

GAO

Report to the Ranking Member,  
Subcommittee on Oversight of Government  
Management, the Federal Workforce, and  
the District of Columbia, Committee on  
Homeland Security and Governmental  
Affairs, U.S. Senate

April 2007

# INTELLECTUAL PROPERTY

## Better Data Analysis and Integration Could Help U.S. Customs and Border Protection Improve Border Enforcement Efforts





Highlights of [GAO-07-735](#), a report to the RM, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Committee on Homeland Security and Governmental Affairs, U.S. Senate

### Why GAO Did This Study

U.S. government efforts to protect and enforce intellectual property rights are crucial to preventing billions of dollars in economic losses and for mitigating health and safety risks from trade in counterfeit and pirated goods. The Department of Homeland Security's Customs and Border Protection (CBP) leads intellectual property (IP) enforcement activity at the U.S. border. GAO was asked to (1) examine key aspects of CBP's process to carry out border enforcement, (2) analyze CBP's border enforcement outcomes during fiscal years 2001 to 2006, and (3) evaluate CBP's approach for improving border enforcement. GAO examined relevant documents, interviewed agency officials in Washington, D.C. and seven port locations, and analyzed CBP data on trade and IP seizure and penalty activity. This is the public version of a law enforcement sensitive report by the same title (GAO-07-350SU).

### What GAO Recommends

In the restricted report, GAO recommended that the CBP Commissioner (1) include measures to guide and assess IP enforcement outcomes in CBP's strategic plan; (2) improve CBP's IP enforcement data; and (3) use existing data to better understand ports' IP enforcement activities and outcomes, and link ports' performance to measures in CBP's strategic plan. CBP generally agreed with our recommendations.

[www.gao.gov/cgi-bin/getrpt?GAO-07-735](http://www.gao.gov/cgi-bin/getrpt?GAO-07-735).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Loren Yager at (202) 512-4347 or [yagerl@gao.gov](mailto:yagerl@gao.gov).

## INTELLECTUAL PROPERTY

# Better Data Analysis and Integration Could Help U.S. Customs and Border Protection Improve Border Enforcement Efforts

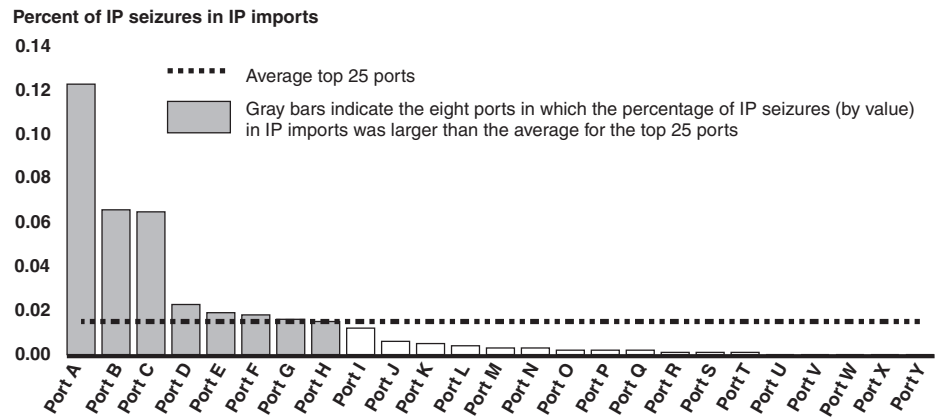
### What GAO Found

CBP's Office of International Trade (OT), formed in 2006, and Office of Field Operations (OFO) carry out IP border enforcement processes, including targeting and examining suspicious shipments, seizing infringing goods, and assessing penalties as warranted. CBP uses computer-based and manual targeting to determine which shipments it will examine, and both methods have strengths and limitations. Port practices for recording exam results vary, making it difficult for CBP to fully assess the effectiveness of its IP targeting efforts.

Since 2001, CBP's IP enforcement outcomes have been concentrated among particular transport modes, product types, and ports. Rising numbers of low-value seizures from mail facilities have driven growth in seizure actions, but uneven seizures of high-value goods from sea containers have caused the estimated value of seizures to fluctuate. The vast majority of seizure and penalty outcomes in the last 6 years have been concentrated among 10 or fewer of CBP's 300-plus ports. For example, 10 ports account for 98 percent of the \$1.1 billion in penalties assessed during fiscal years 2001 to 2006.

CBP lacks agencywide performance measures in its strategic plan and an integrated approach across key offices to guide and improve IP enforcement. Narrowly focused initiatives led by offices now under OT have had limited results. CBP has not done a broader analysis to examine variances in port IP enforcement outcomes. For example, GAO found that some of the largest IP-importing ports had very small seizure rates relative to other top IP-importing ports. A lack of integration between OT and OFO impedes using this type of analysis to identify potential IP enforcement improvements.

**Top 25 IP-Importing Ports' Seizure Rates: Percent of IP Seizures in IP Imports (by Value), Fiscal Year 2005**



Source: GAO analysis of CBP data.

Note: Port names are not included in the figure for law enforcement reasons.

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## Abbreviations

ATS	Automated Targeting System
CBP	U.S. Customs and Border Protection
DHS	Department of Homeland Security
HTS	Harmonized Tariff System
ICE	U.S. Immigration and Customs Enforcement
IP	intellectual property
MSRP	Manufacturer's Suggested Retail Price
OFO	Office of Field Operations
OT	Office of International Trade
STOP	Strategy Targeting Organized Piracy

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United States Government Accountability Office  
Washington, DC 20548

April 26, 2007

The Honorable George V. Voinovich  
Ranking Member  
Subcommittee on Oversight of Government Management, the Federal  
Workforce and the District of Columbia  
Committee on Homeland Security and Governmental Affairs  
United States Senate

Dear Senator Voinovich:

The illegal importation and distribution of counterfeit and pirated goods poses an increasing cost to the United States economy and threatens the health and safety of its citizens.<sup>1</sup> The United States dominates the creation and exportation of intellectual property (IP)—creations of the mind—and provides broad protection for IP through means such as copyrights, patents, and trademarks. However, IP protection in many parts of the world is inadequate, and as a result, U.S. goods are subject to substantial counterfeiting and piracy in other countries.<sup>2</sup> The Department of Justice has reported on the growing threat of IP crime in the United States, noting that IP has become increasingly more critical to our country's economic security. Other federal agencies have testified that the economic benefits of capitalizing on IP goods have drawn the attention of counterfeiters and pirates, and that the magnitude and complexity of IP rights violations have increased in recent years.<sup>3</sup> In an effort to protect American public health and safety and safeguard the U.S. economy, a number of federal agencies are involved in keeping IP-infringing goods from entering the country and investigating or prosecuting those responsible for their importation. The Department of Homeland Security's (DHS) U.S. Customs and Border Protection (CBP) leads enforcement activity at the U.S. border by

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<sup>1</sup>Counterfeit goods carry a false trademark identical to, or substantially indistinguishable from, a U.S. registered trademark (See Timothy P. Trainer and Vicki E. Allums, *Protecting Intellectual Property Across Borders*, 2006 ed. (Eagan, MN: Thomson/West, 2006).) Pirated goods are reproduced without authorization, especially in infringement or copyright.

<sup>2</sup>GAO, *Intellectual Property: U.S. Efforts Have Contributed to Strengthened Laws Overseas, but Challenges Remain*, [GAO-04-912](#) (Washington, D.C.: Sept. 8, 2004).

<sup>3</sup>Officials from the Departments of Commerce, the U.S. Trade Representative, and Homeland Security have all recently reported on the growing threats to the United States from increases in counterfeit goods.

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detecting and seizing counterfeit or pirated goods that enter the United States through its 300-plus ports of entry and assessing penalties against IP rights offenders.<sup>4</sup>

In response to your request to review federal enforcement efforts of IP at the borders, this report (1) examines key aspects of CBP's process to carry out border enforcement, (2) analyzes CBP's border enforcement outcomes during fiscal years 2001 through 2006, and (3) evaluates CBP's approach for improving border enforcement. We plan to report on CBP and other federal agencies' activities and resources devoted to IP enforcement later in 2007.

To address these issues, we met with CBP officials in Washington, D.C., and at seven port locations and reviewed relevant agency documents to understand CBP policies and practices related to IP border enforcement. At the ports, we examined port organizational structures and practices for enforcing IP rights, and we spoke with various CBP personnel who are responsible for identifying, examining, seizing, and assessing penalties on goods that involve IP violations. We analyzed CBP data on the volume and value of trade entering U.S. ports and on its IP seizure and penalty activity. Most of this analysis was based on data covering fiscal years 2001 through 2006, but some data were only available for fiscal years 2003 through 2006. We identified certain limitations in the seizure and penalty data but found them sufficiently reliable to indicate broad trends in enforcement outcomes. We discussed CBP's efforts with knowledgeable agency officials and obtained information on certain steps CBP has taken to improve its efforts. Our work focused on tangible goods that cross U.S. borders, rather than goods that are pirated over the Internet. We conducted our work from November 2005 through January 2007 in accordance with generally accepted government auditing standards. The original version of this report was issued on March 20, 2007, as a restricted report, copies of which are available for official use only.<sup>5</sup> This public

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<sup>4</sup>Given its role in overseeing the import and export of physical goods, CBP's efforts are primarily directed toward counterfeit goods manufactured overseas and, occasionally, the means to create or finish them in the United States. Computer- or Internet-based piracy of copyrighted media, such as music, movies, or software, is also a significant problem, but because these activities usually have no link to the border, CBP is not as involved in fighting this form of IP infringement. Our use of the term "counterfeit" in this report refers broadly to violations that may involve a range of IP infringement.

