

INTELLECTUAL PROPERTY RIGHTS (IPR)
Commercial Customs Operations Advisory Committee
April 27, 2016

OVERVIEW:

- The Advisory Committee on Commercial Operations of (COAC) and U.S. Customs and Border Protection's (CBP) Trade Enforcement and Revenue Collection Subcommittee (TERC), and its Intellectual Property Rights Working Group (IPRWG), provide advice and recommendations to CBP on improving Intellectual Property Rights (IPR) enforcement. At the May 22, 2014 Public Meeting, the COAC made three principal IPR recommendations to CBP, which focused on: (1) Simplified Enforcement for Express Consignment, (2) Document Imaging System (DIS), and (3) Voluntary Disclosure.
- As of early 2015, Voluntary Disclosure is no longer being pursued. DIS has not been a topic of recent meetings.
- At the July 29, 2015, quarterly meeting, the TERC set forth a plan that during the 14th term of COAC, an IPRWG would be established to discuss and explore this topic and formulate a recommendation for the viability of an IPR "known" importer program.

Trade Facilitation and Trade Enforcement Act of 2015

- The IPRWG is discussing IPR related topics and mandates included in Trade Facilitation and Trade Enforcement Act of 2015.

Simplified Enforcement for Express Consignment

- The COAC recommended that CBP collaborate with its express consignment industry partners and stakeholders to develop a simplified and mutually beneficial IPR enforcement process in the express consignment environment through which CBP would offer the importer and the U.S. consignee an abandonment option on detention notices for shipments detained by CBP on suspicion of trademark or copyright violations.
- On November 1, 2014, CBP successfully implemented a pilot at the UPS Express Consignment Facility in Louisville, KY to streamline procedures for the administrative processing of small shipments in the express consignment environment.
- In February 2015, CBP expanded this pilot to the DHL Express Consignment Facilities in Cincinnati, OH and Los Angeles, CA. Then, in April 2015, the program was expanded a second time to the DHL Express Consignment Facilities in Miami, FL and New York City, New York.
- In FY 2015, the IPR Voluntary Abandonment Pilot processed nearly 4,000 shipments at great savings of CBP time and expense.

IPR Known Importer Program

- Under the current concept of the program, industry trade associations would identify importers that potentially then would be approved by CBP. The program is being considered for importers of electronics, but eventually it would be broadened to include other industries.
- Recent meetings of the TERC IPRWG have focused on the level of interest for the program, details of how the program would operate, and what qualifies an IPR “known” importer.

Fiscal Year (FY) 2015 IPR Statistics

- The FY 2015 IPR seizure statistics were recently released and are available on CBP’s website at the following link: [IPR Statistics](#).
- FY 2015 was a record year with regard to the total number of seizures.
- In addition, the total number of IPR seizures involving products that pose a health or safety risk to the consumer rose substantially in FY 2015. There were 4,615 such seizures, which is a 21 percent increase. Theft of intellectual property threatens America’s innovation-based economic vitality, business competitiveness, the livelihood of workers, consumer safety, and national security.
- Trade in counterfeit and pirated goods helps to fund criminal enterprises.
- The IPR enforcement statistics include IPR border enforcement activities by CBP and ICE/HSI. These include copyright, trademark, and circumvention device seizures, and the enforcement of exclusion orders.
- In FY 2015, the total number of IPR seizures was 28,865, which is a 25 percent increase over the 23,140 IPR seizures that were made in FY 2014. The 28,865 FY 2015 IPR seizures signified a record since IPR became a priority trade issue for CBP.
- The total estimated Manufacturer’s Suggested Retail Price (MSRP) value of the IPR infringing products seized in FY 2015 was \$1,352,495,341, which is 10 percent higher than the \$1,226,347,540 MSRP value estimated to be the total value of IPR infringing products seized in FY 2014.
- The express and mail environments were the top areas for IPR seizures, making up 90 percent of all such seizures. This is a 3 percent increase over the previous FY and continues the trend of the past several years of these two environments making up the vast majority of all IPR seizures.
- The top two source economies were again China and Hong Kong, accounting for 49 and 34 percent of the total number of IPR seizures, respectively.
- Singapore was the third highest source economy, accounting for 5 percent of the total number of IPR seizures.
- Tactical interagency collaboration with the National Intellectual Property Rights Coordination Center resulted in 538 arrests, with 339 indictments, and 357 convictions.
- Wearing Apparel remains the top commodity seized, making up 22 percent of FY 2015 IPR seizures. It is followed by Consumer Electronics at 18 percent, Footwear at 10 percent, Watches/Jewelry at 10 percent, and Pharmaceuticals at percent.
- The total number of IPR seizures involving products that pose a health or safety risk to the consumer rose substantially in FY 2015. There were 4,615 such seizures, which is a 21 percent increase from FY 2014. These include counterfeit items such as, batteries, automotive parts, bearings, cigarettes, pharmaceuticals and consumer electronics.

BACKGROUND

Simplified Enforcement for Express Consignment

- More than half of all Intellectual Property Rights (IPR) seizures occurred in the express environment and these numbers are expected to increase as direct-to-consumer sales and e-commerce industries continue to surge.
- In 2013, the Office of the U.S. Intellectual Property Enforcement Coordinator, within the Administration's Office of Management and Budget, released the 2013 Joint Strategic Plan on Intellectual Property Enforcement. A key part of this strategy is for CBP to develop a three-year plan which focuses on working with express carriers on counterfeit shipments.

IPR Known Importer Program

- During the 13th term of COAC, the Intellectual Property Rights Working Group (IPRWG) suggested that the COAC explore whether an IPR "known" importer program would offer CBP improved targeting, while providing trade facilitation benefits.
- At the July 29, 2015, quarterly meeting, the TERC set forth a plan that during the 14th term of COAC, an IPRWG would be established to discuss and explore this topic and formulate a recommendation for the viability of an IPR "known" importer program.

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