



## **FJATA NEWSLETTER**

### **November 2021 Edition**

#### **TWO NEW FACES ON THE CPSC BOARD**



*Commissioner Alexander Hoehn-Saric [left] and Chairman Richard Trumka Jr. [right]*

On October 7<sup>th</sup>, Alexander Hoehn-Saric was confirmed by the US Senate as a permanent chairman and commissioner of the US Consumer Product Safety Commission (CPSC), and briefly after on November 16<sup>th</sup>, Richard Trumka Jr. was confirmed as a CPSC chairman.

Prior to this role, Hoehn-Saric served as Chief Counsel for the Subcommittee on Consumer Protection and Commerce and the Subcommittee on Communications and Technology at the US House Committee on Energy and Commerce at Capitol Hill. This his time in those roles as well as his experience in various senior roles on the Senate Committee on Commerce, Science, and Transportation, Department of Commerce, Federal Communication Commission, and Charter Communications, Hoehn-Saric is very familiar and educated in the mechanics of the CPSC and consumer product safety laws.

Trumka, who will be taking the place of Commissioner Bob Adler who's term expired late October, served on the US House of Representatives' Committee on Oversight and Government Reform as General Counsel and Staff Director of the Economic and Consumer Policy Subcommittee. He also is well associated with the CPSC after his time on the staff of two Commissioners in the 1970s and his own two terms on the Commission starting in 2009.

Hoehn-Saric, the Commission's first long-term chairman since Elliot Kaye stepped down early in 2017, and Trumka join existing republican Chairmen Dana

Baiocco and Peter Feldman to make the partisan standing even. Some speculate President Biden's choice of Hoehn-Saric was a response to a recent amendment to the Commission's FY22 Operating Plan that was approved after a 2-1 vote in favor of republicans.

This 2-2 standing may result in frequent partisan gridlock unless the fifth and final spot on the Commission is filled. Nonetheless, the team will need to work with the newly amended FY22 Operating Plan and maintain a focus on Agency compliance and enforcement activities.

## **CONTAINER EXCESS DWELL FEE STALLED**

After much debate, the Port of Los Angeles and the Port of Long Beach will delay consideration of the Container Excess Dwell Fee until November 22. These additional fees, if implemented, would be placed on carriers at these two California ports who have stayed over their allotted time.

When consideration of these fees was announced, a letter signed by FAJTA and 84 more industry leaders urging Chairman Maffei to reassess the implications of the fees. For one, the fees implied for carriers might be passed along to the cargo owners. Also, with demurrage fees already in place, another fee would subject carrier to dual costs.

As a result of the fees' announcement, the ports, known as the twin ports, saw a 26% decline combined in aging cargo on the docks. With the postponing of the fees, there may be a regained confidence of these ports, something dire in need for the shipping industry.

## **COUNTERFEIT GOODS REACH NEW HIGH AT TWIN PORTS**

During the 2021 Fiscal Year, beginning in October of 2020 and ending late September 2021, a record high amount of counterfeit goods and various other illegal merchandise were seized by CBP at the LA/Long Beach Ports. There was a total of \$760 million in falsified products which is a 652% increase in value from products seized in 2020. There were also more enforcement seizures, up 24%.

One of the most pressing seizures they conducted was one of 37 illegally imported pill press machines, along with 2,305 capsule-filling machines. These machines are used by drug traffickers to encapsulate narcotics in clandestine labs, allowing them to make, regarding the amounts of captured machines, about 1 million capsules per hour. Seizing shipments like this is a clear reminder that counterfeit goods are not just fake brand labels on pieces of clothing, but items that can have serious effect on the health and safety of Americans.

## **CBP PLACES AN ORIGIN BREAKOUT ON WATCH AND CLOCK PARTS**

The CBP has increased requirements for watches and clocks imports. Importers of these goods, when they are subject to Section 301 tariffs, from China, and not substantially changed, must have each part of the product “constructively separated into their component parts and each component separately valued and reported on separate summary lines,” as stated by the CBP. When components of a watch or clock are classified as Harmonized Tariff Schedule heading 9101 through 9105 with a collective origin country of China and one or more countries, the same detailed breakdown is required.

The goal of implementing this is to ensure the countries of origin are paying proper duties for the correct type and volume of goods they are exporting.

