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OFFICE OF INSPECTOR GENERAL

DHS and CBP Should Improve Intellectual Property Rights Management and Enforcement (REDACTED)

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July 18, 2022
OIG-22-52



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OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

July 18, 2022

MEMORANDUM FOR: The Honorable Robert Silvers
Under Secretary
Office of Strategy, Policy, and Plans

The Honorable Chris Magnus
Commissioner
U.S. Customs and Border Protection

FROM: Joseph V. Cuffari, Ph.D. **JOSEPH V** Digitally signed by
Inspector General **CUFFARI** JOSEPH V CUFFARI
Date: 2022.07.14
16:13:53 -04'00'

SUBJECT: *DHS and CBP Should Improve Intellectual Property
Rights Management and Enforcement – Law
Enforcement Sensitive*

Attached for your action is our final report, *DHS and CBP Should Improve Intellectual Property Rights Management and Enforcement – Law Enforcement Sensitive*. We incorporated the formal comments provided by your office.

The report contains seven recommendations aimed at improving the Office of Strategy, Policy, and Plans and the U.S. Customs and Border Protection intellectual property rights management and enforcement. Your offices concurred with six recommendations. Based on information provided in the response to the draft report, we consider recommendation 4 open and unresolved. As prescribed by the Department of Homeland Security Directive 077-01, *Follow-Up and Resolutions for the Office of Inspector General Report Recommendations*, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until your response is received and evaluated, the recommendations will be considered open and unresolved.

Based on information provided in your response to the draft report, we consider recommendations 1 through 3, and 5 through 7 open and resolved. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of

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completion of agreed-upon corrective actions and of the disposition of any monetary amounts.

Please send your response or closure request to
OIGAuditsFollowup@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Bruce A. Miller, Deputy Inspector General for Audits at (202) 981-6100.

Attachment



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DHS OIG HIGHLIGHTS

DHS and CBP Should Improve Intellectual Property Rights Management and Enforcement

July 18, 2022

Why We Did This Audit

In 2016, Congress designated seven high-risk priority trade issues, one of which is IPR. Priority trade issues represent high-risk areas that may cause significant revenue loss, harm the U.S. economy, or threaten the health and safety of the American people. Our audit focused on the extent to which DHS and CBP manage and enforce the priority trade issue related to IPR.

What We Recommend

We made seven recommendations to improve DHS' and CBP's management and enforcement of IPR.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

The Department of Homeland Security and U.S. Customs and Border Protection (CBP) did not coordinate or manage intellectual property rights (IPR) strategy, and CBP does not have accurate data to demonstrate the full extent or effectiveness of its IPR enforcement. First, DHS and CBP did not coordinate or monitor IPR strategy because DHS prioritized responding to ad hoc issues. Second, CBP did not strategically manage IPR or develop an IPR risk assessment. CBP did not have standard operating procedures and believed targeting would satisfy risk assessment requirements. Without a strategic IPR approach, DHS was limited to fragmented efforts from individual components and CBP may be unable to determine whether it focused finite resources on violations with the greatest risk.

Additionally, CBP did not have accurate data to manage the IPR enforcement process to 1) improve targeting or monitor alternative IPR enforcement actions, 2) report reliable seizure data, or 3) track IPR criminal referrals. These problems occurred because CBP did not establish standard operating procedures or oversight, including parameters for alternative IPR enforcement actions. Without IPR enforcement data, CBP may be missing opportunities to enhance targeting effectiveness and contributions toward disrupting IPR violators.

DHS Response

DHS concurred with six recommendations and did not concur with one recommendation.

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Abbreviations

CBP	U.S. Customs and Border Protection
GAO	Government Accountability Office
HSI	Homeland Security Investigations
ICE	U.S. Immigration and Customs Enforcement
IPR	intellectual property rights
JFK	John F. Kennedy International Airport
MSRP	manufacturer’s suggested retail price
OFO	Office of Field Operations
P.L.	Public Law
PLCY	Office of Strategy, Policy, and Plans
PTI	Priority Trade Issue
SEACATS	Seized Asset and Case Tracking System
Trade Act	<i>Trade Facilitation and Trade Enforcement Act of 2015</i>
UDR	User-Defined Rule



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Background

Congress established seven priority trade issues (PTI) in the *Trade Facilitation and Trade Enforcement Act of 2015*¹ (Trade Act), which represent high-risk areas that may cause significant revenue loss, harm the U.S. economy, or threaten the health and safety of the American people. Intellectual property rights (IPR) are designated as one of the seven high-risk priority trade issues. Intellectual property sustains nearly every aspect of our economy, supporting good paying jobs, the arts, sciences, and technology, and creates a framework allowing new industries and innovations to flourish.

- Priority Trade Issues**
- (1) Agriculture programs.
 - (2) Antidumping and countervailing duties.
 - (3) Import safety.
 - (4) Intellectual property rights.**
 - (5) Revenue.
 - (6) Textiles and wearing apparel.
 - (7) Trade agreements and preference programs.

Source: Trade Act

As part of its mission, the Department of Homeland Security shares responsibility for protecting IPR, which means guarding against the infringement of U.S. patents, copyrights, and trademarks. Within DHS, U.S. Customs and Border Protection (CBP) has authority to seize imported merchandise that violates recorded trademarks and copyrights. CBP's Office of Field Operations (OFO) officers enforce the protection of IPR at U.S. ports of entry through:

1. *Identification.* OFO personnel identify potential counterfeit and pirated merchandise by conducting observations of cargo, targeting shipments based on manifest information in the Automated Targeting System, and other methods.²
2. *Examinations.* Officers at ports examine targeted shipments and other suspect mail and cargo. If they suspect an item is counterfeit or a shipment contains pirated merchandise, the officers check the items against recorded copyright and trademark databases and information from rightsholders.
3. *Detention and Seizures.* If an officer reasonably believes the items are

¹ Public Law (P.L.) 114-125, *Trade Facilitation and Trade Enforcement Act of 2015*, Section 117 (2016).

² CBP's Automated Targeting System is a decision support tool that compares traveler, cargo, and conveyance information with law enforcement, intelligence, and other enforcement data. The system uses "rules" to compare cargo information entering and exiting the country with patterns identified as requiring additional scrutiny.



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counterfeit, they hold or detain the items and may eventually seize them. In some cases, OFO may detain the shipment but take an alternative action, such as rejecting the shipment and returning it back to the sender. CBP uses the Seized Asset and Case Tracking System (SEACATS) to record information about IPR seizures, including the number of shipments seized, the domestic value, and the manufacturer's suggested retail price (MSRP) of the goods. See Figure 1 for examples of seized counterfeit goods.



4. *Criminal and Civil Actions.* If a targeted shipment is determined to be counterfeit, CBP may refer the shipment to U.S. Immigration and Customs Enforcement (ICE) for investigation. ICE's Homeland Security Investigations (HSI) may investigate the shipment and work with the U.S. Attorney's Office at the Department of Justice to prosecute violators, if appropriate. CBP may also impose civil penalties as part of its enforcement process.

CBP's Office of Trade is responsible for managing trade policy, developing trade programs, and measuring compliance with trade laws. To comply with Trade Act requirements, the office developed two documents that identify CBP's IPR enforcement priorities and goals to support overall IPR enforcement:

- *IPR Priority Trade Issue FY Enforcement Priorities*, which Office of Trade coordinates with OFO each fiscal year to identify challenges or areas of "high risk" related to IPR enforcement. In fiscal year 2019, CBP's enforcement priorities included goals or enforcement challenges such as deterring imports of counterfeit automotive parts, reducing counterfeit shipments routed through Hong Kong, and pursuing repeat violators.
- *IPR Priority Trade Issue Annual Plan (PTI plan)*, which the Office of Trade develops each fiscal year to support CBP's overall trade strategy by identifying operational challenges and goals or initiatives for the upcoming year. The PTI plan states that the goals in the plan were based on "risk management and resource maximization" to support overall



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trade strategy. For example, the FY 2019 plan included goals such as enhancing basic IPR training for CBP personnel, promoting a webpage where the public could report IPR violations directly to CBP, and working with Hong Kong customs to conduct joint enforcement operations.

