



Asia-Pacific
Economic Cooperation

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Challenges for Intellectual Property Rights Enforcement in a Paperless Environment

Submitted by: United States



**Symposium on Paperless Trading Capacity
Building and Intellectual Property Rights
Protection
Beijing, China
14-16 August 2007**

APEC

Symposium on Paperless Trading Capacity building and IPR Protection

Challenges for IPR Enforcement in a
Paperless Environment



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Border Protection

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Essential Elements of an Effective Border Enforcement Program

- Legal / Regulatory Authority
- Risk Analysis & Risk Management Tools
- Information/Intelligence (from IPR Owners, Ports of Entry, and Other Law Enforcement Agencies)



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Intellectual Property Law, Customs Law, and Criminal Law

- Generally there is some interplay among these three areas of law
- Adequate legislation and regulations need to be implemented to ensure that Customs has complete, accurate information



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Types of Customs Controls

- Imports
- Exports
- Transiting shipments
- “Trans-shipped”



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Intelligence-Based Enforcement: Targeting Shipments for Examination Through Risk Assessment

Many customs administrations empower Customs officers to act *ex-officio* against shipments suspected of infringing IPR.

Customs officers acting on their own initiative select shipments posing a high risk of containing infringing goods for examination

Use intelligence-based controls to target high risk shipments i.e factors indicating a high risk for piracy and counterfeiting



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Selecting Shipments for Inspection: Risk Management

- Efficient use of limited resources
- Trade facilitation
- Two Approaches
 - Intelligence (Experience)-based
 - IPR Experts
 - WCO Handbook
 - Data-based
 - “Risk Model”



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Intelligence-based Controls: Driven by Risk Indicators

- WCO compiled a list of risk factors common to all customs administrations
- Risks and threats differ from region to region and from country to country
- Risks and threats are constantly changing; therefore it is important to regularly conduct risk assessments.



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Data Elements

- Documents consist of data elements
- Pertinent “documents” include:
 - Customs declaration or entry
 - Invoices
 - Airbills or bills of lading
 - Licenses
 - Other?



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“Document”-based identification of high-risk shipments:

- 1. Description of goods – are high-risk goods involved?
- 2. Are goods described in vague terms?
- 3. Country of origin – is the country of origin known as source of counterfeit or pirated goods?
- 4. Country of destination- does the country of destination have a reputation for demand for counterfeit of pirated goods
- 5. Nature and quality of the documentation
- 6. Who is the shipper, who is the importer and who is the consignee?
- 7. Where were the goods produced?
- 8. Routing of the goods / means of transport
- 9. Declared value of the goods
- 10. Size of the shipment
- 11. Terms of sale/delivery



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Examination of Customs Declaration and Other Documentation

- A review of documentation and electronic information presented by the importer, owner, or consignee of goods can help the Customs officer to identify goods that present a high risk for counterfeiting and piracy.
- Customs officer should look for a logical connection among all of the data presented and attempt to reconcile any inconsistencies that might appear in the documents.
 - May require consulting outside sources such as commercial databases and directories or the Internet.
- A common-sense approach that requires the Customs officer to use his discretion.



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Nature and Quality of Documentation

- Unusual layout of invoices or bills of lading; substandard print quality or blurred print on invoices or bills of lading ; handwritten or manually typed invoices indicate an elevated risk.
 - Normally invoices are electronically generated and are often printed on special paper that has been pre-printed with the company logo, address, etc.
- Documentation has interlineations, changes, or other amendments
- Invoice or bill of lading is incomplete. Most legitimate documents include:
 - telephone /fax number, e -mail address, and business registration numbers of the manufacturer, shipper, or importer of the goods
 - terms of sale and delivery (e.g. FAS (free along side), FOB (free on board), Net 30 (payment within 30 days)
 - order number or invoice number and date (most legitimate businesses use sequentially numbered invoices)
 - stock numbers or item numbers and unit price
 - legitimate invoices also often state a payment discount (e.g. 2% discounting the case of payment within 30 days)



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Description of Goods / Tariff No.

