

# CBP's Intellectual Property Rights (IPR) Border Enforcement Regime



# ROADMAP

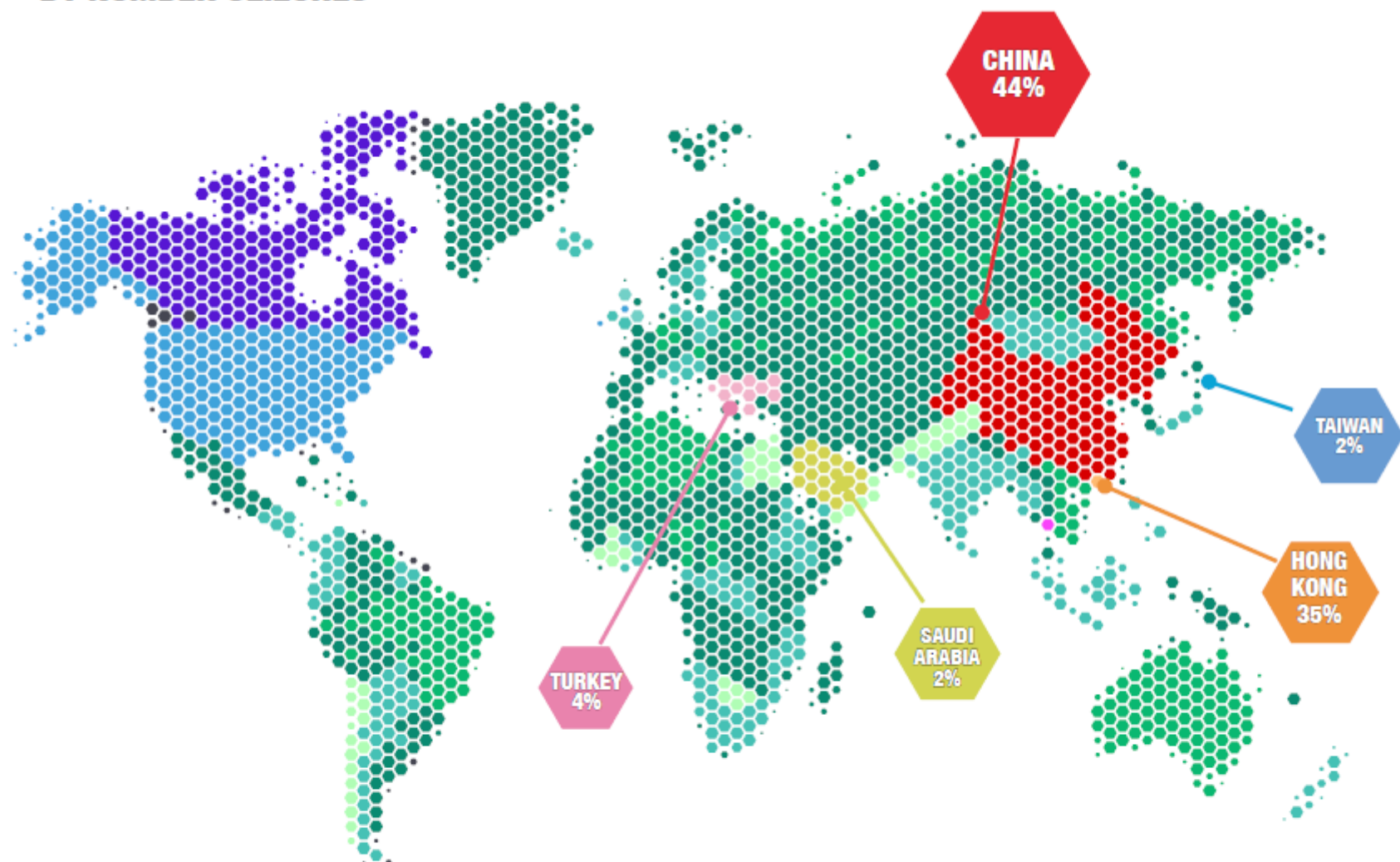
- Introduction to CBP's IPR Enforcement
- What IP CBP Enforces
- CBP e-Recordation
- Overview of IP Border Enforcement Procedure
- Legal Enforcement Authorities
- Programs Available to e-Recordation Holders
- Reporting Violations
- Points of Contact
- Questions

# ENDURING MISSION PRIORITIES



- **Counter Terrorism** – Anticipate, detect and disrupt the threat of terrorists, their weapons and actions to protect the people and economy of the United States.
- **Combat Transnational Crime** – Detect, deter and disrupt transnational organized crime that threatens U.S. national and economic security interests at and beyond the border.
- **Secure the Border** – Protect the Homeland through the air, land and maritime environments against illegal entry, illicit activity or other threats to uphold national sovereignty and promote national and economic security.
- **Facilitate Lawful Trade and Protect Revenue** – Enable fair, competitive and compliant trade and enforce U.S. laws to ensure safety, prosperity and economic security for the American people.
- **Facilitate Lawful Travel** – Enhance, enable and transform the travel experience by anticipating, detecting and intercepting threats prior to and at ports of entry.

