



Newsletter August 2019

Furniture Laws & Regulations

CHINESE FURNITURE TARIFFS

Recently there have been a flood of issues affecting imports of furniture from China. With the current tariff rates increased from 10% to 25% there is huge ripple effect through our supply chains with orders for furniture declining from China at a free fall rate of over 50% in some categories with no resolution in sight as negotiations have stalled and only a continuation of talks was resumed in late July, but there was no progress made so the next talks will proceed in September. However President Trump has now

scheduled new tariffs effective on September 1,2019 of 10% on another \$300 Billion of Chinese goods.These new tariffs **do not include** Furniture products imported from China.

So for some American furniture buyers there is still the current 25% tariff on Chinese imports.Some companies continue to have a wait and see attitude but deliberations abound to hastily find new sources of supply for those furniture companies who have not already started this process in the last few years.

Reactions have varied on how to proceed, mostly depending on the size of the importer and their percentage of furniture goods sourced from China.

Extremely dangerous solutions have emerged to simply change the “country of origin” to other countries not affected by the 25% tariffs like

Vietnam, Cambodia, Thailand and other southeast Asia countries but with the risks of new U.S. Customs investigations now proceeding to track these obvious movements of goods or claimed movements of goods using false documentations in their supply chains. Circumventing import duties will face harsh penalties and possible sanctions yet to be announced by CBP (U.S. Customs & Border Patrol) and the U.S. Department of Commerce. Vietnamese customs agencies announced last month that it is increasing penalties for country of origin fraud.

Vietnam has enjoyed a huge increase in investments in manufacturing plants recently but with a population at 97 million, fewer than some individual Chinese provinces, there is a lack of

enough skilled labor and also the need for improved new infrastructure still in the development stages with existing factories now being overwhelmed and unable to increase their output. Factories are still requiring more investments in tooling, machinery, logistic costs and workforce training to effectively replace the huge Chinese furniture production in the short run.

The actual valid shifting of the supply chain out of China is a common but difficult approach and has been proceeding by all sizes of furniture importers each with their own priorities and special requirements. Keeping their trusted customers satisfied with the quality, price and finished item design to seamlessly continue their supply so inventories will only suffer minimal disruptions...this is a daunting task.

Efforts to engineer HTS tariff classifications is being employed in some industries like apparel and footwear where small design changes can result in a significantly lower tariff rate.

Furniture however is more specific in tariff language and well defined, for example in bedroom furniture with dressers and beds covering the major definitions. In the HTS Code #9401 through #9404 for example, subheading #9403.50.90 “furniture of wood of a kind used in the bedroom” is all inclusive.

Note, “Chinese Wooden bedroom furniture” is today assessed other appropriate tariffs (CVD) for Countervailing Tariff Duties because of the huge government subsidies and other Chinese government policies like tax exemptions that help

promote exports. These are separate from the new 25% duty on all imports from China.

There is now an international furniture supply chain shift with countries as diverse as Mexico,India,Canada,Taiwan,Bangladesh,East Europe and some United States manufacturers offering new sourcing opportunities for furniture and bedding.

So what decisions are being contemplated as we face the current uncertainty in furniture tariffs, sources of supply, costs of available production and new worldwide logistical problems?

Moving out of China encompasses the following considerations:

- Product diversification with some percent of production moved to other countries,

- Redesigning finished goods to find possible loopholes in tariff classifications,
- Labeling goods with new country of origins,
- Renegotiating cost prices with suppliers,
- Manufacturers absorbing part of the increased tariffed costs,
- Passing these new tariffed landed costs on to American consumers at higher retail price points while facing the risks of a new world order of price competition for similar furniture goods.

There are no simple answers and each manufacturer,distributor and retailer will have different solutions to their own realities in today's furniture markets.

THE WORLD TRADE ORGANIZATION

The WTO is an International organization based in Brussels with a mission of facilitating smooth trade between nations and functioning as an arbitrator of trade disputes.

In July the WTO issued a ruling on the countervailing import duties(CVD) from China for dumping of products offered under “fair value”.For over twenty years China has been defined as a “Non-Market Economy”. Not as a normal fair trading “Market Economy” as China contends it is today...But Chinese government subsidies and special tax benefits and an encouraged high buildup of inventories of goods for export offered at

unfair low prices to push exports are still being used to make Chinese furniture goods more competitive on the world market.

In addition the current restrictions of market access into China from government policies against the U.S.,the EU, Japan and other WTO members has continued to cause an imbalance in free trade. This classification has been challenged by the United States and the European Union since the method used to assess Countervailing Duties(CVD) was determined by use of comparison prices obtained from other countries not from domestic Chinese prices since these domestic prices are alleged by the WTO to be “distorted” and not a fair comparison.

Therefore the CVD duties are still considered proper.If the WTO classified China as a “Market Economy” then there would be no issue and the CVD duties would not be assessed.

Recently China has petitioned in a suit with the WTO in assertions that they are a “Market Economy” and should be considered as such and thereby be released from any CVD duties. However, last month China suddenly halted their suit with the WTO claiming to be a true “Market Economy” since the WTO now has strong evidence showing that unfair pricing and dumping of products still exists meaning China must accept the continued U.S. and European Union anti-

dumping duties on under valued Chinese goods and the WTO will continue to define China as a “Non-Market Economy”.