- Customs officers select shipments of types of goods which present a high risk for counterfeiting. For example:
- Consumer goods
 - Pharmaceuticals
 - Personal Hygiene Products
 - Luxury Goods
 - Spirits and Tobacco



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Examples of counterfeit goods



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Pirated CDs, DVDs and Software



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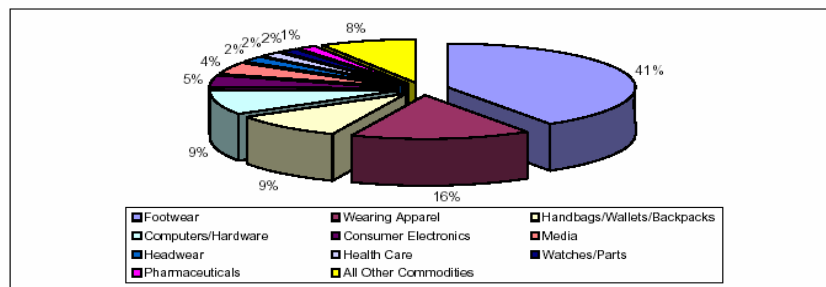


Counterfeit Pharmaceuticals



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Department of Homeland Security U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement FY 2006 Top IPR Commodities Seized

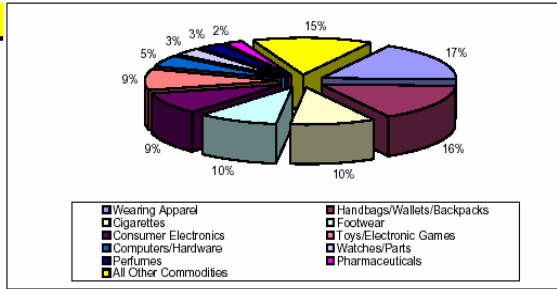


Commodity	Domestic Value	Percent of Total
Footwear	\$ 63,445,619	41%
Wearing Apparel	\$ 24,320,976	16%
Handbags/Wallets/Backpacks	\$ 14,750,201	9%
Computers/Hardware	\$ 14,287,989	9%
Consumer Electronics	\$ 7,057,034	5%
Media	\$ 6,965,156	4%
Headwear	\$ 3,257,963	2%
Health Care	\$ 3,092,919	2%
Watches/Parts	\$ 2,832,364	2%
Pharmaceuticals	\$ 2,298,694	1%
All Other Commodities	\$ 13,060,321	8%
Total FY 06 Domestic Value	\$ 155,369,236	
Number of Seizures	14,675	

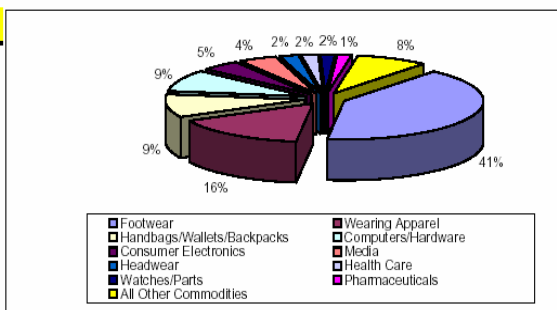
Note: Media includes motion pictures on tape, laser disc, and DVD; interactive and computer software on CD-ROM, and floppy discs; and music on CD or tape. Consumer Electronics includes cell phones and accessories, radios, power strips, electrical tools and appliances.

**Department of Homeland Security
U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement
FY 2005 and FY 2006 Top IPR Commodities Seized**

FY 2005 Commodity	Domestic Value	% of Total Value
Wearing Apparel	\$ 16,099,540	17%
Handbags/Wallets/Backpacks	\$ 14,954,525	16%
Cigarettes	\$ 9,648,876	10%
Footwear	\$ 8,941,185	10%
Consumer Electronics	\$ 8,793,700	9%
Toys/Electronic Games	\$ 8,568,925	9%
Computers/Hardware	\$ 4,798,852	5%
Watches/Parts	\$ 3,070,832	3%
Perfumes	\$ 2,713,695	3%
Pharmaceuticals	\$ 2,094,352	2%
All Other Commodities	\$ 13,550,028	15%
Total FY 05 Domestic Value	\$ 93,234,510	
Number of Seizures	8,022	



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Vague descriptions of goods indicate a high risk for counterfeiting and piracy

Goods described in vague terms or as “blank“, “unfinished“, “articles of plastic“, “plastic molding“, “articles of metal“, “metal molding“, “metal discs“, “samples” “parts“, “household goods” or “consolidation” are often high risk for counterfeiting and piracy.



