

STATEMENT FOR THE RECORD

on

“American Trade Enforcement Priorities”

**United States House of Representatives
Committee on Ways and Means
Subcommittee on Trade**

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Submitted by:

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The International AntiCounterfeiting Coalition (“IACC”) is pleased to offer these written comments for the record in connection with the Subcommittee’s February 28, 2025 hearing concerning, “American Trade Enforcement Priorities,” and we thank you for your work on these important issues.

Founded in 1979, the IACC is the world’s oldest and largest organization representing exclusively the interests of companies concerned with trademark counterfeiting and copyright piracy. Our members represent a broad cross-section of industries, and include many of the world’s best-known brands in the apparel, automotive, consumer goods, entertainment, pharmaceutical, personal care, and other product sectors. The IACC is committed to working with government and industry partners in the United States and around the world, to strengthen IP protection and enforcement and to raise awareness regarding the enormous—and growing—harm caused by the illicit trafficking of counterfeit goods.

The U.S. economy rests upon a foundation of intellectual property. From everyday consumer goods that make our lives easier, computing and communications technologies that increase business productivity, breakthroughs in medicine that save and improve the quality of our lives, and the music, movies, games, and books that enrich our culture; intellectual property underlies them all. American manufacturers and creators of all kinds have developed a global reputation for quality, and despite growing competition, the goods and services that they provide remain in high demand throughout the world. Unfortunately, our markets – both brick-and-mortar and online – are being flooded with cheap, and often dangerous, counterfeits by criminals who seek a free-ride on American rights-holders’ investments, expertise, and reputations. Overwhelmingly, the counterfeit goods on offer to U.S. consumers are manufactured abroad and smuggled into the country; as a result, the enforcement of intellectual property rights at the border is a vital component to our economic security.

We welcome this opportunity to share our views with the Committee regarding our trade enforcement priorities, and we look forward to working with you to protect American businesses and consumers. Our comments address three key areas of concern: Modernizing the Statutory and Regulatory Framework for IP Enforcement; Adopting an All-of-Government Approach to IP Protection; and Fostering Respect for Intellectual Property. We also wish to note at the outset that, as many of these issues have been raised in previous discussions with the Committee and with individual Members, for brevity's sake, these comments provide a brief summary of concerns, with links to relevant documents offering more comprehensive coverage.

Modernizing the Statutory and Regulatory Framework for IP Enforcement

Full Implementation of Key IP Provisions of TFTEA

The Trade Facilitation and Trade Enforcement Act of 2015 (“TFTEA”)¹ – the first comprehensive authorization of U.S. Customs and Border Protection (“CBP”) since the creation of the Department of Homeland Security in 2003 – was signed into law in late February 2016. Over nine years later, however, the legislation has yet to be fully implemented, and unsurprisingly, IACC members continue to express a great deal of frustration over the delays in implementation.

Section 116 of TFTEA sought to address an issue related to the responsibility of customs brokers to validate the powers of attorney (“POAs”) provided to them by their clients, and to maintain records related to their verification of the information included with those POAs. While brokers were already required to obtain a valid POA, there was a lack of clarity with respect to what constituted a *valid* POA and what steps brokers were expected to take to comply with that obligation. In August of 2019 – over three and a half years

¹ Pub. L. No. 114-125

after TFTEA became law – CBP issued a Notice of Proposed Rulemaking² in connection with the provisions of Section 116. The IACC expressed favorable views of the proposed rule, viewing it as a commonsense response to a long-standing concern.³ Inexplicably, that proposed rule has yet to be finalized during the intervening five years since the rule was published for comment.

Sections 302 (relating to the exchange of information related to trade enforcement) and 303 (relating to seizures of circumvention devices) of TFTEA were aimed at resolving questions related to CBP’s authority to share relevant enforcement information with, and seek assistance from, rights-holders in carrying out their IP enforcement mission at the border. For many years, Customs officials have raised concerns regarding the extent of their authority to work more collaboratively with private sector stakeholders, and the limitations imposed on that authority by the Trade Secrets Act.⁴ Congress sought to alleviate those concerns as far back as 2012⁵, and revisited the issue again in the context of TFTEA. As was the case with Section 116, CBP’s proposed rule to implement Sections 302 and 303 was not published until more than three years after TFTEA’s enactment, and a final rule was only published in mid-2024.⁶⁷ The IACC offered detailed feedback during the rulemaking process, highlighting rights-holders’ desire for more robust collaboration and increasing the efficiency of the agency’s IP enforcement procedures.⁸ We would welcome the Committee’s attention to continuing challenges in this area, and encourage the introduction of legislation to expand and clarify CBP’s authority to work with their counterparts in the private sector.

