

# Report on Combating Trafficking in Counterfeit and Pirated Goods

## Implementation Strategy and Associated Efforts

Following the release of the U.S. Department of Homeland Security's (DHS) Report on Combating Trafficking in Counterfeit and Pirated Goods (the Report), the Office of Strategy, Policy, and Plans (PLCY) was tasked with developing and executing a unified strategy to implement the Report's recommended actions.

⇒ The milestones described below focus on immediate actions and short-term deliverables that will create the building blocks for more time-intensive action that may require legislative or regulatory changes. Executive Steering Committee (ESC) working groups will continue monitoring progress and establish new milestones periodically to reflect current status, completed deliverables, and new focus areas.

ACTION	MILESTONES	ESTIMATED TIMELINES
<b>1. Ensure Entities with Financial Interests in Imports Bear Responsibility</b>	Determine whether the promulgation of new regulations is necessary to better define and enforce Section 321 provisions. <ul style="list-style-type: none"> <li>• Reestablished the eCommerce Task Force to initiate discussions about current data collection efforts.</li> <li>• Discussions also included pursuing multi-directional information sharing, trade facilitation benefits, areas for policy clarification, and responsible parties.</li> <li>• Compiled a draft Section 321 data set, to include mandatory, conditional, and optional elements.</li> <li>• Finalized regulatory worksheets for Regulations and Rulings review, which begins the regulatory drafting process.</li> </ul> Next Step: Explore facilitation benefits for trade, and propose conclusion of these data pilots pending public notice (this also relates to Action 2).	Ongoing
	Initiate U.S. Government (USG) discussions and private sector consultations regarding bulk abandonment, destruction, or other disposition of contraband goods. <ul style="list-style-type: none"> <li>• Held internal U.S. Customs and Border Protection (CBP) discussion to socialize concept and highlight where regulatory changes may be necessary in order to implement.</li> <li>• Held initial discussions with Commercial Customs Operations Advisory Committee (COAC) Intellectual Property Rights (IPR) Work Group.</li> </ul> Next Step: Continue discussions with industry around options for disposition of contraband goods.	Ongoing
	Prepare administrative guidance and/or notice of proposed rulemaking (NPRM) on responsible parties. <ul style="list-style-type: none"> <li>• <b>Currently pending formal drafting and review.</b></li> </ul>	Pending
	Issue ruling on Fulfillment Center use of Section 321. <sup>1</sup>	Completed
	Use the resulting information gains from the ruling to use foreign seller's identity to help pinpoint and encourage domestic warehouses and fulfillment centers to abandon or destroy inventories of identical offending goods.	Ongoing
	Conduct a data analysis of noncompliance for the use of Section 321 in fulfillment centers.	Completed
	Complete initial findings and offer conclusions from the Section 321 fulfillment center analysis.	Completed
	Complete NPRM on Section 321 data requirements.	Sept. 2021
	Assess the ability to pursue bulk abandonment in conjunction with information sharing.	Ongoing
	Enhance compliance of importers with the use of Section 321 for fulfillment centers.	Ongoing
	CBP will administer the Section 321 Advance Data Pilot.	Ongoing

