



TESTIMONY OF

BRANDON LORD
Executive Director
Trade Policy and Programs
Office of Trade

U.S. Customs and Border Protection
Department of Homeland Security

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Introduction

Chairman Issa, Ranking Member Johnson, and distinguished Members of the Subcommittee, thank you for the opportunity to appear today to discuss the enforcement of Intellectual Property Rights (IPR). As America's unified border security agency, U.S. Customs and Border Protection (CBP) enforces nearly 500 U.S. trade laws and regulations on behalf of 49 other federal agencies, including those concerning IPR and counterfeit and pirated goods. Trade in counterfeit and pirated goods threatens America's innovation economy, competition, the livelihood of U.S. workers, and, in some cases, national security and the health and safety of consumers. Furthermore, trade in these illegitimate goods is frequently linked to smuggling and other criminal activities and often funds criminal enterprises.

CBP formally designated IPR as a Priority Trade Issue (PTI) in 2007, recognizing IPR infringement represents a high risk of significant revenue loss, including harm to our economy via loss of legitimate revenue for rightsholders and legitimate tax revenue loss to the U.S. government. In 2016 Congress passed the *Trade Facilitation and Trade Enforcement Act of 2015* (TFTEA), which expanded and enhanced CBP's authority to enforce trade laws – including IPR and import safety violations, while facilitating lawful trade. TFTEA also codified PTIs in statute, including IPR and import safety.

CBP's IPR enforcement strategy is built on the pillars of “deter, detect, and enforce.” CBP employs a broad range of authorities and innovative approaches to target and seize imports of counterfeit and pirated goods and enforces International Trade Commission exclusion orders on patent infringing goods. CBP's strategic approach focuses on collaborative efforts with Homeland Security Investigations (HSI), other law enforcement partners, and industry stakeholders with which we share IPR enforcement responsibilities.

IPR Seizures and Trends

In Fiscal Year (FY) 2023, CBP processed more than 28.5 million imported cargo containers at ports of entry (POE) across the nation. CBP also seized an increasing amount of counterfeit and pirated goods. From FY 2019 to FY 2023, the total quantity of goods seized for IPR violations more than doubled. In FY 2023, CBP and HSI seized 19,722 shipments – approximately 23 million counterfeit products – for IPR violations with a Manufacturer's Suggested Retail Price (MSRP) of more than \$2.78 billion, had the goods been genuine. The People's Republic of China and Hong Kong remained the primary source for counterfeit and pirated goods seized, accounting for nearly 84 percent of the total value of all IPR seizures, with a total estimated MSRP value of \$2.3 billion, had the goods been genuine. Nearly 90 percent of the total amount of seizures were in the express carrier and international mail environments.¹ CBP seized a variety of goods for IPR violations in FY 2023, including more than 2 million counterfeit pharmaceuticals and personal care items that threaten consumer safety.

¹ <https://www.cbp.gov/newsroom/stats/intellectual-property-rights-ipr-seizures>

E-Commerce

Rapid growth of e-commerce revolutionized the way goods are bought and sold, resulting in record volumes of small, low-value shipments arriving in the United States. Section 321 of the *Tariff Act of 1930*, as amended by TFTEA in 2016,² through its implementing regulations, authorizes CBP to, among other exemptions, provide an administrative exemption to admit free from duty and tax, shipments of merchandise (other than bona-fide gifts and certain personal and household goods accompanying persons arriving in the United States, which are covered by separate exemptions) imported by one person on one day and having an aggregate fair retail value in the country of shipment of not more than \$800. These types of shipments are commonly referred to as “Section 321” or “*de minimis*” shipments.

