



TESTIMONY OF

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BEFORE THE

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ON

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## **Introduction**

Chairman Hatch, Ranking Member Wyden, and distinguished Members of the Committee, thank you for the opportunity to appear today to discuss the enforcement of Intellectual Property Rights (IPR). Trade in counterfeit and pirated goods threatens the health and safety of American consumers, national security, and America's innovation economy. As America's unified border security agency, U.S. Customs and Border Protection (CBP) is responsible for enforcing nearly 500 U.S. trade laws and regulations on behalf of 49 other federal agencies, and plays a critical role in the Nation's efforts to keep unsafe counterfeit and pirated goods from harming the American public.

In 2016 Congress passed the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), which expanded CBP's authority to enforce trade laws that affect national security, U.S. business competitiveness, and the collection of revenue- including IPR violations and import safety, two of the seven Priority Trade Issues (PTI) identified by TFTEA- while facilitating lawful international trade.

In Fiscal Year (FY) 2017, CBP processed \$2.39 trillion in imports, 33.2 million entries and more than 28.5 million imported cargo containers at U.S. Ports of Entry (POE). In addition, CBP processes approximately 1.5 trillion in export of goods excluding services. CBP also seized more counterfeit and pirated goods than ever before. Seizures of shipments with violations of IPR increased by eight percent in FY 2017 over FY 2016. If the seized products had been genuine, the total estimated manufacturer's suggested retail price (MSRP) of the items would have been more than \$1.2 billion. CBP's Office of Trade is a critical participant in CBP's multi-layered and multi-faceted approach to identify violations and enforce IPR. Economic benefit modeling shows that the Office of Trade alone provides a \$2.1 billion benefit to the American economy through our IPR efforts.

## **E-Commerce**

CBP has seen a nearly 50 percent increase in express consignment shipments over the past five years. At the end of FY 2017, the average express consignment courier facility in the United States received an estimated 25 million shipments. This same facility received an averaged 2.4 million shipments in 1997, an increase of over 1,000 percent in 20 years. In FY 2013, CBP processed over 76 million express bills and, in FY 2017, CBP processed approximately 110 million bills. In FY 2013, CBP and the U.S. Postal Service (USPS) processed approximately 150 million international mail shipments. By FY 2017, the number of international mail shipments had swelled to over 400 million shipments.

Under TFTEA the *de minimis* value exemption -- the value of a shipment imported by one person on one day that generally may be imported free of duties and taxes -- increased from \$200 to \$800. This change has resulted in cost-saving opportunities for importers and consumers that are driving a significant sector of the U.S. economy. Evolving business models, with increasing volumes of imports of small, just-in-time packages, have significantly altered the dynamic of the international trade environment and CBP's enforcement of IPR and import safety laws. CBP is working with our partners to improve our ability to target illicit shipments in the e-commerce environment while facilitating legitimate trade.

In FY 2017, CBP and ICE-HSI made 34,000 seizures of counterfeit and pirated goods, worth an estimated MSRP of \$1.35 billion. Over 90 percent of the seizures were in the express carrier and international mail environments. In FY 2017, during a “small package” blitz at the international mail facility in New York, 43 percent of the packages inspected were non-compliant. During this single event, CBP seized over five pounds of fentanyl along with almost 1,300 other non-compliant imports, including 800 counterfeit goods, as well as additional controlled substances. E-Commerce shipments pose the same health, safety, and economic security risks as containerized shipments, but the volume is higher and growing. Transnational Criminal Organizations (TCOs) are shipping illicit goods to the United States via small packages due to a perceived lower interdiction risk and less severe consequences if the package is interdicted.

CBP is aggressively working to enhance our enforcement reporting, tracking, strategy and metrics. For example, in 2016 CBP established the E-Commerce and Small Business Branch to manage trade policy and better address various complexities that have emerged as a result from the growth of e-commerce. CBP has been actively engaging with stakeholders, consumers, partner government agencies, and in international forums to better address these challenges in innovative ways. This Branch demonstrates CBP’s commitment to support small and microbusinesses while addressing the challenges posed by today’s dynamic trading environment.

One of the initial goals of the Branch was to gain a full understanding of the challenges faced at the border related to small shipments. As a result of the Branch’s efforts, CBP has finalized an e-commerce strategy that will assist in adapting to a more agile enforcement of e-commerce shipments, create better compliance through new incentives and measures, and educate and engage international trade in order to support the U.S. economy. The strategy will strengthen CBP’s ability to protect U.S. consumers, improve managing threats in the e-commerce environment, maximize trade revenue collection, strengthen international mail enforcement, and create stronger, longer-term partnerships here and abroad.