## **TEXTILE AND APPAREL IMPORT DATA**

2021 textiles and apparel imports have been down compared to months prior but up compared to 2020 numbers. Here is a chart of the specifics with the year’s total:

Kind of Imports	Total Current Imports (in billions)	% Change since Sept-Aug	% Change Since 2020
Textile	5.43	-14.7%	+21.0%
Apparel	2.88	+1.4	+17.1
Textile year-to-date	45.8	N/A	+50.8%
Apparel year-to-date	21.6	N/A	+29.1
Total year-to-date	67.4	N/A	+43.1%

## **NEW STRATEGY AGAINST PFAS**

The US Environmental Protections Agency (EPA) released a new strategy to reduce the usage of PFAS on October 18. This plan, titled PFAS Strategic Roadmap, focuses on investing in research, reducing PFAS dispensation into the environment, and creating plans to deal with PFAS that are already in the environment.

To gain as much information as possible on how to properly execute this plan, manufacturers of PFAS are required to comply with a new TSCA testing strategy. This will gather new data on the toxicity levels and categories of their PFAS that previously was unknown. Another priority of the Strategic Roadmap is evaluating how PFAS might effect some communities more than others and devising a plan to stop these disproportionate results.

The main focuses of the strategy are referred to as the three Rs: research, restrict, remediation.

## **EPA ADDS FIVE CHEMICALS TO SNUR**

The Environmental Protection Agency (EPA) has subjected five more chemicals to Premanufacture Notices (PMNs) after publishing a final rule on November 15. The EPA has set new Significant New Use Rules (SNURs) under the Toxic Substances Control Act (TSCA).

The SNURs require manufacturers, importers, or any kind of processors of these substances to give the EPA notice of this activity at least 90 days beforehand. Importers must recognize their chemical's new requirements that accompany SNUR status, especially the export notification requirements. The final rule will take effect January 14, 2022.

## **FMC COMMISSIONER LEADS SUPPLY CHAIN DATA INITIATIVE**



*Carl Bentzel in 2019 being confirmed as a Commissioner of the FMC*

Federal Maritime Commission (FMC) Commissioner Carl Bentzel is leading an initiative for the FMC that uses data analysis to locate where exactly supply chain inefficiencies and interruptions in the flow of ocean cargo are. Bentzel hopes this effort will create a lasting data focused program in the FMC to reaffirm reliability in domestic shipping systems.

This effort will be presented at the Maritime Data Summit in Spring of 2022, with the goal of gaining attention from FMC Chairman Daniel Maffei. Being presented will be the main purposes of this program which are (1) advancing common data standards used in the supply chain internationally by giving suggestions of where improvements can be made and (2) streamlining information sharing between leaders of the industry by implementing policy and protocols.

Bentzel plans on conducting thorough research by interviewing and holding meetings with people who are on the front of these issues. He will gather information from ocean carriers, marine terminal operators, truckers, railroads, and other related

government agencies to have a baseline and general understanding of how maritime data is stored and shared, and what the major commonalities throughout the industry are. The data will be mostly related to definition, classifications, and recommendations on where improvements on data records can be. There will also be considerations from the input of the FMC's National Shipper Advisory Committee.

Before his presentation at the Summit, Bentzel will be holding a public meeting in December of 2021 where several speakers who are data experts, standards settings specialists, FMC's National Shippers Advisory Committee representatives, or from the Biden Administration will be present. Bentzel has stated he has met with many of these knowledgeable people and found that they share similar ideas on how improving data recognition could greatly assist current supply chain issues while creating a long-term way to ease industry complications even if a global crisis, like a pandemic, occurs. This event, with specific details to be announced, is planned to be in Washington, D.C.

Other projects that aim to regain supply chain stability are the Fact Finding 29, the Vessel-Operating Common Carrier (VOCC) Audit Program, and the investigations of specific ocean carrier fees.

## **ADDITIONS TO AND MOVEMENT ON THE NDAA**

According to Senate Majority Leader Chuck Schumer, there should be some movement regarding the China package, that passed through the Senate in June, and the National Defense Authorization Act (NDAA), that awaits Senate confirmation.

The US Innovation and Competition Act of 2021 (USICA), which renews the Generalized System of Preferences benefits program and the Miscellaneous tariff Bill, has gained strong bipartisan support for being added to the NDAA. This act also functions to boost US domestic manufacturing and supply chains by creating and allocating funds to policies that will assist US small businesses and consumers in their day-to-days. Despite this, the House intends to construct their own version of a USICA which would be negotiated with the China package before the end of 2021.