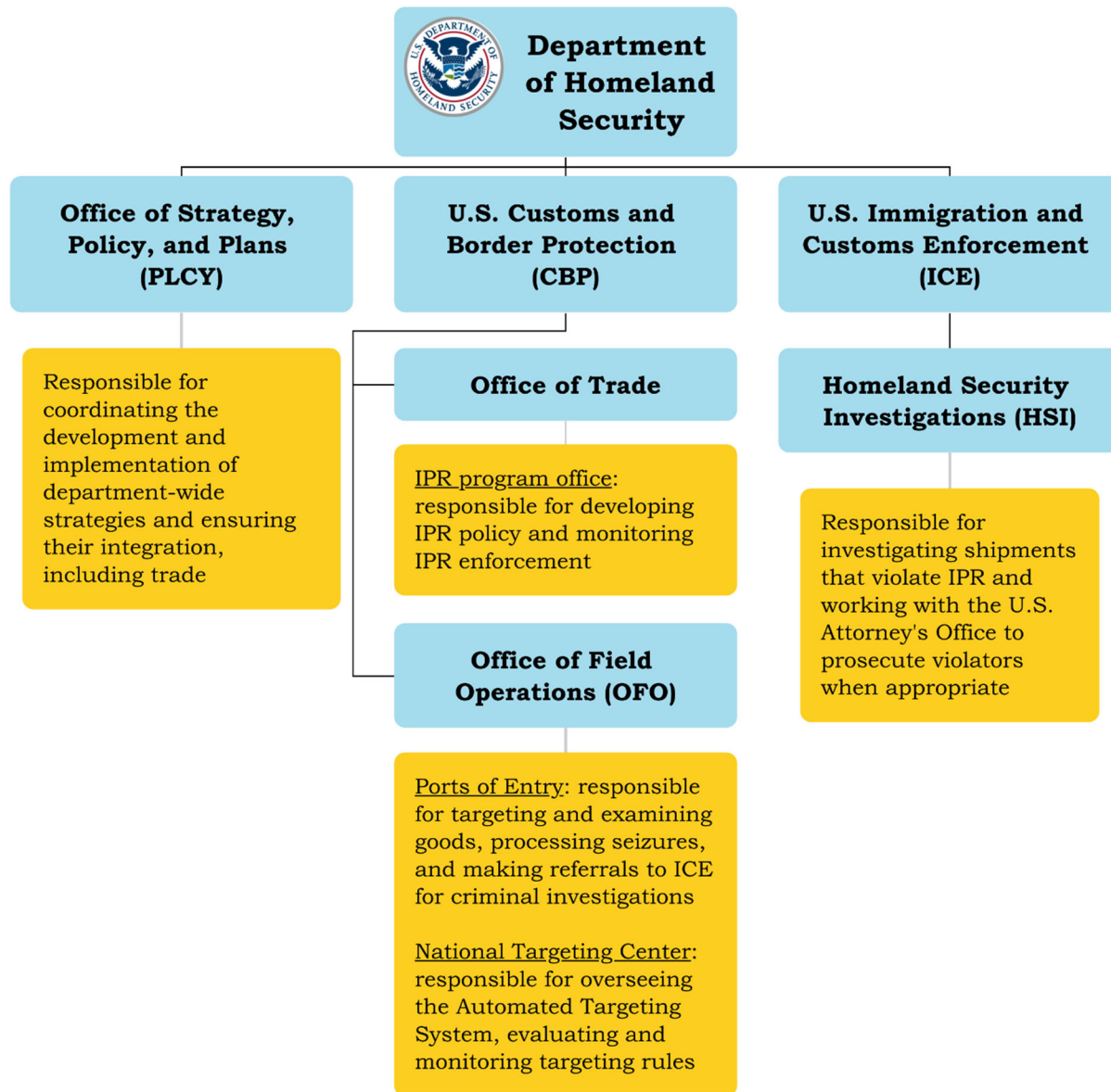
Additionally, DHS's Office of Strategy, Policy, and Plans (PLCY) plays a role in the Department's enforcement of IPR. PLCY is responsible for coordinating the development and implementation of department-wide strategies and policies, including those related to trade, and ensuring their integration.³ See Figure 2 for DHS offices with IPR responsibilities.

³ DHS Delegation Number 23000, *Delegation to the Under Secretary for Strategy, Policy, and Plans*, December 9, 2019 and Delegation 23000, Revision Number 00.1, August 19, 2020.



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Figure 2. Primary DHS Offices with IPR Responsibilities



Source: DHS OIG analysis

Note: These offices have additional responsibilities beyond those listed here. We highlighted the responsibilities related to the scope of our report.

In FY 2020, CBP reported seizing approximately 26,503 shipments that violated IPR. According to CBP’s statistics, the total MSRP was approximately \$1.3 billion, had the products been genuine. We conducted this audit to determine the extent to which DHS and CBP manage and enforce the priority trade issue related to IPR.



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Results of Audit

DHS and CBP did not coordinate or manage IPR strategy, and CBP does not have accurate data to demonstrate the full extent or effectiveness of its IPR enforcement. DHS did not effectively coordinate or monitor an IPR strategy because PLCY prioritized its workload based on ad hoc guidance from the Secretary and the White House. Additionally, CBP did not strategically manage IPR or produce an IPR risk assessment. It did not manage or assess risk because the Office of Trade did not have standard operating procedures for its responsibilities and OFO officials believed “common sense” paired with intelligence reports and targeting satisfied requirements to conduct risk assessments. Without a strategic IPR approach, DHS was limited to fragmented efforts from individual components, and CBP may be unable to determine whether it focused finite resources on violations with the greatest risk.

CBP also did not have accurate data to manage the IPR enforcement process. It did not have data to measure the efficiency and effectiveness of its IPR targeting, monitor alternative enforcement actions when not seizing shipments that violated IPR, report reliable seizure data, or track its contributions toward disrupting IPR violators through investigative referrals. These problems occurred because CBP did not establish guidance, identify parameters for alternatives to seizure, provide oversight to ensure reporting of accurate data, establish a data system for alternatives to seizure or investigative referrals, and did not maintain an auditable record of changes to manually processed data. CBP is unable to determine whether its finite enforcement resources focused on violations with the greatest risk and may be missing opportunities to enhance its targeting effectiveness and contributions toward disrupting IPR violators.

DHS and CBP Did Not Coordinate or Manage IPR Strategy

DHS did not coordinate the development of an IPR department-wide strategy or formal enforcement priorities or oversee component’s goals, despite being delegated the responsibility by the Secretary of Homeland Security. Further, CBP did not strategically manage IPR. Initially, CBP did not develop goals or enforcement priorities, and after eventually developing such goals and priorities, CBP did not align the goals or priorities and monitor achievements. Finally, CBP did not develop an IPR risk assessment to inform its strategic decisions.



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PLCY Did Not Establish or Coordinate IPR Strategy

According to a 2019 Delegation from the Acting Secretary of DHS,⁴ PLCY is responsible for coordinating the development and implementation of department-wide strategies. This includes ensuring the integration of such strategies in programs, offices, and activities across the Department, including trade. However, PLCY did not coordinate the development of an IPR department-wide strategy or formal department enforcement priorities, even though Congress identified the issue as a PTI. PLCY also did not vet separate component IPR priorities to ensure alignment, which is important as CBP and ICE do not have the resources to seize or investigate all of the counterfeit items they encounter.

CBP and ICE submitted a joint strategic plan to Congress as required by the Trade Act. PLCY did not coordinate or monitor components' contributions toward developing the joint strategic plan nor review the priorities or goals that the components developed. For example, CBP copied its portion of the joint strategic plan from its PTI plan, which CBP developed independently, without ICE. PLCY did not monitor CBP's PTI plan, which CBP used as its submission for the joint strategic plan but did not complete. Although the components submitted the required plan, the plan did not reflect a coordinated effort to help focus on seizures and investigations that support criminal prosecutions.

These issues occurred because PLCY prioritized its workload based on ad hoc guidance from the Secretary and the White House. It considered the issue static, because it had not received any requests from the White House on the topic, and an official described IPR as a "steady issue." When requested by the White House in 2019, PLCY led a government-wide effort to evaluate changes to IPR enforcement through legislation and other methods. Without an overarching IPR strategy, or coordinating and monitoring the components' efforts to enforce IPR, DHS is limited to a fragmented approach by CBP and ICE and risks using finite resources on lower IPR priorities.