With the rise of e-commerce, more companies than ever are leveraging *de minimis* administrative exemptions to reach consumers directly. These new business models, and rapid growth in overall volume of low-value shipments, have significantly altered international trade environment dynamics and CBP’s enforcement of IPR and import safety laws. E-commerce shipments pose the same health, safety, and economic security risks as containerized shipments, but the volume is higher and growing. In FY 2023, CBP processed more than 1 billion shipments under the *de minimis* value exemption threshold, and the agency is on track to exceed that volume this year. The average value of a *de minimis* shipment in FY 2023 was approximately \$54. By comparison, when TFTEA was first implemented in FY 2017, the agency processed approximately 220 million *de minimis* shipments with an average value of \$50. The average value of each shipment has remained roughly the same, though the overall volume continues to rise. Once confined primarily to air transport, express consignment hubs, and international mail facilities, *de minimis* shipments now enter through all modes of transportation, at all POEs, impacting CBP locations that have not previously processed these types of shipments. While shipment volume has dramatically increased, CBP’s staffing, tools, and facilities have not grown at the same pace.

Additionally, transnational criminal organizations (TCOs) are known to ship illicit goods to the United States via small packages due to a perceived lower interdiction risk and less severe consequences if the package is interdicted. It is difficult for CBP to assess penalties to adequately enforce against a single low-value shipment because the relevant civil statutory authorities generally do not permit the agency to assess a penalty exceeding the value of the merchandise for *de minimis* shipments. For those shipments not exceeding \$800, such a low value penalty does not provide a sufficient deterrent effect against potential violators. Separate from any penalty concerns, shipments entering through the *de minimis* process are often purposefully manifested incorrectly or contain products that are not included on the manifest at all, which complicates CBP’s ability to target and hold suspect shipments.

As of March 2024, 85 percent of cargo seizures originated as *de minimis* shipments, and included narcotics, health and safety, and IPR seizures. Furthermore, new or infrequent importers often possess less familiarity with U.S. customs laws and regulations, which can lead to the importation of non-compliant goods. The *de minimis* exemption was created to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would

² Section 321(a)(2)(C) of the Tariff Act of 1930 (19 U.S.C. 1321(a)(2)(C)), as amended by the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), Pub. L. No. 114-125, § 901, 130 Stat. 122, 223 (2016).

otherwise be collected; however, the opposite is proving true, and the agency is investing more time and energy into this environment, due to heightened risks that result from dramatic increases in volume, the speed with which shipments move, and high rates of non-compliance found in this environment.

Section 321 Data Pilot and Entry Type 86 Test

In 2019, CBP implemented two voluntary *de minimis* shipment tests– the Section 321 Data Pilot and the Entry Type 86 test – in the Automated Commercial Environment (ACE). The Entry Type 86 test allows CBP to collect Partner Government Agency (PGA) data on *de minimis* shipments (and therefore, for the first time, allows shipments subject to PGA requirements to qualify for the *de minimis* exemption), and offers filers a faster, more predictable, automated release. The Section 321 Data Pilot tests the utility of accepting advance data from e-commerce supply chain partners, including online marketplaces, for risk segmentation purposes. Data submitted through this pilot in advance of arrival in the United States helps CBP target high-risk shipments for inspection and expedite clearance of low-risk shipments.

As noted earlier, CBP enforces hundreds of laws on behalf of other PGAs and a *de minimis* shipment is not exempt from PGA requirements. For example, PGAs may require strict accountability of imported goods for national security, health and safety reasons, and to identify specific shipments of potential violative products for reporting or enforcement targeting purposes. “Entry Type 86” creates a new informal entry process that allows customs brokers and self-filers to electronically submit *de minimis* entries through ACE, including those subject to PGA data requirements for clearance.

Results and lessons learned from these two initiatives has helped form the foundation for programmatic changes necessary to modernize how low value, *de minimis* shipments are processed. Informed by initiative outcomes, CBP is updating regulations to require additional information regarding shipments claiming eligibility for administrative exemption and to clarify existing processes. CBP is working to publish the Notice of Proposed Rulemaking as quickly as possible. CBP is also working closely with Congress to pursue vital statutory changes to address strained resources and further enhance efforts to interdict dangerous and illicit goods in the small shipment environment, including preventing exploitation of special entry procedures for *de minimis* shipment; empowering industry partners to identify and report suspicious behavior; reinstating subpoena authority to investigate suspicious exports; and enhancing penalties for unlawful imports. While these legislative changes are primarily focused on countering illicit fentanyl, if enacted, we believe they will also help enhance CBP’s overall trade enforcement operations, allowing for greater action against IPR and other trade violations, as well as increasing compliance capabilities in an age of inordinate volumes of e-commerce and small, *de minimis*/low-value shipments.

