

**ADVISORY COMMITTEE ON COMMERCIAL OPERATIONS OF CUSTOMS AND
BORDER PROTECTION (COAC)
Trade Enforcement Subcommittee
Intellectual Property Rights Working Group
Government Report on Intellectual Property Rights Enforcement
October 2014**

Background

The Advisory Committee on Commercial Operations of Customs and Border Protection's Trade Enforcement and Revenue Collection Subcommittee (TERC), and its Intellectual Property Rights Working Group (IPRWG) provide advice and recommendations to U.S. Customs and Border Protection (CBP) on improving Intellectual Property Rights (IPR) enforcement. The TERC continues to examine CBP programs and processes used to facilitate legal trade while supporting its mission to effectively and efficiently enforce against violative goods. At the May 22, 2014 Public Meeting, the COAC made three principal IPR recommendations to CBP focused on (1) Simplified Enforcement for Express Consignment, (2) Document Imaging System, and (3) Voluntary Disclosure.

Current Status

- **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 October 6th, CBP is slated to issue proof of concept guidance to the UPS Louisville Port, testing this recommendation, which provides streamlined procedures for the administrative processing of small shipments of counterfeit goods in the express consignment environment. Though this process, CBP will offer the importer and U.S. ultimate consignee an abandonment option on detention notices for shipments detained by CBP on suspicion of trademark or copyright violations.
 - This change is expected to have a significant, yet positive impact on resources, as the express environment now accounts for more than half of all intellectual property rights seizures. In addition, collaboration with CBP express consignment industry partners has been mutually beneficial in providing IPR enforcement in the express consignment environment.

- **Document Imaging:** The COAC recommended that CBP pilot the use of the Document Imaging System (DIS) in ACE within the next 12 months as a means for importers and customs brokers to voluntarily provide information to assist CBP in assessing a shipment's IPR risk.
 - On September 11, 2014 CBP began solicitation for nine non-partnership program participation filer volunteers to transmit advanced IPR authenticating documentation as a means to expedite the release of legitimate goods and reduce costs to CBP and the trade.

- Once qualified participants are identified, CBP expects to begin its pilot phase, testing this method for furnishing advanced information about a shipment's IPR compliance, determining whether DIS could be used to provide facilitation benefits to legitimate importers.
- At the conclusion of the pilot, CBP will collect and share pilot results with the COAC, offering the COAC an opportunity to further review and comment on the initiative.

Voluntary Disclosure: The COAC recommended that CBP pilot an IPR Voluntary Disclosure program within the next 12 months, which would will allow members of the trade to provide CBP with intelligence for targeting purposes by voluntarily disclosing violations of the laws prohibiting importation of goods infringing U.S. registered trademarks or copyrights, without incurring liability for any otherwise applicable CBP fines and penalties. In addition, COAC recommended that CBP open a sub-working group of the COAC-TERC-IPRWG, specific to this initiative, in order to finalize the details of the pilot program. The sub-WG would use both the July 20, 2010 concept document, which was co-created by CBP and the COAC regarding this proposal, as well as additional stakeholder input received, as a framework to allow for COAC discussion and comment on a final program document before implementation of the pilot.

- A sub-working group of the IPRWG has been convened and is in the process of revising the 2010 document, discussing issues to include the disclosure process and means of destruction of the infringing articles. The goal of such a program is to enable the trade community to work with CBP to stop infringing items imported contrary to law from being sold or delivered into the commerce of the United States.
- A follow-up meeting is planned for October to address comments, suggestions and questions put forward by the sub-working group to CBP, so that a determination can be made about the viability of the program.
- At the conclusion of the pilot, CBP will collect and share pilot results with the COAC, offering the COAC an opportunity to further review and comment on the initiative.
- This working group will also examine methods by which importers that are not good fits for the Customs-Trade Partnership Against Terrorism (C-TPAT) and Importer Self-Assessment (ISA) programs might be assessed for IPR compliance and assessed supply and distribution chain risk accordingly, in relation to possible IPR infringement and vulnerabilities.