## FISCAL YEAR 2020 IPR SEIZURES STATISTICS BY NUMBER SEIZURES



### FY 2020 TOTALS

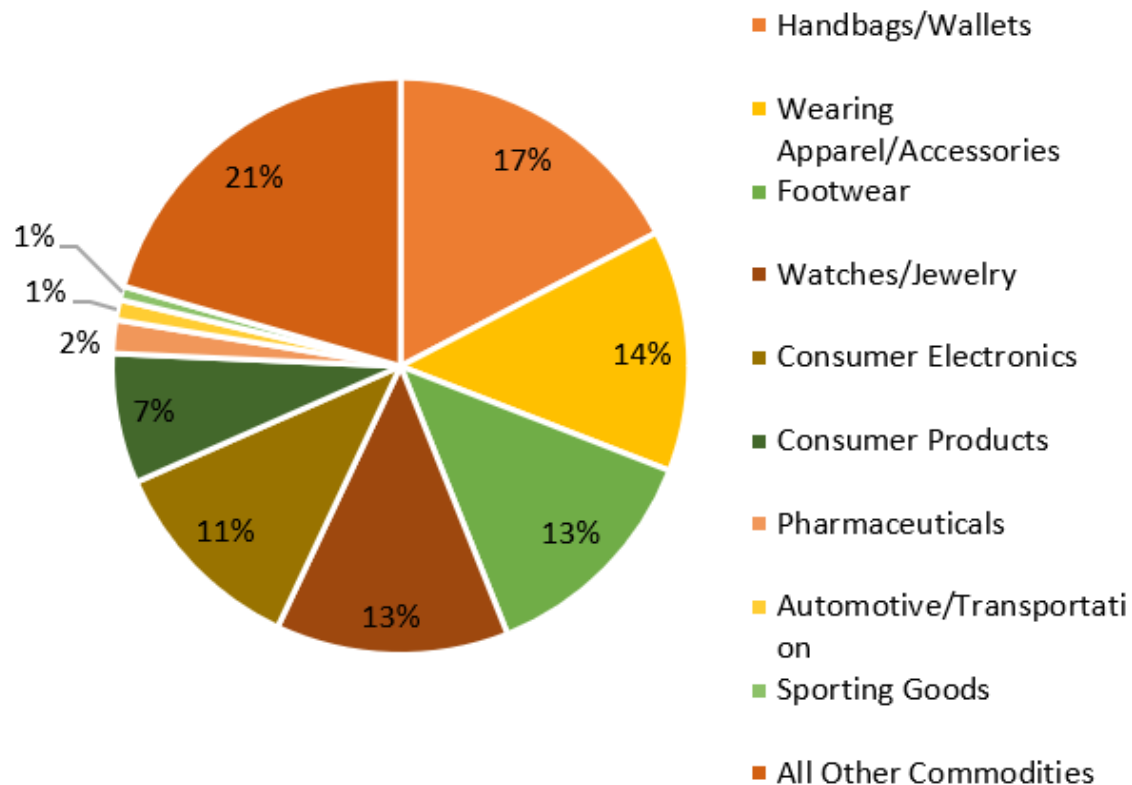
Number of seizures: 26,503

MRSP: \$1.3 billion

**ALL OTHER COUNTRIES 13%**

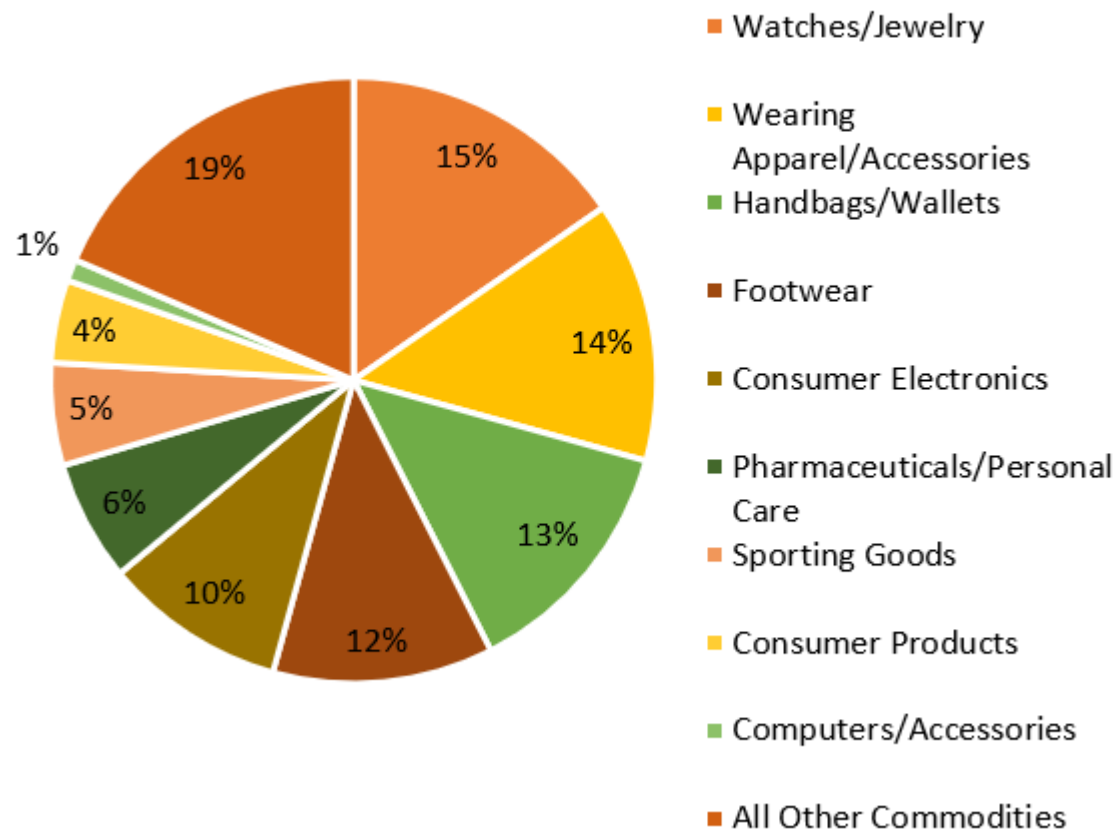
# IPR Seizure Statistics

**Fiscal Year 2020**



**Number of Seizures: 26,503**

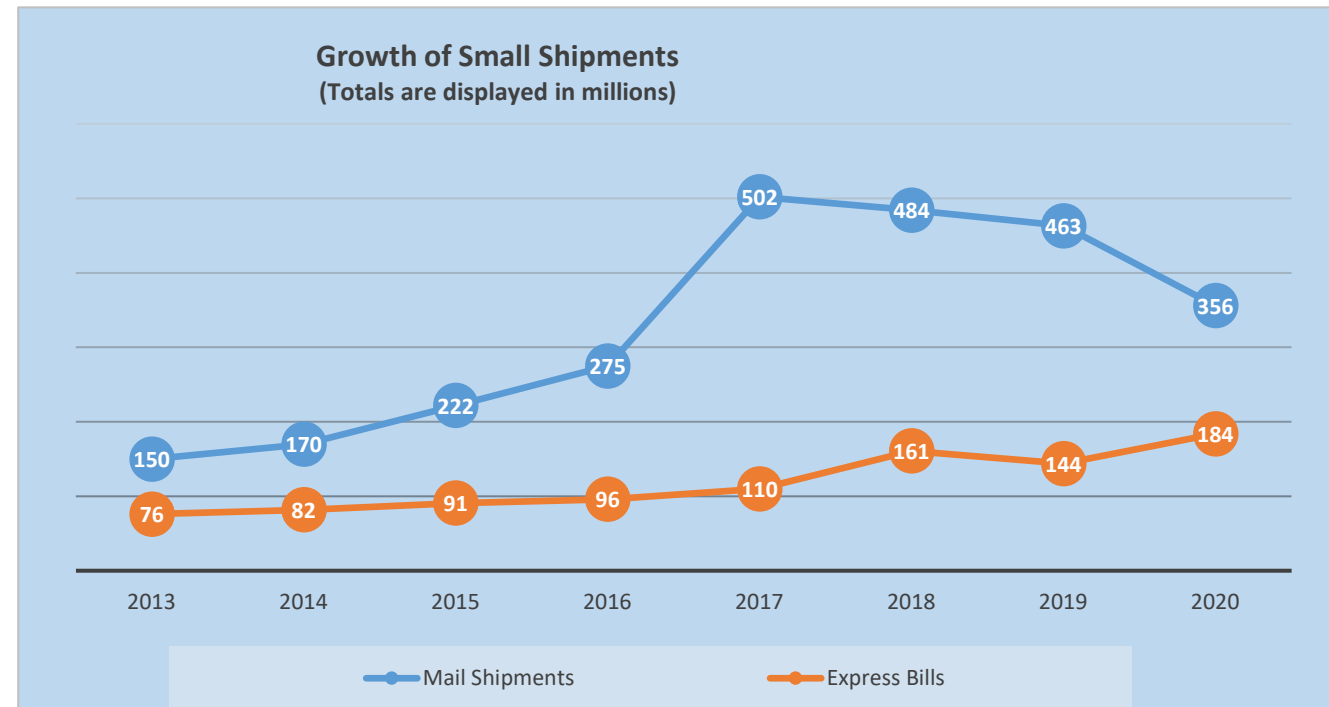
**Fiscal Year 2019**



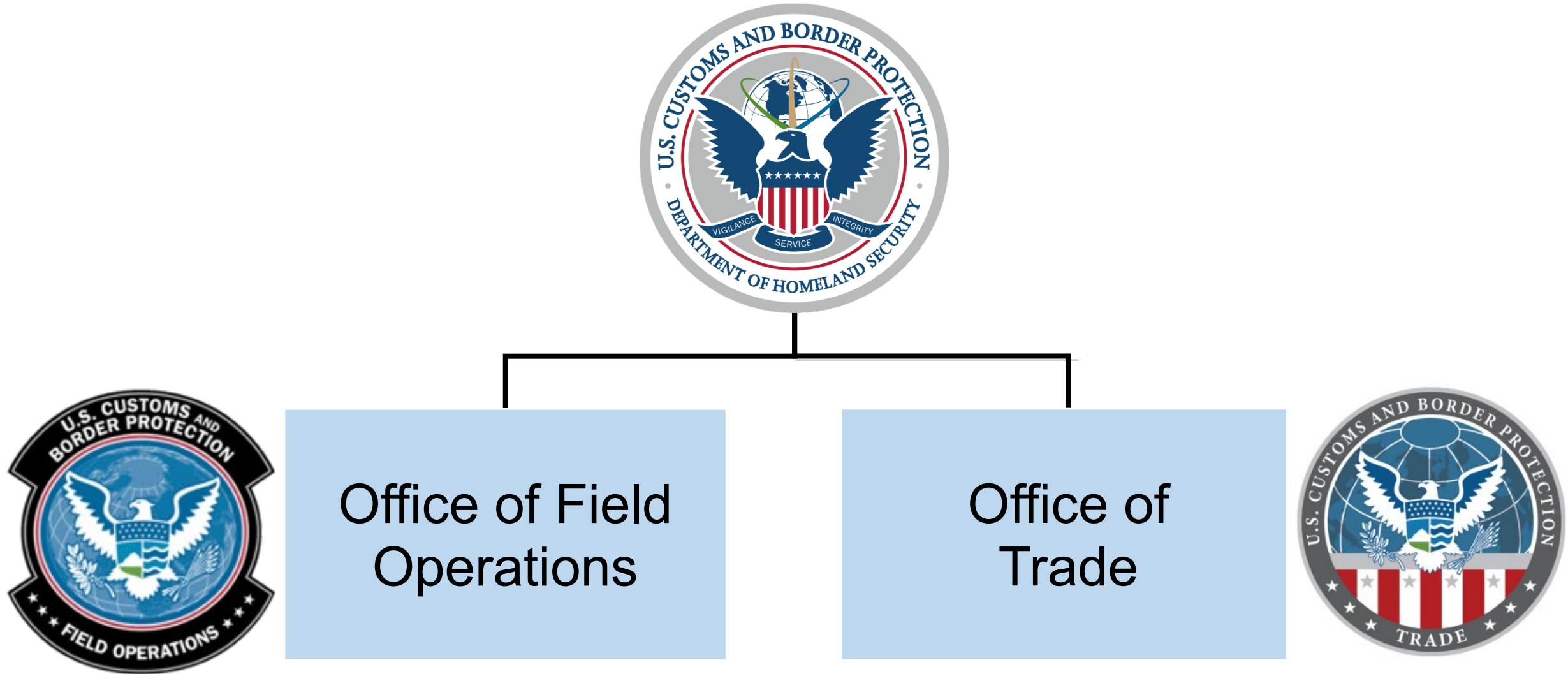
**Number of Seizures: 27,599**

In FY 2020:

- 184 million express shipments and 356 million international mail shipments
- Over 90 percent of all intellectual property seizures occur in the international mail and express environments.
- The ongoing e-commerce revolution drove a 28 percent increase in low-value shipments and a 219 percent increase in air cargo in Fiscal Year 2020.



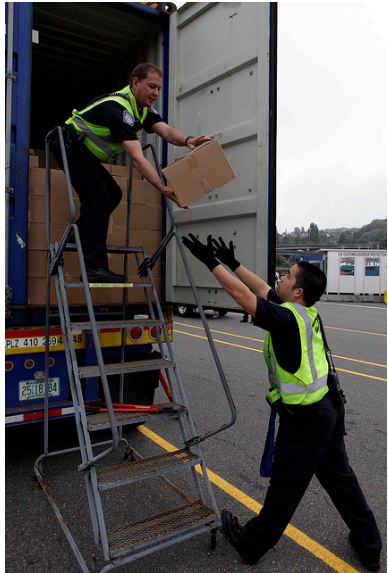
# Main CBP Offices Involved in IP Enforcement