<sup>5</sup>GAO, *Intellectual Property: Better Data Analysis and Integration Could Help U.S. Customs and Border Protection Improve Border Enforcement Efforts*, GAO-07-350SU (Washington, D.C.: Mar. 20, 2007).

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version of the original report does not contain certain information that DHS regarded as law enforcement sensitive and requested that we remove.

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## Results in Brief

CBP undertakes a series of steps to enforce IP rights at the U.S. border and faces numerous challenges throughout this process. CBP's process includes three key functions: (1) targeting suspicious shipments, (2) examining goods to determine their authenticity, and (3) enforcing IP laws through seizure and penalty actions. CBP's Office of International Trade, formed in October 2006, focuses on trade policy and program development and the Office of Field Operations oversees port operations and implements CBP policies; both play important roles in carrying out key IP functions. To help determine which of the millions of shipments entering the United States each year require further review, CBP relies on two primary targeting methods, computer-based and manual, but both have certain strengths and limitations for targeting IP violations. Both offices use computer-based targeting to electronically identify commercial shipments by known or suspected violators, which typically enter the country via sea, air, and truck. However, the primary computer method used for IP targeting does not work for noncommercial shipments, has limited usefulness in express consignment (e.g., Federal Express) and international mail processing environments, and has uncovered a relatively small portion of IP violations. Manual targeting involves skilled port employees making real-time decisions based on instinct and experience and can be used for any transport mode, but it requires dedication of time and resources, and its role in uncovering IP violations cannot be determined. Once a shipment has been targeted, CBP examination techniques range from document reviews to physical exams, with physical exams being the best method for evaluating potential IP violations. Determining whether infringement has occurred can be a challenging process in which port staff may require input from CBP's legal and product experts and from the rights holders themselves. Although port staff are required to enter exam results in CBP's data systems, CBP officials said that information on IP exams has been unevenly recorded across ports, making it difficult for CBP to fully analyze the effect of its targeting efforts in this area. CBP's IP enforcement process concludes by ports seizing infringing goods and, if warranted, assessing penalties against offenders.

The bulk of CBP's enforcement outcomes in recent years have been generated by pockets of activity within certain modes of transport and product types as well as among a limited number of port locations. Although both seizure numbers and estimated values have increased in

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recent years, the increase in numbers can be attributed almost exclusively to seizures of small-value shipments made from air transportation, particularly express consignment and international mail. This type of seizure grew particularly rapidly in 2006, leading to a near doubling in the number of seizure actions compared with those in the prior year, an outcome that may reflect a shift in smuggling techniques that has forced CBP to be more reliant on manual targeting methods. In contrast, more than half of estimated seizure value has been generated by a much smaller number of seizures from ocean-going cargo containers, a transportation mode in which computer-based targeting is used. The sheer size of some of these seizures has caused total estimated seizure values to fluctuate from year to year, reaching a high in 2006. Wearing apparel, cigarettes, footwear, and handbags have accounted for the majority of seizure value in the past 6 years. A limited number of ports have produced the bulk of seizure and penalty activity since 2001, with nearly three-fourths of aggregate seizure value and 84 percent of penalty cases opened accounted for by the top 10 ports as ranked by those outcomes.<sup>6</sup> These are a mix of ports, including a few of the nation's largest and some that are smaller. Six of these ports have consistently driven enforcement outcomes over time.

Despite recent increases in seizure outcomes, CBP lacks an integrated approach across key offices for further improving border enforcement outcomes, causing it to focus on certain efforts that have produced limited results while not taking initiative to understand and address the variations among ports' enforcement outcomes. Although CBP's strategic plan highlights the importance of IP enforcement, the plan lacks any performance measures in this area to guide agencywide efforts and measure outcomes. CBP offices that formed the Office of International Trade have led certain initiatives to improve IP enforcement processes, including developing a statistically driven risk-assessment model to improve targeting, auditing certain importers' internal controls for preventing importation of infringing goods, and issuing guidance to give ports more discretion in deciding when to issue penalties in cases where collection is unlikely. However, these efforts have produced limited results: poor data collection during port-based pilots prevents CBP from fully assessing the effectiveness of its risk model; the audits have produced some enforcement actions, but are time consuming and many

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<sup>6</sup>We ranked ports according to their aggregate number of seizure actions, estimated seizure values, IP penalty cases opened, and IP penalty amounts assessed during fiscal years 2001 through 2006. The top 10 ports for each category differ, but there is considerable overlap among the ports so ranked in each category.



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are not yet complete; and the guidance, while reducing new penalty amounts as expected, has not helped to bridge the large gap between amounts assessed and those collected. Beyond these efforts, CBP has not analyzed existing data to identify factors that might account for variations in enforcement outcomes within or among certain ports, in part because port priorities and practices are highly decentralized. In addition to identifying a concentration of IP enforcement outcomes among certain ports, we also compared IP seizures to “IP imports” (goods that have been monitored by CBP for IP violations and goods that are similar to them) across a larger number of ports. We determined that, of 25 ports that represented 75 percent of the value of fiscal year 2005 IP imports, just 8 had seizure rates (seizure value as a percent of import value) that were higher than the group average. Surprisingly, the port with the highest seizure rate also had the smallest value of IP imports among the ports we examined. In contrast, the IP seizure rates for several of the ports with relatively larger IP import values were well below the group average. This illustrates the type of analysis that CBP could perform using existing data to better understand and potentially improve port enforcement outcomes. Such analysis would likely be conducted by the Office of International Trade, but overseeing and influencing port operations is the purview of Office of Field Operations.

To develop a more effective approach to IP border enforcement, in the law enforcement sensitive report we recommended that the CBP Commissioner direct the Offices of International Trade and Field Operations to work together to (1) include in CBP’s strategic plan measures to guide and assess IP enforcement efforts, (2) improve CBP’s data on IP enforcement, and (3) analyze the data to better understand ports’ IP enforcement activities and outcomes and link ports’ performance to CBP’s strategic plan.

We provided a draft of the law enforcement sensitive report to DHS for review by CBP and ICE. In commenting on that report, CBP generally agreed with our recommendations. CBP and ICE also provided technical comments, which we incorporated into the law enforcement sensitive report as appropriate. We also provided a draft of this report to DHS for sensitivity review by CBP and ICE, which agreed that we had appropriately removed law enforcement sensitive information.

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## Background

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### Counterfeit Goods Pose a Cost to U.S. Economy and a Threat to Health and Safety

Intellectual property is the result of human innovation and creation to develop products that people consume every day, whether it is the music we listen to, the books we read, the cars we drive, or the medicine we take. The protection of IP is recognized as important to continuing that innovation and creativity, and the United States has several laws aimed at protecting IP rights. Copyrights, patents, and trademarks are the most common forms of protective rights for IP.<sup>7</sup> Protection is granted by guaranteeing owners limited exclusive rights to whatever economic reward the market may provide for their creations and products. According to the U.S. Intellectual Property Rights Coordinator, industries that relied on IP protection were estimated to account for over half of all U.S. exports, represented 40 percent of U.S. economic growth, and employed about 18 million Americans in 2006, making IP protection important to protecting our nation's economy.<sup>8</sup> It is difficult to reliably measure criminal activity, but industry groups suggest that counterfeiting and piracy are on the rise and that a broader range of products, from auto parts to razor blades, and from medicines to infant formula, are subject to counterfeit production. The threat to America's health and safety from the theft of IP and counterfeiting of products is an increasing concern for many reasons—counterfeit batteries can explode, counterfeit car parts can fail to perform, and counterfeit pharmaceuticals can lack the ingredients necessary to cure deadly diseases.<sup>9</sup> In addition to public health

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<sup>7</sup>A copyright provides protection for literary and artistic works such as books, musical compositions, computer software, and cinematographic works (movies). A copyright is a property right in an original work of authorship that arises automatically upon creation of such a work and belongs, in the first instance, to the author. A patent protects an invention by giving the inventor the right to exclude others from making, using, or selling a new, useful, nonobvious invention during a specific term. Trademarks are words, phrases, logos, or other graphic symbols used by manufacturers or merchants to identify their goods and distinguish them from others. Other types of intellectual property include trade secrets, industrial designs, and geographic indications. Geographic indications are names used to identify products with quality, reputation, or other characteristics attributable to the origin of the product.