THE CPSC/ U.S.CONGRESS DELIBERATE

The U.S.CPSC(consumer product safety commission) has recently been considering new bills being offered by Congressional Subcommitees in markup sessions that affect our furniture industry Including the following:

A)-HR-2647(SOFFA). Federal adoption of California’s Technical bulletin TB-117-2013 for the flammability of upholstered furniture.This new proposed adoption would remedy the current confusion concerning various states with their own state regulations for flammability and their

restrictions of the use of flame retardant chemicals now banned in several States in various chemical configurations. Since full compliance to the California regulation does not require the use of any dangerous flame retardant chemicals at all, companies could now use the new federal law to manufacturer upholstered furniture items that would be legally compliant and eliminate the use of these dangerous flame retardants completely in their manufacturing processes. This would also increase safety for consumers, saving production costs and with no State liability for restricted use or bans since no dangerous flame retardant chemicals would even exist in their finished upholstered furniture. This is obviously a win-win for manufacturers and consumers.

The California regulation promulgated into law in 2014 currently only requires compliance to a “smolder test” of each layer of material from cover fabric to foam to decking materials where 95% of all upholstery manufactured worldwide now are compliant to this flammability test.

This California regulation replaced the old “CAL-117” from 1976 where an “open flame test” was used for flammability compliance which led to the use of dangerous flame retardant chemicals(up to one pound of TDCPP/TCEP in each typical sofa). These chemicals have now been revealed as cancer causing as dust emitted by use of upholstery in homes over many years is released and absorbed by inhalation and dermal contact.

B)-HR 2211.The Sturdy Act.Requiring the CPSC to promulgate a rule for mandatory compliance to

ASTM F2057 for the stability of free standing clothing storage units to protect children from tip-over related deaths and injuries. In the last decade ten children have died by suffocation from entrapment when dressers and chests have fallen on top of them. Many hundreds of children have also suffered injuries from these unstable furniture items.

ASTM F2057 also requires warning notices to be displayed so consumers are aware of a company's safety compliance and also required to have visible warning notices on the item offered for sale to be read before consumers intend to purchase children's dressers or clothing storage units.

C)-Section-9 Review of the Consumer Product Safety Act. This is the procedure used when the CPSC issues a mandatory rule which involves

certain restrictions on the CPSC unless the following criteria is met:

The rule benefits must have a “reasonable relationship to its costs, and represents the least burdensome option, and require that no existing voluntary rule or standard is adequately addressing the hazard issue”.

Many furniture industry stakeholders claim that section-9 prevents or delays new rules from becoming mandatory regulations. The Fast Track needed to address current problems as shown with the tip-over cases where children are being suffocated or injured daily requires swift action and a reduction of bureaucratic stipulations now present in the operations of the CPSC. We hope that Congress will act to change section-9 and will allow important rules to be expedited. We will

report Congress's *actions* as proposed legislation proceeds.

File Cabinets from China Antidumping

The U.S.Department of Commerce on July 25,2019 issued a preliminary positive determination that metal file cabinets from China have been sold at unfair prices below fair market value.Both Antidumping duties(AD) and countervailing duties(CVD) have been issued at rates of 198.50% and 227.10% respectively for all Chinese producers and exporters.The Commerce Department will instruct U.S.CBP to collect cash deposits based on these preliminary results.Final determination by Commerce is scheduled for October 8,2019 along with the ITC(International

Trade Commission) determination on or before November 21,2019.Both agencies must have issued final affirmable determinations of material injury or threat of material injury to domestic industries if the issuance of final orders will take place on November 28,2019.

These vertical metal file cabinets amounted to imports of \$45 million in 2018 and similar amounts so far in 2019.The subject cabinets are of metal construction with a width of 25 inches or less and having two or more extendable drawers of a height that permits hanging files of either letter or legal size documents.The HTSUS numbers are under subheading #9403.10.0020,9403.10.0040,9403.20.0080 and 9403.20.0090.

CALIFORNIA PROP-65 NOTICE HEXAVALENT CHROMIUM IN LEATHER

Hexavalent Chromium is a chemical used in the industrial process of leather tanning and in pigments and textile dyes. Exposure can occur through breathing, ingesting or direct contact with skin. Hexavalent chromium is listed on the PROP 65 list of over 900 dangerous chemicals. It is a chemical that can cause cancer, birth defects and other reproductive harm **at certain exposure levels** above the “safe Harbor” level of exposure issued by OEHHA (California Office of Environmental Health Hazard Assessment).

Leather furniture technically falls under the possible regulation level which is 0.001 ug/per day (inhalation) a non-significant risk level of

exposure for furniture in the home. A MADL(maximum allowable dose level) of 9.8 ug/per day for other exposure in some manufacturing facilities for processes in “factories tanning leather,chrome plating and used in pigments and dyes of textiles and at low levels in some leather goods and other small leather accessory items”, where direct continuous contact to skin can occur.

A Leather sofa for example probably does not cause enough direct skin contact to be the cause of dermal contact and absorption over the levels of 9.8 ug/per day.

However lawyers have issued 60-day notices of a violation of prop 65 safe harbor levels for both inhalation and dermal contact.These 60-day notices of a coming lawsuit are first issued for “Not

posting proper warning notices for Prop 65". In fact recently after the initial 60-days notices, some six "notices of Violation" have been issued to retail stores and manufacturers for causing consumer exposure to leather products containing hexavalent chromium compounds. These lawsuits have been settled by negotiated agreements to reformulate or a special defined limit on the allowable exposure.

Nevertheless if cited by a 60-day notice it is necessary to seek legal defense and to conduct certified lab tests to check the measured level of exposure using toxicology methods to prove compliance to be under the safe harbor levels of exposure. Otherwise a hearing in California Alameda Superior court could proceed to be settled by a Consent Judgment issued against the

retail store and the source manufacturer
worldwide.

Best Regards,

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Schoenfeld Consulting is available for advice and personal discussions of all laws and regulations affecting our furniture industry. For more information about the inexpensive monthly fee for advice and research with 24/7 availability please contact us at:

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Furniture Laws & Regulations

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