<sup>1</sup> <https://rulings.cbp.gov/ruling/H290219>

ACTION	MILESTONES	ESTIMATED TIMELINES
<b>2. Increase Scrutiny of Section 321 Environment</b>	Using data from its Pilot Programs, CBP will develop a strategy to clarify Section 321 requirements and to identify how to update relevant statutes and regulations, as appropriate. This strategy will be updated and revised as the Pilot continues.	TBD
	Identify opportunities to share information with platforms to identify violative sellers.	Ongoing
<b>3. Suspend and Debar Repeat Offenders; Act Against Non-Compliant International Postal Operators</b>	CBP will complete a regulatory worksheet in furtherance of NPRM that will exclude suspended and debarred individuals from participating in the Importer of Record Program.	Completed
	CBP will complete its analysis for implementing an international mail compliance metric.	TBD (COVID-19 Delay)
	CBP will transmit its report on options for enforcing an international mail compliance metric to the President.	TBD (COVID-19 Delay)
	CBP will complete a draft NPRM to exclude suspended and debarred individuals from participating in the Importer of Record Program and submit to OMB. <ul style="list-style-type: none"> <li>• <b>Currently pending formal drafting and review.</b></li> </ul>	Dec. 2020
	OMB will approve and publish the draft NPRM in the Federal Register.	TBD 2021
	USPS to continue negotiating bilateral agreements with foreign postal operators regarding compliance with U.S. Importer of Record Requirements.	Inclusion of language in bilateral agreements began in July 2020 and is ongoing as new instruments are executed
<b>4. Apply Civil Fines, Penalties, and Injunctive Actions for Violative Imported Products</b>	Build support for partnerships with federal, state, and local law enforcement with the goal of prosecuting intellectual property crime at all levels of government through, among other vehicles, the task forces established by federal law enforcement with the support of DHS and the Department of Justice (DOJ).	Ongoing
	DHS will refocus efforts to review seizure data and data received from third parties to identify potential criminal and civil violators.	Ongoing
	The U.S. Immigration and Customs Enforcement (ICE)/Homeland Security Investigations (HSI)-led IPR Center will use its Outreach and Training Unit, in cooperation with other relevant Departments and Agencies, to find increased ways to work closely with brand owners and third-party intermediaries to educate industry and the general public as to the resources available for enforcing IP laws.	Ongoing
	ICE/HSI will look to increase staffing at the ICE/HSI-led National IPR Center for both special agent and intelligence analyst positions.	TBD
	ICE/HSI will leverage known and emerging nexuses with other areas of ICE/HSI authority—such as efforts to include the disruption and dismantlement of illicit websites and dark web online marketplaces—to attack the points of sale and payment processes for illicit sites that deal in counterfeits. ICE/HSI will continue to refine investigative techniques and strategies to attack IP crime throughout the supply chain process.	Ongoing
	Prioritize investigations into intellectual property-based crimes regardless of size and make referrals for such investigations where appropriate.	Ongoing
<b>5. Leverage Advance</b>	CBP and the USPS will continue to work internationally toward the Universal Postal Union (UPU) development of its “item check” function that could allow for the removal of prohibited or inadmissible (including counterfeit) items prior to	Ongoing (Q2 2021)

ACTION	MILESTONES	ESTIMATED TIMELINES
<b>Electronic Data for Mail Mode</b>	departure from a foreign country.	
	USPS and CBP continue to work closely on using advance electronic data (AED) to target counterfeit shipments.	Ongoing
	USPS and CBP will continue to utilize the current Letter of Intent executed by both agencies to collaborate on specific operations to target counterfeit goods.	Ongoing
	USPS has confirmed that the UPU will complete its technical updates on schedule to allow for an item check function. This is the first part of the broader international mail security response protocol functionality being developed to enable members to use AED to comply with EU requirements similar to the Air Cargo Advance Screening (ACAS) program, i.e. additional data required, additional screening requested, or do not load.	Ongoing (Q2 2021)
	The volume of mail packages with associated AED continues to increase, allowing for more effective targeting of packages suspected of containing counterfeit goods.	Ongoing
	CBP will incorporate information on known violative shippers into CBP and USPS systems so that the item check function can be used to detect potential counterfeit shipments and to advise they be removed from the mail stream prior to loading and possibly be tendered to export customs authorities for review.	TBD
<b>6. Plan for ACTION</b>	Develop a list of proposed Anti-Counterfeiting Consortium to Identify Online Nefarious Actors (ACTION) Members.	Completed
	ICE/HSI will hold an inaugural meeting of ACTION.	Completed
	ICE/HSI will establish a framework allowing ACTION Members to enter non-binding memoranda of understanding with the IPR Center to further facilitate the sharing of information and to allow for better coordination of IPR enforcement.	Completed
	Engage directly with individual private sector Members to evaluate current practices and determine the need for a memorandum of understanding (MOU).	Ongoing
	Build on direct engagement with private sector Members to encourage cross-sector information sharing between platforms, payment processors, intermediaries, etc.	Ongoing
	Initiate conversations with private sector Members regarding their implementation of the Report's ten voluntary best practices. Building on these ACTION interactions, the IPR Center will begin outreach to non-ACTION Members.	Ongoing
<b>7. Analyze Enforcement Resources</b>	CBP will transmit its report on the sufficiency of fees to cover operations for processing small parcels to the President by August 2020.	Completed (Aug. 2020)
<b>8. Create Modernized E-Commerce Enforcement Framework</b>	<p>Explore opportunities to streamline seizure processes.</p> <ul style="list-style-type: none"> <li>Discussed the feasibility of sending concurrent notices of seizure and forfeiture, with the result being a more streamlined administrative forfeiture process. This would not require a regulatory change but is dependent on minor technology changes in Seized Assets and Case Tracking System (SEACATS).</li> <li>Coordinated with Office of Chief Counsel (OCC) for legal opinion that expands on this approach.</li> </ul>	Completed (Sept. 2020)