CBP Office of Trade Did Not Manage IPR Strategy

The Trade Act requires CBP to establish priorities and performance standards to measure the development and levels of achievement for all PTIs, including IPR.⁵ Within the Office of Trade, the IPR program office responsible for strategic plans did not:

⁴ DHS Delegation Number 23000, *Delegation to the Under Secretary for Strategy, Policy, and Plans*, December 9, 2019 and Delegation 23000, Revision Number 00.1, August 19, 2020.

⁵ P.L. 114-125, *Trade Facilitation and Trade Enforcement Act of 2015*, Section 103(a)-(b), Section 111(a)(1)(A), and Section 117(a) (2016).



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- develop strategic planning goals in FY 2017 or enforcement priorities in FYs 2017–2018,
- align goals and priorities once established (see examples in Appendix C),
- monitor levels of achievement for established goals or priorities, or
- assess IPR statistics to identify achievements as a result of its goals or priorities.

The Office of Trade reviewed its records at our request and acknowledged that CBP did not complete many of its goals. The IPR office could only support that it completed 14 of the 56 goals (25 percent) in our judgmental sample of IPR-related goals from FY 2018 through FY 2020 PTI plans and FY 2019 through FY 2020 enforcement priorities. The enforcement priorities and PTI plans listed 10 goals deferred to other offices within the Office of Trade and OFO, but the IPR program office did not determine whether those offices completed the goals. See Appendix D for a breakdown of goal completion by fiscal year with examples. These results are consistent with the Government Accountability Office's (GAO) 2018 review,⁶ in which it found CBP had conducted limited evaluation of its IPR enforcement.

This occurred because the Office of Trade does not have standard operating procedures, including establishing responsibility for (1) developing products, (2) establishing baselines to measure its goals, and (3) monitoring the progress of stakeholders toward completing goals. An Office of Trade official overseeing the IPR program office tracked key performance indicators for the IPR program office but focused on the total number of seizures and the MSRP value rather than progress the IPR program office made in supporting CBP's overall enforcement. Most of CBP's IPR goals and initiatives remain unimplemented, and as a result, the Office of Trade did not ensure that CBP focused its limited resources on the IPR goals and activities it identified as important or high-risk.

CBP Did Not Conduct an IPR Risk Assessment

Under the Trade Act, OFO's National Targeting Center, in coordination with the Office of Trade, is responsible for establishing targeted risk assessment methodologies and standards to determine whether cargo coming to the United States may violate trade laws.

Both OFO and the Office of Trade completed threat assessments, impact assessments, and other documents related to risk. However, the documents

⁶ GAO-18-216, *Agencies Can Improve Efforts to Address Risks Posed by Changing Counterfeits Market*, January 2018.



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did not meet the criteria established in the Trade Act and DHS' *Risk Management Fundamentals*⁷ to identify, assess, and analyze potential risks; develop alternatives; implement a decision regarding risk; and evaluate and monitor the decision. For example, the Office of Trade produced a trade threat analysis that analyzed the IPR risks related to specific importers, and impact assessments that analyzed the impact of potential targeting rules on port operations. Yet neither contained an overall risk assessment related to IPR.

OFO officials believed that officer "common sense" paired with trade intelligence reports and targeting based on the Office of Trade's threat analysis satisfied CBP's requirements to conduct risk assessments. National Targeting Center officials stated that CBP's Automated Targeting System allows them to identify and mitigate risk for cargo shipments. This system is a decision support tool that allows CBP to identify shipments that may be inadmissible, but it does not assess overall IPR risk. Officers can also adjust their local targeting efforts based on their experience and threats identified from prior shipments. However, these targeting efforts may not reflect nationwide risks. Further, a comprehensive approach to understanding and managing risks would improve decision making by allowing CBP to balance sources of risk to achieve its strategic goals.

CBP Did Not Have Accurate Data to Manage the IPR Enforcement Process

CBP did not have the data necessary to comprehensively manage and enforce IPR. Specifically, CBP did not have targeting data to determine whether it met key goals and priorities. It used alternatives to seizure but did not maintain data related to those enforcement actions. In addition, CBP reported manually processed IPR seizure data to Congress and the public that could not be reconciled with the system of record. Lastly, CBP was unaware of the number of criminal referrals to ICE HSI for further investigation. These problems occurred because CBP did not have applicable guidance or standard operating procedures, including parameters for using alternative IPR enforcement, and did not provide oversight to ensure reporting requirements were met with accurate data. Without IPR enforcement data, CBP may be missing opportunities to enhance targeting effectiveness and contributions toward disrupting IPR violators.

⁷ *Risk Management Fundamentals, Homeland Security Risk Management Doctrine*, April 2011.



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CBP Did Not Have Accurate Data to Measure Effectiveness of IPR Targeting Operations

CBP did not have data to evaluate whether ports met targeting priorities, such as IPR violations that impact health and safety or national security and shipments from repeat violators. According to GAO's *Standards for Internal Control in the Federal Government*, management should establish a structure to achieve objectives, enforce accountability, document policies, and obtain and use relevant and reliable data. In FYs 2018 and 2019, CBP identified 1 percent of IPR seizures through targeting from user-defined rules (UDR), which CBP staff create to trigger automated alerts on cargo manifest anomalies that officers should further examine.⁸ The National Targeting Center evaluated UDRs for effectiveness — based on the number of shipments targeted, inspected, and found to be discrepant⁹ — but it was unable to gather the same type of information when officers identified IPR violations through other methods. As a result, CBP did not have data about how it identified the remaining 99 percent of IPR seizures and if those targeting efforts were focused on areas of priority.

In addition to UDRs, officers used manual queries and physical observations to target and inspect shipments, which have limitations. When creating manual queries, officers use data from inbound cargo manifests to identify irregularities. They may also use available intelligence to identify potential IPR-violating shipments. For example, at one port, officers manually queried the Automated Targeting System based on the [REDACTED] and the [REDACTED] to determine if a shipment should be inspected. Although ports may have visibility of local, manual queries, those queries have limitations as they are officer dependent and may not be shared within their port for consistency. Physical observations, such as walk-throughs of a warehouse, are also limited by officer time and availability to examine packages in a warehouse. Due to the nature of physical observations, officers are not able to select based on whether the contents might be a priority item. Further, officers at ports of entry were not always aware of any specific targeting priorities, such as those identified in CBP's enforcement priorities document, and in some cases, targeted based on items of personal interest. One OFO supervisor described how an officer routinely targeted shipments manifested as fishing related items, after the officer purchased a counterfeit fishing reel from an online retailer.

⁸ See page 14 for a discussion of concerns about the reliability of seizure data.

⁹ The National Targeting Center defines discrepant as an exam finding of cargo that is inconsistent with the documentation submitted to CBP or the item examined is not lawfully permitted to enter U.S. commerce.



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OFO did not establish guidance or provide oversight for when individual ports or officers should convert their daily manual queries into formal targeting rules¹⁰ or UDRs with quantifiable data CBP can evaluate. While OFO has standard operating procedures for creating a UDR, the guidance does not specify when manual queries should be converted to a UDR. Further, OFO did not have a formal process to evaluate the efficiency of manual queries or physical observations. National Targeting Center officials explained that the targeting system was new in FY 2018 and the Center provided training on targeting to increase the number of seizures identified through UDRs. However, OFO provided additional data for FY 2020 which demonstrated that UDRs in that year were used to identify only 0.8 percent of its total seizures.

CBP Did Not Have Data for Its Inconsistent Approaches to Alternative Enforcement Actions

Title 19 United States Code Section 1526(e) requires CBP to seize any merchandise imported into the United States bearing a counterfeit mark. However, CBP used alternative enforcement actions, such as denial of entry and voluntary abandonment, instead of seizing counterfeit shipments. In addition, CBP ports did not use consistent enforcement practices. CBP used ad hoc minimum value thresholds for seizing counterfeit items — if the goods did not meet the threshold, they would be denied entry instead of being seized. Further, CBP did not have data to monitor alternative enforcement actions.

Denial of entry. CBP officers identify an inadmissible item, notify the importer, and do not allow it to enter the country. Officers described returning these items and referred to this alternative as “return to sender” or “return to origin.”

