter is, PFAS are harmful, and restrictions are inevitable; businesses must continue to be informed of and attentive to any regulatory liabilities as legislatures continue to place increasing oversight responsibility at every level of the supply chain.

CBP PROPOSES RECLASSIFICATIONS OF FASHION SHOW ITEMS

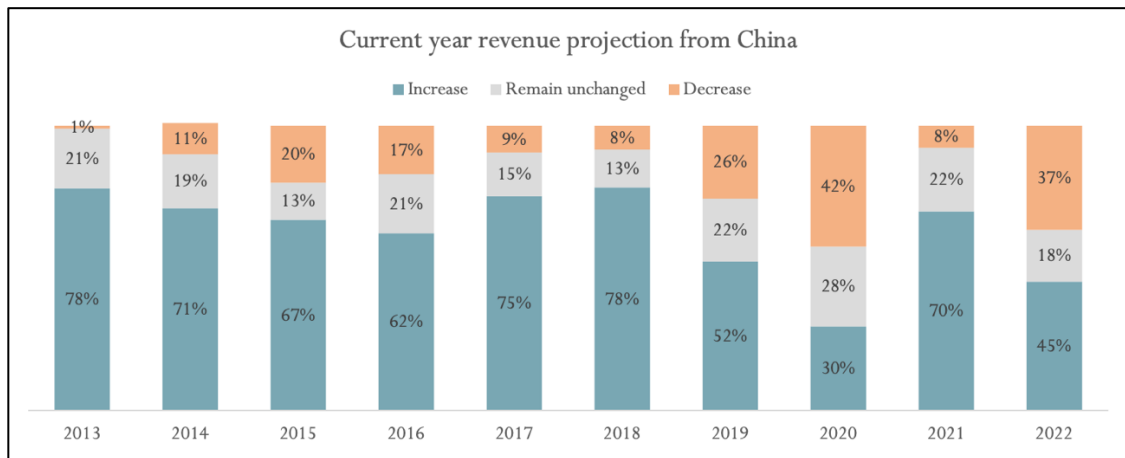
The CBP released a Customs Bulletin and Decisions on September 14, 2022, that proposes reclassifications of mattress covers, pipe fittings, and fashion show items. Focusing on the fashion show items, the relevant goods include runway haute couture wearing apparel, headwear, footwear, jewelry, and accessories.

The current classification of these items is a collection of historical pieces, which allows duty-free entry. The CBP originally determined this because the items were used in showcases only twice a year, displayed in museums when not used, and priced bases on rarity. The CBP has now changed this view and proposes the items be reclassified in their relevant separate headings, which would subject them to tariffs.

This change comes after the CBP found the items are now used more for commercial purposes with the primary goal of consumer interest and sales. The historical pieces classification excludes items with a commercial undertaking which would therefore, as the CBP argues, prevent most fashion show items from such classification.

Comments on these proposed changes will be accepted until October 14, 2022.

USCBC SURVEY SHOWS HOW US-CHINA TENSION AFFECTS BUSINESS



Statistics from the USCBC's 2022 Member Survey, entire survey found [here](#)

Tensions between the US and China have affected the multitude businesses with operations in both countries. The US-China Business Council (USCBC) took a survey from 117 of their large US members conducting business in China, 69% of which have been doing so for over 20 years.

The survey results share insight into how US business leaders are reacting to US China tensions and the effects of COVID-19 in China. Almost half of respondents reported Chinese COVID-19 policies and restrictions have cause severe negative impacts on their business, 44% of which believe confidence recovery from this will take years. 24% of respondents have moved segments of their business out of China and the top reasons for this include increased costs or other uncertainties from US-China tension (listed by 75%), supply chain resilience (75%), and unpredictable pandemic related shutdowns.

For more information and other interesting statistics, view the 2022 USCBC Member Survey [here](#).

PFAS-DISCLOSURE LEGISLATION AWAITING GOVERNOR APPROVAL IN CA

On August 30, the California Legislature passed the [AB 2247](#) legislation along to Governor Newsom's desk where it now awaits his approval to be signed into law. If passed, the bill would go into effect July 1, 2026 and would require all imported products containing any amount of intentionally added PFAS to be publicly registered in an online database. Regulated drugs, medical devices, dietary supplements, medical equipment, and all products intended for animals are exempt from AB 2247 disclosure requirements, but all other products will be obligated to meet these demands.