² Customs Broker Verification of an Importer’s Identity 84 Fed. Reg. 40302 - 17 (August 14, 2019)

³ https://www.iacc.org/wp-content/uploads/Comments_ProposedRule_CustomsBrokerKYC.pdf

⁴ 18 USC 1905

⁵ Pub. L. No. 112-81 at Sec. 818(g)

⁶ Enforcement of Copyrights and the Digital Millennium Copyright Act 84 Fed. Reg. 55251 (October 16, 2019)

⁷ Enforcement of Copyrights and the Digital Millennium Copyright Act 89 Fed. Reg. 52364 (June 24, 2024)

⁸ https://www.iacc.org/wp-content/uploads/CBP_ProposedRule_DMCA_Copyright.pdf

Disclosure of Information re: Voluntary Abandonment

The Committee is undoubtedly familiar with the challenges that Customs has faced in connection with the dramatic growth in recent years of small consignments imported via mail and express delivery services. The volume of those shipments has stretched CBP's enforcement capacity to its limits, and in response CBP has explored a number of options to help ease the burden. The agency's development of a "voluntary abandonment" procedure is one such option; it allows CBP to bypass its formal detention and seizure process to permit individuals to abandon, without liability, shipments that CBP has a reasonable suspicion of violating intellectual property laws. The process is intended to allow for more efficient processing of suspect imports than would be possible under its formal procedures (which are more suited to enforcing against large-scale cargo shipments). Unfortunately, in building out the voluntary abandonment procedure, CBP determined that it lacked clear authority to disclose relevant enforcement information to stakeholders, because its regulations permit such disclosures only in the context of a formal detention or seizure. In 2019, CBP published a proposed rule aimed at alleviating rights-holders' concerns, but over five years later, that proposed rule has yet to be finalized.⁹

While the IACC strongly supports the underlying goal of the abandonment procedure – i.e., to facilitate more efficient enforcement in the small-package environment, in turn allowing CBP to focus on more impactful enforcement against large-scale shipments – we have consistently questioned the manner in which the procedure has been implemented. More specifically, we have questioned CBP's determination that sharing information regarding these non-traditional interdictions is precluded under the existing statutory and regulatory framework.¹⁰

⁹ Disclosure of Information Regarding Abandoned Merchandise 84 Fed. Reg. 44790 (August 27, 2019)

¹⁰ https://www.iacc.org/wp-content/uploads/CBP_Disclosure_AbandonedGoods.pdf

Support for the Enactment of Legislation to Clarify & Enhance CBP's Information Sharing and Collaboration with the Private Sector

The IACC welcomed the introduction of legislation in the Senate during the 118th Congress, intended to address many of the concerns detailed above. S. 5160, “A bill to expand the sharing of information with respect to suspected violations of intellectual property rights in trade,” sponsored by Senators Grassley and Hassan, seeks to clarify that Customs does indeed have the authority to make necessary disclosures to stakeholders in the performance of its IP enforcement mission, when the agency has a reasonable suspicion that the entry of the goods would violate intellectual property laws, and it has determined that consulting with relevant stakeholders would assist it in making a final determination regarding the admissibility of the goods in question.¹¹ The bill seeks to put to rest any concerns that such disclosures may run afoul of the Trade Secrets Act, and confirms CBP's discretion to seek assistance from not only IP owners, but other stakeholders who are responsible for the importation (e.g., e-commerce platforms, shipping intermediaries, etc.). We look forward to working with the Committee to pass this important legislation during the 119th Congress.