Voluntary abandonment. Generally, an officer notifies the importer or carrier (often UPS, DHL, etc.) that it suspects the goods violate IPR laws. The importer or carrier requests permission from the recipient to consider the goods abandoned, and then CBP may destroy the goods.

Source: DHS OIG Analysis of CBP documents

Five of the 15 ports we visited and surveyed used alternatives to seizure. In November 2014, the Office of Trade’s IPR program office, working with OFO, established a voluntary abandonment pilot program to allow IPR-violating shipments to be abandoned and destroyed rather than seized. Although the IPR program office recommended ending the pilot on October 11, 2016, an official from one port indicated they continued alternatives to seizure after the

¹⁰ During the audit, we observed officers writing queries that they developed and used for targeting without formal approval. We refer to them as “manual queries” or “informal targeting” for the purposes of this report. We use the term “formal targeting” to refer to the creation of UDRs, which National Targeting Center monitors for effectiveness.



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pilot ended. Additionally, four ports used denial of entry (one port reported using both alternatives).

Ports also established differing minimum value thresholds for IPR seizures, ranging from \$750 to \$75,000, as shown in Table 1. For example, one port issued guidance not to seize counterfeit merchandise when the value of the goods was less than \$75,000 and instead instructed officers to use a seizure alternative. Officials at another port reported a minimum threshold of \$2,500, but officers said they only use the threshold if they suspected but did not confirm an IPR violation.

Table 1. Variations in Use of Alternatives and Thresholds to Process IPR Violations at 15 Ports of Entry, FYs 2017–2020

Port of Entry	Threshold Amount
Port 1	Alternatives for Violations under \$2,500
Port 2	Did Not Use Alternatives
Port 3	Did Not Use Alternatives
Port 4	Did Not Use Alternatives
Port 5	Did Not Use Alternatives
Port 6	Alternative for mail only; no dollar threshold.
Port 7	Alternatives for Violations under \$75,000
Port 8	Did Not Use Alternatives
Port 9	Alternatives for Violations under \$75,000
Port 10	Did Not Use Alternatives
Port 11	Did Not Use Alternatives
Port 12	Did Not Use Alternatives
Port 13	“Officer discretion”
Port 14	No Alternatives; Did Not Seize Under \$750
Port 15	Did Not Use Alternatives

Source: DHS OIG analysis of interviews and questionnaires with Directors of Field Operations and Port Directors and documented port guidance

Although CBP officers enforced IPR through alternatives to seizure, they did not record these actions in SEACATS or another database. CBP could not monitor how officers used alternatives to seizure, including whether officers denied entry for goods that pose health and safety risks or are identified in the enforcement priorities document. Some examples of health and safety risks might be counterfeit car interior lights that could catch on fire or counterfeit computer microchips used in hospitals or by the military in missiles and jets that could fail and jeopardize citizens and military personnel.



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CBP estimated that processing one seizure costs more than \$2,000 for 50 hours of labor, whereas an alternative like voluntary abandonment costs approximately \$100 for 2.5 hours of labor. Large seizures can take several weeks to process and photograph each unique item for evaluation. We observed a seizure that officers at John F. Kennedy (JFK) International Airport processed for \$2.5 million after detaining the items on July 8, 2021. The shipment contained 2,231 counterfeit handbags, sneakers, and other merchandise with 22 item types, requiring the officers to individually photograph each item type and submit 138 photos for verification as counterfeits and then seize them. Officers completed the seizure 41 days later, on August 18, 2021.

Differences in ports' use of alternatives to seizure and using alternatives without data to monitor these enforcement actions occurred because CBP did not provide overarching guidance or parameters for applying statutory and regulatory authority to use alternative dispositions. 19 U.S.C. 1526(e) does not address alternatives to seizure, yet CBP program officials from three different offices explained that ports need operational flexibility for alternative enforcements and seizure thresholds depending on the operational environment. However, in Fall 2021,¹¹ when experiencing large lines of cargo ships waiting to dock and unload, port officials in Long Beach, California, reported no use of alternatives to seizures or threshold for IPR shipments. This led to the port processing more seizures during the surge of shipments and delays. In contrast, other ports had a larger threshold and more flexibility about which violations must be seized. Without guidance and the ability to monitor for alternatives to seizure, CBP did not have data to fully evaluate all IPR enforcement actions and no means for ports to evaluate use of alternatives to seizures.

CBP Did Not Have Accurate Data to Report Seizures to Congress

As part of the Trade Act, Congress requires CBP to report a list of the 10 ports at which it seized the most merchandise by volume and by value that infringes IPR.¹² GAO's *Standards for Internal Control in the Federal Government* specifies that management evaluate data for reliability and ensure data is reasonably free from error and faithfully represents what it is intended to represent. We found discrepancies between the information CBP reported to Congress and information contained in SEACATS, CBP's official system of record for seizures.

¹¹ See *Fact Sheet: Biden Administration Efforts to Address Bottlenecks at Ports of Los Angeles and Long Beach, Moving Goods from Ship to Shelf*, October 13, 2021. See also, *Record backlog of cargo ships at California ports*, BBC News, September 21, 2021, <https://www.bbc.com/news/business-58643717>.

¹² P.L. 114-125, *Trade Facilitation and Trade Enforcement Act of 2015*, Section 306 (2016).



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Specifically, analysts from the Office of Trade extracted seizure data from SEACATS and added it to an informal Microsoft Access database. When doing so, they also changed records in the database they believed to be inaccurate. The Office of Trade used this informal database, rather than SEACATS, to report IPR seizures and MSRP values to Congress and the public.

From FY 2017 through FY 2020, the Office of Trade reported to the public and Congress¹³ MSRP values for IPR seizures that were 3 to 13 percent higher than data contained in SEACATS. In FY 2018, SEACATS indicated that CBP’s IPR seizures had an MSRP of more than \$1.2 billion, but CBP reported to Congress that its IPR seizure values were worth \$1.4 billion — a difference of almost \$156 million, as shown in Table 2. We also determined that, in its report, CBP adjusted the MSRP values in 13,102 cases from FY 2017 through FY 2020.

Table 2. Differences between MSRP Values of IPR Seizures in SEACATS and CBP’s Reports to Congress, FYs 2017–2020, in millions

Fiscal Year	Total SEACATS IPR Seizures by Value	Total Reported IPR Seizures by Value	Percent changed	Difference in Totals
2017	\$1,089	\$1,206	10.7%	\$117
2018	1,244	1,400	12.5%	156
2019	1,407	1,555	10.5%	148
2020	1,268	1,309	3.2%	41

Source: DHS OIG analysis of SEACATS and CBP’s informal database. Numbers are rounded.

We also found discrepancies in the total number of seizures. For example, in FY 2019, CBP reported a net of 364 more seizures to Congress, after analysts added 512 seizures to and removed 155 seizures from its informal database. After we evaluated SEACATS and CBP’s informal databases that capture information about each unique item in a seizure,¹⁴ we identified further discrepancies with what CBP analyzed and reported to Congress and the public from its informal database, as shown in Figure 3. We noted instances in which the SEACATS records appeared to be incorrect. In one case, analysts identified a seizure line of 14,133 counterfeit apparel from a luxury brand with a \$1

¹³ CBP and ICE reported the top 10 ports and total IPR seizures, with the total MSRP value to Congress for FY 2017 and FY 2018 in its biennial *Trade Facilitation and Trade Enforcement Joint Strategic Plan for Fiscal Years 2019–2020*. CBP and ICE also reported the total number of IPR seizures and MSRP value for FY 2017 through FY 2019 in its annual *Intellectual Property Rights Enforcement* report, which it is required to submit under Section 310 of the Trade Act. Additionally, for FY 2017 through FY 2020, CBP reported seizure statistics, including total IPR seizures, total MSRP value, and other figures in its annual *Intellectual Property Rights Seizure Statistics* publication on its public website.