The bill also assigns the Department of Toxic Substances Control the responsibility of coordinating with existing data collection entities to establish a digital platform for

manufacturers and importers of CA to register their PFAS containing products. The data collection interface will aim to “streamline and facilitate data reporting” in an efficient manner that promotes both consumer safety and effortless industry compliance. Those who fail to comply with the disclosure requirements will be subject to civil penalties. AB 2247 does not specify which stakeholder along the supply chain of a particular product is responsible for reporting the PFAS information, but rather, leaves it up to the coordinating entities to determine who will report on behalf of all contributors. It is crucial that all participants be vigilant of the disclosure requirements, as one representative’s failure to disclose can subject all members of the products’ supply chain to civil penalties.

The registration report must include the following information:

- Name and type of product
- Designation of which product component includes intentionally added PFAS
- UPC of the product/component
- Function of the intentionally added PFAS
- Type and amount of all PFAS compounds
- Number of products imported in a calendar year
- Name and address of manufacturer’s contact representative

MAINE BANS THE SALE OF ALL PFAS-CONTAINING PRODUCTS

The Maine legislature has introduced some of the most comprehensive restrictions on PFAS chemicals that the nation has faced. Effective January 1, 2030, the state is prohibiting the sale of all products containing “intentionally added” PFAS, not including cases of “unavoidable use.” The “unavoidable use” clause of the bill is awaiting further scrutiny by the Maine Department of Environmental Protection (DEP) before the details of the exception can be finalized. This potentially groundbreaking outright ban on PFAS-containing products has unsurprisingly sparked dispute amongst environmentalists and industry leaders.

Environmentalists are excited about this assertive stance on these harmful chemicals, but many industry members are concerned that too broad of a restriction on PFAS chemicals will result in a ban on a massive range of essential products, doing more harm than good for consumers and retailers alike. Due to the unique genetic makeup of each individual PFAS chemical, rivals of the bill have argued that it will unnecessarily ban many products that cause no harm, ultimately burdening a variety of manufacturers for no reason.

Furthermore, this law contains a range of regulatory compliance measures that will only enhance the burden that many companies are already facing under a strained supply chain and declining market. Despite the ongoing pleas of industry members, environmentalists have upheld the importance of a total ban on these dangerous chemicals for both human and environmental welfare. However, some environmentalists have argued in favor of exempting certain PFAS from the ban due to their importance in

transitioning toward more renewable energy sources. Regardless of the potential benefits that PFAS chemicals can add to certain products, studies have repeatedly shown that overexposure to these chemicals can lead to adverse health effects. Their current presence in a long range of everyday consumer products deems them a “slow-building threat to human health”.

While Maine’s current legislation is the strictest in the nation, industries across the country should beware of the spillover effects this legislation may have and anticipate more stringent regulations to come in their own state.

UFLPA COMPLIANCE GUIDEBOOK RELEASED

On June 21, 2022, the Uyghur Forced Labor Prevention Act (UFLPA) came into effect. This act works to reduce the amount of goods the US imports from forced labor in the Xinjiang Uyghur Autonomous Region of China, a region notorious for utilizing forced labor. This act creates a rebuttable presumption which assumes all goods imported from this area are made by forced labor and are therefore not permitted in the US.

In the case of importers looking to legitimately rebut the presumption, they must meet specific standards as outlined in Homeland Security’s Report to Congress titled [Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People’s Republic of China](#). This report details what information an importer would have to provide to prove their goods from the Uyghur Region are made up to legal standard. Important information from the report is below.

- Products sourced in whole or in part, raw materials included, shipped directly or indirectly from any entity on the UFLPA Entity List are subject to rebuttable presumption.
- The CBP will use data collection and analytics to identify imports from prohibited areas and follow through with the appropriate action such as detention, exclusion, or seizure.
- To respond to UFLPA related enforcement action, importers must either show imports from a prohibited region are made legally through complying with Section 3(b) of UFLPA or provide sufficient evidence that imports in no way were made or sourced from a prohibited region. Both options require documentation of proper due diligence systems, supply chain tracking, and supply chain management.
- Companies importing from China should proactively become more aware of their supply chain. Legislators encourage importers to request sourcing information from suppliers.