<sup>8</sup>Statement by Chris Israel, U.S. Intellectual Property Rights Coordinator, before the Senate Committee on Homeland Security and Governmental Affairs Subcommittee on Oversight of Federal Management, the Federal Workforce, and the District of Columbia on July 26, 2006.

<sup>9</sup>The World Health Organization estimates that 10 percent of all pharmaceuticals worldwide are counterfeit.

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and safety concerns, the annual losses that companies face from IP violations are substantial.

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## CBP Leads IP Enforcement at the Border

Multiple federal agencies play a role in combating counterfeiting and piracy, and their efforts were wrapped into the administration's Strategy Targeting Organized Piracy, launched in October 2004. One objective of this effort is to improve border enforcement, and CBP is the agency primarily responsible for such enforcement, given its authority to detain and examine shipments and seize goods that violate U.S. law. CBP's current mission has two goals: preventing terrorists and terrorist weapons from entering the United States while facilitating the flow of legitimate trade and travel; and its priority mission is to ensure homeland security.<sup>10</sup>

CBP is responsible for enforcing antiterrorism, trade, immigration, and agricultural policy, laws, and regulations at more than 300 ports of entry. Two CBP offices play a role in carrying out policies and procedures related to IP enforcement:

- **Office of International Trade (OT)** – Established in October 2006, this office consolidates the trade policy, program development, and compliance measurement functions of CBP into one office.<sup>11</sup> This office is responsible for providing uniformity and clarity for the development of CBP's national strategy to facilitate legitimate trade and managing the design and implementation of strategic initiatives related to trade compliance and enforcement, including IP rights.
- **Office of Field Operations (OFO)** – This office houses CBP's border operations and is comprised of 20 field offices under which are CBP's 325

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<sup>10</sup>Under the Homeland Security Act of 2002, border inspection functions of a number of agencies, including the Immigration and Naturalization Service, the U.S. Customs Service, and the Department of Agriculture were transferred to DHS. P.L. 107-296, Title IV. CBP is responsible for carrying out these functions by assessing and collecting customs duties, excise taxes, and fees and penalties due on imported merchandise; interdicting and seizing contraband; processing persons, baggage, cargo, and mail; detecting and apprehending persons engaged in fraudulent practices designed to circumvent Customs and related laws; protecting American business and labor and IP rights; and, protecting the general welfare and security of the United States by enforcing import and export restrictions and prohibitions.

<sup>11</sup>The Office of International Trade was formed by merging CBP's Office of Strategic Trade, Office of Regulations and Rulings, and certain trade-related policy functions of the Office of Field Operations.

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ports of entry.<sup>12</sup> Overseeing more than 25,000 employees, including more than 20,000 CBP officers, OFO is responsible for carrying out CBP's cargo and passenger-processing activities related to security, trade, immigration, and agricultural inspection.

Daily management of port operations is highly decentralized, with field offices overseeing but not directly managing port operations. CBP's port operations oversee an array of cargo- and passenger-processing environments, and port management structures are not uniform. For example, some ports' management oversees a single port of entry while others oversee multiple ports of entry (e.g., a seaport and nearby airport).

- **Seaports** – CBP operations in the sea environment primarily consist of cargo container processing, but may include passenger processing for cruise ships. Cargo containers arriving at seaports may be transported to interior ports for processing via an import mechanism called the in-bond system.<sup>13</sup> CBP receives manifest information 24 hours before lading at foreign ports so that it may screen cargo container data to identify high-risk shipments.<sup>14</sup>
- **Airports** – CBP processes passengers and cargo at U.S. airports with international flights. CBP's air environment includes air cargo, express consignment carriers, such as Federal Express, and international mail. Air cargo shipments are generally larger in size than express consignment or international mail shipments. CBP receives manifest information in the air environment 4 hours prior to arrival.
- **Land Border Crossings** – CBP processes passengers, commercial truck and rail, and personal vehicles at land border crossings. CBP receives

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<sup>12</sup>U.S. Customs and Border Protection, *Securing America's Borders at Ports of Entry*, Office of Field Operations, Strategic Plan Fiscal Years 2007 through 2011.

<sup>13</sup>Because of the in-bond system, a significant portion of goods received at U.S. ports do not immediately enter U.S. commerce but are instead transferred to other ports for official entry or are transported through the United States to Mexico or Canada. For example, containers arriving at the port of Los Angeles might be transferred via truck to the port of Cleveland for official entry. In a recent report, GAO found that weaknesses in CBP's management of the in-bond system persist and that CBP does not adequately monitor and track in-bond shipments (see *International Trade: Persistent Weaknesses in the In-Bond Cargo System Impede Customs and Border Protection's Ability to Address Revenue, Trade, and Security Concerns*, GAO-07-561 (Washington, D.C.: Apr. 17, 2007).

<sup>14</sup>A manifest is a listing of the conveyance's cargo, e.g., goods within an ocean-going container.

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manifest information for commercial truck and rail shipments 30 minutes to 2 hours prior to arrival, depending on the transport mode.

The volume of goods and people that CBP processes for entry into the United States every year is substantial and has been steadily increasing. For example, the number of “entries summaries” filed with CBP rose from nearly 24 million in fiscal year 2001 to nearly 30 million in fiscal year 2005.<sup>15</sup> In fiscal year 2005, CBP processed approximately 20 million sea, truck, and rail containers and about 450 million passengers and pedestrians.<sup>16</sup> At the same time, the value of import trade has been growing, rising from about \$1.2 trillion in fiscal year 2001 to about \$1.7 trillion in fiscal year 2005, according to CBP statistics.<sup>17</sup> The largest share of imports by value arrives at the United States via ocean-going cargo containers, followed by air transport, as illustrated in figure 1. According to CBP, the proportion of import value by transport mode has remained relatively static since fiscal year 1999.

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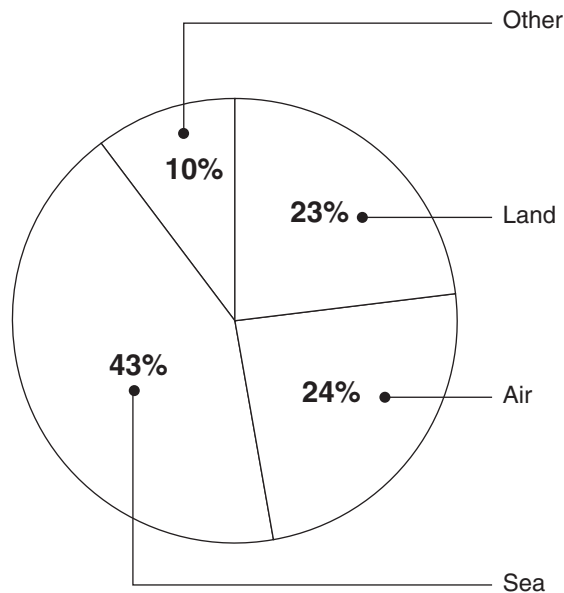
<sup>15</sup>A formal entry is required for imports greater than \$2,500 in value, and refers to information (usually in electronic format, but sometimes in paper format) that is filed by the importer or broker. Entry data includes the manufacturer’s identification number, the importer’s identification number, country of origin of the goods, and a more precise description of merchandise and is used by CBP to, among other things, assess customs duties and determine when cargo will be cleared to leave a port.

<sup>16</sup>*Performance and Accountability Report, Fiscal Year 2005*, U.S. Customs and Border Protection.

<sup>17</sup>*Import Trade Trends, Fiscal Year 2005 Year End Report*, U.S. Customs and Border Protection.

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**Figure 1: Import Value by Mode of Transport, Fiscal Year 2005**



Source: GAO analysis of CBP data.

Note: "Land" includes imports that entered via truck or rail. "Other" includes imports that entered through foreign trade zones, warehouses, and other methods.

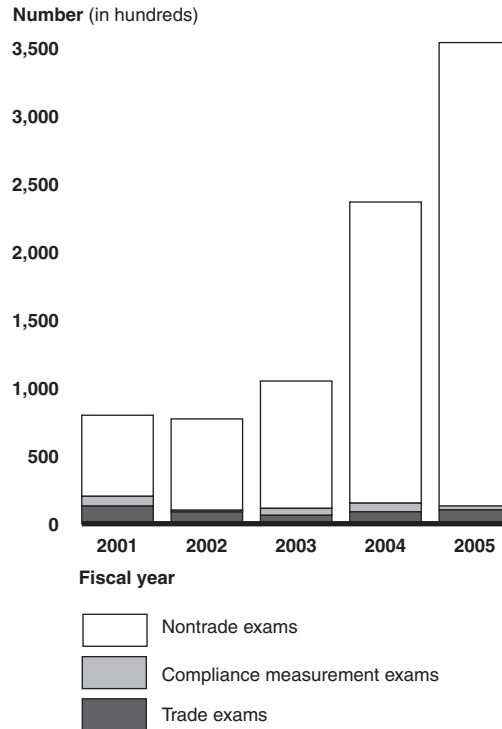
Although all goods imported into the United States are subject to examination, CBP examines only a small portion of them.<sup>18</sup> Most exams are conducted for security reasons, and these have been increasing each year, while the number of trade-specific exams has not grown since 2001, as shown in figure 2. In addition, CBP conducts a small portion of exams under its Compliance Measurement Program, which has components to address both security and trade compliance.<sup>19</sup>

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<sup>18</sup>CBP is authorized by law (19 U.S.C. 1499(c)(1)) to examine all merchandise entering the territory of the United States.

