

The role of government and regulatory overlaps in the FTAR industry based on the Code of Federal Regulations

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Various federal agencies have independent authority over the entire fiber-textile-apparel-retail (FTAR) supply chain functions (SCF). For example, on the retailing side, Federal Trade Commission (FTC) imposed \$ 4.2 million on a company, Fashion Nova, due to the manipulation of consumer reviews on their website (Henderson, 2022). On the production side, the United States Environmental Protection Agency (EPA) regulates the textile manufacturing sector under the Clean Water Act of 1972. The Consumer Product Safety Commission (CPSC) sued Amazon to take responsibility for children's sleepwear violating the flammability standards (CPSC, 2022), regulating two SCFs—retailing and production. These examples showed that the FTAR SCFs are susceptible to government policies, which may result in lawsuits with substantial fines or investigations. Furthermore, when multiple federal agencies are involved in one issue, duplicate investigations and jurisdictions can occur, creating regulatory overlaps (Aagaard, 2011). It is partly due to the fragmented FTAR supply chain and the resulting regulatory environment (Arseneau *et al.*, 2022; Ha-Brookshire and Hawley, 2013). Despite these complex regulatory structures and challenging environments, limited research exists about which federal agencies are ruling and what possible regulatory overlaps affect the current US FTAR supply chain.

Porter's diamond theory (1998) posits four determinants that construct national competitive advantages: (a) factor conditions, (b) demand conditions, (c) related and supporting industries (RSI), and (d) firm strategy, structure, and rivalry (FSR). It also illustrates that the government's regulations influence the determinants in order to enhance the nation's productivity. The global supply chain management (GSCM) theory that posits seven key FTAR SCFs also claims that the government can affect the entire FTAR SCFs through legislations (Ha-Brookshire & Hawley, 2013). Grounded from these two theories, this study analyzed the Code of Federal Regulations for the overarching legal framework that might exist for US FTAR supply chain, and explored the provisions specify corresponding federal agencies (McKinney, 2002). For this purpose, we developed two research questions: (a) which federal agencies govern the FTAR SCFs, and facilitate the four factors described in Porter's diamond model theory? (b) Is there any possibility of generating regulatory overlaps based on the CFRs? If so, how does it influence the SCFs?

For the two research questions, we conducted the directed content analysis of CFRs from title 1 to title 50 (a total of 303,413 pages as of March 2022 publications available online). As the directed content analysis is deductive, it helped identify and expand the theories' key constructs and replaced the initial coding processes (Potter & Levine-Donnerstein, 1999). Hence, we found

applicable CFR provisions and classified them into the SCFs stated in the GSCM theory. Next, we conducted the second analysis to know the specific U.S. federal government's perspective of the FTAR regulations based on Porter's diamond theory. Finally, we explored the possible regulatory overlaps. During the processes, this study concentrated on provisions that contain the keywords related to the FTAR SCFs, such as textiles, manufacturing, logistics, and retailing. In addition, throughout the content analysis, two researchers reached a unanimous agreement when classifying and categorizing each provision to respective theoretical frameworks.

For RQ (a), we found a total of 131 CFR provisions and ten different federal agencies, affecting four out of seven SCFs stated in the GSCM theory. Specifically, sourcing/production has the largest CFR provisions (n=94) and involves eight federal agencies, most of which focus on safe production for consumers and the environment. Product development has the least CFRs (n=13) and three agencies that are related to copyright and patent registration and management. In addition, the analysis based on Porter's diamond theory showed that the U.S. federal government focuses on the demand conditions (n=114) and factor conditions (n=48) to guide the FTAR SCFs to facilitate domestic demands by managing the quality of the resources.

We also found two possible regulatory overlaps for RQ (b). The first case is related to organic cotton products. When the product is made of non-organic cotton material, FTC might sue the sellers because they use false advertising under 16 CFR 260 [Guides for the Use of Environmental Marketing Claims]. In addition, when cotton farming practices cause water pollution, EPA can require the manufacturers to get investigations under the Clean Water Act (i.e., 40 CFR 131 [Water Quality Standards]). The second case can take place when using inappropriate endorsement and unauthorized certificates for Native American crafts. FTC can call the deceptive endorsement into question under 16 CFR 255 [Guides Concerning Use of Endorsements and Testimonials in Advertising]. The US Department of Interior (DOI) may impose a criminal penalty on the company due to the unauthorized use of government certificates under the 25 CFR 301 [Navajo, Pueblo, and Hopi Silver and Turquoise Products; Standards]. In both cases, multiple agencies might investigate the specific case, creating regulatory overlaps.

This study explored the breadth of the U.S. federal government's administrative structure for the FTAR industry by surveying CFRs and federal agencies. First, this study added regulatory overlaps knowledge to the FTAR study with the government administration framework by utilizing the GSCM theory and Porter's diamond theory. Second, sourcing managers and educators may want to pay attention to the suggested overlap examples because the examples show how the overlaps can affect their businesses, helping them prepare for other possible overlaps. However, there are various types of regulatory overlaps, such as legal conflicts between federal and state governments. Therefore, future research is recommended.

References

- Aagaard, T. S. (2011). Regulatory overlap, overlapping legal fields, and statutory discontinuities. *Virginia Environmental Law Journal*, 29(3), 237-303.
- Arseneau, D. M., Brang, G., Darst, M., Faber, J. M., Rappoport W, D. E., and Vardoulakis, A. (2022). *A macroprudential perspective on the regulatory boundaries of US financial assets*. Finance and Economics Discussion Series
- Consumer Product Safety Commission. (2021, July 14). *CPSC Sues Amazon to Force Recall of Hazardous Products Sold on Amazon.com* [Press release].
<https://www.cpsc.gov/Newsroom/News-Releases/2021/CPSC-Sues-Amazon-to-Force-Recall-of-Hazardous-Products-Sold-on-Amazon-com>
- Ha-Brookshire, J. E., & Hawley, J. M. (2013). Envisioning the clothing and textile-related discipline for the 21st century its scientific nature and domain from the global supply chain perspective. *Clothing and Textiles Research Journal*, 31(1), 17-31.
doi.org/10.1177/0887302X12470024
- Henderson, J. G. (2022, January 25). *Fashion Nova will pay \$4.2 million as part of settlement of FTC allegations it blocked negative reviews of products*. Federal Trade Commission.
<https://www.ftc.gov/news-events/news/press-releases/2022/01/fashion-nova-will-pay-42-million-part-settlement-ftc-allegations-it-blocked-negative-reviews>
- McKinney, R. J. (2002). A research guide to the Federal Register and the Code of Federal Regulations. *Law Library Lights*, 46(1), 10-15.
- Porter, M. E. (1998). *Competitive Advantage of Nations*. Free Press.
<https://books.google.com/books?id=onk4QH2rxGIC>
- Potter, W. J., and Levine-Donnerstein, D. (1999). Rethinking validity and reliability in content analysis. *Journal of Applied Communication Research*, 27(3), 258-284.
<https://doi.org/doi.org/10.1080/00909889909365539>