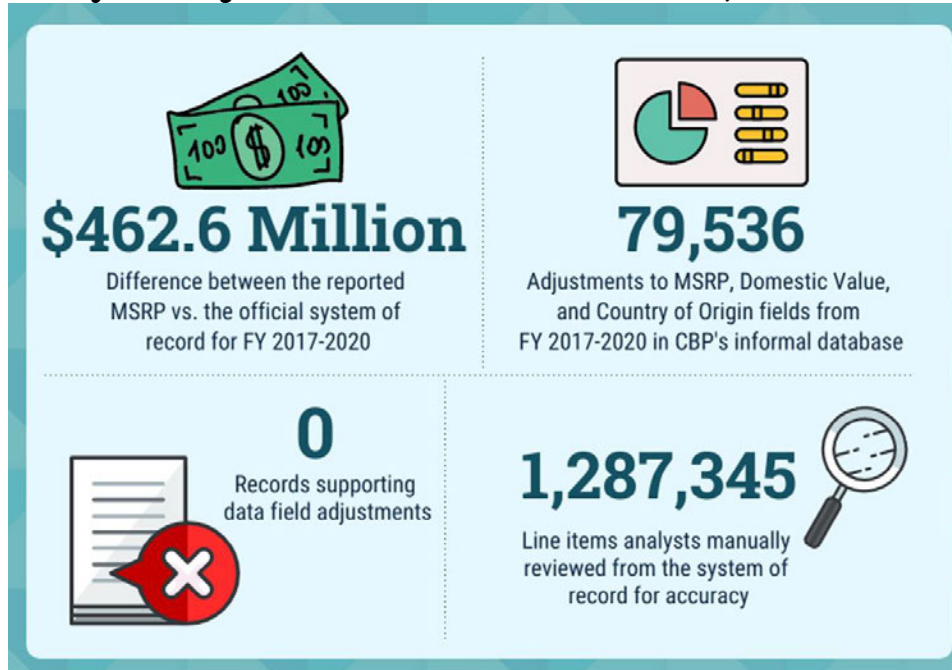
¹⁴ CBP assigns a case number to each shipment that officers seize. Within a seized shipment, CBP may identify unique items and records information (e.g., domestic value, MSRP, and country of origin) about each item type in a separate line.



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MRSP value recorded in SEACATS and changed the MSRP to \$3,533,250 for the same line item in the unofficial database. In another case, officers seized masks with an appraised domestic value¹⁵ of \$3.1 million during the COVID-19 pandemic and an MSRP of \$475,000. Analysts adjusted the record in the unofficial database to reflect that the MSRP was \$3.1 million. We were unable to reconcile how CBP supported the differences in all values reported to Congress or where they conflicted with the system of record.

Figure 3. Differences in MSRP Values, CBP Office of Trade Analysts' Adjustments and Manual Review, FYs 2017–2020



Source: DHS OIG analysis of SEACATS and CBP's informal database, and interviews with analysts

Our inability to reconcile this information occurred because analysts did not maintain an auditable record of changes during their manual review. Analysts used their institutional knowledge and did not develop a standard operating procedure explaining the procedures they used to review, compile, or reconcile approximately 300,000 lines of data annually for official reporting purposes. Additionally, when the analysts identified inaccuracies, they did not have the authority or responsibility to correct SEACATS records.

¹⁵ According to 19 CFR 162.43(a), domestic value represents the price at which such or similar property is freely offered for sale at the time and place of appraisal, in the same quantity or quantities seized.



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These issues also occurred because the Office of Trade did not complete goals in the FY 2019 and FY 2020 PTI plans to improve seizure data quality. Despite listing the goal on its PTI plan for two consecutive years, an IPR program office official said they did not have concerns with SEACATS data. Due to the absence of standard operating procedures and a non-auditable process for tracking changes to the data fields, we could not determine whether the informal database CBP used to report figures to Congress was accurate. Additionally, Office of Trade analysts transferred the responsibility for compiling the informal database to the IPR program office, which reported developing initial process instructions as they were learning the responsibilities.

CBP Did Not Track Its Contributions toward Disrupting IPR Violators

According to the Trade Act, CBP and ICE must annually report to Congress investigative cooperation for IPR, including CBP's investigative referrals to ICE and efforts to improve the success rate of investigations leading to prosecutions of IPR violators. ICE HSI is the lead for criminal investigations of IPR violations. In FY 2018 through FY 2020, ICE and CBP reported in their annual *Intellectual Property Rights Enforcement* report to Congress that CBP was the leading source of referrals to HSI for criminal investigations. CBP officials noted they receive a larger volume of IPR violations than they can process. They also said that disrupting IPR violations through criminal prosecutions is critical to enforcement, but CBP did not track its efforts to increase the number of criminal prosecutions. According to ICE, it records referrals from CBP only where it has opened an investigation and noted CBP as a source in its case management system. Further, although CBP did not track its referrals to ICE, most of its IPR seizures do not lead to criminal investigations. Specifically, in FY 2017 through FY 2020, HSI investigated less than 1 percent of CBP's IPR seizures annually. This occurred because CBP did not prioritize reporting investigative referrals to ICE, nor did it establish guidance or a system to do so. As a result, CBP may be missing opportunities to enhance its contributions toward disrupting IPR violators and address strategic goals such as criminal prosecutions.

Conclusion

Despite CBP reporting more than 122,000 seizures from FY 2017 through FY 2020, DHS and CBP must address strategic leadership gaps and data accuracy issues as CBP receives exponentially more counterfeit items than it is capable of seizing and processing. Without strategic guidance from PLCY, the Department is limited to fragmented efforts from CBP and ICE, and the Department may not be using its finite resources to address high priority IPR



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risks. Additionally, CBP was unable to determine whether it focused on and supported its IPR enforcement priorities because it did not complete its goals or a risk assessment. CBP also may be missing opportunities to enhance its targeting effectiveness and contributions toward disrupting IPR violators because it had limited data about its targeting, alternative dispositions, and investigative referrals, and unreliable data about its IPR seizures. Without complete and accurate data, CBP cannot demonstrate how its efforts toward enforcing IPR are data-driven and address strategic goals or lead to criminal prosecutions that disrupt the flow of incoming counterfeit goods.



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Recommendations

Recommendation 1: We recommend the Assistant Secretary for Trade and Economic Security of DHS' Office of Strategy, Policy, and Plans, in coordination with ICE and CBP, develop, implement, and monitor a departmental strategic, risk-based approach for managing and enforcing intellectual property rights.

Recommendation 2: We recommend the Executive Assistant Commissioner for CBP Office of Trade:

- a. develop and implement standard operating procedures for the IPR Division's official responsibilities and activities, including procedures for developing strategic planning documents and evaluating IPR seizure statistics to measure its strategic planning goals;
- b. quarterly monitor and document CBP's progress toward key IPR activities and strategies reported to Congress;
- c. develop and define and implement a repeatable process for documenting changes to IPR seizure data;
- d. establish a standard operating procedure for reconciling and reporting IPR seizure data; and
- e. assign responsibility to trade officials for coordinating the correction of inaccurate IPR seizure data when identified.

Recommendation 3: We recommend the Deputy Commissioner for CBP assign responsibility to an office to develop a strategic risk assessment for its IPR Priority Trade Issue.

Recommendation 4: We recommend the Executive Assistant Commissioner for CBP Office of Field Operations:

- a. establish criteria for when to convert informal targeting efforts to formal targeting rules, and
- b. develop and implement a process to increase monitoring and oversight of IPR targeting.

Recommendation 5: We recommend the Executive Assistant Commissioner for CBP Office of Field Operations direct the coordinated establishment and implementation of a national database for recording non-seizure events, such as abandonments and return-to-sender.

Recommendation 6: We recommend the Executive Assistant Commissioner of the Office of Field Operations and the Executive Assistant Commissioner of the Office of Trade consult with the CBP Office of Chief Counsel to interpret the intellectual property rights seizure statutes and establish parameters and



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oversight procedures for ports to determine their own seizure thresholds or alternatives to seizure, as appropriate.

Recommendation 7: We recommend the Executive Assistant Commissioners for CBP Office of Field Operations and Office of Trade establish a tracking mechanism for IPR investigative referrals to ICE.

OIG Analysis of DHS Comments

DHS concurred with six recommendations and did not concur with one recommendation. Appendix B contains a copy of the Department's response in its entirety. DHS also provided technical comments to our draft report, and we revised the report as appropriate. A summary of DHS' responses to the recommendations and our analysis follows.