<sup>19</sup>The Compliance Measurement Program is a statistical sampling program that randomly selects shipments for review and examination to determine the degree to which they comply with relevant laws and regulations. The program initially focused on trade compliance and revenue issues. In fiscal year 2006, CBP expanded the program to also focus on supply chain security.

**Figure 2: Number of Trade, Compliance Measurement, and Nontrade Exams CBP Performed, Fiscal Years 2001-2005**



Source: GAO analysis of CBP data.

Note: According to CBP, “nontrade exams” include exams conducted for security, narcotics, or agricultural reasons. These data include security exams conducted through nonintrusive inspection techniques such as mobile X-ray machines.

After the formation of DHS and in light of homeland security priorities, CBP determined that it needed to focus its trade enforcement resources and activities on the most pressing trade issues. CBP has six Priority Trade Issues, one of which involves IP.<sup>20</sup> According to CBP’s Intellectual Property Rights Trade Strategy, the agency’s goal is to improve the effectiveness of its IP enforcement activities; ensure a uniform enforcement approach across its multiple port locations; and focus on making seizures with high aggregate values, that threaten health and safety or economic security, or

<sup>20</sup>The number and focus of Priority Trade Issues has changed over time. As of fiscal year 2006, the Priority Trade Issues included agriculture, antidumping and countervailing duties, IP rights, penalties, revenue, and textiles and wearing apparel.

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that have possible ties to terrorist activity. CBP is also responsible for enforcing International Trade Commission exclusion orders that arise from an administrative process in which the commission determines that certain products constitute infringement of a relevant U.S. law and should be excluded entry to the United States.<sup>21</sup> CBP coordinates its efforts with DHS's U.S. Immigration and Customs Enforcement (ICE), which investigates IP violations and builds cases for prosecution.

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## CBP Undertakes a Series of Steps, Amid Challenges, to Enforce IP Rights at the Border

CBP takes a series of steps to enforce IP rights at the border and faces a number of challenges throughout this process. Two key offices, OT and OFO, are responsible for carrying out these steps, which include (1) targeting suspicious shipments; (2) examining detained shipments to determine if they carry infringing or excluded goods; and (3) enforcing IP laws by seizing goods and, if warranted, assessing penalties against importers. CBP uses two primary methods to target IP violations: computer-based and manual targeting. Their use varies, depending on the individual port approaches and the transportation mode being targeted, and both methods have certain strengths and limitations. OT and OFO both use computer-based methods to target vast numbers of commercial shipments, but the primary computer method used for IP purposes has led to a relatively small percent of IP seizures. Manual targeting by port employees is more ad hoc and flexible than computer-based targeting, given its reliance on employee skill and availability, but determining its effect on IP enforcement is difficult. Ports conduct exams on targeted shipments, and determining whether infringement has occurred during an exam can be a challenging process that requires training and input from experts. Because of differing port practices, information on IP exams has been unevenly recorded across ports, according to officials, making it difficult for CBP to fully analyze the effect of its targeting efforts in this area. CBP's process for enforcing IP concludes with ports seizing infringing goods and, if warranted, referring cases to ICE and assessing penalties. According to CBP officials, storing and destroying infringing goods has been costly, and the penalty process has resulted in few collections. Agency IP enforcement efforts have primarily been focused on goods for which the trademark or copyright has been recorded with CBP.

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<sup>21</sup>Section 337 of the Trade Act of 1930, as amended (Title 19 U.S.C. 1337), makes it is unlawful to import into the United States articles that infringe a U.S. patent, trademark, copyright or mask work.



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## CBP Operates in a Challenging Environment to Combat the Entry of Counterfeit Goods

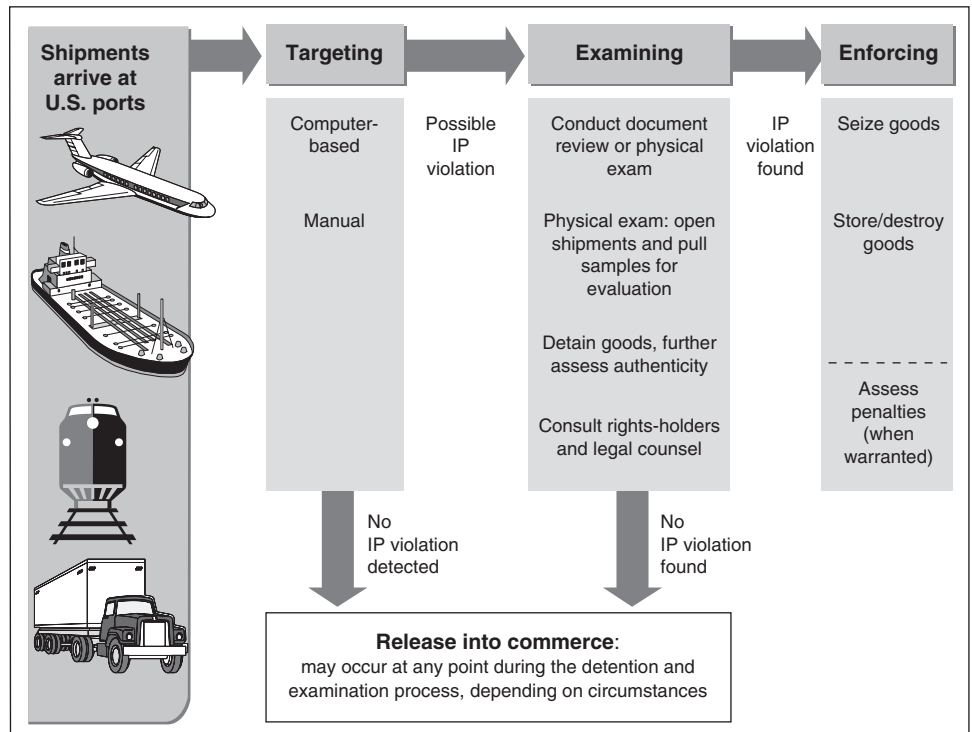
Because importing counterfeit goods is an inherently deceptive activity, it presents challenges to CBP's ability to process large volumes of goods and determine those that are legitimate. CBP regularly confronts nefarious importers who attempt to smuggle IP-infringing goods into the country through various means. For example, according to a CBP press release, in August 2006, the Norfolk seaport found fake Nike shoes concealed inside a refrigerated container behind the jellyfish and salt kelp declared on the manifest.<sup>22</sup> In addition, CBP contends with counterfeiter practices that make it difficult to detect shipments containing IP-infringing goods or distinguish legitimate from unauthorized goods. The law enforcement sensitive report described some of these practices in greater detail.

Amid these challenges, however, OT and OFO both have responsibility for executing a series of actions to (1) target potential IP infringing goods as they enter the United States, (2) examine suspicious goods, and (3) enforce IP laws through seizures and penalties, if warranted. Figure 3 depicts an overview of CBP's process.

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<sup>22</sup>CBP, "U.S. Customs and Border Protection Intercepts "Cool" Counterfeit Shoes Worth Over One Million Dollars," press release, Washington, D.C., August 3, 2006.

**Figure 3: Overview of CBP's Process for Conducting IP Border Enforcement**



Sources: GAO (data); Nova Development (clip art).

### CBP Uses Various Targeting Methods, Depending on Port Practices and Transport Modes, Each Having Strengths and Limitations

CBP uses both computer-based and manual targeting approaches to target counterfeit goods either before or as they enter the United States—both methods have strengths and limitations related to scope, data accuracy and overall sophistication, and resource requirements. CBP ports vary in the degree to which they use these methods, depending on their overall approach to IP enforcement and the modes of transport that they oversee. The primary computer-based targeting method used for IP purposes has uncovered a relatively small share of IP seizures. The effect of manual targeting is more difficult to determine. In addition, CBP undertakes other targeting and compliance measurement actions that, while not intended for IP enforcement, have uncovered IP violations.

#### Computer-Based Targeting

CBP's computer-based targeting for IP violations is handled primarily through its Cargo Selectivity program, a system that targets commercial

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shipments, which are typically transported to the United States by sea, air, and truck.<sup>23</sup> Commercial shipments may arrive to the United States via various modes of transport, but the largest shipments arrive via ocean-going cargo containers. When data about a particular shipment match the targeting criteria entered into the system, the port of entry is electronically notified, and the shipment is flagged for examination. Cargo Selectivity is not used to target noncommercial shipments, which typically enter the United States via express consignment, international mail, passengers, or private vehicle.