Internationally, the United States is a leader on e-commerce through the World Customs Organization (WCO). In September 2016, the WCO created an e-commerce working group, comprised of customs administrations from WCO member governments, private sector representatives, international organizations, e-commerce operators/intermediaries and academia, in order to develop solutions supporting needs and expectations of all stakeholders in the e-commerce supply chain. The WCO also created sub-working groups focusing on issues of revenue collection; safety and security; trade facilitation; and data analytics and analysis. CBP co-leads the sub-working group on safety and security.

Finally, in December 2016 and pursuant to Title III of the PRO IP Act of 2008, the Office of the Intellectual Property Enforcement Coordinator, within the Executive Office of the President, released a three-year Joint Strategic Plan for FYs 2017-2019, titled “Supporting Innovation, Creativity & Enterprise: Charting a Path Ahead.” CBP is supporting the carryout of the four primary objectives included in the strategy. These objectives are: to enhance national understanding of the economic and social impacts flowing from the misappropriation and unlawful exploitation of intellectual property; to promote a safe and secure Internet by minimizing cyber-enabled, illicit intellectual property-based activities; to secure and facilitate legitimate cross-

border trade; and to enhance domestic strategies and global collaboration in support of the effective intellectual property enforcement.

## **Targeting and Enforcement**

In FY 2017, more than 11 million maritime containers arrived at our seaports. At our land borders, another 10 million arrived by truck, and 3 million arrived by rail. An additional quarter billion cargo, postal, and express consignment packages arrived through air travel. Among these are the 110 million express consignment carrier (ECC) shipments and 400 million international mail shipments that arrived in the United States in FY 2017.

CBP uses a multi-layered, risk-based approach to target those shipments deemed to be of highest risk. One of the resources CBP uses in this multi-layered approach is the knowledge and expertise of our regulatory auditors. Strike unit audits begin when significant or sensitive issues arise, such as increases in health and safety violations, or large volume of counterfeit products are seized. In FY 2017, 16 strike units were assembled and included CBP regulatory auditors, CBP targeting specialists from the National Targeting and Analysis Group (NTAG), and ICE-HSI personnel. CBP and ICE-HSI work closely to complete follow-up enforcement actions resulting from information gathered during these audits.

### *National IPR Coordination Center*

One of the ways TFTEA enhanced IPR enforcement was through the formal establishment of the National Intellectual Property Rights Coordination Center (IPR Center) with joint leadership from ICE and CBP, and permanent CBP staffing. The IPR Center is the lead office within the U.S. Government for coordinating with other federal agencies on IPR infringement investigations, law enforcement training, and private sector and public outreach.

CBP plays an integral role in the IPR Center, collaborating with ICE-HSI and 23 additional partners at the IPR Center to ensure that border seizures representing criminal activities lead to investigations, arrests and convictions. CBP holds one of the three deputy director positions on the management team at the IPR Center, and is the leading source of referrals to ICE-HSI for criminal investigations. Additionally, staff from CBP's IPR Division (IPRD) attend the weekly Director's staff meeting and all other relevant meetings at the IPR Center. IPRD also coordinates with the IPR Center and the National Cyber-Forensics and Training Alliance (NCFTA) by providing IPR monthly seizure data for de-confliction purposes and potential IPR leads.

The IPR Center has been a key facilitator of INTERPOL's Operation Pangea, an international effort to shut down online pharmacy websites used to sell counterfeit medicine and illicit medical devices. During the most recent operation, Operation Pangea X (September 12-19, 2017), CBP, in coordination with ICE-HSI and the U.S. Food and Drug Administration, effected 1,294 seizures of counterfeit medical devices and illicit medicines. Overall, the operation resulted in the launch of 1,058 investigations, 3,584 websites taken offline, 400 arrests worldwide and the seizure of more than \$51 million worth of potentially dangerous medicines.

Trade in illegitimate goods is associated with smuggling and other criminal activities, and often funds criminal enterprises. With the help of CBP and other partners in FY 2016, ICE-HSI arrested

451 individuals, obtained 304 indictments, and received 272 convictions related to intellectual property crimes.

*The Commercial Targeting & Analysis Center (CTAC)*

Originally established in 2010 as the “Import Safety CTAC” in support of the July 18, 2007, Executive Order 13439: *Establishing An Interagency Working Group on Import Safety*, the Commercial Targeting & Analysis Center (CTAC) is a 12-member multi-agency, national trade enforcement coordination center. The CTAC combines the resources and intelligence capabilities of CBP and other government agencies to advance interagency information-sharing and operational collaboration in better protecting the American public from harm caused by unsafe imported products.