Senator Marco Rubio purposed for his Uyghur Forced Labor Prevention Act to also be added to NDAA, as there is likeness that the Act will soon pass.

## **REVISION OF PHASE 1 ESAS**

For the first time since 2013, the ASTM International's Environmental Assessment Risk Management and Corrective Action Committee has amended their standard practice for Phase I Environmental Site Assessments (ESAs). Phase I ESAs, also referred to as ASTM E1527, work to assist the all appropriate inquires rule set by the US EPA that gives protections from CERCLA liability to innocent purchasers or lessees. This is hugely impactful to many property transactions.

The revision occurred after a detailed evaluation process and resulted in making the new standard to perform Phase I ESAs ASTM E1527-21. This standard is most found in commercial transaction or brownfield redevelopment projects.



## INTRODUCTION OF THE CUSTOMS MODERNIZATION ACT OF 2021



The “foundational pillars” of the CBP’s 21<sup>st</sup> Century Customs Framework as shown on the [CBP website](#)

Congress has begun the processes of the Customs Modernization Act of 2021, the first act in almost 30 years that focuses on major customs advancement and works to push the CBP’s 21<sup>st</sup> Century Customs Framework forward. This is aimed to be achieved through the inclusion of current industry mechanics and growing technologies that will result in improved national and economic security, better data encryption, ability to create and accept expanding opportunities, maintain these developments for long-term change.

The following are some of the Act’s main focuses and their plan of approach.

**Trade Data:** The CBP will adapt commercial or marketing platforms to obtain a wider access to information on sales, purchases, transportation, importation, and warehouse holdings. If successful, the CBP is authorized to use this information lawfully and, when applicable, can impose fines of \$5,000 for initial violations and \$10,000 for following violations. Also, in the case of an Enforce and Protect Act investigation, the CBP can publish the importer name as long as the importer is not identified in the allegation and there is feasible suspicion evasion has occurred.

**Entry Filing and Recordkeeping:** All data related to entry must be electronically recorded by the importer to ensure proper and permanent records are kept. Advanced entries by an importer of record (IOR) are accepted but must certify the electronically filed entry data. All entities that have cross-border transactions must abide by these requirements. If compliance of this recordkeeping is not reached, the CBP, after confirming the discordance, will determine a proper fine, penalty or duty for the entity.

**Penalties:** The gross negligence standard will be removed and new meanings for negligence and fraud will be imposed. An exception will be allowed for pre-penalty notices if the claim made is \$500,000 or higher per regulation. A standard

for penalty determinations and claims will be established. Any person in connection to illegal activity, including those who intentionally spoil evidence, will be liable and subject to increased civil penalties for violations regarding arrivals, reporting, entries, or clearance requirements.

**Intellectual Property Rights:** To verify shipment authenticity, the CBP will be able to share intellectual property rights information related to import violations from entities facilitating imports or the sale of them. Only the International Trade Commission will accept objections to Section 337 exclusion order enforcement.

**Forfeiture:** Counterfeit goods now will be seized and if a written consent form is not signed by an owner of imports, they will immediately be forfeited. Also, to be summarily forfeited are items in violation of the Food, Drug, and Cosmetic Act. Seizure of exports may be made discretely and summarily forfeited good may be made without notice requirements.

**Suspensions:** The CBP is able to keep a person from participating in the IOR program if they are suspended or debarred due to conducted business with the federal government. Suspended or debarred persons may also be denied administrative exceptions for imports and may have specific rules for entry and declaration of their goods, both determined by the CBP.

## CHANGES TO HTSUS CLASSIFICATIONS

There will be changes to the classifications of Harmonized Tariff Schedule of the United States (HTSUS). Though the exact date has yet to be specified, the implementation may be as early as the beginning of 2022.

The reason for these changes is due to the recommendations made by the World Customs Organization on the global Harmonized System (HS). From this, the US International Trade Commission wrote a Recommended Modification to the Harmonized Tariff Schedule that modifies HTSUS to conform to amendments to the HS that have been adopted by the WCO. The Modification has been submitted to the president.

## ITC OR CIVIL SUITS: HANDLING COUNTERFEIT GOODS

Knockoff goods have been becoming an increasingly large issue for fashion brands everywhere. Counterfeit goods and the defense against them were discussed during an October 26 Crowell & Moring webinar titled “The Year of the Knockoff”.