Cargo Selectivity criteria can be developed to target on a nationwide basis or on a local, port-specific basis. National criteria for targeting suspected IP violations are developed and overseen by the Strategic Trade Center in Los Angeles (formerly in the Office of Strategic Trade and now under OT), where International Trade Specialists with expertise in particular industries develop criteria based on their analysis of recent seizure activity and information from industry representatives.<sup>24</sup> CBP officials said that Cargo Selectivity criteria are designed to target known or suspected violators and that criteria can be written to target on all or some of a limited number of data elements. Ports develop local criteria in a similar fashion; however, they differ in the degree to which they use national or local criteria.

CBP's Automated Targeting System (ATS) is another computer-based targeting tool, but it is not used to systematically target for IP violations. ATS is a primary component of CBP's approach for security targeting.<sup>25</sup> As we note later in this report, CBP has conducted one pilot test of an ATS module for targeting IP violations.

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<sup>23</sup>Cargo Selectivity has been long used to help CBP and legacy Customs to determine whether and how "intensively"—ranging from document review to physical examination—it should examine certain shipments for various types of violations. In addition to IP violations, CBP uses Cargo Selectivity to target other types of trade issues, such as tariff classification, quota issues related to textiles, and revenue matters.

<sup>24</sup>CBP has five Strategic Trade Centers located around the country, each aligned with one of the agency's Priority Trade Issues. The Strategic Trade Center in Los Angeles is responsible for addressing IP enforcement and penalties.

<sup>25</sup>ATS is a complex model that calculates a risk score for each cargo shipment arriving in the United States. The system is primarily used for security targeting, but CBP is considering ways to expand its use to include targeting for nonsecurity matters as well.

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## Manual Targeting

Manual targeting describes a range of activities in which individual employees at the ports or the Los Angeles Strategic Trade Center—based on their own knowledge, analysis, and experience—identify certain shipments for examination. According to CBP officials and based on our observations at select ports, manual targeting may involve CBP staff flagging shipments by:

- conducting queries (such as in ATS) or executing analysis of electronically-filed manifest or entry data;
- reviewing entry paperwork (including paper and electronic entries), which may be generated as a computer-based targeting;<sup>26</sup>
- visually observing packages in a processing or storage environment; and
- receiving information from other CBP employees within their own port or at other ports regarding a given shipment, perhaps based on information obtained from law enforcement agencies or rights holders.

## Both Targeting Methods Have Strengths and Limitations

Both Cargo Selectivity and manual targeting methods have certain strengths and limitations relating to their scope, usefulness, and feasibility:

- Cargo Selectivity allows CBP to quickly screen vast volumes of commercial shipments on a nationwide basis, but it doesn't work for all types of shipments, and it has uncovered a relatively small share of IP violations since fiscal year 2003. Cargo Selectivity can use only a limited number of elements to target potentially infringing shipments, and getting criteria into the system takes time. According to CBP officials, the lack of sophistication and cumbersome process limits the system's overall usefulness for performing IP targeting.<sup>27</sup> Also, CBP must use caution when developing its Cargo Selectivity targeting criteria in order to minimize the number of suspect shipments that are false positives, which can create

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<sup>26</sup>CBP receives a large portion of manifest and entry data in electronic format. According to CBP officials, CBP's data systems may require entry packets to be generated from electronically filed data, but many shipments are released without this requirement.

<sup>27</sup>According to some CBP officials, the lack of sophistication makes it particularly difficult for the agency to enforce certain exclusion orders. CBP uses national Cargo Selectivity criteria to specify which manufacturers or products are subject to exclusion orders, but when the orders are more general in nature and identify products to be excluded based on certain production processes, it is very difficult to write criteria to correctly target offending goods without creating a large number of false positives and an unmanageable workload for the ports.

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unmanageable workloads for the ports, delay the movement of legitimate goods, and burden importers with exam costs. CBP data shows that IP targeting using Cargo Selectivity accounted for only about 3 percent of seizure actions made by CBP during fiscal years 2003 through 2006 and about 10 percent of the total estimated value of goods seized. More information on CBP's seizure outcomes is provided later in this report.

- Ports use manual targeting to overcome some of the limitations of Cargo Selectivity. CBP officials at several ports we visited expressed the view that there is no substitute for the skills and experience of a well-trained CBP officer, but other officials noted that CBP can't rely on manual targeting to process vast volumes of trade. According to CBP officials, manual targeting is heavily dependent on employee availability and expertise; therefore, its use for IP targeting at some ports may be limited, particularly as CBP increasingly focuses its staff resources on security matters. CBP lacks data to fully determine the extent to which its seizure outcomes have resulted from manual targeting, but the portion could be large, given the relatively small portion that stems from Cargo Selectivity.

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### Other Targeting or Compliance Measurement Actions May Uncover IP Violations

CBP undertakes other actions that, while not intended for IP enforcement, have uncovered IP violations, such as targeting for other trade violations or security reasons or actions that measure compliance with laws and regulations. For example, CBP's Compliance Measure Program, a statistical sampling program, is designed to examine randomly selected shipments for their compliance with a range of laws and regulations, including IP laws. According to CBP, IP violations have been found in a very small percent—less than one-tenth of 1 percent—of such exams.<sup>28</sup> In addition, Cargo Selectivity, when used to target for reasons such as terrorism or other trade issues, has revealed IP violations. Specifically, an additional 3 percent of seizure actions and 10 percent of estimated seizure value was uncovered from non-IP related criteria during fiscal years 2003 to 2005. Finally, any shipment that ATS identifies as high risk is automatically subjected to nonintrusive examinations using radiation detection and gamma-ray or X-ray scanning technologies. Such examinations may reveal unexpected results, such as contents that appear to differ from what is described in the manifest or entry data. When IP

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<sup>28</sup>Of about 287,000 Compliance Measurement exams conducted during fiscal years 2000, 2001, 2003, 2004 and 2005, IP violations were uncovered in an average of about 0.06 percent of them. The program was temporarily suspended in fiscal year 2002. Reviewing the structure and implementation of the Compliance Measurement program was outside the scope of this audit.

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violations are suspected, the container is referred for further review to port personnel who handle trade enforcement. CBP could not provide data to show how often IP violations were found in this way.

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**Targeted Shipments Are Subject to Examination, but Determining Infringement Can Be Difficult, and Exam Results Are Unevenly Recorded**

Once shipments have been targeted for examination, CBP personnel at the ports are to examine shipments and record the results of their exams in CBP's data systems. Because of high counterfeit quality and complex U.S. IP laws, determining whether IP infringement has occurred can be difficult. CBP provides some training to assist ports in this endeavor. Because of variations in port practices for recording IP exam results, CBP's exam data are uneven, according to CBP officials, and limits the agency's ability to assess CBP's targeting effectiveness.

**Physical Exams Are Performed to Determine IP Violations**

CBP uses the term "exam" to refer to a range of actions, including paperwork reviews, nonintrusive exams, and physical exams in which CBP examines all or a portion of the targeted goods. According to CBP officials, physical exams are the best means for assessing potential IP infringement. The procedures for conducting physical examinations differ according to the mode of transport and the movement of goods for examination.<sup>29</sup>

- **Sea Cargo Examinations.** In the sea cargo environment, sea containers are generally transported and examined away from their point of arrival at CBP exam facilities located at some distance from the port itself. When multiple shipments are contained in a single cargo container, these are first moved to a container freight station for debundling and then targeted shipments within the container are moved to the examination warehouse.
- **Air Cargo Examinations.** In the air environment, the examination location may vary. For example, air cargo shipments may be examined at their arrival location or moved to a CBP exam facility while international mail and express consignment shipments may be examined at their arrival location.

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<sup>29</sup>CBP officials at certain ports said that sometimes targeted shipments do not arrive as intended for examination because of human error or fraud. Problems associated with the physical control over containers have been identified in the past. (See DHS Inspector General, *Audit of Targeting Oceangoing Cargo Containers (Unclassified Summary)*, OIG-05-26 (Washington, D.C., July 2005). In this audit, we did not review CBP's internal controls for ensuring that targeted IP shipments were examined as intended.

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- **Land Border Crossing Examinations.** At land border crossings, vehicles and packages are moved to examination areas while still under CBP's control.

CBP personnel who perform physical exams at the ports have discretion over how intensive an exam will be. For example, according to CBP and ICE officials, decisions are made about how many boxes will be opened from a single ocean-going cargo container; which boxes will be opened; and whether the container will be partly or fully unloaded.

CBP personnel are to follow a common set of procedures grounded in law and regulation once shipments are opened for examination. When CBP decides to examine goods, it has a 5-day period, following the date on which the goods were presented for examination, to decide whether it will detain or release them.<sup>30</sup> If examining personnel can immediately identify goods as counterfeit, perhaps because they have recently seized similar goods or the violations are obvious, CBP initiates procedures to detain the goods. However, because this is often not the case, samples of the merchandise may be provided to commodity experts at the ports called Import Specialists who evaluate the goods for IP infringement. As a result of their evaluation, Import Specialists will either order the goods to be detained for further review or released.<sup>31</sup>

When CBP decides to detain goods, it must notify the importer of the detention within 5 days after the decision was made, and may also notify the affected rights holder.<sup>32</sup> The notice to the importer advises, among other things, the reason for the detention and the nature of any information or tests that CBP requires in order to process the matter. The importer and rights holder can take various actions, and communication with CBP may ensue for a period of 30 days. According to CBP officials, some rights holders are willing to negotiate with importers, which may involve financial compensation for the rights holder. If the importer's actions fail to secure release of the goods within 30 days or CBP finds them to be infringing, the agency proceeds with seizure and forfeiture actions.