The CTAC, led by CBP, is the primary coordination center for operational implementation of Title II of TFTEA, titled “Import Health and Safety,” including execution of the Joint Importation Safety Rapid Response Plan (JISRRP). The JISRRP is currently within the review and clearance process, but the goal of the JISRRP is to leverage member tools, mechanisms and authorities to identify import safety threats and communicate exigent threat awareness, as well as prescribe mitigating response and recovery actions to agency field operations. Once published, the JISRRP will also provide CTAC members an opportunity to identify and close any current gaps in the joint efforts to address the growing threat of unsafe products imported into the United States.

CTAC’s joint targeting and enforcement efforts initiated 243 seizures of unsafe imported products in FY 2017 with an appraised MSRP of more than \$3.8 million. Whether it be for counterfeit automotive parts (such as grills, bumpers and brake lines), counterfeit home products, or counterfeit toys – CTAC’s rigorous repeat targeting campaigns have resulted in the successful interception of serious threats to consumer safety.

For example, every year in the run-up to the holiday season, CBP seizes thousands of shipments of decorative holiday string lights that have the potential to cause fires or electric shock. These dangerous products are identified through a CTAC nationwide targeting operation and in close partnership with the U.S. Consumer Product Safety Commission (CPSC).

On January 28, 2018, in another recent example of CTAC joint targeting, CBP officers at the Port of Los Angeles seized a large incoming shipment of toy building blocks for trademark infringement. These counterfeit toys were also found to violate the Federal Hazardous Substance Act for excessive lead and small parts. The shipment was identified through the efforts of CBP and CPSC to target shipments of high-risk consumer products for possible import safety violations.

CBP also established an Interagency Collaboration Division within the Office of Trade. Our Import Safety Division has been closely collaborating and coordinating across federal agencies to streamline the import process by reducing the redundancy of inspection activities, targeting high-risk trade, ensuring compliance with U.S. trade laws among agencies with overlapping authorities, and deploying risk-based management strategies.

### *National Targeting Center (NTC)*

At CBP's National Targeting Center (NTC), advance data and access to law enforcement and intelligence records converge to facilitate the targeting of travelers and items of cargo that pose the highest risk to our security in all modes of inbound transportation. The NTC processes large amounts of data and uses sophisticated targeting tools and subject matter expertise to analyze, assess, and segment risk at every stage in the cargo/shipment and travel life cycles. As the focal point of that strategy, the NTC leverages classified, law enforcement, commercial, and open-source information in unique, proactive ways to identify high-risk travelers and shipments at the earliest possible point prior to arrival in the United States.

The NTC also works to detect anomalies, trends, and violations in the global supply chain to target high-risk shipments. This high-level analysis helps CBP identify emerging threats, including those posed by TCOs, and to take action to counter these threats. The NTC-Cargo is also leading efforts to de-conflict and coordinate IPR targeting throughout CBP, as well as to ensure timely targeting support for ICE-HSI investigations. There are currently two full-time ICE-HSI Special Agents and two United States Postal Inspection Service (USPIS) employees embedded within the NTC, who serve as liaisons between the NTC and ICE-HSI and USPIS personnel in both domestic and international posts. The NTC also collaborates daily with critical partners from the Drug Enforcement Agency, the Federal Bureau of Investigation, the Food and Drug Administration Office of Criminal Investigations (FDA/OCI), and other members of the Intelligence Community. CBP is sharing information with these agencies and conducting joint enforcement initiatives.

For example, in a single week in June of 2017 approximately 115 seizures were made of counterfeit products by CBP in Puerto Rico, valued at more than \$6.5 million. All of these products were illegally imported into Puerto Rico via international mail. This was a record value of counterfeits seized by CBP in Puerto Rico during a single week. A wide range of counterfeited products were seized during the week-long enforcement effort, called Operation Silver Snake, to include pharmaceuticals, electronics, jewelry, apparel, and footwear.<sup>1</sup>

### *Integrated Trade Targeting Network (ITTN)*

Components of CBP's Integrated Trade Targeting Network (ITTN) conducted 12 national-level IPR-mitigating trade operations in FY 2017. The ITTN coordinates all national targeting assets of CBP, including the Centers of Excellence and Expertise, the Tactical Trade Targeting Unit (T3U), CTAC, and the National Targeting and Analysis Groups (NTAGs).

