

**Commercial Customs Operations  
Advisory Committee (COAC)  
Intelligent Enforcement Subcommittee  
Intellectual Property Rights Process Modernization  
Working Group Background Paper**

March 2021



# IPR Process Modernization Working Group Background Paper

## **Team 1: April 2020 COAC Recommendation 010434 Sharing of Detention Information**

COAC recommends that CBP automate the sharing of detention information, photographs, images and samples as provided for by current regulations. CBP regulations provide for disclosure of unredacted photographs, images and samples (“images”) to the importer per 19 CFR 133.21(a)(1) and to the IP owner per 19 CFR 133.21(b)(3), (c) and (e) but CBP has not adopted procedures to do the following allowed for under these regulations:

- Generate sharable images at the time of inspection
- Provide images to importers at the outset of the 7-day response period
- Provide images to intellectual property (IP) owners promptly following seizure
- Provide images electronically

## **Recommended Changes:**

### General Considerations.

*New Standard Operating Procedures are recommended; no regulatory or statutory changes are needed.* We confirmed that strategies to implement the COAC recommendations could be adopted under existing regulatory authorities although there may be some technological or budgetary restraints. We recognize that CBP is not required to take photographs of all detained or seized goods, and that it is not required by law to share those images voluntarily with importers or rights holders. However, it is authorized to do so and these recommendations are intended to identify those instances in which it would be a good policy to do so in order to more efficiently and accurately enforce IPR rights at the border.

*CBP, Rights Owners and Importers will benefit from these recommendations.* We also concluded that the adoption of these strategies would benefit CBP’s interests to better leverage private sector information so as to improve the speed and validity of enforcement decision-making while eliminating many of the information and image requests, petitions and appeals. Similarly, rights holders would benefit by achieving better and earlier protection of their IP rights, and importers would benefit by resolving suspect imports quickly, economically and correctly.

### Specific Recommendations.

- (1) *Generate shareable images at the time of inspection.*

*Current practice:* CBP inspectors already take shareable images when appropriate at the time of inspection primarily to transmit to import specialists to make IP determinations. These images may also be shared prior to detention with IP owners (redacted) and with importers (generally only upon request and after detention but unredacted). However, it appears that the standards for taking such images, the quality of the images and methods of transmission are not uniform throughout the ports of entry.

*Recommendation:* Since shareable images are already generated when appropriate, Team 1 makes no recommended change. However, IPR WG Team 2 is making recommendations on the quality, uniformity and transmission of the images in order to improve and expedite decision-making based upon shared images.

*(2) Provide Images to importers at the outset of the 7-day response period.*

*Current practice.* CBP does not provide images unless requested by the importer. Thus, images are rarely (if ever) made available to an importer prior to expiration of the 7-day response period. In addition, the detention notice often provides no detailed reason for the detention, since it is so early in CBP's decision-making. CBP is currently examining ways to provide more specific reasoning in its detention notices. Accordingly, the 7-day notice provision allows importers to advise CBP that it is licensed to import a protected product; it rarely provides enough information for the importer to address any specific observation that triggered the suspicion. As a result, if the importer is actually licensed to import the IP-protected product, it can provide the license (which might cause the goods to be released, but will not address situations where counterfeit goods have been shipped in response to a legitimate order); if it is a parallel market importer lawfully importing an IP-unrestricted product, the importer is unlikely to know what fact or issue triggered the detention.

*Recommendation:* The Team believes that where the inspector's suspicions are triggered by something seen on the goods or their packaging the image should be shared with the importer prior to detention or with the notice of detention.

This would allow the importer to resolve the suspicion quickly, e.g., address the anomaly seen by the inspector (older model goods, goods packaged for another market, refurbished goods, *et.al*), or to concede that the goods shipped are not the goods ordered. By limiting this procedure to situations in which the suspicion is triggered by the something seen on the goods or their packaging, it is believed this is a manageable and not overly burdensome recommendation.