A large portion of the webinar was the possible disadvantages and advantages of opening a civil suit in federal court or beginning an investigation with the International Trade Commission (ITC). Here were the main points made by Josh Pond, partner at Crowell & Moring:

- Civil suits require for the source of the counterfeit goods to be known, which is very difficult to find, and many times is not. This must occur before establishing personal jurisdiction against the foreign seller, which is also very difficult.

- Personal jurisdiction is not necessary in ITC investigations and a company can have one case with multiple counterfeit targets. This was especially helpful in dealing with the increased number of cases that arose during the pandemic.
- District court cases take a longer amount of time to resolve and the US backlog is only increasing that time.
- The ITC has full access to CBP records which can lead to compensations. For example, if the ITC investigation finds purposefully misclassified imports that avoid taxes and a company reports that to the CBP, they are eligible for some of the fines were paid.
- ITC usually are more costly than court cases.
- Though not widely known, ITC protects trademarks as well as patents.

Lately there has been a push of counterfeit goods through advertising through social media influencers. They openly push false goods onto consumers and though the American Apparel and Footwear Association (AAFA) was able to get the hashtag “#designerdupe” banned, this in no way is the end of that issue. Howard Michael, co-chair of Crowell & Moring technology and brand protection group, believes handling these cases would be best in a district court where the parties would be able to discuss the best resolution at as little a cost possible.

The director of brand protection at the AAFA, Christina Mitropoulos, stresses that knockoffs goods are more than just a loss of sales. When customers buy a product believing it comes from a reputable brand and the good falls apart or, worse, is made from dangerous ingredients, that hurts the brand’s name.

Industry leaders are closely tracking the Shop SAFE Act and the INFORM for Consumers Act that are both currently under consideration in Congress. These both work towards creating a safer environment for trading.

## **DRAFT OF CUSTOMS MODERNIZATION BILL CREATES CONCERN FOR SUPPLY CHAIN LEADERS**

There has been much concern over a draft of a customs modernization bill that aims to use cargo data for any lawful purpose. This usage would accelerate data sharing and better recognition of intellectual property rights (IPR) violations. The draft, which comes from the office of Senator Bill Cassidy, has provoked negative reaction. One of the major issues is that this bill is based on data collected earlier on in the supply chain before accurate figure can be produced. This makes people liable for discrepancies in their data at a time where definite numbers were not available. The Express Association of America (EAA) and The National Customs Brokers and Forwarders Association of America (NCBFAA) gave suggestions on how to improve the bill.

The EAA feels this plan is helpful but should be implemented with cautions as to not make all information public to everyone. The organization believes that only relevant information should be gathered during IPR violation investigations and just those facilitating the investigation should have the information available to them. This does not



necessarily include all involved in the general transaction. The EAA also suggests a list of companies that have past or repeated violations in customs law and companies that are no longer allowed to do business with the US because of previous offences be provided in the draft.

The NCBFAA is concerned that law abiding traders may have unfair consequences due to their information being so widely known. They instead suggest that this newly required information be submitted with advanced technology as a part of the same parties' entry process but with no formal entry. The NCBFAA believes with this method the data should be submitted with accurate parties and times. They also clearly stated that this does not intend to put more responsibility on the importer than the customs broker, and that information should only be withheld if there is reason to believe inaccuracies are present.

This organization proposes a switch of statutory language governing de minimis shipments from 19 USC 1321 to 19 USC 1484. This would have all goods over \$800 and imported regularly as de minimis exemptions, now addressed as entries of merchandise under 19 U.S.C. 1484, making importers of these goods self-filers. If they chose not to self-file, they will be responsible for handling their transactions with compliancy.

The draft has caught the attention of the 21 CCF Customs Modernization Trade Coalition that, along with the EAA and NCBFAA, urges Cassidy's office to reconsider some of the bill's actions. Despite this undeniably poor reaction, the Coalition cannot make any real steps to prevent the bill's movement unless the CBP agrees to take action.

## AFT LETTER TO USTR

The Americans for Free Trade (AFT) coalition has written a letter to USTR Katherine Tai that addresses how to keep the US supply chain strong through focusing on American workers and gaining global competitiveness through new markets and foreign investment. All members of AFT, except those who chose to opt-out by November 10<sup>th</sup>, were listed on the letter, including FAJTA. Click [here](#) to view the letter.

## 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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