These operations targeted high-risk shipments at seaports, airports, international mail facilities, and express carrier hubs across the United States and resulted in 1,845 seizures of IPR-infringing goods that, if genuine, would have had an estimated MSRP of \$44 million. Eight of these operations were conducted by Mobile Intellectual Property Enforcement Teams (MIPETs), teams of CBP IPR experts deployed to assist enforcement operations. MIPET operations in FY 2017 resulted in 1,687 seizures of IPR-infringing goods valued at \$34.6 million MSRP and 67 voluntary abandonments.

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<sup>1</sup> <https://www.cbp.gov/newsroom/local-media-release/cbp-san-juan-stops-millions-counterfeits>

### *Centers of Excellence and Expertise*

CBP's 10 Centers of Excellence and Expertise (Centers) focus CBP's trade expertise on industry-specific issues through account-based processing on a national scale. The Centers, managed from strategic locations around the country, have national authority to make trade determinations at all POEs in an effort to meet the goals of strengthening America's economic competitiveness, enhancing industry knowledge and expertise, developing innovative trade processing procedure, applying strategic and impactful trade enforcement actions, and leveraging available trade intelligence. The Centers serve as resources to the broader trade community and to CBP's U.S. Government partners. By redirecting work to the centralized, industry-specific Centers, the POEs are able to more effectively focus their resources on high-risk shipments and importers that may pose a danger to border security, harm the health and safety of consumers, or violate U.S. trade laws and IPR.

### **Collaboration with our Partners**

TFTEA empowered CBP to collaborate with our partners in new ways, and CBP remains committed to enforcing IPR in accordance to the mandates of TFTEA and in close collaboration with our partners across government and the private sector to ensure that IPR are enforced while facilitating legitimate trade.

TFTEA created the Commercial Customs Operations Advisory Committee (COAC) to advise the Secretaries of the Treasury and DHS on all matters involving the commercial operations of CBP, including advising on significant proposed changes to regulations, policies, or practices. The IPR working group, which falls under the Trade Enforcement and Revenue Collection COAC Subcommittee, is made up of CBP's federal partners and 19 representatives from multiple industries including express carriers, customs brokers, and marketplace providers. The group has identified a series of challenges for the consumer, the trade community, and government. One of the main challenges identified was the need for better data collection, automation, and a legal framework for sharing data. The working group also identified education and outreach as a need. As new e-commerce participants may not know they are importers, or understand the responsibilities of being an importer, a mechanism is needed to educate the public. As a follow-up to recent meetings, the working group developed recommendations that CBP is working to implement. The recommendations focused primarily on challenges on section 321/de minimis filings. Topics mentioned included data sharing, Partner Government Agency coordination and clarification, and the adoption of policies that would encourage section 321/de minimis filings without impeding the flow of commerce.

CBP continues to assess and improve its ability to enforce the laws governing trade in products that are protected by U.S. trademarks and copyrights, and exclusion orders issued by the United States International Trade Commission (ITC). TFTEA provided CBP with new authority to disclose information to the owners of recorded trademarks and copyrights and to persons injured by Digital Millennium Copyright Act (DMCA) violations. CBP concentrates its IPR border enforcement on federally registered trademarks and copyrights that have been "recorded" with CBP by their owners using the Intellectual Property Rights e-Recordation (IPRR) system. CBP administers these "recordations" using a secure proprietary database that CBP can access to make IPR border enforcement determinations. Product ID manuals that are prepared by right holders are also linked to the database and used by CBP in making IPR border enforcement determinations.

Additionally, CBP is able to access information contained in the USPTO trademark registration database.

If CBP suspects that imported merchandise bears a counterfeit mark; constitutes a piratical copy; or violates the DMCA, and CBP determines that the right owner's assistance would help CBP in its ongoing IPR enforcement efforts, CBP is authorized by TFTEA to disclose information appearing on the imported merchandise and its packing or labels to the right owner. IPR owners also assist CBP in identifying authentic and low-risk shipments. As of January 31, 2018, CBP was enforcing 18,302 active recordations, of which 4,477 were copyrights and 13,725 were trademarks.