## PHYSICAL LOCATION



## VIRTUAL



**Ports of  
Entry**

**Centers**

**CBP  
Officers/Inspectors**

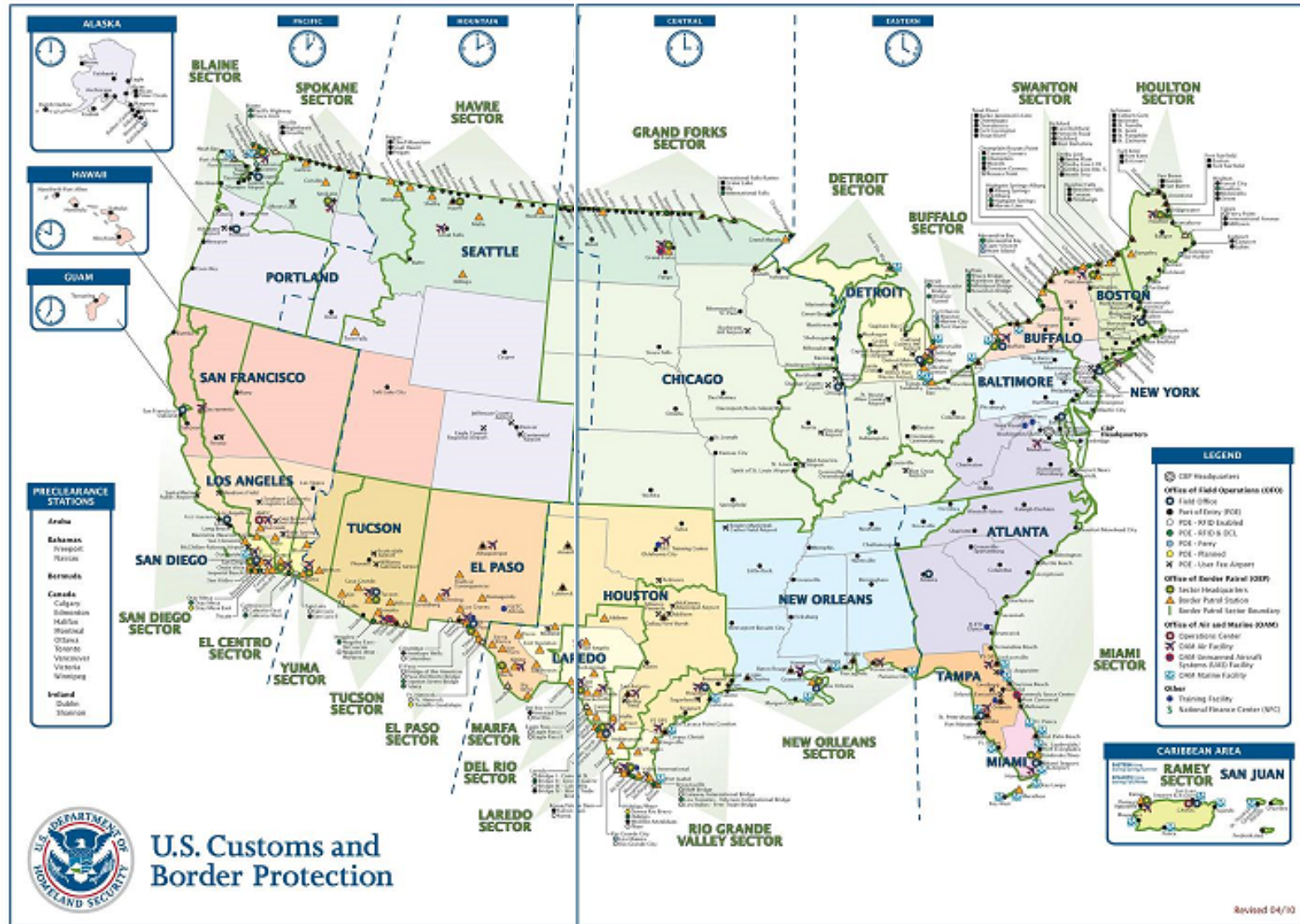
**Fines Penalties and  
Forfeiture Officers**

**Import Specialists**

**Entry Specialists**



# 20 CBP Field Offices; 328 Ports of Entry



# CENTERS OF EXCELLENCE & EXPERTISE

CBP created 10 industry-specific Centers to increase uniformity at the ports, facilitate the timely resolution of trade compliance issues nationwide, and further strengthen the agency's knowledge about industry practices.



# OT Directorates in IP Space

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- Regulations & Rulings Directorate
    - Intellectual Property Enforcement
    - Exclusion Order Enforcement
  - Trade Policy & Programs
    - IPR Policy
    - IPR Operations
  - Trade Remedy Law Enforcement Directorate
    - National Threat Analysis Center
- 



# CBP's IP Border Enforcement Authority

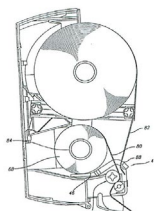
CBP is the primary federal agency responsible for securing American's borders; this includes civil enforcement of Intellectual Property Rights (IPR)

CBP has independent authority (*ex officio*) to examine, detain, seize, forfeit and ultimately destroy imported merchandise that violates a recorded trademark or copyright

CBP is solely responsible for determining whether there is IP infringement, and has the legal burden of showing probable cause prior to seizure

**RECORDATION** is the cornerstone of trademark and copyright protection at the border

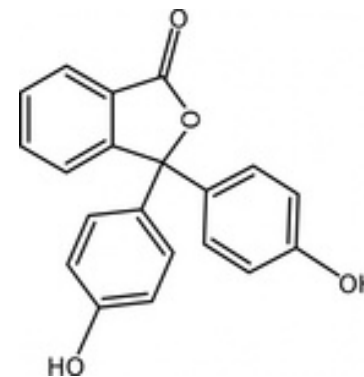
# What IPR does CBP Enforce?



ex officio



ex officio







# Civil Enforcement Authorities

- Search/examination
- Detention
- Seizure
- Forfeiture/destruction
- Assess Penalties



# In rem seizure authority

- In civil IPR enforcement the action is taken against the goods themselves, and not the importer
- Ex: *United States v. 10,500 Computer Towers*, *United States v. One (1) Lot of Approximately Twenty Thousand (20,000) Pairs of Counterfeit Blue Jeans Bearing the Jordache Trademark*







# U.S. Customs & Border Protection e-Recordation Program

## How to Obtain Border Enforcement of Trademarks and Copyrights

<https://iprr.cbp.gov/>

U.S. Customs and Border Protection (CBP) has the authority to detain, seize, forfeit, and ultimately destroy merchandise seeking entry into the United States if it bears an infringing trademark or copyright that has been registered with the United States Patent and Trademark Office (USPTO) or the United States Copyright Office (USCOP), and has subsequently been recorded with CBP.

As an intellectual property right (IPR) owner, you can partner with CBP to receive border enforcement of your registered trademarks and copyrights through CBP's e-Recordation Program.

# Registration v. Recordation

**Registration** relates to the official act of filing (1) a trademark with the U.S. Patent & Trademark office, or (2) a copyright with the U.S. Copyright Office for a federal registration.



**Recordation** refers to bringing a valid, federally registered right (trademark or copyright) to CBP (IPR Branch, R&R) in order to protect against the importation of infringing goods. 19 CFR § 133.1, *et seq.*

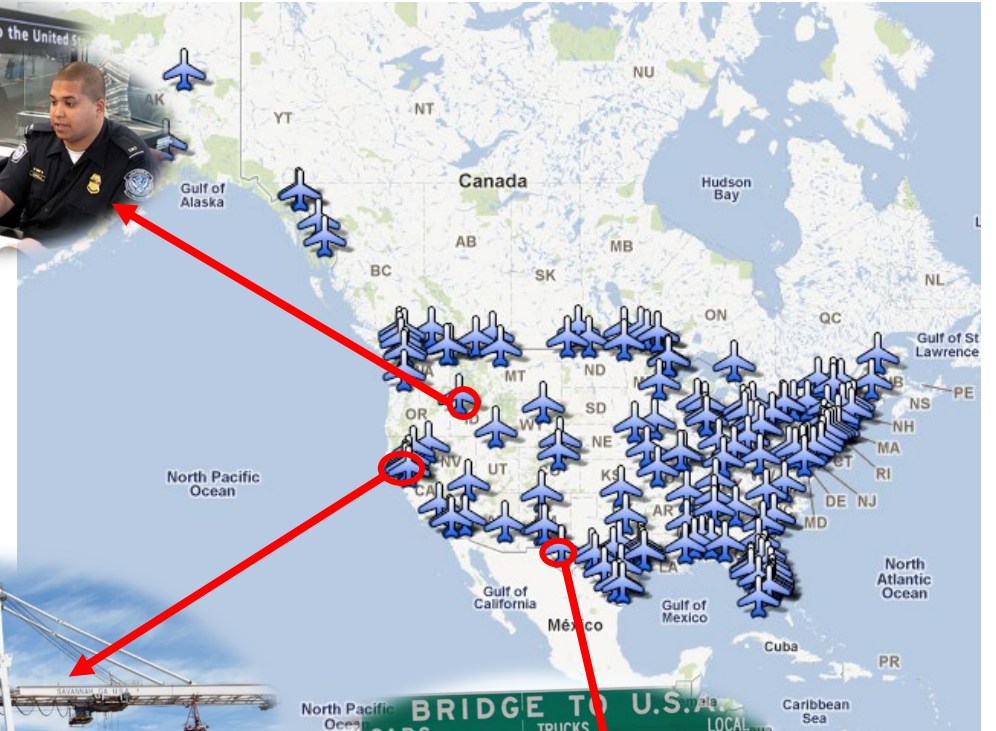


**Distinction:** Seizure is not always possible of goods that violate unrecorded rights.

# Registration



# Recordation



# Registration with the USPTO



Trademark Examiner Substantive Review



# Recordation with CBP



A screenshot of the IPRR application form in a Microsoft Internet Explorer browser window. A red arrow points to the 'Description of trademark registered with the U.S. Patent & Trademark Office' field. Another red arrow points to the 'Point of contact last name' field. A large red 'REQUIRED' stamp is overlaid on the form.

Intellectual Property Rights (IPR) search - gov Trademark Recordation Application - Microsoft Internet Explorer

U.S. Customs & Border Protection  
Securing America's Borders  
CBP.gov

IPRR INTELLECTUAL PROPERTY RIGHTS e-RECORDATION

Fields marked with an Asterisk (\*) are required

Description of trademark registered with the U.S. Patent & Trademark Office

Supplemental Information

(3) DESIGN PLUS WORDS, LETTERS OR NUMBERS

Name of trademark owner(s)

Address

City

State

Zip Code

Is the applicant the trademark owner(s)? If not, what is the applicant's name and relationship to the trademark owner?

Point of contact first name

Point of contact last name



IPE BRANCH  
REVIEW

A screenshot of the IPRS search results page. A red arrow points from the clipboard icon to the 'GO' button. A red 'APPROVED' stamp is overlaid on the page.