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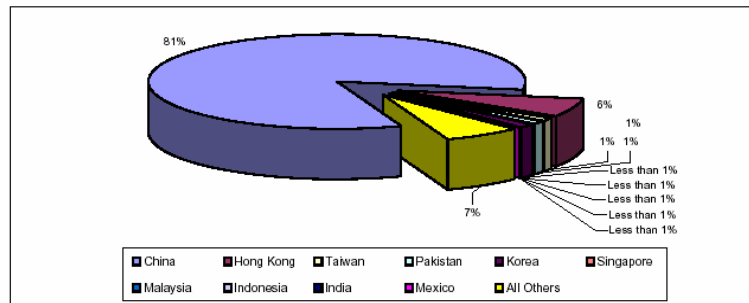
Origin of Goods

- According to WCO statistics, currently the countries of manufacture or production posing the greatest risk for counterfeiting and piracy are located in Asia (specifically People's Republic of China; Hong Kong, China ; South Korea; Singapore; Thailand ; Chinese Taipei; Malaysia and Pakistan) and Eastern Europe (specifically the Czech Republic, Turkey and Poland)
- In addition, countries of export (or transit) of goods posing a great risk for counterfeiting and piracy are located in North America, Central America, and South America including Canada, Mexico, Paraguay, and Brazil
- Goods entering via land border from or otherwise transiting a country with a reputation for weak enforcement (a "porous" border) also present a risk for counterfeiting and piracy.



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Department of Homeland Security
U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement
FY 2006 Top Trading Partners for IPR Seizures

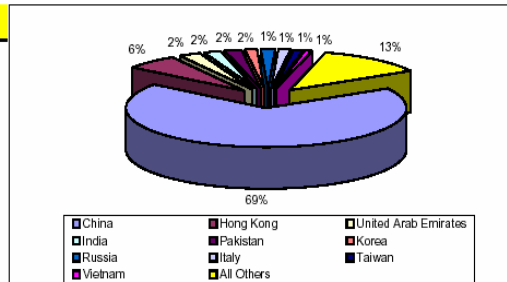


Trading Partner	Domestic Value	Percent of Total
China	\$ 125,535,844	81%
Hong Kong	\$ 9,389,464	6%
Taiwan	\$ 1,843,764	1%
Pakistan	\$ 1,838,815	1%
Korea	\$ 1,810,140	1%
Singapore	\$ 1,198,735	Less than 1%
Malaysia	\$ 1,174,071	Less than 1%
Indonesia	\$ 983,425	Less than 1%
India	\$ 832,541	Less than 1%
Mexico	\$ 535,826	Less than 1%
All Others	\$ 10,166,611	7%
Total FY 06 Domestic Value	\$ 155,369,236	
Number of Seizures	14,675	

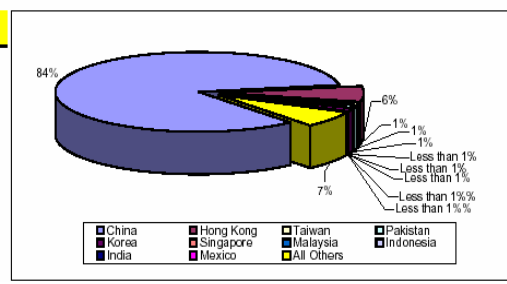
Figures for trading partners are based on country of origin and/or country of export as listed in the seizure report.

