

**Commercial Customs Operations Advisory Committee  
Government Issue Paper  
Intelligent Enforcement Subcommittee  
Intellectual Property Rights Working Group**

**December 2022**



**U.S. Customs and  
Border Protection**

Pub# 2079-1122

**Office of Trade, Trade Policy and Programs, Intellectual Property Rights Division  
Intelligent Enforcement Subcommittee  
Intellectual Property Rights Working Group  
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**Action Required:** Informational

**Background:**

- In late October 2020, U.S. Customs and Border Protection (CBP) asked the Commercial Customs Operations Advisory Committee (COAC) to further develop, expand upon, and align three previous recommendations pertaining to Sharing of Detention Information, Photographic Standards Guide, and Data- Driven CBP Seizures Process.
- The Intellectual Property Rights (IPR) Working Group (IPRWG) focused on developing a model that appropriately accounts for and incorporates:
  - A cost-sharing framework that reduces the burden of storage, detention, seizure, and/or destruction of IPR violative goods.
  - A tiered approach for the disposal, detention, and/or seizure of shipments, based on key shipment characteristics (e.g., parcel size, quantity, or value).
  - The effective use of new or emerging technologies for the enforcement of IPR.
  - Information sharing needs.
  - Current laws that should be amended to enable the implementation of new processes.
- The IPRWG met regularly since October 2020 to discuss implementation solutions to the identified recommendations mentioned above, and in late January 2021 presented its written report on the status.
- In early 2021, the IPRWG went on hiatus to reorganize and allow CBP the opportunity to implement some of the recommendations provided to CBP. Since that time:
  - CBP began concurrently issuing the notice of seizure (NOS) and initiating publication of the notice of intent to forfeit on all seized shipments with a domestic value less than \$2,500, on January 4, 2021. Although publications are advanced, all interested parties are afforded the same opportunity to respond to the NOS as they had under previously existing procedures.
  - CBP began to email NOS to rights holders via the email addresses provided to CBP through the IPR e-Recordation program on June 7, 2021. Delivery of seizure notices via email allows for instantaneous notification to the rights holder.
- On May 26, 2021, CBP signed a Memorandum of Understanding (MOU) with the U.S Chamber of Commerce to increase cooperation in protecting intellectual property rights. The MOU outlines general terms for future information sharing that will help stem the tide of counterfeit goods entering the U.S.
- CBP reactivated the IPRWG as part of the 16<sup>th</sup> term of the COAC to identify opportunities to enhance trade and CBP practices, policies, and programs in relation to the interdiction of violative counterfeit goods.

## **Issue:**

- U.S. Customs and Border Protection (CBP) is charged with the authority to target and seize imports of counterfeit and pirated goods entering the United States.
- During Fiscal Year 2022 CBP made seized nearly 24 million counterfeit goods with a manufacturer's suggested retail price (MSRP) of \$3 billion had the goods been genuine.
- CBP has taken steps to combat counterfeit goods, especially in the small package environment, and in keeping with a recent U.S. Government Accountability Office (GAO) recommendation, we are working to further streamline our enforcement approach.
- To further progress in these IPR enforcement space, the IPRWG is focusing efforts on three items:
  - The automation of the detention process.
  - The ability to manipulate shipments so that they do not violate CBP's admissibility standards.
  - Review and identification of improvements to the IPR Priority Trade Issue CBP.gov webpage.
- The Office of Inspector General for the Department of Homeland Security (OIG DHS) also published a report in July 2022 entitled "DHS and CBP Should Improve Intellectual Property Rights Management and Enforcement". The report includes a list of recommendations aimed at improving DHS and CBP IPR management and enforcement.

## **Current Status:**

- In 2022, CBP met with the IPRWG to discuss working group priorities and gather trade community input. Based on the feedback, CBP is conducting an internal review of all COAC IPR recommendations and is working to prioritize the implementation of the existing recommendations.
- Since reactivation, the IPRWG has held regular meetings to discuss pragmatic and practical recommendations for improving communications with CBP, rights holders, and importers to develop strategies for streamlining the seizure process.
- Based on the discussions, the group has compiled the following recommendations for CBP:
  - A single, bidirectional automated system for CBP's detention and seizure process that would allow for electronic notice of detention and have a unique identifier that would act as a reference number throughout the entire importation process.
  - Enhanced communication system for interested parties that would allow for direct and confidential communications between CBP and interested parties. The portal would include:
    - Password protected accounts that allow for access of notifications, images, and information exchange
    - A search mechanism for importers and other interested parties to track CBP actions pertaining to goods through the entire enforcement process using a unique identifier.
    - The ability for appropriate parties to provide permission or request manipulation or abandonment of goods.

## **Next Steps:**

- CBP will continue to work with the IPRWG to gather more detailed feedback and further discuss how CBP can implement the above recommendations.
- CBP is also working internally on meeting the recommendations listed in the OIG DHS report and will continue to seek IPRWG input on how to address the challenges raised in the report.

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Date: November 22, 2022