U.S. Customs and Border Protection  
Securing America's Borders

IPRS INTELLECTUAL PROPERTY RIGHTS SEARCH

Keyword: nike

Search ALL Title Product Description Owner Contact Name Firm Name Record

Filter Show All Trademarks Copyrights Tradenames Exclusion Orders

Trademark

Customs Recordation Number: TMK 05-00165

Title	SWOOSH DESIGN
Product	IC 009 FYFGI ASSES AND FYFGI ASS FRAMES: COM PAGES, HEART RATE CREATE WORKOUT SCHEDULE
Description	Swoosh Design
Owner Name	Nike, Inc.
Gray Market Importations Restricted	NO
U.S. Patent and Trademark Office Registration Number	2863049
Firm	[N/A]
Contact Name	Newton Vieira ONE BOWERMAN DRIVE BEAVERTON, Oregon 9700
Phone Number	(503) 671-6463

CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of Decisions, Rulings, Regulations, Notices, and Abstracts Concerning Customs and Related Matters of the U.S. Customs and Border Protection U.S. Court of Appeals for the Federal Circuit and U.S. Court of International Trade

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DEPARTMENT OF HOMELAND SECURITY U.S. CUSTOMS AND BORDER PROTECTION

# Importance of Recordation

- The longstanding CBP policy is to focus its IP enforcement efforts on recorded trademarks and copyrights
- The legal authorities for detaining, seizing and forfeiting merchandise are different depending on whether the trademark or copyright has been recorded with CBP
- Recorded trademarks and copyrights are afforded more protection than those that are unrecorded:
  - Enforcement against “confusingly similar” marks
  - Right holders receive notice of the name and address of the parties associated with the seized goods
  - Right holders received digital images of the infringing goods as well as a sample, provided a bond is posted
  - §1526(f) penalty available to deter future violations

# Eligibility & Fees: Trademark



In order to record with CBP you must have a valid trademark registration published on the Principle Register of the [United States Patent and Trademark Office \(USPTO\)](#). The fee for e-Recordation is \$190 per International Class of Goods (IC), per trademark registration. The recordation will remain in force concurrently with the underlying USPTO registration, if renewed along with the USPTO registration.



# Eligibility & Fees: Copyright



In order to record with CBP you must have a valid copyright registration with the [United States Copyright Office \(USCOP\)](#). The fee for e-Recordation is \$190 per copyright. The recordation will remain in force concurrently with the underlying copyright registration, if renewed with CBP every 20 years.

# Renewal & Expiration

- Recordations can be renewed for another term for the fee of **\$80** per International Class of Goods (IC) for trademarks, and **\$80** per copyright.
- Once a recordation has expired, the right holder has **90 days** to renew. Beyond this **90 day** period, should the right holder wish to revive their recordation in order to receive border enforcement, they will have to apply anew and pay the standard fee for new recordations.



# U.S. Customs & Border Protection e-Recordation

## How to Obtain Border Enforcement of Trademarks and Copyrights

United States Customs and Border Protection (CBP) has the authority to detain, seize, forfeit, and ultimately destroy any goods imported into the United States if it bears an infringing trademark or copyright that has been registered with the [United States Copyright Office \(USCOP\)](#), and has subsequently been recorded with CBP. As an intellectual property owner, you can request CBP to receive border enforcement of your registered trademarks and copyrights through CBP's e-Recordation system.

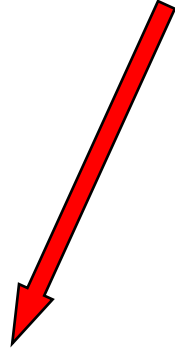
[New Recordation](#)[Renewal](#)[Change of Ownership](#)[Check Status](#)[Request 3 Month Extension](#)

Electronic Application  
<https://iprr.cbp.gov/>

# Required Documents

- U.S. Patent & Trademark Office Registration Certificate, U.S. Copyright Office Registration Certificate, or proof of an application with the U.S. Copyright Office
- Digital images of the trademark or copyright as used in commerce in ".jpg," ".gif" or ".pdf" format. Please note that individual image files are limited to 2MB.
- Name, address, telephone number and email address of a Point of Contact that will be available to CBP should they have questions concerning border enforcement of the recordation
- List of authorized manufacturers, licensees and parties authorized to use the trademark, if applicable
- Countries of manufacture

# **IPRR** INTELLECTUAL PROPERTY RIGHTS e-RECORDATION

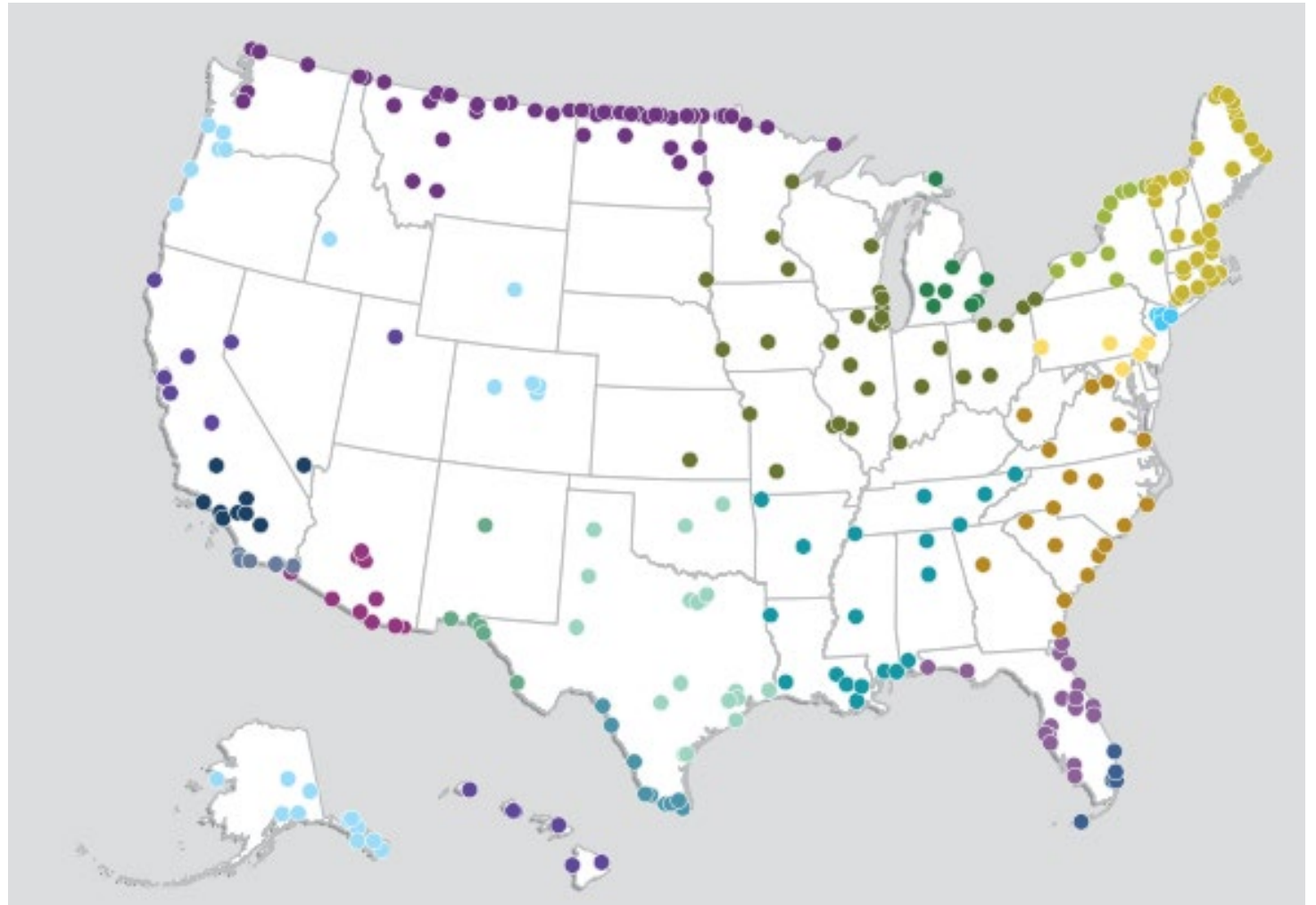


## **IPRS** INTELLECTUAL PROPERTY RIGHTS SEARCH



## **IPRiS** INTELLECTUAL PROPERTY RIGHTS *internal* SEARCH

Recordation data available  
to all 328 U.S. Ports of  
Entry, the moment a  
recordation is approved





# **CUSTOMS BULLETIN AND DECISIONS**

*Weekly Compilation of  
Decisions, Rulings, Regulations, Notices, and Abstracts  
Concerning Customs and Related Matters of the  
U.S. Customs and Border Protection  
U.S. Court of Appeals for the Federal Circuit  
and  
U.S. Court of International Trade*

*This issue contains:  
U.S. Customs and Border Protection  
General Notices  
U.S. Court of International Trade*

**DEPARTMENT OF HOMELAND SECURITY  
U.S. CUSTOMS AND BORDER PROTECTION**

## **COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS**

(No. 11 2017)

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**SUMMARY:** The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in November 2017. The last notice was published in the CUSTOMS BULLETIN Vol. 51, No. 47, November 22, 2017.

Corrections or updates may be sent to: Intellectual Property Rights Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, NE., 10th Floor, Washington, D.C. 20229-1177, or via email at [iprrquestions@cbp.dhs.gov](mailto:iprrquestions@cbp.dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** LaVerne Watkins, Paralegal Specialist, Intellectual Property Rights Branch, Regulations and Rulings, Office of Trade, at (202) 325-0095.

Dated: January 31, 2018

CHARLES R. STEUART  
Chief,  
Intellectual Property Rights Branch  
Regulations and Rulings, Office of Trade