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<sup>30</sup>19 U.S.C. 1499 (c) (1).

<sup>31</sup>Import Specialists may use input from other experts in CBP, including attorneys, commodity specialists, and laboratory technicians, as well as rights holders or the U.S. agencies with which the rights are registered.

<sup>32</sup>19 U.S.C. 1499 (c) (2).

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## Identifying IP Violations Can Be Difficult

Because of high counterfeit quality and the complexity of U.S. laws, making a determination of IP infringement in some instances is difficult. To help ports assess whether goods are authentic, CBP's agency regulations<sup>33</sup> provide rights holders the option to record trademarks, trade names, or copyrights with CBP. CBP currently charges \$190 for its recordation application. Through the fee-based recordation process, CBP collects information from an IP owner about specific registered trademarks, copyrights, or trade names, and then enters that information into an electronic database accessible by CBP officers at ports across the country. However, CBP officials said that some IP owners do not record their rights with CBP, meaning that CBP lacks information about their products and access to individuals within the company who can address potential infringement. Moreover, when counterfeit quality is quite good, even the rights holder may have to conduct research to distinguish real from fake.

In addition, the complexity of U.S. IP laws and CBP's array of seizure authorities present challenges to port staff, according to CBP officials. CBP has an array of detention and seizure authorities for IP violations; port personnel must be aware of these authorities and ensure their actions are in accord with them. CBP advises the ports that the most appropriate seizure authority will depend on the type of IP right infringed, whether the right is federally registered, whether the right is recorded with CBP, and the type of alleged infringement.<sup>34</sup> CBP is authorized, in some instances, to seize goods for which the right is registered with appropriate rights-granting authorities but not recorded with CBP; however, OT's lead IP attorney stated that because the statutory bases for such enforcement are established by criminal statutes that invoke certain limitations and evidentiary requirements, such seizures would be available only in cases involving clear instances of counterfeiting or piracy and would require CBP to establish more elements of the infringement than is required for recorded rights. Therefore, CBP directs ports to focus their IP enforcement on recorded goods. For certain other types of violations, CBP

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<sup>33</sup>19 Code of Federal Regulations, Part 133, Subparts A, B, and D.

<sup>34</sup>Customs Directive 2310-010A, December 11, 2000.



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does not commence seizure actions either because of agency policy or the lack of proper authority.<sup>35</sup>

CBP and rights holders offer training to port personnel to assist them in evaluations. For example, OT's IP attorneys train port personnel, including CBP Officers, Import Specialists, and others, on the legal and regulatory authorities in this area. Between 35 and 40 ports received training in each of fiscal years 2005 and 2006. In addition, private sector training is periodically arranged for CBP ports. Rights holder representatives give CBP staff advice about how to determine whether goods are counterfeit. For example, rights holders may tell CBP about security features they embed in their products or other methods they use to protect their IP.

#### Uneven Quality of Exam Data Limits CBP's Ability to Analyze IP Enforcement Efforts

CBP maintains data systems in which port staff are required to record the results of exams they conduct, but the uneven quality of exam data has made it difficult for the agency to accurately analyze the results of IP targeting and to fully track all incidents of IP violations, according to CBP officials. CBP requires port staff to document exam results, whether or not violations were found, in order to contribute to the agency's repository of enforcement knowledge and for future targeting purposes. Officials in OT and its legacy offices familiar with the agency's data for IP-related exams told us the data are not uniform or timely and contains inaccuracies. For example, these officials said they have found instances where goods were seized for IP violations, but exam records did not indicate that any discrepancies were found. Also, officials said that staff at some ports quickly record exam results, but staff at other ports do not record exam results until several months after the goods have been detained or seized, if ever. Among ports that quickly record results, sometimes port staff must later revise the exam results if further investigation determines that the

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<sup>35</sup>For example, CBP advises staff to determine whether, in the case of suspected trademark violations, the goods are counterfeit, "confusingly similar," or "gray market." According to CBP, confusingly similar marks are those that, while not identical to, or substantially indistinguishable from, genuine marks, are nonetheless similar enough to the genuine mark so as to constitute an infringement. Gray market goods are genuine trademarked goods that were manufactured and intended for sale in another country but were imported to the United States without the authorization of the trademark holder. Customs Directive 2310-010A states that, where the subject trademarks are recorded with CBP, the agency has authority to seize violative goods based on either of those trademark violations. With regard to marks not recorded with CBP, while the agency may seize goods bearing counterfeit versions of trademarks registered on the Principal Register of the U.S. Patent and Trademark Office but not recorded with CBP, the agency refrains from seizing goods bearing nonrecorded confusingly similar marks for policy reasons and lacks statutory authority to seize restricted gray market goods bearing nonrecorded trademarks.

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goods are legitimate. In addition, although port staff are directed to indicate in CBP's data systems whether IP violations were found and can add additional information about laws that were violated or a narrative description of the goods, officials in OT and its legacy offices that are familiar with the data said that whether and how they record this information varies. These officials were not sure what accounted for variations in the quality of exam results across ports, and we did not independently assess CBP's policies or port practices for recording exam results.

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## CBP's Key IP Enforcement Actions Entail Seizing Goods and Issuing Penalties

CBP's process for enforcing IP rights concludes with the seizure of counterfeit goods and, if warranted, the assessment of penalties against the IP infringer. A seizure action, as defined by CBP, entails CBP taking control and/or possession of articles imported contrary to law. Penalties result in monetary fines imposed on the violator.<sup>36</sup>

Once CBP officers have examined goods and determined that they are counterfeit, the legal process to seize goods is initiated. This process, carried out by Fines, Penalties, and Forfeiture offices at the ports, entails (1) resolving or deciding CBP compliance actions; (2) providing advice to other CBP officers on the various trade violations; (3) securing or maintaining seized property; and (4) making sure CBP's automated system accurately reflects description, location, value, and forfeiture status of seized goods. CBP calculates the domestic value of seizures to track the value of goods it intercepts.<sup>37</sup> For penalties it issues under 19 U.S.C. 1526(f), CBP calculates the Manufacturer's Suggested Retail Price (MSRP)—which would have been the value of the merchandise if it were genuine. CBP determines whether additional enforcement in the form of civil penalties should be assessed. It is CBP's policy not to assess a penalty, however, until all forfeiture proceedings have been completed, and the property, except for representative samples, has been destroyed. When assessing 19 U.S.C. 1526(f) penalties against a first-time violator, the

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<sup>36</sup>CBP is granted the authority to seize goods under various statutes, however 19 U.S.C. § 1526(e) is the statute under which CBP commonly seizes counterfeit goods due to trademark violations. CBP has the authority under 19 U.S.C. § 1526(f) to assess monetary penalties for these violations.

<sup>37</sup>Domestic value is calculated as the landed cost plus profit (the cost of the merchandise when last purchased, plus all duties, fees, broker's charges, profit, unloading charges, and U.S. freight charges to bring the good to the importer's premises), a value generally lower than the price at which the goods might sell to the final consumer.

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amount of the penalty may be equal to or less than the MSRP. In the event of a second or subsequent seizure, the amount of the penalty is assessed at twice the value of the merchandise, based on the MSRP at the time of seizure. For seizures valued over \$100,000 in domestic value, OFO maintains responsibility for reviewing the case before any legal action is taken. For penalties that are assessed, CBP officials said that substantial resources are dedicated to processing penalty cases, but they also said that penalty amounts are seldom fully collected. CBP's collection issues are discussed later in this report.

Depending on the size and value of a seizure, CBP officers coordinate with ICE agents who then consult the Department of Justice's U.S. Attorneys Offices to determine if criminal investigation and prosecution is warranted. For example, a repeat violator may warrant criminal action if ICE has enough information to initiate a criminal investigation and build a case.

Seized goods have to be secured, as they have potential value but cannot be allowed to enter U.S. commerce. Storage may be prolonged by law enforcement actions, but the goods are generally destroyed or otherwise disposed of according to law when determined to be illegal and are no longer needed. According to CBP officials, as seizures have increased, the agency's storage and destruction costs have grown and become increasingly burdensome. CBP reports that it spent over \$9.1 million to destroy seized property between fiscal years 2001 and 2006.<sup>38</sup> CBP officials said that the environmental regulations for disposing of goods, particularly in states like California, prevent CBP from disposing of certain counterfeit goods in landfills. Often the goods are destroyed through incineration.

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<sup>38</sup>Between fiscal years 2001 and 2006, CBP spent about \$2.5 million to destroy apparel; about \$662,000 to destroy electronics; about \$500,000 to destroy DVDs; about \$382,000 to destroy shoes; and about \$352,000 to destroy batteries.