This recommendation is fully authorized by existing regulations. CBP is authorized to provide images to the importer "at any time after presentation of the goods for examination" (Section 131.21(d)) and to provide a notice of detention which sets forth the "specific reason for the detention" and provides the importer with "seven business days to present evidence "establishing that the detained merchandise does not bear a counterfeit mark" (Section 131.21(b) (2) (B)).

*(3) Provide images to intellectual property (IP) owners promptly following seizure.*

*Current Practice.* Images are often provided in redacted form to IP owners prior to seizure – and prior to detention – to assist CBP in authenticating goods. However, when seizures are made the rights holder is not made aware that the seizure involves the goods in those images; and where the Rights Holder requests images after the seizure is made, there are often very long delays in providing those images.

*Recommendations.* Where images were produced at the time of inspection or in decision-making by the import specialist or other CBP official, CBP should adopt procedures which make the images readily available and transmitted to the rights holder quickly after receipt of a request. Where redacted images were shared with the rights holder prior to the seizure, CBP should notify the rights holder of its decision related to those shared images.

*(4) Provide images electronically.*

*Current Practice.* CBP already generates and shares images from the time of inspection to the time of seizure. However, it faces technological and budgetary restraints in any effort to expand its sharing of images.

*Recommendation.* We recommend that CBP provide images electronically in all instances in order to assure that they can be reacted to within the limited timeframes for CBP to make its decisions.

We further recommend that COAC and CBP review the current image sharing capacity of CBP to determine its current capabilities and to make recommendations regarding any needed enhancements, the possibility of differing standards for small packages moving through the mail or express environment, as well as any related needs for funding.

**Team 2: April 2020 COAC Recommendation #010435: Photographic Standards Guide**

COAC recommends that CBP partner with brand holders to share and provide “photographic standards guides” to aid CBP Officers in taking the required photographs necessary to streamline and expedite the brand authentication process. This can help authenticate products that are detailed within 24-48 hours.

As outlined in April IPR Working Group recommendations document, Team 2 was established to discuss and review recommendations for Data Sharing, the DHS Report on Trafficking and Pirated IPR goods, and the Presidential Executive Order on ecommerce. As a result, an additional working group was created to prepare a proposal for the recommended Photographic Standards Guide to improve and simplify the current process for the sharing of photographic information between CBP Officers and Rights Holders.

COAC recommends that CBP partner with brand holders to share and provide “photographic standards guides” to aid CBP Officers in taking the required photographs necessary to streamline and expedite the brand authentication process. This can help authenticate products that are detailed within 24-48 hours.

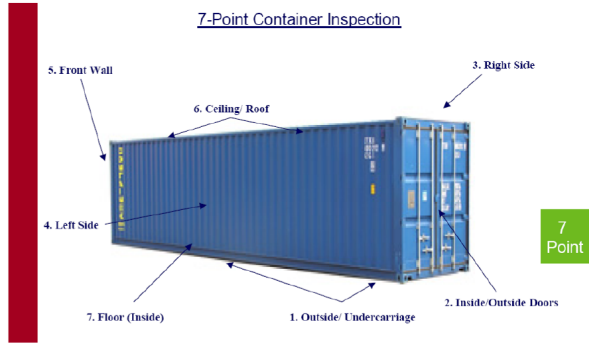
Our initial work follows.

**Gaps in current process:**

1. Blurred images are received by Rights Holders
2. File formats vary between Word, PowerPoint, Adobe docs and/or various image file types
3. Contact method varies – Rights holders receive phone calls and/or emails lacking standardization
4. Insufficient images are received by Rights Holders – photographs provided do not capture the needed information for Rights Holders to identify goods

The team reviewed several resources to aid in the development of our recommendation that include the following:

- A. Existing product guides/images, image below
- B. Rights Holder CBP training materials
- C. Existing Rights Holder Image guidelines (on-line retail sales), image below
- D. CTPAT 7-point inspection process (product agnostic), image below
- E. Existing technologies/systems used by CBP and Rights Holders