As we pursue key regulatory updates and legislative changes, CBP continues to upgrade our facilities and provide our personnel with tools needed to efficiently process *de minimis* cargo. We are installing state of the art scanning technology at our POEs and international mail facilities. The agency is also advancing our investments in artificial intelligence and automated tools to assist personnel in risk-assessment.

CBP IPR Enforcement

For all imports – whether informal entries of *de minimis* packages or formal entries of containerized cargo³ – CBP continues to improve its ability to interdict goods that infringe on IPR before these violative goods enter the U.S. stream of commerce. CBP has legal authority to detain, seize, forfeit, and destroy merchandise found to infringe a trademark or copyright registered with the U.S. Patent and Trademark Office or the U.S. Copyright Office, and subsequently recorded with CBP through the eRecordation program. CBP also has authority to exclude merchandise subject to an Exclusion Order issued by the International Trade Commission (ITC). While these orders are predominantly focused on protection of patents, under Section 337 of the *Tariff Act of 1930*, the ITC may also issue orders applicable to other IPR or other unfair trade practices.

CBP focuses enforcement efforts on trademarks and copyrights that were applied for and accepted into the eRecordation program. CBP administers the online application site and reviews submissions for accuracy and approves eligible rights. CBP maintains a database of all recorded and enforceable trademarks and copyrights per Title 19 authorities, which includes an application portal, a public facing website, and an internal law enforcement database housing all recorded rights. The internal site contains additional information concerning the scope of rights at issue, a point of contact for CBP to utilize when needing assistance, authentication features and product identification manuals and any relevant Trade Alerts concerning IPR. The recordation system was re-platformed in 2022, to implement enhancements for both internal CBP users and eRecordation holders.

If CBP suspects imported merchandise bears a counterfeit mark, constitutes a piratical copy, or violates other laws such as the Digital Millennium Copyright Act (DMCA), and CBP determines that right owner's assistance would help CBP in ongoing IPR enforcement efforts, CBP is authorized to disclose information appearing on the imported merchandise and its packing or labels to the right owner. IPR owners can then assist CBP to identify authentic and low-risk shipments. Collaboration with IPR owners is the core of CBP's enforcement operations. As of April 30, 2024, CBP is enforcing approximately 20,000 active recordations, of which approximately 5,000 are copyrights and 15,000 are trademarks.

Donations Acceptance Program

To expand private-sector collaboration and enable CBP to determine authenticity of suspected counterfeit goods more quickly, CBP published a final rule to allow donations of hardware, software, equipment, and similar technologies, and related support services and training from the private sector for enforcing IPR. The implementing regulation is authorized under Section 308(d) of TFTEA and the Donations Acceptance Program, 6 U.S.C. § 301a, and enables CBP to collaboratively explore and implement solutions to trade and travel facilitation and enforcement challenges. To date, six companies have participated in this program and have donated

³ A formal entry must be filed if the shipment is valued at more than \$2,500 or contains certain goods that are regulated or restricted, or from a country subject to sanctions or embargoes. Formal entries require more documentation and fees than informal shipments, and they are subject to duties and taxes imposed on or by reason of importation, whereas qualified *de minimis* shipments are not.

authentication devices to assist CBP personnel in quickly determining product legitimacy, reducing the possibility of counterfeit goods entering the U.S. stream of commerce.

For example, under its partnership with CBP, Nike, Inc. donated proprietary technology to aid in authenticating a variety of Nike merchandise and prevent counterfeit products from entering the United States. CBP and Nike are testing the tool at a limited number of international mail and express consignment facilities. Additionally, Canon, USA, Inc. plans to donate 328 verification tools to CBP cargo and mail facilities to aid in authenticating a variety of Canon products. Canon intends to partner with CBP for the long term by resupplying and if necessary, upgrading donated testing devices as CBP's detection needs evolve. To deter importation of illicit goods and protect U.S. consumers and businesses, CBP developed a proactive, aggressive, and dynamic enforcement approach to IPR enforcement. CBP's enforcement efforts are strengthened by stakeholder collaboration and innovative approaches such as the Nike and Canon partnerships.