DHS Comments to Recommendation 1: Concur. PLCY Trade and Economic Security will convene routine meetings beginning in July 2022 with CBP's Office of Trade and OFO, and ICE HSI's Intellectual Property Rights Center. The meetings will allow a collaborative review of existing DHS efforts related to the protection of IPR. The group plans to conclude evaluations and prepare recommendations to leadership in the first quarter of calendar year 2023. PLCY's remaining work will culminate in identifying resources and assigning staff to coordinate, implement, and monitor the risk-based approach. Estimated Completion Date (ECD): December 30, 2023.

OIG Analysis of DHS Comments: DHS' corrective action plan is responsive to the recommendation. We consider this recommendation resolved and open until PLCY provides documentation showing that DHS implemented a departmental strategic, risk-based approach for managing and enforcing IPR, and performs ongoing monitoring.

DHS Comments to Recommendation 2: Concur. CBP's Office of Trade is reviewing processes and responsibilities to establish standard operating procedures. Office of Trade's procedures will outline the development of strategic planning documents, monitoring and reporting progress, developing IPR seizure statistics, and oversight procedures for reviewing seizure data. ECD: September 30, 2022.

OIG Analysis of DHS Comments: CBP's planned actions are responsive to the recommendation. We consider this recommendation resolved and open until the Office of Trade provides documentation showing that it implemented all corrective actions.



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DHS Comments to Recommendation 3: Concur. CBP plans to develop a risk assessment for the IPR priority trade issue. ECD: September 30, 2022.

OIG Analysis of DHS Comments: CBP's plan is responsive to the recommendation. We consider this recommendation resolved and open pending the completion of the IPR risk assessment.

DHS Comments to Recommendation 4: Non-concur. CBP's response indicated that formal and informal targeting are critical parts of a multi-layer targeting process. CBP noted it had guidance defining when to convert queries into User Defined Rules (UDR). Further, officials asserted CBP conducts analysis related to the efficiency of its targeting. CBP did not concur and requested closure of this recommendation.

OIG Analysis of DHS Comments: CBP's plan is not responsive to the recommendation. OIG recognizes that formal and informal targeting are both critical but did not find that CBP's guidance explains how informal targeting should be used or when informal targeting should be transitioned to a formal targeting rule. Further, OIG could not conduct analysis on IPR query effectiveness nationwide because CBP does not have sufficient data to conduct that analysis. The recommendation will remain unresolved and open until CBP provides a plan demonstrating how it will guide officers on converting informal targeting to formal targeting rules and implements a process to increase monitoring and oversight of IPR targeting.

DHS Comments to Recommendation 5: Concur. OFO National Targeting Center reported having existing capabilities within its Automated Targeting System to record non-seizure events. CBP also issued a new policy and will provide OIG additional documentation on the system and policy. ECD: September 30, 2022

OIG Analysis of DHS Comments: CBP's planned actions are responsive to the recommendation. We consider this recommendation resolved and open. The recommendation will remain open until CBP provides the March 2022 policy documentation and illustrates its system has the capability to track and report on IPR non-seizure events.

DHS Comments to Recommendation 6: Concur. Office of Trade and OFO plan to establish a working group including OT Regulations and Rulings attorneys which will consult with Office of Chief Counsel to evaluate intellectual property rights statutes to determine thresholds for alternatives to seizure and develop or update corresponding policy. ECD: September 30, 2022



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OIG Analysis of DHS Comments: We consider CBP's planned action responsive to the recommendation. This recommendation will remain resolved and open until CBP provides a charter for the working group or other formal documents discussing roles, responsibilities, goals, and milestones for the group.

DHS Comments to Recommendation 7: Concur. CBP plans to develop thresholds for IPR referrals to ICE and develop corresponding policy which will include the use of existing systems to track referrals to ICE. ECD: September 30, 2022

OIG Analysis of DHS Comments: CBP's plan is responsive to the recommendation. After our draft was issued, CBP's Office of Information Technology provided OIG a demonstration of a tracking mechanism that CBP could use. The recommendation will remain resolved and open until CBP provides documentation showing it has established and implemented its process for tracking and reporting IPR investigative referrals to ICE.



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Appendix A

Objective, Scope, and Methodology

The Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

The objective of this audit was to determine the extent to which DHS and CBP manage and enforce the priority trade issue related to intellectual property rights. To answer our objective, we reviewed Federal laws and regulations as well as DHS and CBP policies and guidance associated with IPR. Specifically, we reviewed criteria pertaining to CBP's enforcement of IPR including *The Trade Facilitation and Trade Enforcement Act of 2015*. For FY 2017 through FY 2020, we assessed CBP's IPR strategic planning documents, including:

- *Intellectual Property Rights Strategic Plan, FY 2018*
- *Office of Trade Intellectual Property Rights Priority Trade Issue Annual Plan, FY 2019 and FY 2020*
- *IPR Priority Trade Issue Enforcement Priorities, FY 2019 and FY 2020*
- *Trade Facilitation and Trade Enforcement Joint Strategic Plan for FY 2019 and 2020 Joint Report to Congress*
- *Intellectual Property Rights Enforcement Reports to Congress, FYs 2018–2020.*

We evaluated the Department's January 2020 report on *Combating Trafficking in Counterfeit and Pirated Goods*, its action plans for addressing items in the report, and the Department's Delegation 23000 to the Under Secretary for Strategy, Policy, and Plans. Additionally, we reviewed and evaluated CBP's risk-related products against DHS' *Risk Management Fundamentals Homeland Security Risk Management Doctrine*, April 2011, and GAO's *Standards for Internal Control in the Federal Government*.

We conducted site visits to observe targeting and seizure practices and to discuss IPR prioritization. Due to COVID-19 travel restrictions, we selected three initial site visit locations based on geographic proximity to OIG staff, which were Boston, MA; Chicago, IL; and Houston, TX. When travel restrictions eased, we generated a list of field offices with the top 10 highest number of IPR seizures in SEACATS from FYs 2017–2020. During our site visits, we interviewed CBP officials and observed operations at the following locations:

- Boston International Cargo Port



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- Chicago International Mail Facility
- Houston Centralized Examination Station
- JFK International Airport and express consignment facilities
- JFK International Mail Facility
- Long Beach Seaport
- Los Angeles Field Office
- Los Angeles International Airport and express consignment facilities
- Los Angeles International Mail Facility
- Miami Field Office
- Miami International Airport
- Miami International Mail Facility
- Miami Seaport
- Newark International Airport, consolidated air cargo examination facility, and express consignment facilities
- Newark Seaport
- New York Field Office

To better determine practices related to alternative seizure actions, we sent questionnaires to seven additional ports. We selected these ports based on a list of the top port within the top 10 field offices by IPR seizure volume. We also reviewed a list of the top individual ports by IPR seizure volume from FY 2017 to FY 2020. We selected the following seven ports:

- Detroit Airport, Detroit Field Office
- Federal Express Anchorage Port, in San Francisco Field Office
- Houston International Airport, Houston Field Office
- Jacksonville Port, Tampa Field Office
- Rochester Port, Buffalo Field Office
- San Juan International Airport, San Juan Field Office
- UPS Hub Louisville, Chicago Field Office

In addition to observations and questionnaires, we interviewed officials from CBP, including the Office of Chief Counsel and the following offices within OFO: Trade Operations, Cargo and Conveyance Security, National Targeting Center, Center of Excellence and Expertise, and Fines Penalties & Forfeitures. Within the Office of Trade, we interviewed officials from the following offices: Trade Intelligence Division, Trade Policy and Programs, IPR Division, Regulations & Rulings, Trade Remedy and Law Enforcement Directorate, National Threat Analysis Division, Regulatory Audit & Agency Advisory Services, and the Planning, Programming, Accountability & Evaluation Division. We also interviewed officials from PLCY, as well as ICE HSI officials



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from the IPR Center and Trade Enforcement Coordination Center staff in Newark and Los Angeles.

To analyze CBP's completion of the IPR goals and action items listed in its enforcement priorities and PTI plans, we requested the status of all CBP's enforcement priorities and supporting documentation for completed actions for FY 2017 through FY 2020. We also evaluated a judgmental sample of IPR plan goals. We requested the completion status of all goals in the enforcement section for each of the plans and supporting documentation for completed goals.