Printed name of person who conducted security inspection upon arrival: \_\_\_\_\_ Signature: \_\_\_\_\_  
 Inspection was completed: Date: \_\_\_\_\_ Time: \_\_\_\_\_  
 Printed name of person who conducted follow up security inspection: \_\_\_\_\_ Signature: \_\_\_\_\_  
 Seal number(s) that was on container when it arrived at this facility: \_\_\_\_\_  
 Seal number(s) that was on container when it departed this facility: \_\_\_\_\_  
 Printed name of person who affixed seal(s): \_\_\_\_\_ Signature: \_\_\_\_\_  
 Printed name of person who verified physical integrity of seal(s): \_\_\_\_\_ Signature: \_\_\_\_\_

**SIZING**

Images must meet the following width x height sizing requirements:

Usable (with zoom):

- 1000 x 1201 pixels minimum
  - Allows the customer to zoom in on product details while using the desktop or mobile app
- Pixels Per Inch (ppi):
- 300 ppi preferred
  - 72 ppi minimum

Usable (No Zoom):

- 550 x 660 pixels up to 1000 x 1201 pixels



**Genuine Toyota Oil Filter**



**Key considerations:**

- Universal and simplistic model, 80/20 rule is applicable
- Include referral to Rights Holder specific guidelines, where available
- Utilize existing or highly adaptable technologies
- Consistent content, quality and delivery method

**Guidelines draft:**

**A. Image Requirements:**

- Standardized file format (JPEG, TIFF...)
- Zoomable
- Clear images only

## B. Product Photo Requirements (unpackaged)

- At least one each of the following, where possible:
  - i. Area of part/package that CBP Officer finds suspicious
  - ii. Front
  - iii. Back
  - iv. Top
  - v. Bottom
  - vi. Sides
  - vii. Internal parts of product (guts), to the extent possible – i.e. products with removable covers allowing internal access
  - viii. Stampings, markings, labels, serial numbers and their location on the product (i.e. a close-up and distance photo)

## C. Packaging Photo Requirement

- Interior of master carton – chowder, packing paper...
- Product box/bag
  - i. Front
  - ii. Back
  - iii. Top
  - iv. Bottom
  - v. Sides
- Labels

## D. Submitter Requirements

- Access to camera (cell or other) capable of taking photos that meet minimum image requirements
- Always check applicable database for specific photo requirements provided by Rights Holders

## E. Delivery Method Requirements

- E-mail (minimum), phone App (e.g. banking app or Scout vendor product) and/or CBP portal/IPR hub

## F. Guide Format

### Immediate:

- Hard copy, existing CBP internal database to which all photo submitters and Rights Holders have access

### Near Future:

- Other existing external technology, such as an APP (like a banking APP or similar) or sharing portal to which photo Submitters and Rights Holders would have access
  - i. Incorporates minimum required fields or photos (controlled submission)
  - ii. Integrated checks to ensure image quality and file format
  - iii. Includes automated method for communication between Submitter and Rights Holder for additional information sharing or questions

### **Team 3 April 2020 COAC Recommendation 010436: Data-Driven CBP Seizure Process**

COAC recommends that CBP re-evaluate the current 25-point step seizure process to eliminate unnecessary steps and choose an expedited process for small parcels vs. pallets. An innovative, streamlined seizure flow would create more efficient identification, interdictions, and seizures. Particularly, the first six to seven steps could be combined through technology advancements. Expedited seizure should not eliminate ability to share information with the business community or target bad actors.

#### **BACKGROUND**

CBP has invited the COAC IPR Process Modernization Working Group to offer a recommendation to streamline the current CBP seizure process leveraging data and technological solutions to enhance efficiencies. This initiative supports CBP's 21st Century Customs Framework.