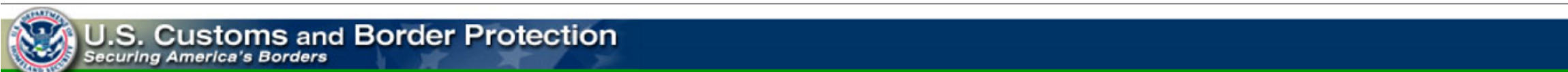


### CBP IPR RECORDATION — NOVEMBER 2017

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmkt/Tm	Owner Name	GM Restricted
COP 17-00215	11/01/2017	11/01/2037	Emmy.	National Academy of Television Arts and Sciences & Hollywood Academy of Television Arts and Sciences d.b.a. Academy of Television Arts and Sciences	No
COP 17-00217	11/08/2017	11/08/2037	GAME OF THRONES: THE IRON THRONE	HOME BOX OFFICE, INC.	No
COP 17-00218	11/18/2017	11/16/2037	CARTOON NETWORK ANTI-COUNTERFEITING GUIDE 2017	THE CARTOON NETWORK, INC.	No
COP 17-00219	11/29/2017	11/29/2037	Fingerlings Sloth Packaging (1L)	WowWee Group Limited	No
COP 17-00230	11/30/2017	11/30/2037	National Electrical Code, 2014 Edition.	NFPA	No
TMK 00-00133	11/16/2017	12/29/2027	DONNA KARAN NEW YORK	GABRIELLE STUDIO, INC.	No
TMK 00-00133	11/16/2017	12/29/2027	DONNA KARAN NEW YORK	GABRIELLE STUDIO, INC.	No
TMK 03-00050	11/18/2017	08/13/2027	LEGO and Design	LEGO JURIS A/S	No
TMK 03-00050	11/18/2017	08/13/2027	LEGO and Design	LEGO JURIS A/S	No
TMK 03-00534	11/30/2017	01/11/2019	JEAN PAUL GAULTIER (Stylized)	GAULME SOCIETE ANONYME	No
TMK 03-00534	11/30/2017	01/11/2019	JEAN PAUL GAULTIER (Stylized)	GAULME SOCIETE ANONYME	No
TMK 03-00536	11/30/2017	05/02/2018	JEAN PAUL GAULTIER (Stylized)	GAULME	No
TMK 03-00536	11/30/2017	05/02/2018	JEAN PAUL GAULTIER (Stylized)	GAULME	No
TMK 04-00723	11/02/2017	08/07/2026	WARMLITE	Altare International Corp.	No
TMK 04-00723	11/02/2017	08/07/2026	WARMLITE	Altare International Corp.	No
TMK 05-00272	11/17/2017	02/08/2025	Rams Helmet Design	THE LOS ANGELES RAMS, LLC	No
TMK 05-00272	11/17/2017	02/08/2025	Rams Helmet Design	THE LOS ANGELES RAMS, LLC	No
TMK 06-00820	11/30/2017	10/09/2022	R (Stylized)	THE LOS ANGELES RAMS, LLC	No
TMK 06-00820	11/30/2017	10/09/2022	R (Stylized)	THE LOS ANGELES RAMS, LLC	No

# IPRS Public Website Search

<https://iprs.cbp.gov/#/>



IPRS Intellectual Property Rights Search

Keyword:

[Help](#) | [About](#) | [Print](#) |  
[Report Technical Concerns](#)

SEARCH:           
FILTER:

## What's New

The total number of searchable IPR recordations in this database is 41049

## Recordations

In order to record a new recordation or to renew your existing recordation, please navigate to [e-Recordations](#). CBP's IPR e-Recordation program is administered by the Intellectual Property Rights Branch within the Regulations and Ruling Directorate, Office of Trade. For assistance please email: [iprrquestions@cbp.dhs.gov](mailto:iprrquestions@cbp.dhs.gov), or call .

## About the Intellectual Property Rights Search (IPRS)

IPRS is a searchable database containing public versions of U.S. Customs and Border Protection intellectual property rights recordations. Recordations can be retrieved based on simple or complex search characteristics using keywords and Boolean operators. IPRS has the added functionality of restricting searches to specific fields and record types. IPRS contains expired as well as current records and by default excludes expired records. For more information

# IPRS: Public Site



U.S. Customs and Border Protection  
Securing America's Borders

IPRIS Intellectual Property Rights  
Internal Search

Keyword:

GO

[Help](#) | [About](#) | [Print](#) |  
[Product ID Manuals](#)  
[Service Requests](#) | [Technical Concerns](#)

SEARCH:

All

Title

Product

Description

Owner

Contact Name

Firm Name

Recordation No.

Agency Registration No.

FILTER:

Show All

Trademarks

Copyrights

Tradenames

Exclusion Orders

Exclude Expired

Include Expired

1

1 - 5 of 5 items

Effective Date	Expirat Date	Title	Product	Description	Owner Name	Contact Name	Firm Name	Record Number	Agen Numl	Typ
8/8/2018	9/24/2028	<a href="#">DESIGN ONLY (AIR FORCE 1 OUTSOLE)</a>	IC 025. Footwear	The color(s) Color is not claimed as a feature of the mark. Is/are claimed as a feature of the mark. The mark consists of the design of the tread on the sole a shoe. The broken lines show the position of the mark on the goods and are not claimed as a part of the mark.	Nike, Inc.	Joe Pallett	Nike, Inc.	TMK 18-00812	34519...	TMK
8/8/2018	9/24/2028	<a href="#">DESIGN ONLY (AF1 HIGH)</a>	IC 025. Footwear.	The color(s) Color is not claimed as a feature of the mark. Is/are claimed as a feature of the mark. The mark consists of the design of	Nike, Inc.	Joe Pallett	Nike, Inc.	TMK 18-00814	34519...	TMK

**Trademark**  
**Customs Recordation Number: TMK 18-00812**

**Effective Date: 8/8/2018**

**CBP Recordation Expiration Date: 9/24/2028**

**USPTO Registration Expiration Date: 6/24/2028**

[CLOSE](#)

[Print](#)

<b>Title</b>	DESIGN ONLY (AIR FORCE 1 OUTSOLE)
<b>Product</b>	IC 025. Footwear
<b>Description</b>	The color(s) Color is not claimed as a feature of the mark. is/are claimed as a feature of the mark. The mark consists of the design of the tread on the sole a shoe. The broken lines show the position of the mark on the goods and are not claimed as a part of the mark.
<b>Owner Name</b>	Nike, Inc.
<b>Gray Market Importations Restricted</b>	NO
<b>U.S. Patent and Trademark Office Registrati... Number</b>	3451904
<b>Firm Contact Name</b>	Nike, Inc. Joe Pallett One Bowerman Drive Beaverton, Oregon, 97005
<b>Phone</b>	.

Effective Date: 8/30/2012  
CBP Recordation Expiration Date: 10/25/2022  
USPTO Registration Expiration Date: 7/25/2022

Trademark  
Customs Recordation Number: TMK 08-00387

[CLOSE](#)[Print](#)

Title	MARLBOROFILTER CIGARETTES
Product	IC 034. CIGARETTES.
Description	MARLBORO FILTER CIGARETTES- Words with Design
Owner Name	Philip Morris USA Inc.
Gray Market Importations Restricted	YES
U.S. Patent and Trademark Office Registrati... Number	0938510
Firm Contact Name	Altria Client Services Inc. / Representative Shannon D. Browning Altria Client Services LLC 6601 W. Broad Street Richmond, Virginia, 23230
Phone	.

# Gray Market and *Lever-* rule protection

1. Foreign made goods that;
2. Bear a *genuine* trademark;
3. Are intended for sale in a market other than the United States
4. Are imported without authorization from the U.S. trademark owner; and

+ [*Lever*-rule: are physically and materially different]

5. Have applied for and received gray market protection from the IPE Branch, Regulations & Rulings

[HQIPRBranch@cbp.dhs.gov](mailto:HQIPRBranch@cbp.dhs.gov)

See 19 CFR § 133.23 for more information

# Overview of Border Enforcement Procedure



Merchandise exported



Manifest data filed with  
CBP electronically



24 Hours



4 Hours



2 Hours



1 Hour



**Merchandise arrives at  
a US Port of Entry**



**Merchandise released  
into commerce**



**Merchandise subject to random  
examination by CBP**



**Merchandise transferred  
to examination area**

# Examination

CBP is authorized to examine **ANY** shipment coming within the customs territory, regardless of entry type (in-bond), and with or without any level of suspicion

- Three types of exams:
  - *Non-intrusive inspection systems*: X-ray and gamma imaging, rail gamma imaging, radiation portal monitors, radiation detection pagers
  - *Manual examination*: physical tailgate examination, opening of package(s), sampling
  - *Intensive examination*: transportation and unloading at CES

# Timing:

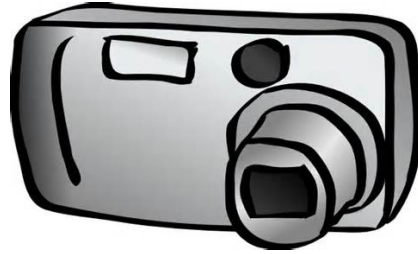
## 19 U.S.C. §1499

- 5 business days from presentment to examine the merchandise + 5 business days before goods *deemed detained*
- Notice to importer, in writing, must be given within 5 business days of the decision to detain
- Detention will be for a period of up to 30 calendar days from the date on which the merchandise was presented for examination . . .
- After which, if the article is not released, it will be *deemed excluded* for the purposes of 19 U.S.C. 1514(a)(4)