We analyzed SEACATS data by initially reviewing for obvious errors, such as duplicative or missing fields. We held multiple meetings with CBP officials to gain an understanding of SEACATS and the SEACATS reporting system, which is housed on CBP's Enterprise Management Information System. We also discussed with CBP officials their concerns with SEACATS data reliability, which led to the use of a secondary data set outside the system of record for congressional reporting. We obtained seizure data for FY 2017 through FY 2020 from SEACATS (the system of record) and compared it with CBP's informal database. Upon obtaining the data, we conducted a comparative analysis to determine the number of changes made related to the country of origin, MSRP, and domestic value. We also identified significant changes in the informal database in cases where a very low value MSRP were recorded in SEACATS for large seizures, which appeared to be obvious errors. Based on this evidence, we determined that the information contained in SEACATS was not reliable for the purposes of our report and made recommendations to address this issue.

We reviewed all active UDRs between FY 2017 and FY 2020 for errors, such as duplicative or missing fields, and discussed with CBP officials their process for evaluating the effectiveness of UDRs. We received UDR data extracted by the National Targeting Center from the Automated Targeting System, which is maintained in the Enterprise Management Information System. Additionally, we discussed the results of our review with subject matter experts from National Targeting Center, who confirmed the accuracy of the extraction and data analysis. As a result, we determined the data was sufficiently reliable for the purposes of this report.

We conducted this performance audit between March 2021 and January 2022 pursuant to the *Inspector General Act of 1978, as amended*, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our



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audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.



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Appendix B
DHS Comments to the Draft Report

U.S. Department of Homeland Security
 Washington, DC 20528



Homeland Security

June 9, 2022

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.
 Inspector General

FROM: Jim H. Crumacker, CIA, CFE JIM H
 Director CRUMPACKER
 Departmental GAO-OIG Liaison Office
 U.S. Department of Homeland Security

Digitally signed by JIM H
 CRUMPACKER
 Date: 2022.06.09 17:06:19
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SUBJECT: Management Response to Draft Report: "DHS and CBP Should Improve Intellectual Property Rights Management and Enforcement" (Project No. 21-022-AUD-CBP, PLCY)

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS or the Department) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

DHS leadership is pleased to note the OIG's recognition of U.S Custom and Border Protection's (CBP) efforts to protect Intellectual Property Rights (IPR) and safeguard the U.S. economy as well as the health and safety of its citizens, such as identification of potential counterfeit and pirated merchandise, examination of targeted shipments, and detention and seizures at U.S. ports of entry. Trade in counterfeit and pirated goods threatens America's innovation economy, the competitiveness of our businesses, the livelihoods of U.S. workers and, in some cases, the health and safety of consumers and U.S. national security.

As of September 30, 2021, CBP was enforcing 20,758 active copyrights and trademarks that were registered with the agency by the rightsholders. During fiscal year (FY) 2021, CBP also seized 27,107 shipments with IPR violations. If the seized products were genuine, the total manufacturer's suggested retail price (MSRP) of these items would have been valued at more than \$3.3 billion. This represents a 152 percent increase compared to FY 2020, when \$1.3 billion worth of goods were seized. A return to pre-pandemic trading levels and an overall increase in the number of CBP seizures of counterfeit products account for the significant rise in MSRP.



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CBP continues to engage regularly with industry partners and explore ways to enhance its IPR efforts, such as by working with the Commercial Customs Operations Advisory Committee (COAC) IPR Working Group, which is comprised of IPR industry stakeholders. Additionally, in May 2021, CBP signed a “Memorandum of Understanding between Department of Homeland Security, U.S. Customs and Border Protection and the U.S. Chamber of Commerce regarding information sharing for Intellectual Property Rights (IPR) Enforcement.” This joint initiative established a first-of-its-kind framework for public-private collaboration on combating counterfeit and pirated goods.

It is also important to underscore that from, 2016-2022, DHS’s Office of Strategy, Policy, and Plans (PLCY) also undertook significant actions to coordinate Department-wide policies and action plans to protect intellectual property rights. Most notably, following the Presidents “Memorandum on Combating Trafficking in Counterfeit and Pirated Goods,” dated April 3, 2019, PLCY led a nine-month intensive coordination process with DHS Components and interagency partners¹ to develop a report that articulated the risks associated with counterfeit and pirated goods, and set forth actions to be taken by DHS and recommendations for other U.S. government partners and private sector stakeholders. The resulting report, “Combating Trafficking in Counterfeit and Pirated Good Report to the President of the United States,” dated January 24, 2020, directed specific actions to be executed by CBP and Immigration and Customs Enforcement (ICE). Further, on October 25, 2019, PLCY established a new position for an Assistant Secretary for Trade and Economic Security and, on December 9, 2019, PLCY was delegated the authority to lead, conduct, and coordinate the development and implementation of Department-wide strategies, policies, and strategic planning across the Department, including for trade and foreign investment². PLCY continues to coordinate closely with ICE and CBP on various intellectual property rights policy matters.

The draft report contained seven recommendations, six with which the Department concurs, and one with which the Department non-concurs (Recommendation 4). Enclosed, please find our detailed response to each recommendation. DHS previously submitted technical comments addressing several accuracy, contextual, and other issues under a separate cover for OIG’s consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Enclosure

¹ This includes the U.S. Departments of Commerce, State, and Justice, the Office of Management and Budget, the Office of the U.S. Trade Representative, and the Intellectual Property Rights Coordinator.

² DHS Delegation Number 23000, Revision Number: 01, “Delegation to the Under Secretary for Strategy, Policy, and Plans,” dated January 25, 2022.



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**Enclosure: Management Response to Recommendations
Contained in 21-022-AUD-CBP, PLCY**

OIG recommended that the Assistant Secretary for Trade and Economic Security of DHS' PLCY, in coordination with ICE and CBP:

Recommendation 1: Develop, implement, and monitor a departmental strategic, risk-based approach for managing and enforcing intellectual property rights.

Response: Concur. PLCY Trade and Economic Security (TES) will continue to serve as the DHS central point for department-wide coordination on trade policy matters, including those related to the protection of intellectual property rights. TES will convene routine quarterly meetings beginning in July 2022 among TES, CBP's Office of Trade (OT) and the Office of Field Operations (OFO), and the ICE Homeland Security Investigations (HSI) Intellectual Property Rights Center to: (1) coordinate emergent policy matters related to intellectual property rights; (2) review priority enforcement activities; (3) discuss stakeholder engagement; and (4) identify areas that need to be addressed jointly. Such meetings will allow for a collaborative review of existing DHS lines of efforts related to the protection of IPR, including progress updates.

By October 2022, TES will initiate a collaborative review, with CBP OT and OFO and ICE HSI, of existing DHS lines of efforts related to the protection of intellectual property rights, including progress updates. TES will also engage members of the Trade and Economic Security Policy Council, as appropriate, in the review. During the first quarter of calendar year (CY) 2023, TES will complete its evaluation of the existing lines of efforts and prepare recommendations to present to its leadership in the second quarter of CY 2023. The culmination will be to identify resources and assign staff to coordinate, implement, and monitor the risk-based approach. Estimated Completion Date (ECD): December 30, 2023.

OIG recommended that the Executive Assistant Commissioner for CBP OT:

Recommendation 2:

- a) develop and implement standard operating procedures for the IPR Division's official responsibilities and activities, including procedures for developing strategic planning documents and evaluating IPR seizure statics to measure its strategic planning goals;
- b) quarterly monitor and document CBP's progress toward key IPR activities and strategies reported to Congress;
- c) develop and define and implement a repeatable process for documenting changes to IPR seizure data;



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- d) establish a standard operating procedure for reconciling and reporting IPR seizure data; and
- e) assign responsibility to trade officials for coordinating the correction of inaccurate IPR seizure data when identified.

Response: Concur. CBP OT has begun a full review of division processes and responsibilities that will include the establishment of applicable standard operating procedures (SOPs). Once complete, these SOPs will outline procedures for development of strategic planning documents, monitoring and reporting progress, and the development of official IPR statistics, which includes oversight procedures for the review of seizure data. ECD: September 30, 2022.

OIG recommended that the CBP Deputy Commissioner:

Recommendation 3: Assign responsibility to an office to develop a strategic risk assessment for its IPR Priority Trade Issue.

Response: Concur. CBP OT will conduct a strategic risk assessment and document outcomes as part of the annual Priority Trade Issue and enforcement planning process. ECD: September 30, 2022.