**Department of Homeland Security
U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement
FY 2005 and FY 2006 Top Trading Partners for IPR Seizures**

FY 2005 Trading Partner	Domestic Value	% of Total Value
China	\$ 63,968,416	69%
Hong Kong	\$ 5,799,112	6%
United Arab Emirates	\$ 2,118,409	2%
India	\$ 1,966,638	2%
Pakistan	\$ 1,753,154	2%
Korea	\$ 1,418,060	2%
Russia	\$ 1,377,835	1%
Italy	\$ 1,268,188	1%
Taiwan	\$ 1,091,873	1%
Vietnam	\$ 780,644	1%
All Others	\$ 11,692,181	13%
Total FY 05 Domestic Value	\$ 93,234,510	
Number of Seizures	8,022	

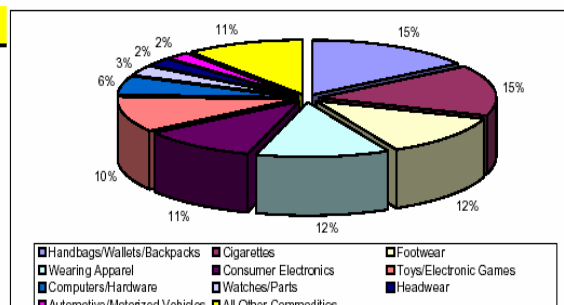


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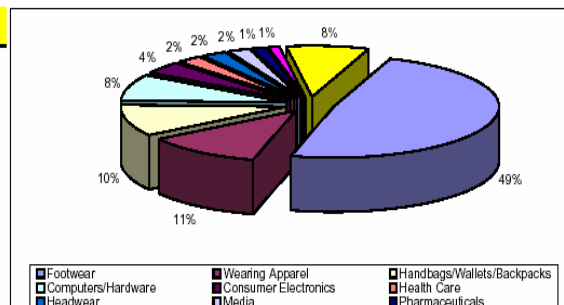


China

FY 2005	Domestic Value	% of Total Value
Handbags/Wallets/Backpacks	\$ 9,797,309	15%
Cigarettes	\$ 9,540,433	15%
Footwear	\$ 7,936,101	12%
Wearing Apparel	\$ 7,787,241	12%
Consumer Electronics	\$ 6,779,947	11%
Toys/Electronic Games	\$ 6,626,217	10%
Computers/Hardware	\$ 3,533,735	6%
Watches/Parts	\$ 2,050,556	3%
Headwear	\$ 1,498,756	2%
Automotive/Motorized Vehicles	\$ 1,468,930	2%
All Other Commodities	\$ 6,949,191	11%
Total FY 05 Domestic Value	\$ 63,968,416	
Number of Seizures	3,709	

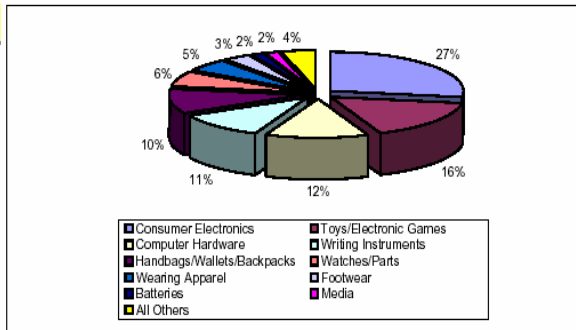


FY 2006	Domestic Value	% of Total Value
Footwear	\$ 61,009,037	49%
Wearing Apparel	\$ 14,215,434	11%
Handbags/Wallets/Backpacks	\$ 12,526,539	10%
Computers/Hardware	\$ 10,479,715	8%
Consumer Electronics	\$ 5,149,151	4%
Health Care	\$ 3,076,323	2%
Headwear	\$ 3,023,457	2%
Media	\$ 2,755,572	2%
Pharmaceuticals	\$ 1,722,750	1%
Cigarettes	\$ 1,679,640	1%
All Other Commodities	\$ 9,958,226	8%
Total FY 06 Domestic Value	\$ 125,595,844	
Number of Seizures	10,325	