# Determining Authenticity



Merchandise Examined



Right Holder



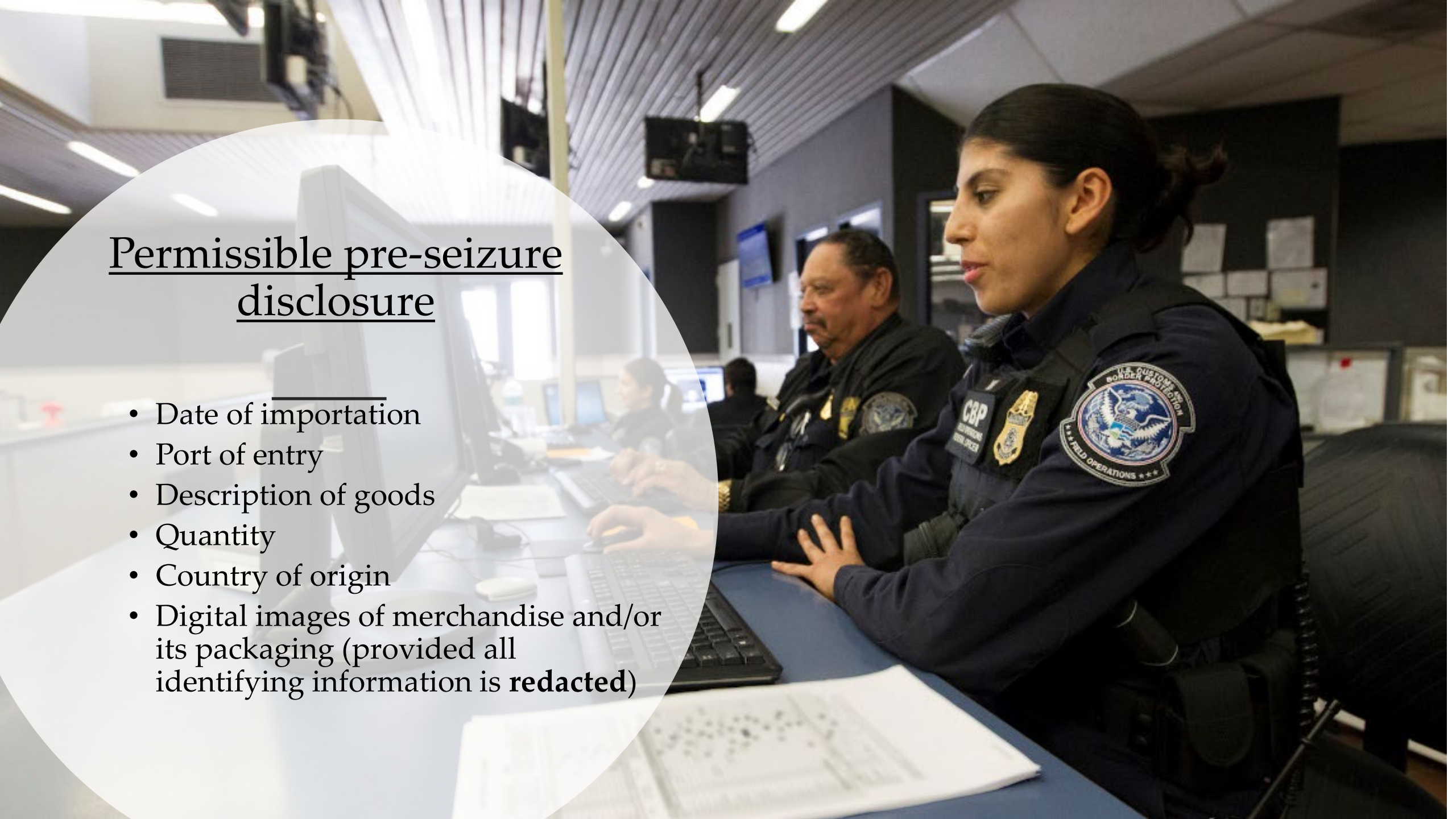


# Helpful Documentation

- License agreement with right owner
- License/certificate from partner government agencies
- Purchase orders and invoices
- Evidence of place and date of manufacture
- USPTO/USCO Registration Certificate
- CBP Advance Ruling

## If relevant:

- Evidence of where and when components were purchased
- Evidence that manufacturer of components was authorized to apply the protected trademarks at the time of manufacture
- Evidence that end product is authorized to bear the protected trademark



## Permissible pre-seizure disclosure

- Date of importation
- Port of entry
- Description of goods
- Quantity
- Country of origin
- Digital images of merchandise and/or its packaging (provided all identifying information is **redacted**)

CBP *may* contact the right holder if they need assistance establishing whether a suspect counterfeit mark was applied to the imported merchandise with authorization

Detention under  
§ 133.21





# Notice of Detention Under §133.21

Issuance to importer with notification that they have 7 business days to come forward with evidence that use of the mark is authorized, otherwise disclosure of sensitive information to the right holder may occur

Importer may request images and/or a sample of the merchandise at issue

CBP can work with the importer to establish that the merchandise is authorized to bear the protected trademark

# After 7 days

If the importer has not proven to CBP's satisfaction that the merchandise sought to be imported is authorized to bear the protected trademark or CBP can disclosure to the right holder the following:

- info. appearing on, and/or photographs of, the merchandise and/or its retail packaging, including labels, **in its condition presented for examination**
- CBP may release a sample, subject to bond and return requirements
- CBP must notify right holder that some or all of the info. being released may be subject to Trade Secrets Act and is being disclosed for the limited purpose of assisting CBP



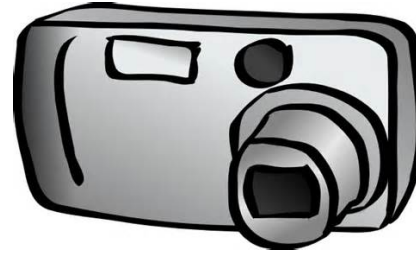
# Helpful Responses to CBP Requests for Authentication Assistance

- Response received within 24 hours, or confirmation of receipt and that a response will be forthcoming
- Reference a review of the digital images
- Articulate specific factors derived from a visual review of the images
- Link these factors to the conclusion that the mark was, or was not, applied to the imported merchandise with authorization
- “Only parties authorized to import”- type responses are not helpful, as all IP related seizures are *in rem*

# Determining Infringement



**Merchandise Examined**



# Legal Burdens for CBP Enforcement Action

When the release of goods is suspended in furtherance of civil administrative IPR enforcement such suspension must be based on **reasonable suspicion**.

In order to make civil administrative *in rem* seizures at the border CBP must establish that there is **probable cause** to believe that there is infringement.

In either scenario CBP's *ex officio* enforcement actions are based on evidence that establishes a *prima facie* case for infringement.



Within 30 days of the seizure of merchandise bearing a counterfeit mark or consisting of a piratical copy, CBP will disclose to the right holder the following comprehensive importation information, if available:

- (1) The date of importation
- (2) The port of entry;
- (3) The description of the merchandise from the notice of seizure;
- (4) The quantity as set forth in the notice of seizure;
- (5) The country of origin of the merchandise;
- (6) The name and address of the manufacturer;
- (7) The name and address of the exporter; and
- (8) The name and address of the importer

# Importer's Remedies to Seizure

- The importer is provided with notice of what was seized, why it was seized and what recordation numbers are at issue
- Importer can request digital images of the seized merchandise or a sample, provided a bond is posted
- Importer elects to either (1) abandon the merchandise, (2) begin administrative forfeiture proceedings, (3) lodge an administrative appeal, or (4) proceed to judicial forfeiture
- Importer cannot pursue both administrative and judicial avenues of relief at the same time
- At any point in the administrative process importer can file a claim and cost bond and proceed directly to judicial forfeiture proceedings



# Petitions for Relief

- Importer has 30 days to file a petition for relief with local FP&F Officer
- HQ IPR Branch will receive petitions if a certain monetary threshold is met, or importer specifically requests HQ review
- Upon CBP's denial of the petition, importer has a second opportunity to obtain relief administratively by filing a Supplemental Petition for Relief
- Petitioner can obtain release of the goods if they can prove by a *preponderance of evidence* that the seized merchandise is not violative
- If the importer is unable to rebut the contention that the marks are counterfeit, the goods are forfeited through the administrative process.

# §1526(f) Penalties and Remission

- 19 U.S.C. 1526(f)(1) specifically allows assessment against "any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise...." This statutory language subjects all parties who exercise control over the import transaction to its application. These individuals may be named individually or jointly and severally in penalty notices
- Penalties based on MSRP of genuine article
- CBP can remit, or return, the property upon payment of a monetary amount and costs associated with the seizure (e.g., storage) as well as upon execution of a Hold Harmless Agreement by the petitioner

## Final Disposition of Merchandise



OR

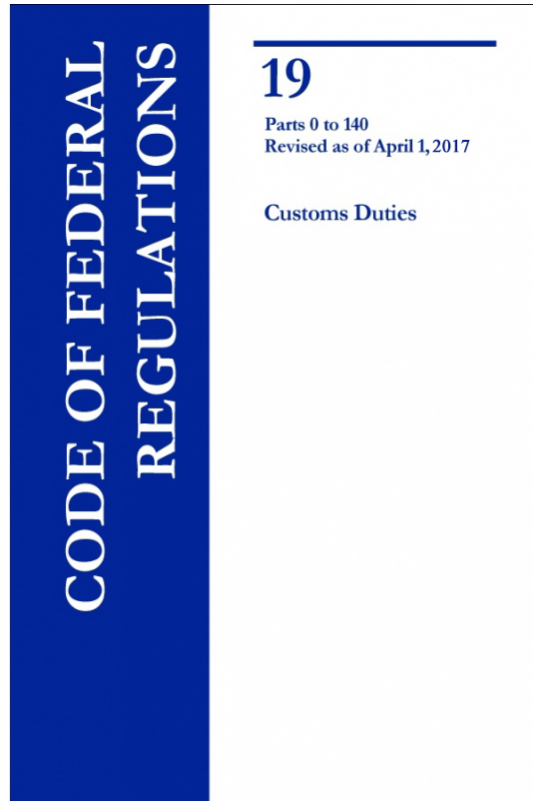


OR



- Three main possibilities for the final disposition of merchandise
- Many options in effectuating such dispositions
- Restrictions on disposition of counterfeit goods and those relating to consumer health and safety
- Right holder must **consent** to donation or auction, and the violative mark must be removed prior to either disposition

# Legal enforcement authorities



# Important to Distinguish . . .

- Prohibited merchandise: shall not be permitted entry into the United States, including in-bond entries for T&E or IE, and is subject to seizure where and when the violation is discovered
- Restricted merchandise: may be permitted entry into the United States under certain conditions, as provided by law - type of entry is relevant to whether such goods are permitted entry



# Main IPR Seizure Statutes

## 19 U.S.C. §1526(e)

- Used only for goods bearing counterfeit marks

## 19 U.S.C. §1595a(c)

- Used for almost everything else:
  - - goods bearing “confusingly similar” marks
  - - gray market restricted/ *Lever*-rule protected goods
  - - §2320 trademark violations
    - piratical copyright violations
    - DMCA violations

## 19 U.S.C. §1526(b)

- Used for restricted gray market goods

## 19 U.S.C. §1337(d)

- Used to exclude merchandise subject to an exclusion order

## 19 U.S.C. §1337(i)

- Used seize merchandise subject to an ITC Seizure and Forfeiture Order

# What is a “counterfeit” mark?

... a **spurious mark** which is identical with, or substantially indistinguishable from, a registered mark ... (15 U.S.C. § 1127)



Imported Merchandise



TMK 05-00169

# Counterfeit violation

- Detention authority

19 CFR § 133.21(b)

- Opportunity to obtain release

19 CFR § 133.21(b)(2)(i) [7 day period – proof of authorization]

- Seizure authority

19 U.S.C. § 1526(e)

- Post- seizure disclosure

19 CFR § 133.21(e)

Comprehensive importation information

- Penalty

19 U.S.C. § 1526(f)

# What is a “Confusingly Similar” mark?

- Neither “identical with” nor “substantially indistinguishable from” the recorded trademark, but instead “copies” or “simulates” the protected mark
- Likely to confuse an ordinarily prudent consumer into associating the source, sponsorship or affiliation of the product with the trademark owner
- Underlying violation of 15 U.S.C. §1124: *Importation of goods bearing infringing marks or names forbidden*
- Opportunity during the 30 day detention period to ‘cure’ the violation and obtain release