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## IP Enforcement Outcomes Have Been Concentrated in Certain Areas and Reflect Pockets of Activity

The bulk of CBP's enforcement outcomes have been concentrated within certain modes of transport and product types and reflect pockets of activity among a limited number of ports. Although the total number of seizure actions has grown since fiscal year 2001, nearly doubling between fiscal years 2005 and 2006, most of these actions involved small-value seizures made from air-based modes of transport and may reflect a shift in smuggling techniques toward larger numbers of smaller-sized shipments. The total estimated domestic value of goods seized since fiscal year 2001, however, has fluctuated due to variations in seizure activity involving large, ocean-going containers in which the highest-value seizures tend to be made. While the types of goods seized have varied over time, wearing apparel, cigarettes, footwear, and handbags have accounted for the majority of estimated seizure value in the past 6 years. Ten or fewer ports, including some of the nation's largest ports and others that are significantly smaller, have accounted for the bulk of seizure and penalty outcomes since 2001. Of these ports, six have made consistent contributions each year to IP enforcement outcomes.

CBP measures IP seizure activity two ways: number of seizure actions and estimated domestic value of goods seized. The number of goods in one seizure action can range from a few items shipped via international mail to hundreds of boxes of goods in a ocean-going cargo container. CBP maintains the official seizure statistics for DHS, including those made by CBP, ICE, or jointly by the two agencies. CBP captures data on the transport mode or processing environment in which goods were seized, but in compiling seizure data, neither OT nor its legacy offices routinely verify this data field. In addition, there are certain limitations in CBP's seizure data, such as the precision of the estimates. However, we found CBP's data to be sufficiently reliable to indicate broad trends.

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## Majority of IP Seizure Actions Occurred in Air Transportation Environment While Value of Seized Goods Was Concentrated in Sea Environment

For fiscal years 2003 through 2006, most IP seizure actions have been concentrated in the air transportation environment, while most seizure value has been concentrated in ocean-going cargo containers.<sup>39</sup> As shown in figure 4, about 78 percent of total seizure actions during fiscal years 2003 through 2006 occurred in air transportation processing environments.<sup>40</sup> Significantly fewer seizure actions were made from ocean-going cargo containers or land-based transport modes, such as truck, train, or auto. Conversely, ocean-going cargo container seizures represented about 60 percent of total estimated seizure value during those years, with significantly smaller portions of value generated by air- and land-based seizures.<sup>41</sup> Even though about one-fourth of U.S. imports enter by land-based modes of transport, seizure actions and values in this mode were less than 5 percent of total seizures, as measured by either indicator.

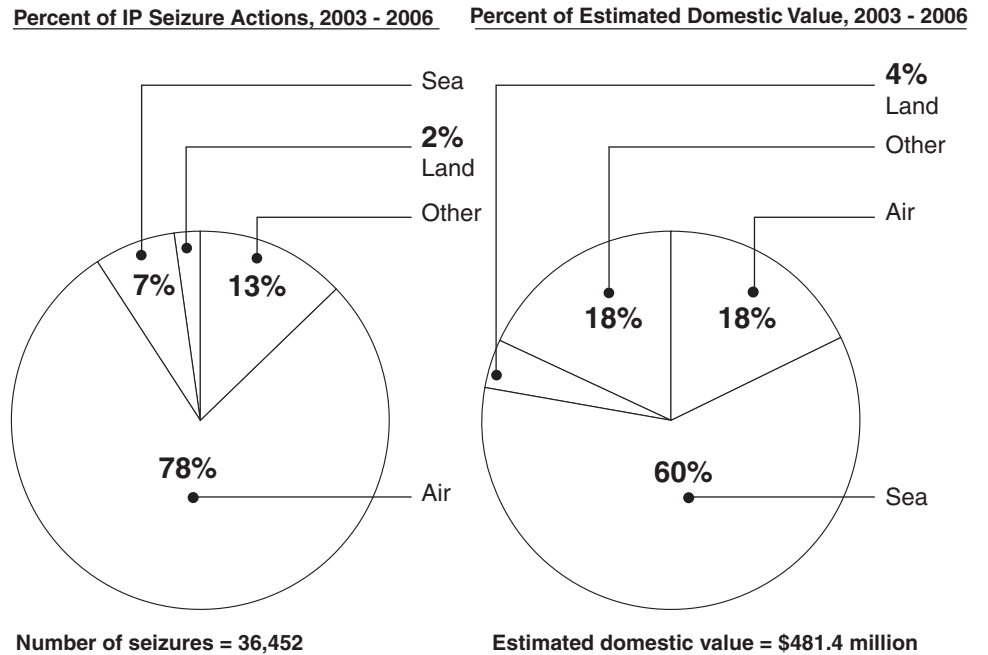
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<sup>39</sup>Data on the mode of transport or processing environment in which seizures were made were only available for fiscal years 2003 through 2006. CBP's data reflect a number of modes and processing environments, some of which we have grouped together. For example, data we report for the air transportation environment include seizures made in air cargo, express consignment, international mail, and private aircraft processing environments. Data we report on the ocean-going cargo container environment include seizures made from what CBP refers to as "commercial vessels" and "private vessels." According to CBP, commercial vessels are predominantly carried by ocean-going cargo containers and processed in the seaport environment, but may also be transported via truck or rail to interior ports of entry using the in-bond system.

<sup>40</sup>Seizures made in air transportation processing environments were the predominant source of seizure actions in each of fiscal years 2003 through 2006, although their percent ranged from a high of about 85 percent to a low of about 68 percent.

<sup>41</sup>Seizures made from ocean-going cargo containers were the predominant source of seizure value in each of fiscal years 2003 through 2006, although the percent ranged from a high of about 70 percent to a low of about 53 percent.

**Figure 4: Percent of IP Seizure Actions and Domestic Value by Transportation Mode, Fiscal Years 2003-2006**



Source: GAO analysis of CBP data.

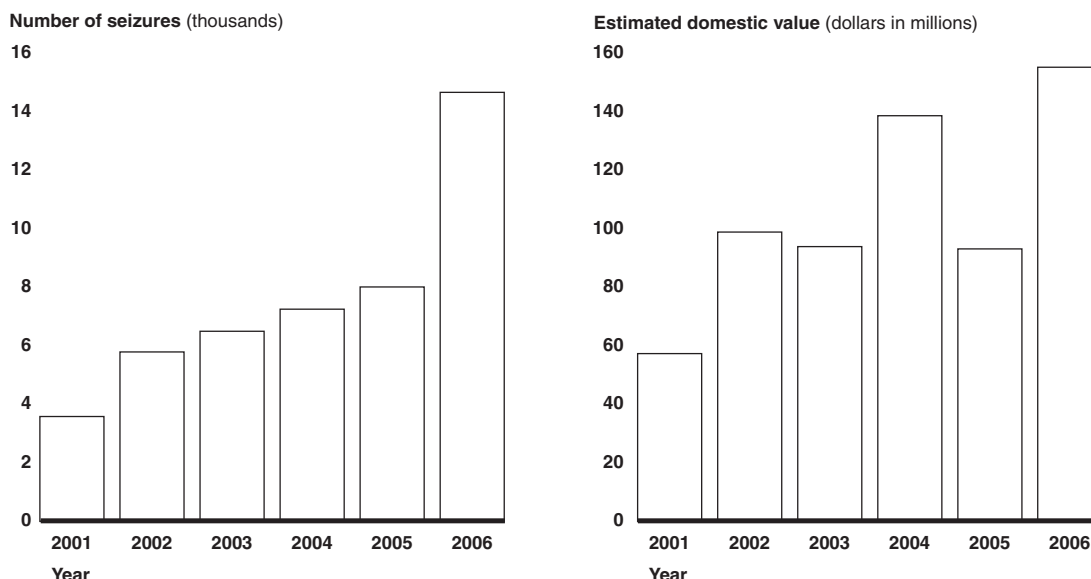
Note: According to CBP, "other" includes no transportation involved (often ICE seizures), "none listed" (often passenger seizures) and "other" (undefined).

CBP seizure data show that the number of seizure actions has grown steadily from fiscal years 2001 to 2006, while domestic values have fluctuated. As shown in figure 5, there were over 3,500 seizure actions in fiscal year 2001, increasing to over 14,000 in 2006. Also shown in figure 5, the domestic value of goods seized in these years has fluctuated, reaching a high in 2006 of more than \$155 million.<sup>42</sup> Although the overall trend for both measurements is upward, these outcomes represent a small fraction of overall imports. For instance, in fiscal year 2005, the domestic value of IP seizures represented less than one-tenth of 1 percent (0.02 percent) of the total value of imports of goods in product categories that are likely to

<sup>42</sup>It is important to note that total estimated seizure value, the value calculated by CBP, in any given year is a function of the type of goods seized, which varies from year to year.

involve IP protection.<sup>43</sup> It is impossible to know whether these seizure outcome trends reflect improved enforcement actions or an increase in the share of counterfeit trade entering the United States during those years.

