



November 10, 2021

The Honorable Richard Neal  
Chairman  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Kevin Brady  
Ranking Member  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, DC 20515

Re: Enforcement of Intellectual Property Rights at the Border

Dear Chairman Neal and Ranking Member Brady:

As the nation seeks to emerge from the health and economic impact of the COVID-19 pandemic, our associations and the thousands of members we represent are deeply concerned with the significant flow of counterfeit products across America’s borders – and the need for stronger, more effective trade enforcement and information sharing with the private sector. We appreciate the Committee’s strong bipartisan leadership on these issues, and welcome continued oversight to ensure that CBP has the authority and resources to combat illicit imports.

Counterfeit products have harmed manufacturers, American workers and consumers for years, but the problem has worsened significantly with the growth of e-commerce. The COVID-19 pandemic brought this threat to the forefront as bad actors abused online platforms to peddle fake tests, spurious purported treatments including counterfeit and unapproved pharmaceuticals and vaccines, and

ineffective personal protective equipment.<sup>1</sup> In 2020, U.S. Customs and Border Protection seized over 26,500 shipments of counterfeit goods valued at more than \$1.3 Billion.<sup>2</sup> Yet CBP's enforcement resources are increasingly stretched to match the growing tide of counterfeit goods at the border, including both large shipments and the increased volume of small-package consignments.<sup>3</sup>

Customs has pursued a number of initiatives aimed at modernizing and streamlining its examination, targeting, and interdiction processes; perhaps most notably through ongoing work to develop its "21<sup>st</sup> Century Customs Framework" and its leveraging of existing processes such as voluntary abandonment to increase the efficiency of its IP enforcement actions. Though we applaud the agency for these and other efforts to safeguard American businesses and consumers from the significant threats posed by counterfeit goods, more must be done to ensure that the CBP has the authority, the resources, and the tools to more effectively prevent the entry of illicit imports. In particular, CBP should continue and expand its efforts to operate more efficiently, through a data-driven, and collaborative approach, working with other agencies and the private sector to boost enforcement.

Congress has on a bipartisan basis strongly signaled support for CBP to increase information sharing with the private sector. These have included provisions in bills such as the Trade Facilitation and Trade Enforcement Act of 2015 clarifying CBP's authority to disclose relevant enforcement data to rights-holders<sup>4</sup>. Yet nearly six years since TFTEA was enacted, CBP has yet to fully implement its IP enforcement-related provisions. While CBP has published a set of proposed regulations in this area, it has yet to finalize them.<sup>5</sup> Without the full implementation of these provisions, the agency's ability to work with its counterparts in the private sector, and exchange relevant enforcement data to independently pursue criminal counterfeiters is severely limited.

Earlier this year, your colleagues in the Senate advanced legislation aimed at providing some much-needed clarity as to the extent of Customs' authority, and the need for a more collaborative and data-driven approach to border enforcement. A key bill to amend the Tariff Act of 1930 to enhance information sharing with the private sector (S. 1159), introduced by Senator Chuck Grassley (R-IA), and later incorporated as part of the United States Innovation and Competition Act (S. 1260),<sup>6</sup> reiterates CBP's authority to share information with rights-holders in seeking assistance to carry out its IP enforcement mission, including additional categories of information not enumerated by CBP's current regulations. The legislation also expands the agency's authority to share such information with other relevant stakeholders in the trade ecosystem such as e-commerce platforms and shipping intermediaries. These provisions would facilitate "self-help" by rights-holders and other responsible members of the trade community, enabling CBP's partners in the private sector to more effectively identify and pursue bad actors, thereby keeping illicit goods out of the stream of commerce before they're able to reach American ports or consumers.

As the House considers its approach to legislation on China, we respectfully encourage you to include these important provisions, along with others that could significantly enhance the border enforcement of intellectual property rights. For example, we encourage the Committee to explicitly address CBP's asserted concerns regarding the applicability of the Trade Secrets Act to the agency's disclosure of information to rights-holders, and the propriety of CBP's current enforcement

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<sup>1</sup> Since April 2020, Operation Stolen Promise, an HSI-led collaboration with CBP has resulted in 3,100+ seizures of such illicit goods, along with over 350 arrests, and more than 30 convictions.

<sup>2</sup> <https://www.cbp.gov/trade/priority-issues/ipr>

<sup>3</sup> <https://www.cbp.gov/trade/priority-issues/ipr/statistics>

<sup>4</sup> See, Trade Facilitation and Trade Enforcement Act of 2015, Publ. L. No. 114-125 at Sec. 302 and 303. See also, National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81 at Sec. 818(g).

<sup>5</sup> Enforcement of Copyrights and the Digital Millennium Copyright Act, 84 FR 55251 (Oct. 16, 2019), amending 19 CFR 113, 133, 148, 151 and 177.

<sup>6</sup> See, S.1260 at Sec. 71022(d).

procedures that unnecessarily delay, or entirely preclude, the provision of assistance or independent follow-on investigations by intellectual property owners.

Due to the rising tide of counterfeit and illicit goods arriving at the border, CBP cannot simply enforce its way out of this issue. Instead, CBP must work hand-in-hand with its partners in the private sector to identify and pursue the organized criminal networks operating within and beyond our borders, and to prevent their exploitation of legitimate supply- and distribution-chains.

We look forward to working with you on these issues and stand ready to provide any assistance you require on these matters.

Sincerely,

American Apparel & Footwear Association  
American Intellectual Property Law Association  
American Watch Association  
Association of American Publishers  
Entertainment Software Association  
Global Innovation Policy Center  
International AntiCounterfeiting Coalition  
National Association of Manufacturers  
Partnership for Safe Medicines  
Pharmaceutical Security Institute