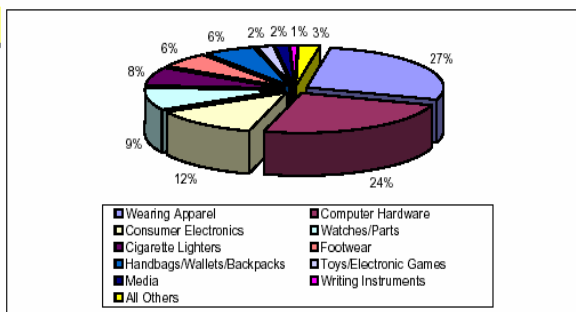


Hong Kong

FY 2005	Domestic Value	% of Total Value
Consumer Electronics	\$ 1,593,344	27%
Toys/Electronic Games	\$ 956,291	16%
Computer Hardware	\$ 716,456	12%
Writing Instruments	\$ 633,009	11%
Handbags/Wallets/Backpacks	\$ 594,134	10%
Watches/Parts	\$ 365,086	6%
Wearing Apparel	\$ 317,578	5%
Footwear	\$ 188,833	3%
Batteries	\$ 98,893	2%
Media	\$ 98,294	2%
All Others	\$ 237,194	4%
Total FY 05 Domestic Value	\$ 5,799,112	
Number of Seizures	892	



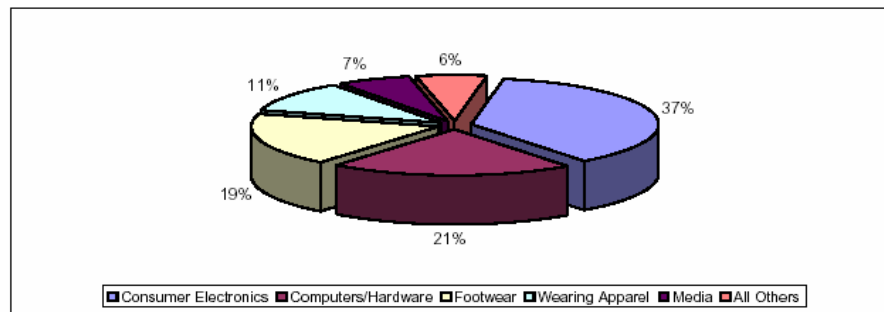
FY 2006	Domestic Value	% of Total Value
Wearing Apparel	\$ 2,568,246	27%
Computer Hardware	\$ 2,286,829	24%
Consumer Electronics	\$ 1,160,502	12%
Watches/Parts	\$ 862,480	9%
Cigarette Lighters	\$ 719,000	8%
Footwear	\$ 567,659	6%
Handbags/Wallets/Backpacks	\$ 567,598	6%
Toys/Electronic Games	\$ 196,287	2%
Media	\$ 151,843	2%
Writing Instruments	\$ 69,995	1%
All Others	\$ 239,025	3%
Total FY 06 Domestic Value	\$ 9,389,464	
Number of Seizures	783	



Taiwan

FY 2006*	Domestic Value	% of Total Value
Consumer Electronics	\$ 679,251	37%
Computers/Hardware	\$ 390,346	21%
Footwear	\$ 341,992	19%
Wearing Apparel	\$ 199,234	11%
Media	\$ 122,780	7%
All Others	\$ 110,161	6%
Total FY 06 Domestic Value	\$ 1,843,764	
Number of Seizures	67	

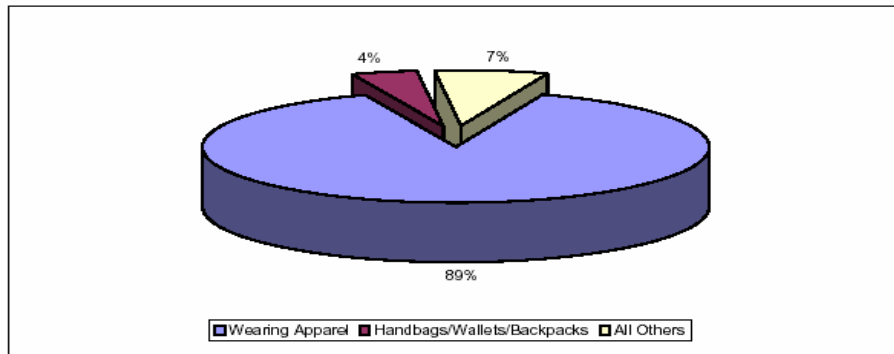
* Taiwan was not among the top five trading partners for IPR seizures in FY 05