ACTION	MILESTONES	ESTIMATED TIMELINES
	<p>Explore statutory options to grant the authority to treat IPR infringing goods as summarily forfeited upon discovery by CBP or ICE.</p> <ul style="list-style-type: none"> <li>This is under review and will require a complicated balancing of CBP's resources, efficiency and expedient enforcement, and due process for the trade community.</li> <li>The 21<sup>st</sup> Century Customs Framework (21CCF) team is looking to codify this concept in a statement of work for a relevant COAC IPR working group.</li> <li>21CCF has identified three recommendations generated by the COAC and presented at the April 2020 Quarterly Public Meeting, and is in the process of creating a scope of work that request that the COAC refine those three recommendations into a future IPR specific business model.</li> </ul>	Ongoing
	<p>Explore options, both those presently legally available, those legally available if existing regulations are modified, and those that will require statutory change to allow for better information sharing with the private sector.</p> <ul style="list-style-type: none"> <li>Actively working public comments received on the NPRM on Abandonment</li> <li>Engaging with Chief Counsel and Rules &amp; Regulations to review the Trade Act, Trade Secrets Act, Trade Facilitation and Trade Enforcement Act 116, as well as other key statutory documents that may impact or be impacted by changes to information sharing.</li> <li>Initiated discussions with the Enforcement Task Force (ETF) regarding information sharing in the context of the Section 321 data pilot.</li> </ul>	Ongoing
	Continue exploring ways to work within existing seizure statutes to shorten the seizure process. Identify options to move forward.	Ongoing
	Identify statutory changes to expand the ways CBP can treat small packages.	Ongoing
	Convene the E-Commerce Working Group to discuss multi-directional information sharing.	Mar. 2021
	Agree on draft legislative proposals to submit through the OMB review process.	Dec. 2020
<b>9. Assess Contributory Trademark Infringement Liability for E-Commerce</b>	Complete update of analysis of current legal framework specific to secondary liability for trademark infringement in the e-commerce environment.	Completed
	Seek public input through a Federal Register Notice (FRN) request for comments on secondary liability for trademark infringement in the e-commerce environment. Comments will then be used to further inform conclusions and recommendations for additional action. <sup>2</sup>	Completed (Nov. 2020)
	Comments from aforementioned FRN will be collected, and review process will begin using information to inform conclusions and recommendations for additional action.	Feb. 2021
	U.S. Patent and Trademark Office (USPTO) will draft memorandum or other appropriate document, based on FRN responses, outlining the inputs, analysis, conclusions and recommendations. This step includes time for internal discussions, interagency discussions, drafting iterations, interagency clearance, and approvals. If the conclusions lead to recommendations for changes in the law, Office of Policy and International Affairs (OPIA) will propose language.	Apr. 2021
<b>10. Examine the Legal Framework Surrounding Non-Resident Importers</b>	<p>Finalize opinion on non-resident importer legal framework and proposal for improvements (statutory/regulatory change, etc.).</p> <ul style="list-style-type: none"> <li>PLCY formally requested information, from CBP, involving nonresident shippers/sellers and Section 321 entries. This inquiry assisted in exploring the legal requirements to enact a series of options (from outright prevention, to greater amounts of data, to some form of bond).</li> </ul>	Completed
<b>11. Establish a</b>	Coordinate with USG agencies and public-private entities to identify and assess existing public awareness activities and capabilities.	Completed

<sup>2</sup> <https://www.federalregister.gov/documents/2020/11/13/2020-25163/secondary-trademark-infringement-liability-in-the-e-commerce-setting>

ACTION	MILESTONES	ESTIMATED TIMELINES
<b>National Consumer Awareness Campaign</b>	Seek public input while developing the campaign, which is critical to its success. USPTO will draft a FRN requesting comments from the public on developing and implementing a public awareness campaign suited to the goals of reducing the market for counterfeit and pirated goods.	Completed (Nov. 2020)
	Organize small “listening” sessions with stakeholders through channels such as the COAC, Industry Trade Advisory Committee (ITAC), and related associations. <ul style="list-style-type: none"> <li>• <b>ESC Working Group developed a strategy document to assign and track stakeholder engagement based upon existing agency relationships with the private sector.</b></li> </ul>	Feb. 2021
	Relevant USG agencies will review and begin the analysis of the input received through the FRN request for comments.	Jan. 2021
	Relevant USG agencies will complete the analysis of the FRN comments and will begin using this data to inform the implementation of a public awareness campaign.	Feb. 2021

### Associated Efforts

In addition to the Actions recommended in the Report, DHS, including CBP and ICE, have concentrated attention on several additional efforts to address illicit goods in e-commerce. These initiatives correspond with the Trump Administration’s trade priorities. While these initiatives will be independent of the Report’s Actions, due to overlapping objectives, some milestones may be similar or identical to those of the Report’s Implementation Strategy.