OIG recommended that the Executive Assistant Commissioner for CBP OFO:

Recommendation 4:

- a) establish criteria for when to convert informal targeting efforts to formal targeting rules, and;
- b) develop and implement a process to increase monitoring and oversight of IPR targeting.

Response: Non-Concur. CBP does not define targeting with the terminology utilized by OIG, and has currently existing criteria and processes in place that sufficiently address the intent of this recommendation. Specifically, targeting is a multi-layered process that includes system and personnel review of data to identify shipments that pose a risk. User Queries (Advanced Search) and User Define Rules (UDR) are critical parts of the targeting process, in which Advanced Searches are designed to look for the unknown risks and the UDRs are used to target known risks. Queries are used to broadly look at a risk area, and are needed to narrow the scope for a UDR to be effective when applied. Further, Post Seizure Analysis is conducted on seizures to determine if rule or query modifications are necessary.

Currently, the established criteria that defines when to convert a query into a UDR, which is applied through first line management oversight, is outlined in:



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- CBP Directive 3290-022 – “Advance Cargo Targeting Procedures and Responsibilities” – effective October 26, 2020; and
- “CBP User Define Rules Standard Operating Procedures” – effective October 21, 2020.

Pursuant to this guidance, queries are reviewed by first line management. When a query becomes a risk which has the potential to impact multi ports or on a more national scale, the rule creator or first line manager makes a referral through a multi-layered approach with coordination, including with those offices who have national targeting responsibilities and scope. This includes the National Targeting Center, Centers of Excellence and Expertise, and National Threat and Analysis Centers. Accordingly, once concurrence from appropriate offices is achieved, a UDR may be created to target this risk.

DHS requests that this recommendation be considered resolved and closed, as implemented.

Recommendation 5: Direct the coordinated establishment and implementation of a national database for recording non-seizure events, such as abandonments and return-to-sender.

Response: Concur. CBP OFO will provide existing and additional documentation of existing capabilities within CBP to record, track, and report on non-seizure events through the Automated Targeting System Exam Findings Module (EFM) application. Specifically, within EFM is Import Exam Findings (IEF) application on which CBP personnel must indicate the results of an examination. Within IEF, for example, CBP personnel may select “IPR Abandonment”, “Abandonment”, and “Refused Entry/Immediate Export,” to capture those shipments that are abandonments or returned-to-sender. Prior to the issuance of this report, on March 3, 2022, CBP’s National Targeting Center issued a policy memo and accompanying SOP of operational guidelines which ensured that CBP officers recorded CBP cargo examination results both accurately and timely. ECD: September 30, 2022.

OIG recommended that the Executive Assistant Commissioner of OFO and the Executive Commissioner of OT:

Recommendation 6: Consult with the CBP Office of Chief Counsel to interpret the intellectual property rights seizure statutes and establish parameters and oversight procedures for ports to determine their own seizure thresholds or alternatives to seizure, as appropriate.

Response: Concur. CBP OT and OFO will establish a working group to evaluate intellectual property rights statutes to determine thresholds for alternatives to seizure and

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develop or update corresponding policy. This working group will include OT Regulations and Rulings attorneys, who will consult with Office of Chief Counsel, as needed. ECD: September 30, 2022.

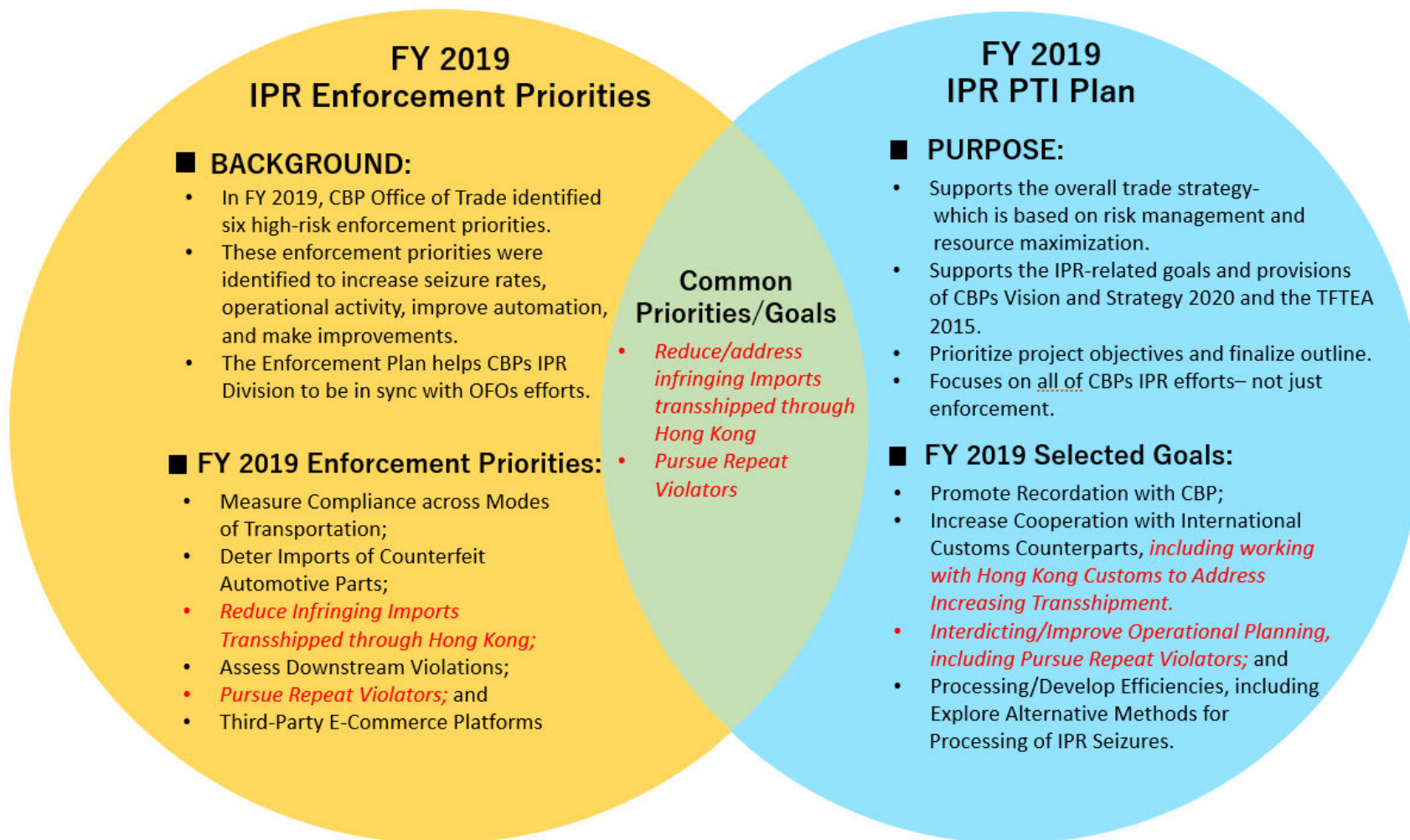
Recommendation 7: Establish a tracking mechanism for IPR investigative referrals to ICE.

Response: Concur. CBP OT and OFO will form a working group to determine thresholds for IPR referrals to ICE and develop corresponding policy, which will include using existing systems and capabilities, such as Intelligence Reporting System - Next Generation to document and track referrals to ICE. ECD: September 30, 2022.



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Appendix C
CBP's IPR Enforcement Priorities and Priority Trade Issue Plan Common Goals for FY 2019





Appendix D CBP's Strategic Management of IPR

Completion Rate of Sampled Goals from CBP's IPR Enforcement Priorities and Priority Trade Issue Plans, FYs 2018–2020



Source: DHS OIG Analysis of CBP data

Examples of Incomplete Goals. The IPR program office responsible for the PTI plan listed goals in FY 2019 to (1) provide guidance on deterring the imports of counterfeit automotive parts and (2) reduce IPR-violating goods shipped through Hong Kong. However, Office of Trade officials did not document whether CBP made progress toward completing these goals.

Examples of Goals with Unknown Status. The IPR program office did not know the status of some goals it had assigned to other offices in CBP. For example, in the FY 2020 PTI Plan, the IPR program office established goals to:

- evaluate options for effectiveness of penalties to increase deterrence, and
- pursue repeat offenders.



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Appendix E
Office of Audits Major Contributors to This Report

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