Korea

FY 2006*	Domestic Value	% of Total Value
Wearing Apparel	\$ 1,602,438	89%
Handbags/Wallets/Backpacks	\$ 78,440	4%
All Others	\$ 129,262	7%
Total FY 06 Domestic Value	\$ 1,810,140	
Number of Seizures	144	

*Korea was not among the top five trading partners for IPR seizures in FY 05



Manufacturer, Shipper Importer, and Consignee Name and Address

There is an elevated risk when:

- Importer has little or no import history
- Importer has a history of previous Customs violations, or uses the same address as a previous violator
- Manufacturer, shipper, or importer name appears to be fictitious
- Manufacturer, shipper or importer name is inconsistent with one involved in the business of dealing in the declared articles. Generally there is less risk if there appears to be a logical relationship between the importer, owner or consignee of the goods and the shipper or exporter of the goods.
 - Example: The manufacturer of the goods is shown as “United Foundry Corp.” and the imported goods are handbags



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Manufacturer, Shipper, Importer, and Consignee Name and Address

There is an elevated risk when:

- Manufacturer shipper or importer address is incomplete or cannot be verified by use of electronic or other databases such as Worldbase, Dun & Bradstreet, telephone directories or the Internet
- Manufacturer, shipper or importer uses a post office box or mail drop address or the consignee is only known by a telephone (mobile phone) number
- Manufacturer, shipper or importer address is located in an area with a reputation for dealing in counterfeit or pirated goods.
 - Example: Places such as Kowloon Bay in Hong Kong, China, Canal Street in New York (USA), Santi Alley in Los Angeles (USA), and Ciangzhou in China are notorious for dealing in counterfeit and pirated goods



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Declared Value of Goods

Risk is elevated when:

- Abnormally high or low import cost or value is declared. (The value of genuine goods can be verified with the right holder in order to help make this determination.)
- Goods are insured for abnormally low value
- If the declared customs value (on the basis of the WTO Agreement on valuation for customs purposes) includes a component for royalty, licensing, or other payment for proprietary rights, a lower risk for counterfeiting or piracy is indicated
- Goods are invoiced as "bulk" or goods are invoiced by cost per weight rather than per unit
 - Example: CDs are priced per kilo instead of per unit



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Size of Shipment

An elevated risk exists when:

- Goods are shipped in abnormally high or low quantities in relation to the type of goods.
 - For example , a shipment of 20.000 units of Rolex watches is abnormally large.



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Multiple IPRs in one consignment

An elevated risk is present when:

- The shipment contains articles manufactured by multiple rights holders
 - e.g. software produced by different companies, motion pictures produced by different studios, or audio recordings produced by different labels in the same shipment (this suggests that the merchandise may be counterfeit or pirated, but it may also indicate that the goods are parallel goods)
- Other examples: Shipment of handbags including several designer brands.
- Shipment of watches including several unaffiliated brands.



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Routing of Goods and Means of Transport

An elevated risk exists when:

- Goods are arriving at a port outside of the right holder's ordinary distribution channels.
- Routing or distribution differs from that stated by rights holder in his application (this is probative that the merchandise is counterfeit or pirated but may be an indicator that the goods are parallel goods)
- There is illogical routing (transshipment) of goods or disproportionately high transportation costs
 - e.g. goods are not shipped by the most direct or least expensive route; transportation costs are higher than the declared value of the goods
- Goods are being shipped by mail or express consignment carrier. Express carriers are mainly shipping watches, optical disks (CDs, DVDs, etc.), pharmaceutical products and computer parts