TMK 17-00581



suspect mark



# “Confusingly similar” trademark violation

- Detention authority

19 CFR § 133.22

- Opportunity to obtain release

19 CFR § 133.22(c) [obliteration/removal,  
right holder consent]

- Seizure authority

19 U.S.C. § 1595a(c)(2)(C) for an underlying  
violation of 15 U.S.C. § 1124

- Post- seizure disclosure

None

- Penalty

None



# Gray Market Goods

- Foreign made goods;
- Bear *genuine* trademark;
- Intended for sale in a market other than the United States; and
- Imported with or without authorization from the U.S. trademark owner

General rule: The importation of gray market goods is permissible *unless* the recorded mark has been specifically afforded “gray market” or *Lever*-rule protection by CBP

# Restricted Gray Market Goods

- Foreign made goods that;
- Bear a *genuine* trademark;
- Are intended for sale in a market other than the United States;
- Are imported without authorization from the U.S. trademark owner; and
- **Have applied for and received gray market protection from the IPE Branch, Regulations & Rulings**

# Lever-rule Protection

- Gray market protection is not available to those right holders who own the trademark abroad and/or share common control or ownership with the foreign owner(s) of the trademark
- Right owners who are denied standard gray market protection have the opportunity to obtain *Lever*-rule protection from CBP
- If they establish that the goods that are not intended for sale in the US are **physically and/or materially different** from those so intended, CBP may restrict importation of such merchandise unless it bears a required label
- See 19 CFR 133.23(b)



# Gray market/ *Lever*-rule violation

- Detention authority

19 CFR § 133.23

- Opportunity to obtain release

19 CFR § 133.23(b) [*Lever*-rule labels, obliteration/removal, right holder consent]

19 CFR § 133.23(d) [obliteration/removal, right holder consent]

- Seizure authority

19 U.S.C. § 1526(b)

- Post- seizure disclosure

None

- Penalty

None

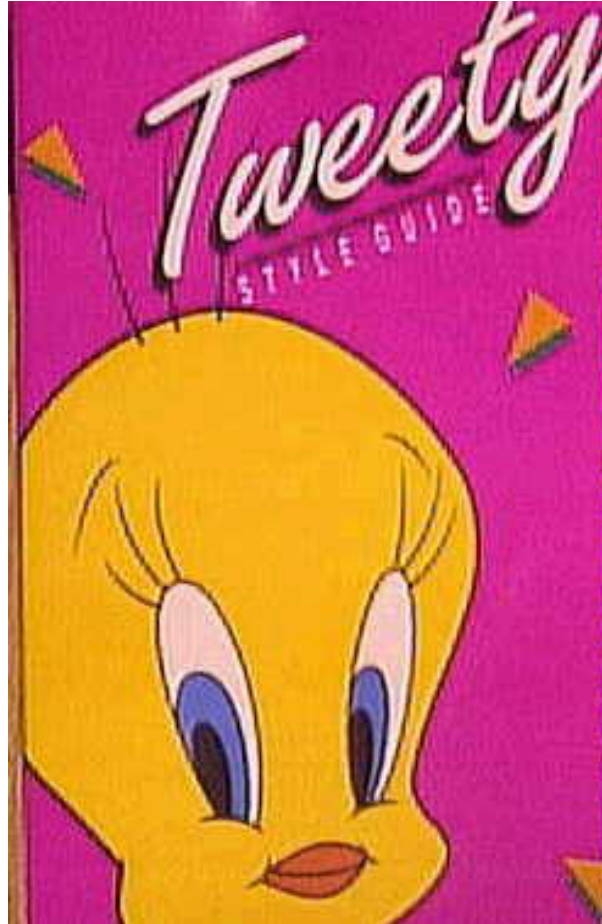
# PIRATICAL COPYRIGHT

## Legal Standard of Infringement

### Substantial Similarity

Whether an *ordinary observer* would recognize the suspect work as having been taken from the work protected by a copyright (i.e., is the suspect work substantially similar to the work protected by a copyright?)

**Protected Work**



**Suspect Work**





# Piratical Copyright violation

- Detention authority

19 CFR §133.43

- Seizure authority

19 U.S.C. § 1595a(c)(2)(C) for an underlying violation of 17 U.S.C. § 602

- Post- seizure disclosure

19 CFR § 133.42 (Comprehensive import information)

- Penalty

None

# ITC Exclusion Order Enforcement

UTILITY PATENT

DESIGN PATENT

TRADE SECRET

TRADEMARK

COPYRIGHT

TRADE DRESS

COMMON LAW TRADEMARKS

UNREGISTERED TRADE DRESS

FALSE ADVERTISING

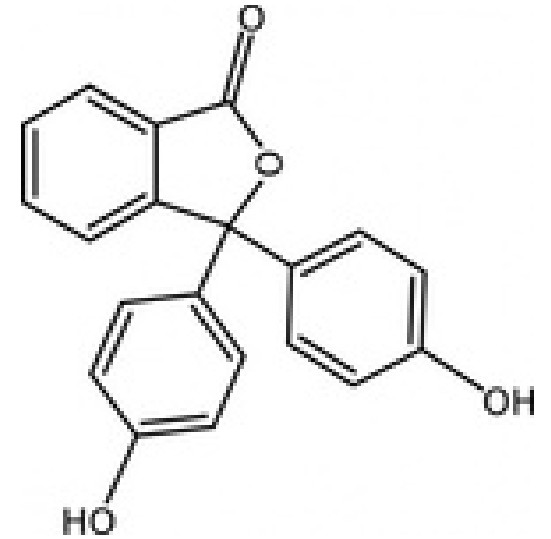
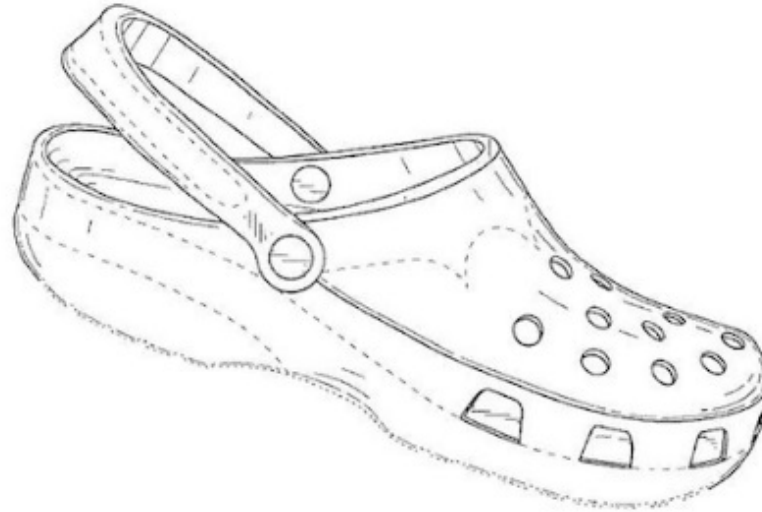
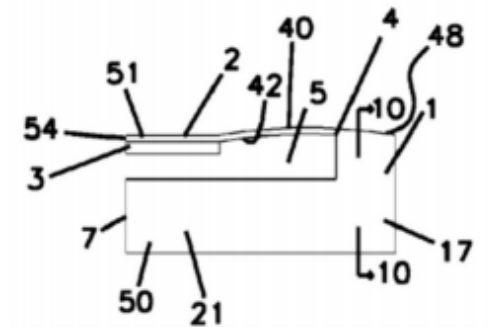


FIG. 2



# ITC Section 337 - Unfair Import Investigations

Section 337 declares the infringement of certain statutory intellectual property rights and other forms of unfair competition in import trade to be unlawful practices.

Most Section 337 investigations involve allegations of patent or registered trademark infringement. Other forms of unfair competition, such as misappropriation of trade secrets, trade dress infringement, passing off, false advertising, and violations of the antitrust laws, may also be asserted.

[https://www.usitc.gov/intellectual\\_property/about\\_section\\_337.htm](https://www.usitc.gov/intellectual_property/about_section_337.htm)

# ITC Exclusion Orders

If the U.S. International Trade Commission finds violation of 19 U.S.C. § 1337 (“Section 337”) it may issue an exclusion order

Two types of exclusion orders:

- Limited Exclusion Order (“LEO”): All goods of a certain description **imported by a certain company or companies** must be denied entry
- General Exclusion Order (“GEO”): **All goods of a certain description** must be denied entry, with specified exceptions

[www.usitc.gov](http://www.usitc.gov)

<https://edis.usitc.gov/external/>

# CBP's Exclusion Order Enforcement

- Subject to exclusion: falls within the scope of a Limited or General ITC Exclusion Order
- Subject to SFO: subject to immediate seizure pursuant to an ITC Seizure & Forfeiture Order

Contact

[EOEBBranch.ITC337.Admin@cbp.dhs.gov](mailto:EOEBBranch.ITC337.Admin@cbp.dhs.gov)

# Programs Available to Recordation Holders

- Submission of product authentication manual/guides
- CBP directed webinar presentation
- In-person field training
- e-Allegation reporting
- Enhanced partnership with CBP



# Product Identification Guides

- Recordation holders have the ability to upload product identification guides, introducing their brand and providing information on how to identify genuine merchandise and distinguish it from others
- Product identification guides are posted on CBP's internal website, and used by CBP personnel to help evaluate suspect shipments
- Side-by-side comparisons of genuine vs. unauthorized goods may be provided
- All CBP personnel are governed by the Trade Secrets Act, 18 U.S.C. § 1905, and cannot disclose this proprietary information
- For more information, and a sample guide, visit: <https://www.cbp.gov/document/guidance/ipr-product-id-training-guide>

**Company Name**

# Product Identification Training Guide

**Company Website**

Date of Product Guide Submission to CBP

FOR LAW ENFORCEMENT USE ONLY

## GENUINE AND SUSPECT PRODUCT EXAMPLES

Genuine



Description(s) of physical  
characteristics of the Genuine  
product.

For example, a Genuine product of  
Company V incorporates blue  
labeling.

Suspect



Description(s) of physical  
characteristics of the Suspect product.

For example, the Suspect version is  
incorrectly labeled with improper  
placement, font, and font size.