All-of-Government Approach to IP Protection and Enforcement

Responsibility for the protection and enforcement of intellectual property rights in the United States is divided among numerous Executive Branch agencies; effective coordination among those agencies is therefore vital to protecting the interests of legitimate businesses and consumers, and to the economy as a whole. Recognizing the importance of such coordination, the IACC has been a vocal supporter of both the White House Office of the Intellectual Property Enforcement Coordinator (IPEC) and the DHS-led National IPR Coordination Center.

¹¹ <https://www.congress.gov/bill/118th-congress/senate-bill/5160/text>

The IPEC, a Senate-confirmed position within the Executive Office of the President, was established pursuant to the enactment of the PRO-IP Act in 2008¹²; that legislation was passed with overwhelming bipartisan support, highlighting Congress' recognition of the urgent need for a more cohesive approach to protecting IP rights. The IPEC is tasked with developing a unified IP enforcement strategy across the Executive Branch, and to ensure the consistent implementation of that strategy. Regrettably, the IPEC position has remained vacant for over four years. The IACC and rights-holders more broadly have expressed strong support for the swift nomination and confirmation of a new Coordinator to carry on this important work in the current Administration.

The National IPR Coordination Center, similarly, has an operational mandate to coordinate the efficient application of resources among its over two dozen component agencies and international law enforcement partners. The IACC has a long-standing and highly-collaborative relationship with the Center, and we view its continued operation as a vital part of the United States' IP enforcement regime.

Given the international nature of the counterfeit trade, we also wish to underscore the need to fully leverage the US government's global assets in connection with IP protection and enforcement. Key among those are the US Patent & Trademark Office's Intellectual Property Attaché Program¹³ and the Department of Justice's International Computer Hacking and Intellectual Property (ICHIP)¹⁴ program. The expertise of these two international networks of attorneys has been indispensable to American businesses both large and small as they seek to expand internationally, to assert their rights, and to navigate increasingly complex legal frameworks in foreign jurisdictions that often appear to be aimed squarely at impeding their entry into those markets. The attachés and ICHIPs have also historically undertaken an important role with respect to capacity building, which offers longer-term benefits – improved enforcement in those countries where the

¹² Pub. L. No. 110-403

¹³ <https://www.uspto.gov/ip-policy/ip-attache-program>

¹⁴ <https://www.justice.gov/criminal/criminal-opdat/global-cyber-and-intellectual-property-crimes>

manufacturing of counterfeits is a concern, or that serve as hubs for illicit trade should ultimately reduce the burden of enforcement on CBP at our borders and on law enforcement agencies in our domestic market. In that way, the attachés and ICHIPs serve as force multipliers, and we would welcome even greater investment in their work.

Fostering Respect for IP

A final issue that we wish to highlight as a priority is the need to foster a greater understanding and appreciation among American consumers regarding the positive impacts that result from strong IP protections, and conversely, the serious harms caused by the trafficking of counterfeit and pirated goods. The Committee is undoubtedly well-acquainted with the range of such harms, whether with respect to the economic injuries resulting from the trade, the revenue lost to illicit smuggling and sales, and the serious threats to consumers' health and safety that are inherent in the distribution of goods that have been produced by criminals who have every incentive to manufacture their wares as cheaply as possible, to ignore accepted standards related to product safety, and with no regard for adverse impacts on consumers. Unfortunately, the recognition of those concerns remains relatively low among the broader population. Accordingly, we wish to highlight our support for programs such as the USPTO's "Go For Real" campaign.¹⁵ While criminal and civil enforcement generally target the supply side of the equation, we believe that increasing public awareness surrounding these issues is essential to decreasing the demand for such goods as well. Public awareness messaging should be supported by empirical data though, and that is an area that may be ripe for improvement. In this context, we would support the development of a pilot program aimed at testing counterfeit goods following seizures, which we expect will demonstrate the prevalence of toxic or otherwise unsafe components typically found in counterfeit goods. We urge the Committee's support to ensure the continued and sufficient resourcing of initiatives to

¹⁵ <https://www.ncpc.org/goforreal/>

raise public awareness about the threats posed by counterfeits and to increase respect for strong IP protections that will protect both legitimate businesses and consumers.

I thank you for your consideration of these comments, and would welcome the opportunity to discuss these matters further with the Committee.

Respectfully submitted,

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