SIGNET JEWELERS TRACKS DECLINE IN SALES OF LESS-EXPENSIVE GOODS



Gina Drosos, CEO of Signet Jewelers Ltd., parent company of Kay, Zales, and other brands, has noticed harsh declines in sales of products ranging \$500 or less. Additionally, the most recent quarter found a 35% increase in online shoppers opting to utilize a “buy now, play later” payment plan. The third-quarter operating income of Signet was reported as “weaker-than-expected” and caused shares to fall 12%.

Many, including Drosos, believe this decrease in interest for products below \$500 driven by the economic uncertainty of the middle-class. Now out of the pandemic, a time where stimulus checks and bundled savings boosted sales of lower-income consumers, this demographic is no longer spending as much. Prices of rent, gas, and other necessities have inflated, leaving little budget space for jewelry. Another factor is the current sales of apparel and electronics companies. The pandemic caused high demand and supply change issues which led companies to over order inventories. Now, in an attempt to offload these products, companies are offering discounts. Signet, however, was not majorly affected by the shipping slowdowns and cannot offer these discounts. As a result, consumers are spending their money not on full price jewelry, but on discounted clothing and electronics.

Going forward, Signet plans to expand their higher-end items. Not only have the sales of these items been stable but have been increasing. In marketing toward lower-income customers, the jewelry company plans to sell more lab-grown diamonds, which are less expensive.

USTR HAS TWICE FAILED TO ABIDE BY APA OBLIGATIONS

On April 1, 2022, the Court of International Trade (CIT) unanimously determined that the United States Trade Representative’s (USTR) imposition of Section 301 List 3 and List 4A tariffs on Chinese products violated regulatory obligations of the Administrative Procedures Act (APA). In an attempt to offer the USTR an opportunity to rectify any oversights or misconceptions, the CIT requested that the USTR respond in a timely manner and “address comments regarding any duties to be imposed, the aggregate

level of trade subject to the proposed duties, and the products covered by the modifications, all in light of section 301's statutory purpose to eliminate the burden on the U.S. commerce from China's unfair acts, policies, and practices and subject to the specific direction of the President, if any".

After an initial failure to justify their imposition of tariffs, the USTR was given yet another chance to redress their violation. On September 14, the USTR final remand response was ultimately deemed inadequate on the basis that it "failed to address significant comments, and offers only non-responsive, immaterial, and post hoc explanations. The USTR was called upon to provide a detailed explanation for their actions in implementing Section 301 tariffs but did nothing other than assert that they did it simply because they wanted to.

In response, three major importers of Chinese products took separate legal action from that of the CIT to file their own amicus brief in opposition to the implementation of Lists 3 and 4A. These importers claimed that the USTR was solely concerned with fulfilling the demands of former President Trump in their decision to impose the tariffs, while simultaneously disregarding their legal obligations to the APA standards. Despite an exemption for a range of tariffs belonging to List 3, the USTR took it upon themselves to shift the previously exempted tariffs to a newly proposed List 4. However, according to the briefing of the three major importers, the exclusion process of the USTR "does not remedy the inappropriate re-inclusion of prior exemptions", and therefore must be further reviewed by the court for their clear overstep of authority. We will keep our members updated on any further findings in the case between the USTR and CIT as they come.

CPSC RELEASES PROPOSAL TO AMEND CLOTHING FLAMMABILITY STANDARD

The Consumer Product Safety Commission (CPSC) is proposing an amendment to the Flammable Fabrics Act and will be accepting public comment on the matter through November 14. The current regulations of the Flammable Fabrics Act prohibit the sale of clothing textiles that are deemed too highly flammable to be safely worn by humans. The determination of flammability is reached through a range of testing procedures and is ultimately classified into three categories: Class 1, Class 2, and Class 3.

Class 1 textiles are considered acceptable in clothing, Class 2 textiles are more flammable but can still be used in clothing, while Class 3 textiles "exhibit rapid and intense burning" are deemed too dangerously flammable to be permitted in clothing. CPSC amendment proposals include clarifying existing regulations, expanding criteria to allow for more permissible equipment and materials, and updating standards for equipment requirements in hopes of promoting consistency and accuracy in flammability testing and classifications.

\$10M WORTH OF COUNTERFEIT GOODS SEIZED IN CINCINNATI



Four of the hundreds of counterfeit Cartier Love Bracelets seized in Cincinnati

On September 6, 2022, the Cincinnati CBP seized three shipments of counterfeit goods with a combined manufacturer's suggested retail price (MSRP) of \$10M. The first shipment came from Hong Kong and contained 700 fake Cartier Love bracelets. These bracelets, made of cheap materials and engraved with fake diamonds, were headed to a business in Illinois. The MSRP for the bracelets is \$8.82M.