FOR LAW ENFORCEMENT USE ONLY

# IPR Product Identification Webinars

- Right holders who conduct product identification trainings, either in-person or online, see heightened identification of counterfeit goods.
- Trainings can now be conducted online, maximizing the number of CBP attendees, and allowing for question and answer periods.
- The webinars are recorded, and available for future viewing by CBP personnel
- The IPR **MUST** be recorded with CBP, a product ID guide must be current, and all materials must vetted prior to delivering the webinar
- To schedule online training events please contact the IPR Division at [IPRHELPDESK@cbp.dhs.gov](mailto:IPRHELPDESK@cbp.dhs.gov).
- For more information visit:  
<https://www.cbp.gov/trade/priority-issues/ipr/webinar>

# In-person training

- Private sector entities can also partner with CBP for in-person, port specific training opportunities
- If interested, private sector entities should submit a request to [tradeseminars@cbp.dhs.gov](mailto:tradeseminars@cbp.dhs.gov).
- Pursuant to Section 104 of the *Trade Facilitation and Trade Enforcement Act of 2015* (TFTEA), CBP established a formal process for the intake and tracking of requests submitted to CBP by the private sector to provide trade-related training.

# Proposals for private sector training should contain the following information and materials:

- (1) Name, address, telephone number, and email address of the entity proposing the training;
- (2) Type of business in which the entity is engaged;
- (3) Topic for the proposed training;
- (4) Outline of proposed curriculum and instructional materials;
- (5) Name, address, telephone number, email address, and qualifications of the proposed private sector instructor(s) (including previous experience in conducting training on the proposed topic);
- (6) Name of the ports or locations at which the training is proposed to be given (which may be conducted at a location provided by the entity proposing the training), as applicable, and the intended audience in CBP and/or ICE;
- (7) Proposed dates for the training;
- (8) Length of the training; and
- (9) Any previous history of trade related training provided to CBP and/or ICE.

# Reporting Tools

Actionable intelligence regarding suspect shipments or parties importing infringing merchandise should be directed to e-Allegations Online Trade Violation Reporting System.







## e-ALLEGATIONS

You are entering an Official United States Government System, which may be used only for authorized purposes. The Government may monitor and audit usage of this system, and monitoring and auditing. Unauthorized attempts to upload information and/or change information on this Web site are strictly prohibited and are subject to prosecution under the C

Thank you for visiting the U.S. Customs and Border Protection e-Allegations portal. Here you can report on suspected violations of U.S. Customs Law and related illicit trade activities. In filing

### REPORT SUSPECTED CRIMINAL/ILLEGAL ACTIVITY

This button is to be used for reporting criminal and illegal activities for referral to Homeland Security Investigations.

- Immigration crime, human rights violations and human trafficking or smuggling
- Smuggling of weapons, narcotics, or other contraband
- Financial crimes, money laundering, bulk cash smuggling
- Cybercrime, website fraud
- International art and antiquity theft
- [En Español](#)

**REPORT SUSPECTED CRIMINAL/ILLEGAL ACTIVITY**

### REPORT TRADE VIOLATIONS

This button is to be used only to report illegal trade activity.

- Intellectual Property Rights infringement
- Textile or Free Trade Agreement violations
- Health and Safety issues
- Classification and Value violations
- Forced Labor Violations

**REPORT TRADE VIOLATIONS**

[e-Allegations Frequently Asked Questions](#)

# Process Overview

- Suspected trade violations are submitted to CBP by the trade community and the general public through the e-Allegations portal.
- CBP screens and assesses each allegation. Allegations that warrant further review are assigned within CBP to expert analysts who research the allegations and determine if enforcement action is warranted.

## Best Practices

- Be specific about the commodity at issue.
- Describe the violation thoroughly.
- Provide any evidence you have.
- If allegation has been reported previously, please indicate when and to whom (e.g. other government agencies, NGOs, trade associations)
- **Non-import IP violations** should be reported to the Intellectual Property Rights Coordination Center.



U.S. Customs and  
Border Protection

# Reporting Tools



You may also contact the [National IPR Coordination Center](#) for additional enforcement opportunities concerning reported violations.

# QUESTIONS?



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

# IP Points of Contact

- Recordation questions: [IPRRQuestions@cbp.dhs.gov](mailto:IPRRQuestions@cbp.dhs.gov)
- Right holder webinars and product ID guides: [IPRHelpDesk@cbp.dhs.gov](mailto:IPRHelpDesk@cbp.dhs.gov)
- IP border enforcement matters: [HQIPRBranch@cbp.dhs.gov](mailto:HQIPRBranch@cbp.dhs.gov)
- e-Allegations: [eAllegations@cbp.dhs.gov](mailto:eAllegations@cbp.dhs.gov)
- In-person port training: [TradeSeminars@cbp.dhs.gov](mailto:TradeSeminars@cbp.dhs.gov)
- e-Commerce and Small Business Branch: [eCommerce@cbp.dhs.gov](mailto:eCommerce@cbp.dhs.gov)

# APPENDIX

- Web resources for IP enforcement
- How to update recordation information
- Applicable IPR regulations
- Overview of enforcement authorities
- Major CBP publications
- Online CBP resources
- Centers of Excellence and Expertise



# Web resources for IP Enforcement

FAQs on CBP recordation:

<https://iprr.cbp.gov/Content/Docs/instruction.pdf>

CBP Recordation application: <https://iprr.cbp.gov/>

IPR Search: <https://iprs.cbp.gov/#/>

Informed Compliance Publication, *CBP Enforcement of IPR*

[https://www.cbp.gov/sites/default/files/assets/documents/2017-Feb/enforce\\_ipr\\_3\\_0.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2017-Feb/enforce_ipr_3_0.pdf)

# How to update recordation information

- To update contact information, please submit a request on your firm/company's letterhead via email to [iprrquestions@cbp.dhs.gov](mailto:iprrquestions@cbp.dhs.gov)
- To change the ownership of a recordation, access the IPRR application at <https://iprr.cbp.gov> and use the *CHANGE OF OWNERSHIP* online application form/button.
- To makes changes to licensees, countries of manufacture and/or 'additional information,' please submit a request on your firm/company's letterhead, specifying the recordation number(s) you are seeking to modify, to [iprrquestions@cbp.dhs.gov](mailto:iprrquestions@cbp.dhs.gov)

# Applicable IPR Regulations

## 19 CFR Part 133 - TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

- § 133.0 Scope.
- Subpart A - Recordation of Trademarks (§§ 133.1 - 133.7)
- Subpart B - Recordation of Trade Names (§§ 133.11 - 133.15)
- Subpart C - Importations Bearing Recorded Marks or Trade Names (§§ 133.21 - 133.27)
- Subpart D - Recordation of Copyrights (§§ 133.31 - 133.37)
- Subpart E - Importations Violating Copyright Laws (§§ 133.41 - 133.46)
- Subpart F - Procedure Following Forfeiture or Assessment of Liquidated Damages (§§ 133.51 - 133.53)
- Subpart G [Reserved]
- Subpart H - Donations of Intellectual Property Rights Technology and Related Support Services (§ 133.61)

# Overview of Enforcement Authorities

- Seizures
  - CBP Takes Possession of Merchandise that is Subject to Seizure under Federal Statutes; Detentions Typically Precede Seizures (19 U.S.C. § 1499)
- Penalties
  - CBP Imposes a Monetary Penalty Against an Entity for a Violation of Laws Enforced by CBP
- Liquidated Damages
  - CBP Issues a Claim for Liquidated Damages for Breach of a Bond Condition under 19 CFR Part 113

# Overview of Enforcement Authorities

- Key Seizure Statutes
  - 19 U.S.C. § 1497: Undeclared Merchandise (“Smuggling”)
  - 19 U.S.C. § 1499: Examination of Merchandise (Detention Precedes Seizure)
  - 19 U.S.C. § 1526(e): Merchandise Bearing Counterfeit Marks
  - 19 U.S.C. § 1595a(c): A Wide Variety of Articles which Have Been Introduced or Attempted to be Introduced into the U.S. Contrary to Law
  - 19 U.S.C. § 1595a(a): Conveyances or Other Things Facilitating Importation of Articles Contrary to Law
  - 19 U.S.C. § 1595a(d): Articles Exported Contrary to Law
- Other Enforcement:
  - 19 U.S.C. § 1337: Unfair Practices in Import Trade

# Overview of Enforcement Authorities

- Key Penalty Statutes
  - 19 U.S.C. § 1592: Penalties for Fraud, Gross Negligence, Negligence
  - 19 U.S.C. § 1595a(b): Penalties for Introduction or Attempted Introduction of Articles Contrary to Law
  - 19 U.S.C. § 1509: Recordkeeping Penalties. See Appendix to Part 163—Interim (a)(1)(A) List
  - 19 U.S.C. § 1641: Penalties Against Customs Brokers
  - 19 U.S.C. § 1526(f): Penalties for Importation of Merchandise Bearing Counterfeit Marks



# Major CBP Publications

- *Federal Register* (daily) “Official Notice to Public”
  - Substantive and Procedural Rules (5 U.S.C. § 553)
  - Guidance: Statements of General Policy; Interpretations of General Applicability
  - General Announcements
- Customs Bulletin and Decisions (weekly)
  - Hard Copy Subscribers and Posted on [www.cbp.gov](http://www.cbp.gov)
  - Reprints CBP Documents Published in FR (Rulemakings and Notices)
  - Specific CBP Documents (Recordations; Quota; Currency Rates; Ruling Revocations under § 1625)
  - Slip Opinions—CIT, Federal Circuit Court of Appeals
- CROSS—Customs Rulings Online Search System (Over 200,000 Rulings)

# Resources

- Electronic (“FOIA”) Reading Room
  - Records Posted When Two or More Requests for the Same Document are Received
- PODS -- Internal Policy, Handbooks, and CBP Directives
- ICPs—Informed Compliance Publications
  - Restates Policy and Procedures Found in Other Official Publications: <https://www.cbp.gov/trade/rulings/informed-compliance-publications>
- [www.regulations.gov](http://www.regulations.gov)
  - Public Comments Submitted for Rulemakings

# Engage the Centers of Excellence and Expertise

- Suspected violations, as well as any questions about CBP operations should be directed to the appropriate Center of Excellence and Expertise.

<http://www.cbp.gov/trade/centers-excellence-expertise-information/cee-directory>

- Email [CEE@cbp.dhs.gov](mailto:CEE@cbp.dhs.gov) for assistance in determining which Center to contact.