For example, on March 14, 2017, at Charleston seaport, CBP seized an estimated \$1.1 million in counterfeit mobile phone accessories, including phone cases, chargers, cables, and headphones. The merchandise arrived into the port from China and was destined for upstate South Carolina. Examination and appraisal revealed 85,000 individual accessories bearing images and markings from Apple, USB, Bluetooth, Blu-Ray, LG, Marvel, DC Comics, Hello Kitty, and Dr. Dre. CBP reached out to representatives from these companies, who confirmed their images and markings were being used without their permission, enabling CBP to seize these counterfeit goods. Approximately 38,000 power adapters seized bore the Federal Communications Commission (FCC) mark, signifying they had been tested in an accredited FCC laboratory and met certain operating standards. These were found to be unauthorized markings, a potentially significant safety risk to consumers.<sup>2</sup>

To expand private-sector collaboration and enable CBP to more quickly determine the authenticity of suspected counterfeit goods, CBP published a final rule to allow donations of certain equipment, training, and other support services from the private sector for enforcing IPR. The Donations Acceptance Program, created by Section 308(d) of TFTEA, enables CBP to collaboratively explore and implement solutions to trade and travel facilitation and enforcement challenges. On February 15, 2018, CBP announced a new formal partnership arrangement with Procter & Gamble (P&G), as part of the Donations Acceptance Program, to prevent counterfeit P&G products from entering the United States. As the first formal partnership under the Donations Acceptance Program for IPR enforcement, P&G will donate testing devices to verify the authenticity of various P&G products. The devices will help CBP officers and trade specialists quickly determine the legitimacy of the product, reducing the possibility of counterfeit goods entering the U.S. stream of commerce.

CBP will continue to collaborate with private industry through the COAC E-Commerce Working Group. The working group will focus on identifying operational best practices and challenges presented by changing business models and supply chains; the increased volume of e-commerce packages; new complexities presented by e-commerce for businesses of various sizes and industry-type; and evolving compliance and enforcement issues. The group is further identifying workable solutions to e-commerce challenges to create a streamlined path forward for CBP, business, consumers, and the public.

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<sup>2</sup> <https://www.cbp.gov/newsroom/local-media-release/charleston-cbp-seizes-11-million-cell-phone-accessories>



## **Public Outreach**

TFTEA also called for the development and execution of an educational awareness campaign to inform international travelers of the legal, economic, and public health and safety effects of importing IPR-infringing merchandise. During the months of June and July of 2017, as well as November and December of 2017, CBP ran a public awareness campaign entitled “Fake Goods, Real Dangers: The Truth Behind Counterfeits” in eleven airports around the country.<sup>3</sup> All information from the campaign is also prominently displayed on the CBP website as part of CBP’s ongoing efforts to keep the public informed about the health and safety dangers to consumers presented by counterfeit and pirated goods. CBP has also revised Form 6059B, the Customs Declaration Form completed by passengers entering the United States, to include a warning to international travelers of the penalties associated with transporting IPR-infringing goods.

CBP constantly seeks to refine and update its outreach to rights owners. To this end, CBP recently prepared a tri-fold brochure titled “How CBP Can Protect Your Intellectual Property Rights,” a publication that is geared especially to rights owners who are unfamiliar with what the agency can do to enforce their IPR. The brochure provides a quick snapshot of the enforcement process, calls the reader’s attention to the relevant CBP regulations, provides links to more detailed border enforcement guidance available via the [cbp.gov](http://cbp.gov) website, and stresses that IPR border enforcement is a shared responsibility. The brochure then highlights opportunities for right owners to engage CBP and the National IPR Coordination Center. CBP looks forward to making the brochure available at outreach events such as the East and West Coast Trade Symposiums.

## **Conclusion**

CBP continues to look to the future of IPR enforcement. Our well-established training program includes rights-holder-conducted webinars, port trainings, and roundtables. In FY 2017, CBP facilitated 18 instructor-led IPR training sessions where over 227 CBP Officers, Import Specialists, and other trade specialists were trained in IPR enforcement. As a result of the hard work of the dedicated men and women of CBP and our partnerships across government and private industry, the combined total number of all IPR border enforcement actions in FY 2017 increased eight percent over FY 2016.

With the support of Congress, CBP remains committed to protecting businesses and consumers every day through an aggressive IPR enforcement program. We will continue to work in collaboration with our public and private stakeholders and partners to better understand emerging challenges, and to better enforce IPR to protect the health and safety of American consumers and our economy, while facilitating legitimate trade.

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<sup>3</sup> These airports were Baltimore, Washington International Airport, Dulles International Airport, John F. Kennedy International Airport, Dallas/Fort Worth International Airport, O’Hare International Airport, Los Angeles International Airport, Miami International Airport, Atlanta Hartsfield Airport, Newark International Airport, George Bush Intercontinental Airport, and San Francisco International Airport.

Chairman Hatch, Ranking Member Wyden, and distinguished Members of the Committee, thank you again for the opportunity to testify today. I look forward to your questions.