ACTION	MILESTONES	ESTIMATED TIMELINES
<b>Exclusion of Duty and Tax-Free Treatment for Goods Subject to Section 301 Tariffs</b>	Issue a NPRM to except from Section 321 treatment, merchandise subject to duties imposed under Sections 301 to 307 of the Trade Act of 1974.	Ongoing
<b>Section 321 Enhanced Data Requirements and Next Steps</b>	Continue to administer its Section 321 Data Pilot and Entry Type 86 Test. (Related to the Report: 2)	Ongoing <sup>3</sup>
	Explore a permanent regulatory solution that is based on the findings of these two pilots and consistent with PM Recommendation #2. Once complete, CBP will require more information about foreign sellers and the nature and value of Section 321 shipments.	Ongoing
<b>Industry Implementation of Best Practices</b>	Continue to further industry adoption of the voluntary best practices for combating counterfeiting, including the inclusion of specific language in the Executive Order titled, “Essential Medicines and Medical Countermeasures.”	Ongoing
	Engage with the U.S. General Services Administration to explore opportunities to incorporate combating counterfeit best practices into their Commercial Platform Proof of Concept, which looks to modernize its procurement of commercial products through commercial e-commerce portals to increase agency spending controls and supply chain risk management.	Ongoing
<b>E-SALE Executive Order Implementation<sup>4</sup></b>	Sections 2(a) and (b) – Develop a regulatory worksheet that proposes to exclude persons suspended or debarred by CBP from obtaining an Importer of Record (IOR) number.	Completed
	Use the regulatory worksheet to draft and publish the formal rulemaking required by this section. <ul style="list-style-type: none"> <li>• <b>Currently pending formal drafting and review.</b></li> </ul>	Dec. 2020

<sup>3</sup> <https://www.federalregister.gov/documents/2019/07/23/2019-15625/section-321-data-pilot>

<sup>4</sup> <https://www.whitehouse.gov/presidential-actions/ensuring-safe-lawful-e-commerce-us-consumers-businesses-government-supply-chains-intellectual-property-rights/>

ACTION	MILESTONES	ESTIMATED TIMELINES
	Section 4(b) – Prepare a draft report outlining measures the Federal Government could take to prevent international mail shipments from persons prohibited from obtaining an IOR number.	Ongoing
	Section 5(a) – Develop a method for assessing the compliance of countries that generate the highest volumes of AED for international mail.	Completed
	As the impact of COVID-19 lessens and as volumes begin to normalize, CBP will initiate its operational-level assessment and complete the international mail non-compliance metric. This will be followed by publication of related guidance pursuant to Section 5(e).	TBD
	Section 5(d) – Prepare a draft report outlining what actions may be taken to protect the U.S. against shipments from non-compliant international posts.	Ongoing
	Section 6 – Explore a more aggressive communication and outreach strategy with respect to publicizing seizure cases. This strategy includes but is not limited to amending the agency’s Public Disclosure Directive to increase the amount of information that can be shared at the earliest possible point in the enforcement and seizure process.	Ongoing
	Section 7 – Prepare a draft report reviewing the agency’s current fee collection and possible fee adjustments.	Completed (Aug. 2020)
<b>Memorandum on Stopping Counterfeit Trafficking on E-Commerce Platforms Through Fines and Civil Penalties<sup>5</sup></b>	<p>Section 2 (a) The Secretary of Homeland Security, through the Commissioner of U.S. Customs and Border Protection and in consultation with the Attorney General, shall consider taking all appropriate action, consistent with applicable law, under sections 526 and 596 of the Tariff Act of 1930, as amended (19 U.S.C. 1526 and 1595a), to:</p> <ul style="list-style-type: none"> <li>(i) seize counterfeit goods imported into the United States in connection with a transaction on an e-commerce platform; and</li> <li>(ii) impose the maximum fines and civil penalties permitted by law on any e-commerce platform that directs, assists with, or is in any way concerned in the importation into the United States of counterfeit goods.</li> </ul> <ul style="list-style-type: none"> <li>• <b>DHS PLCY, in consultation with DOJ, has drafted a proposed report/recommendations and circulated within DHS for preliminary clearance.</b></li> </ul>	Dec. 2020
	<p>Section 2 (b) Within 120 days of the date of this memorandum, the Secretary of Homeland Security, in coordination with the Attorney General, shall develop a legislative proposal to promote the policy objectives of this memorandum.</p> <ul style="list-style-type: none"> <li>• <b>DHS PLCY, in coordination with OGC and DOJ, has drafted a comprehensive legislative proposal and circulated within DHS for preliminary clearance.</b></li> </ul>	Dec. 2020

<sup>5</sup> <https://www.whitehouse.gov/presidential-actions/memorandum-stopping-counterfeit-trafficking-e-commerce-platforms-fines-civil-penalties/>