The second shipment, headed to a private residence in Colorado, contained 60 Cartier bracelets and rings, as well as some pieces from Gucci, Louis Vuitton, and Bvlgari. The third contained a lighter load of 4 Cartier Love bracelets and was one the way to a residence in New Jersey. Both shipments came in from China and had a total MSRP of \$1.96M.

With inflation's effects on merchandise prices, consumers are now more than ever looking for a good deal. Counterfeit sellers are recognizing this and are willing to take advantage. Consumers should be aware of this when shopping and ensuring they are buying from reliable and legit sources.

FMC SEEKING PUBLIC COMMENT ON NEW OSRA PROVISIONS

On September 13, the Federal Maritime Commission (FMC) released a Notice of Proposed Rulemaking (NPRM), in accordance with its OSRA 2022 requirements, to specifically define the standards of an "unreasonable refusal to deal or negotiate with respect to vessel space accommodation provided by an ocean common carrier". The NPRM delineates the requisites needed to determine an OSRA violation along with the guidelines the FMC will follow in regard to determining the reason, if any, behind an ocean carrier's refusal to deal. Some of the criteria outlined in the NPRM include whether the ocean carrier adhered to a previously established export strategy, facilitated

good faith negotiations, and declared valid transportation impediments. If approved, the NPRM will shift the responsibility of providing evidence to the violation, or lack thereof, from the shippers to the ocean carriers themselves.

The current draft of the NPRM requires that complainants meet all the following criteria prior to their case being deemed a violation of OSRA by the FMC:

- The respondent is an ocean common carrier
- The respondent refuses to deal or negotiate in regard to vessel capacity
- The refusal is unreasonable

The Notice also proposes that the Commission define the phrase “vessel space accommodations”, to avoid any future disputes over its interpretation, as it has not yet been defined in past legislations. The FMC acknowledges the impossibility of enumerating the vast possibility of scenarios that may arise in the future and is committed to examining that validity of a violation on a case-by-case basis.

The Commission is accepting submissions of public comment in response to the current provisions of the NPRM for 30 days following its official publication in the *Federal Register*. Once the submission period has been opened to the public, please visit the FMC [website](#) for more details on how to proceed. To read the full NPRM document released by the Commission, click [here](#).

CBP AUGUST 2022 MONTHLY OPERATIONAL UPDATE

The US Customs and Border Patrol (CBP) released their monthly operation update for August 2022 which contained much information on migration, drug seizures, agricultural statistics, and related topics. Find their reported statistics [here](#).

Focusing on the trade data, here are some key statistics measured from August 2022 alone:

- CBP processed more than 3 million entries with a total value of over \$294 billion.
- Approximately \$9.4 billion in duties are to be collected by the US government.
- 46% of total import value is derived from the ocean environment, second highest is air, truck, then rail.
- Around 2,099 shipments were seized containing counterfeit goods worth a total of \$159 million
- Goods valued greater than \$266.5 million seized from 838 entries were detained for suspected use of forced labor. This includes goods liable to the Uyghur Forced Labor Prevention Act and Withhold Release Orders.

The report mentions the threat counterfeit goods have on the competitiveness of the American economy, the safety of consumers, and the lives of American workers. The CBP collaborates with the trade community and port operators to ensure legitimate goods are imported legally and the supply chain can work effectively.

INDUSTRY CALLS FOR GSP REFUNDS

FJATA is in support of the American Apparel and Footwear Association's efforts to urge Congress to pass a legislation that will offer refunds to the tariffs paid on products protected by the Generalized System of Preferences (GSP) program, without renewing the policy. The GSP program offers "nonreciprocal, duty-free tariff treatment to certain products imported to the United States from designated beneficiary developing countries (BDCs)". The AAFA wants to extend the relief efforts to imports that were taxed from 2021 through July of this year in efforts to minimize the burden on the nation's supply chains in an already strenuous economic environment.

Though an eventual long-term renewal of the GSP program remains the ultimate goal, AAFA and supporting entities are aware of the bipartisan gridlock delaying those efforts. Therefore, in order to bypass bureaucratic obstacles and provide immediate support to the nation's economy, the AAFA is urging congress to consider the refund assistance separate from the program's renewal process.

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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