National Targeting Center

CBP's trade enforcement and facilitation operations begin long before a package or container arrives at a POE. By utilizing an intelligence-driven approach, risk-based strategies, and advanced targeting capabilities, CBP identifies suspect shipments at the earliest possible point prior to arrival in the United States. The CBP National Targeting Center (NTC) uses sophisticated targeting tools and subject matter expertise to identify, analyze, assess, and detect emerging threats, anomalies, trends, and violations in the global supply chain to target high-risk shipments. The NTC, in collaboration with CBP National Threat Analysis Centers (NTACs), leads efforts to de-conflict and coordinate IPR targeting units throughout CBP, create targeting rules for physical examinations at POEs, and ensure timely targeting support for HSI investigations.

There are several HSI Special Agents and United States Postal Inspection Service (USPIS) employees embedded within the NTC, who serve as liaisons between the NTC and HSI and USPIS personnel in both domestic and international posts. The NTC also collaborates daily with critical partners from the Drug Enforcement Agency, Federal Bureau of Investigation, Food and Drug Administration Office of Criminal Investigations (FDA/OCI), and other interagency partners, by sharing information and conducting joint enforcement operations.

Post-Import Enforcement Audits

In addition to seizing violative goods, CBP's IPR strategy includes post-import audits of companies caught bringing fake goods into the United States. These enforcement audits begin when significant or sensitive issues arise, such as increases in health and safety violations, or when a large volume of counterfeit products are seized. CBP regulatory auditors, CBP targeting specialists from the NTACs, and HSI personnel work closely to complete follow-up enforcement actions resulting from information gathered during these audits.

Collaboration with Government and Industry Partners

TFTEA empowered CBP to collaborate with both our government and industry partners in new ways, and CBP remains committed to strengthening its robust IPR enforcement efforts while also facilitating legitimate trade.

National IPR Coordination Center

One of the ways TFTEA enhanced IPR enforcement was through formal establishment of the National Intellectual Property Rights Coordination Center (IPR Center) with joint leadership from HSI and CBP, and permanent CBP staffing. The IPR Center is the lead office within the U.S. Government for coordinating with other federal agencies on IPR infringement investigations, law enforcement training, and private sector and public outreach.

CBP plays an integral role in the IPR Center, collaborating with HSI and 30 additional partners to ensure seizures representing criminal activities lead to investigations, arrests, and convictions. I hold one of the three deputy director positions on the management team at the IPR Center, and my staff works side by side with our colleagues there each day. As Deputy Director, I manage CBP's coordinated response with government partners at the IPR Center to combat global intellectual property theft, protect national security, and ensure public health and safety. CBP is the leading source of referrals to HSI for criminal investigations. Furthermore, the IPR Center assists in coordination and funding of Trade Special Operations (TSO). These special operations between CBP, industry, and rights holders, employ risk-based targeting to enforce IPR infringements and counterfeit goods violations. In FY23, the IPR Center funded 33 TSOs at U.S. POEs across the country.

The Commercial Targeting & Analysis Center

Another multi-agency collaboration working to enforce IPR as it affects import safety is the CBP-led Commercial Targeting and Analysis Center (CTAC). CTAC is a 12-member multi-agency, national trade enforcement coordination center responsible for operational implementation of Title II of TFTEA, titled "Import Health and Safety." The CTAC combines resources and intelligence capabilities of CBP and other government agencies to advance interagency information sharing and operational collaboration to better protect the American public from harm caused by unsafe imported products.

CTAC's joint targeting and enforcement efforts initiated 8,500 seizures of unsafe imported products in FY 2023, with an appraised MSRP of more than \$100 million. Whether counterfeit automotive parts (such as grills, bumpers, and brake lines), counterfeit home products such as decorative holiday string lights, or counterfeit toys – CTAC's rigorous targeting campaigns resulted in the successful interception of serious threats to consumer safety.