#### **CONSIDERATIONS**

Understanding that some of the seizure process steps are discretionary, the IPR Process Modernization Working Group requests that CBP identify steps that are outdated and can be removed or combined with other measures to increase efficiency. While processing times vary from seizure to seizure, if CBP identifies which steps are unnecessary, the entire seizure process would be improved. The Working Group offers the following areas for CBP's consideration.

##### **1) Streamlining the Administrative Processes**

###### *Issue:*

Reducing the length of an initial inspection and improving an officer's decision making during an inspection, would create natural process efficiencies. Augmenting technology to increase the decision-making capabilities of officers at Ports of Entry is a critical step toward improving this process and modernizing enforcement measures.

###### *Solutions:*

Integrating technology within the seizure process and providing the right tools (including appropriate mobile hardware and software) to officers and import specialists, supports swift decision making. CBP should consider combining the first six to seven steps of the seizure process. As part of this, CBP should integrate software and/or an app on each officer's mobile device to allow for efficient case management. Eventually, this use of an app where images can be added and package data scanned, will allow for seamless integration. A mechanism to evaluate seizure efficiency should be introduced in order to evaluate how new processes improve seizure metrics.

##### **2) Transition to Electronic Seizure Notifications**

###### *Issue:*

CBP should strive to migrate as many paper processes to electronic processes as possible. Step 5 and Step 12, which indicate transmitting notices via mail, should be digitized and automated.

###### *Solutions:*

All import specialists and officers should transmit electronic seizure notices to rights holders and importers. Transitioning from paper notices to electronic versions of Form 6051D would create an efficient, original record of detained property and create a lasting record to capture chain of

custody. This technology-driven change will reduce processing time and allow for efficient recordation. A foundational element of CBP's 21<sup>st</sup> Century Customs Framework, is *Ensuring*

*Seamless Data Sharing and Access*. The transition to electronic notification supports this pillar emphasizing digitalization from ink and paper processes. Ideally, all seizure information and documentation would be exchanged electronically with the trade via CBP's existing portals and software. Through an enhanced automated process, CBP should be able to process more packages and cargo in the same period of time.

### **3) Uniformity at all Ports of Entry through a Unique Identifier**

#### *Issue:*

Currently, importers, rights holders, and separate offices within CBP may utilize different identifiers for tracking goods suspected of bearing infringing marks through the CBP exam/detention/seizure process. In tracking such shipments, importers may reference a container number or a master bill of lading number. The CBP officer may reference a detention number and the CBP import specialist may reference the entry number. The Fines, Penalties, and Forfeitures Officer typically references a seizure number. Often, rights holders only receive an email with images of the goods under review, but no reference number or any indication of where the shipment is in the exam/detention/seizure process. As a result, it can be challenging to consistently and correctly reference particular shipments being questioned once they are in CBP custody.

#### *Solution:*

CBP should designate a single reference number that can be used to track a shipment all the way through the exam/detention/seizure process. CBP could choose an existing reference number, such as the detention number, which can be shared with all parties, or establish a new identifier. Use of such a unique identifier will help establish uniformity, enable more transparent and efficient case management, and where the case results in a seizure, that one identifier can be used create an electronic record for chain of custody purposes.

### **4) Workforce Optimization**

#### *Issue:*

In order to enhance efficiencies, CBP must have ample staffing. This coincides with proper workforce optimization, sufficient training, and adequate technological capabilities, all of which are crucial to handling increased trade volumes, specifically with the increased reliance on delivery of consumer goods through online marketplaces.

#### *Solutions:*

CBP should continue to update its staffing model to ensure existing and future capabilities are used to their fullest extent. Advancements in staffing specifically at International Mail Facilities will reduce the timeline of the process and increase enforcements.

## **CONCLUSION**

The COAC IPR Process Modernization Working Group appreciates the opportunity to provide this initial White Paper focused on a data-driven seizure process. Ideally, our recommendations can be implemented consistent with the 21st Century Customs Framework to enhance efficiencies at Ports of Entry.