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Terms of Sale/Delivery

- Terms of sale "Cash" or "COD" (Cash on Delivery) indicate an elevated risk
- Terms of sale "EXW" (Ex Works) indicates an elevated risk
- Prepaid shipments indicate an elevated risk



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Information Systems

- Information based approaches to enforcement



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Risk Modeling

- Automated approach to selecting high risk shipments for examination
- Requires that measurement systems such as enforcement results (seizures) be in place
- Assigns various “weights” to risk indicators based on measurements and projects a total risk “score”



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Data-based Risk Assessment

- The WCO makes available to all its Members the Customs Enforcement Network (CEN), an Internet based information system for data exchange and communication between Customs administrations.
- The CEN includes a database of seizures and offences which may be analyzed in terms of modus operandi, trends, concealment methods, routing of the goods, and other factors.



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Risk Assessment Based on Physical Identifiers

- Appearance and quality of packaging
 - Warehouse “sweeps”
- Appearance and quality of goods themselves
- Product security features



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Assessment of Risk Based on Examination of Goods

- Inspection of goods and packaging can help the customs officer to identify shipments that present a high risk for counterfeiting and piracy.
- -Officers can often determine if an article is counterfeit (or pirated) by physical examination.
- -In some cases goods may merit a more in-depth examination, analysis by the trademark owner, or laboratory analysis.



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Goods/Packaging Based Identification of High-Risk Shipments:

- 12. Appearance and quality of packaging
- 13. Quality of the goods
- 14. Labels and marks on the goods
- 15. Product details
- 16. Multiple trademarks in one consignment?



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Counterfeit Copy Examine the cover for the following:

Counterfeits are copied and packaged to resemble the original.



The image shows two CD covers side-by-side. The top cover is labeled 'Legitimate' and features a clear, sharp image of Andrea Bocelli with the text 'Andrea Bocelli Sacred Arias' and 'Produced by Chung Ahn Chung'. The bottom cover is labeled 'Counterfeit' and shows a less sharp image of the same artist and album title, with some text appearing slightly off or missing.

Examine the cover for the following:

- The Sharpness of the images
- Contrast of the colours
- Quality of paper
- Photocopies on coloured paper
- Printing only one side of the paper
- Logo removed
- No catalogue number
- Trim or cut of insert
- Famous artist unknown recording label
- Frequently of high quality reproduction

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Product Identification Information

- Trademark owners may provide information to customs to help them identify counterfeit goods
- Product Identification Handbooks
 - Printed
 - Electronic versions
 - WCO / SNB REACT Database



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Product Security Details

- Often the right holder incorporates “hidden” or other details in his product in order to facilitate identification of counterfeit or pirated products.
 - Use of product identification manuals or direct communication with the right holder will be necessary to verify these details.
 - Examples: Many right holders use holograms, the details of which are difficult to reproduce, to certify the authenticity of their products. Genuine optical discs (CD, CD-ROM, DVD) will contain a Source Identification code (S ID-code).
 - Warranty certificates accompanying most high-quality watches include special identification features such as a die-stamp or watermark.



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Example of genuine NIKE label. These codes indicate the place and date of production and can be verified as accurate with the right holder.



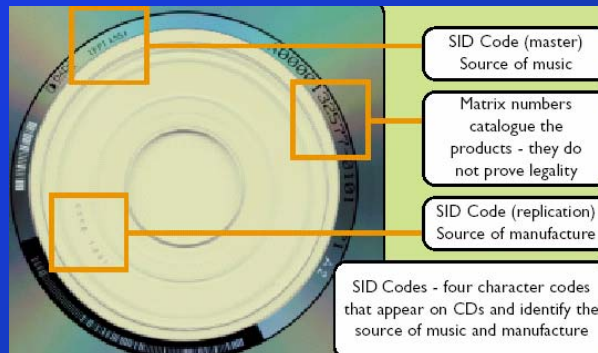
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Example of protection with holograms.



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Details of codes on CD (source: IFPI)



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Thank You

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