Collaboration with our Industry Partners

TFTEA established the Commercial Customs Operations Advisory Committee (COAC) to advise the Secretaries of Treasury and DHS on all matters involving commercial operations of CBP, including advising on significant proposed changes to regulations, policies, or practices. The IPR working group, which falls under COAC's Intelligent Enforcement Subcommittee, is comprised of 19 representatives from multiple industries including express carriers, customs

brokers, and online marketplace providers. The group continues to pursue workable solutions to IPR-related challenges, including increased volume of e-commerce packages and Section 321/*de minimis* filings; new complexities presented by e-commerce for businesses of various sizes and industry-type; and evolving compliance and enforcement issues. CBP continues to review and implement recommendations presented by the COAC to CBP for IPR enforcement. For instance, CBP implemented a new e-Petition Portal which streamlines filing of administrative petitions for relief from seizure. The e-Petition process helps to automate the communication process between CBP Fines, Penalties, and Forfeiture (FPF) and Trade by allowing appropriate parties to electronically file their petitions and providing for instantaneous notification.

Public and Private Sector Outreach

CBP engages with stakeholders and IPR holders on a regular basis to educate them about how to best work with CBP to protect their IPR. In FY 2023, IPR rightsholders conducted 11 national webinars for CBP staff. CBP worked with the U.S. Chamber of Commerce (the Chamber) since 2021 through a memorandum of understanding (MOU) on information sharing to enhance IPR enforcement. This joint initiative established a first-of-its-kind framework for public-private collaboration on combating counterfeit and pirated goods. The MOU covers areas of outreach, training, IPR statistics sharing, and a data pilot with industry members. On August 10, 2023, CBP and the Chamber extended the MOU for five years.

International Capacity Building

Adverse impacts of counterfeiting and piracy on the global economy, as well as on health and safety worldwide, are becoming more severe every year, thereby amplifying the essential role of customs administrations in policing their borders for counterfeit and infringing goods. As the U.S. Government's subject matter expert on border enforcement of IPR, CBP advocates for certain policies that enhance global security by strengthening IP border enforcement around the world. CBP successfully encouraged trading partners to take important steps towards this goal, providing capacity-building assistance to custom administrations of 55 countries in 2022 and 63 countries in 2023. CBP's capacity building initiatives include providing technical legal guidance on international obligations, reviewing draft laws and regulations, establishing national electronic customs registration databases, and sharing best practices in IP border enforcement procedures.

Unfortunately, U.S. consumers spend more than \$100 billion every year on IPR-infringing goods. CBP works hard to educate consumers and help them understand online shopping responsibilities and risks. For example, CBP's public awareness campaign, "The Truth Behind Counterfeits," is prominently displayed on our website as part of CBP's ongoing efforts to keep the public informed about health and safety dangers to consumers presented by counterfeit and pirated goods.⁴ Over the last two years, while sponsoring ads on social media (Facebook, Instagram, and X [formerly known as Twitter]), the Truth Behind Counterfeits Campaign garnered almost 180 million impressions sharing the dangers of counterfeit goods with online shoppers. Since the beginning of FY 2023, CBP held four events at international airports throughout the United States to educate travelers about harms associated with the purchase of IPR-infringing goods. These events helped to amplify the "Truth Behind Counterfeits"

⁴ <https://www.cbp.gov/trade/fakegoodsrealdangers>

messaging of the IPR educational campaign. Additionally, in collaboration with the Chamber, CBP participated in media blitzes during the busy holiday and back-to-school shopping time periods to raise consumer consciousness about negative impacts that come from the purchase of counterfeit goods. Since the “Shop Smart” campaign began during the holidays of 2021, CBP and the Chamber reached over 255 million consumers through TV interviews, radio messages, and news releases.

Conclusion

With Congressional support, CBP remains committed to protecting businesses and consumers every day through an aggressive IPR enforcement program. We will continue to work in collaboration with our public and private stakeholders and partners to address growth of e-commerce and *de minimis* shipments, communicate shared IPR responsibilities, and better enforce IPR to protect the health and safety of American consumers and our economy, while facilitating legitimate trade.

Chairman Issa, Ranking Member Johnson, and distinguished Members of the Subcommittee, thank you again for the opportunity to testify today. I look forward to your questions.