**Figure 5: Trends in Number of IP Seizure Actions and Estimated Domestic Values, Fiscal Years 2001-2006**



Source: GAO presentation of CBP data.

Note: CBP data can be accessed at [http://www.cbp.gov/xp/cgov/import/commercial\\_enforcement/ipr/seizure/seizure\\_stats.xml](http://www.cbp.gov/xp/cgov/import/commercial_enforcement/ipr/seizure/seizure_stats.xml).

According to our analysis, growth in the number of seizure actions was fueled by increases in small-value seizures made in express consignment and international mail facilities. CBP publicly cites an 83 percent increase in the number of seizure actions from fiscal year 2005 to 2006 as an indicator of its growing IP enforcement success. However, our analysis shows that this growth was driven primarily by smaller-value seizures. For

<sup>43</sup>This ratio compares the total estimated domestic value of IP seizures with the total declared value of IP imports. We defined IP imports as products that involve or may involve IP protection and goods that are similar to them. To do so, we reviewed the broad product groups that CBP uses to categorize seizure actions and identified all products that are covered by these groups in the U.S. harmonized tariff schedule. These products include such items as shoes, wearing apparel, handbags and luggage, computer hardware, and consumer electronics. The subset excludes products such as agriculture and other raw goods. A complete description of our methodology can be found in appendix I.

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example, to date, the largest number of seizures for international mail occurred in fiscal year 2006, with the number of seizure actions and their domestic value more than doubling from the previous year. CBP officials said they believed that while some of these seizures are personal shipments ordered from Internet sites that sell counterfeit merchandise, others have contained quantities of goods too large for personal use. Some officials also speculated that counterfeiters may be breaking commercial shipments into smaller components to avoid detection and face more limited losses in the event of a seizure. However, CBP has not conducted any systematic analysis to support these observations.

Our analysis also shows that several factors influence trends in seizure value. Spikes in seizure value in fiscal years 2004 and 2006, accounting for approximately 30 percent of seizure value in each of those years, were largely due to shipments moving through the in-bond system.<sup>44</sup> Also, CBP data show that about 15 percent of seizure value during fiscal years 2003 through 2006 stemmed from seizures made by ICE during its investigations, and OT and ICE officials said that ICE may have played a role in some of the seizures attributed to CBP. Of note in fiscal year 2006, a combined CBP and ICE initiative resulted in the seizure of 77 cargo containers of fake Nike Air Jordan shoes and 1 container of fake Abercrombie & Fitch clothing that were transported in part using the in-bond system (they entered the Los Angeles seaport, transited through Arizona, and were supposedly destined for export to Mexico). The estimated domestic value of these goods was about \$19 million, representing about 12 percent of total domestic seizure value in fiscal year 2006.

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### Seizures Have Been Concentrated among Certain Types of Products

Although the types and quantities of seized goods vary over time, seizures over the past 6 years have been highly concentrated among certain types of products. For example, seizures of footwear, wearing apparel, handbags/wallets/backpacks, and cigarettes accounted for over 60 percent

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<sup>44</sup>We recently reported that weaknesses persist in CBP's management of the in-bond system, impeding CBP's ability to ensure proper collection of trade revenue and management of trade risks. In particular, CBP does not adequately monitor and track in-bond shipments and does not consistently perform in-bond compliance reviews to help identify program weaknesses. See *International Trade: Persistent Weaknesses in the In-Bond Cargo System Impede Customs and Border Protection's Ability to Address Revenue, Trade, and Security Concerns*, [GAO-07-561](#) (Washington, D.C.: Apr. 17, 2007).



of the aggregate value of goods seized over the past 6 years.<sup>45</sup> Table 1 shows that footwear and wearing apparel accounted for 57 percent of domestic value of goods seized in fiscal year 2006, with the high percent of footwear seized partially resulting from the large CBP/ICE seizure described earlier. Health care products and pharmaceuticals accounted for only 3 percent of such value. When asked why commodity seizures vary from year to year, CBP officials stated that counterfeiters produce fake goods depending on marketplace demand at any given time. However, it is difficult to determine whether CBP and ICE seizures are representative of the types of counterfeit products entering the United States in any given year or merely reflect counterfeit products that CBP detected.

**Table 1: Percent of Total Estimated Domestic Value Seized by Commodity, Fiscal Years 2001-2006**

Commodity	2001 (percent of domestic value)	2002 (percent of domestic value)	2003 (percent of domestic value)	2004 (percent of domestic value)	2005 (percent of domestic value)	2006 (percent of domestic value)	Aggregate 2001-2006 total (percent of domestic value) <sup>a</sup>
Wearing apparel	14	9	15	37	17	16	19
Cigarettes	8	38	44	17	10		18
Footwear	5		3	1	10	41	13
Handbags/Wallets/ Backpacks	6	3	12	17	16	9	11
Media	13	29	8	4		4	9
Consumer electronics		5	4	6	9	5	5
Computers/Hardware	7			1	5	9	4
Watches/Parts	10	4	4	2	3	2	3
Toys/Electronic games	8	2	2	3	9		3
Batteries	9			2			1
Sunglasses/Parts	6	1	1				1
Headwear		1	1			2	1
Pharmaceuticals					2	1	1
Health care						2	1

<sup>45</sup>To determine categories of goods, CBP may not group commodities according to Harmonized Tariff System (HTS) numbers because not all seizure records contain HTS numbers. CBP officials said that the field for which the HTS number is to be entered can accept both numbers and text, and that seizing officers sometimes enter incorrect data. Therefore, the Los Angeles Strategic Trade Center developed its own method for grouping seizures into product groups.

Commodity	2001 (percent of domestic value)	2002 (percent of domestic value)	2003 (percent of domestic value)	2004 (percent of domestic value)	2005 (percent of domestic value)	2006 (percent of domestic value)	Aggregate 2001-2006 total (percent of domestic value) <sup>a</sup>
Perfumes					3		0
All other commodities	15	9	6	10	15	8	10
<b>Total estimated domestic value (in millions)</b>	<b>\$57</b>	<b>\$99</b>	<b>\$94</b>	<b>\$139</b>	<b>\$93</b>	<b>\$155</b>	<b>\$638</b>
<b>Total number of seizures</b>	<b>3,586</b>	<b>5,793</b>	<b>6,500</b>	<b>7,255</b>	<b>8,022</b>	<b>14,675</b>	<b>45,831</b>

Source: GAO presentation of CBP data.

Note: Percentages not provided indicate that CBP did not report the commodity as a separate category in a given year. Seizures of these commodities may be included in the "All other commodities" category. Due to rounding, commodities may not total to 100 percent for any given fiscal year.

<sup>a</sup>"Aggregate 2001-2006 total (percent of domestic value)" was calculated by aggregating the reported estimated domestic value per commodity in each year, and dividing this total by the total estimated domestic value of seizures for fiscal years 2001 to 2006.

CBP reports that seizures are also concentrated in one trading partner—for fiscal years 2001 through 2006 combined, exports from China account for 65 percent of total seized IP domestic value. Hong Kong and Taiwan are distant seconds to China, accounting for 6 and 5 percent of seizures in that period, respectively. The combined share of goods seized that were exported from China and Hong Kong grew about 40 percent per year during this period. Also listed among trading partners for which goods were seized for IP violations in fiscal years 2001 through 2006 are Korea, Pakistan, Russia, South Africa, and Singapore.

## Ten or Fewer Ports Have Accounted for the Bulk of IP Enforcement Outcomes

CBP's IP enforcement outcomes, including seizures and penalties, have been highly concentrated among a limited number of ports across the country. We analyzed CBP's seizure and penalty data for fiscal years 2001 through 2006 and found that the bulk of enforcement activity was carried out by 10 or fewer ports in each of four enforcement categories we reviewed: (1) total number of seizures, (2) total seizures by domestic value, (3) total penalty cases opened, and (4) total amount of penalties assessed. The top 10 ports for each category differ, but there is considerable overlap among the ports so ranked in each category. Table 2 also shows that during fiscal years 2001 through 2006, the top 10 ports ranked by total seizure actions accounted for nearly two-thirds of those actions, and the top 10 ports ranked by total domestic seizure values accounted for nearly three-fourths of those values. Table 2 shows even greater concentration among the top 10 ports for penalty cases opened

and penalty amounts assessed. Our analysis indicates that, while seizure actions have been more broadly disbursed among CBP's ports, fewer of them have accounted for seizure values, and even fewer ports have assessed penalties for the seizures they make. The mix of ports in these rankings is surprising because they include some of the nation's largest ports as well as several that are significantly smaller. Moreover, as we discuss later, some of the ports among which seizures are concentrated are not among the top ports in terms of IP import value; and conversely, some high IP-importing ports have shown more limited seizure outcomes.

**Table 2: Top 10 Ports' Percent of Seizure and Penalty Outcomes, Fiscal Years 2001-2006**

Dollars in millions		
Enforcement measures	Number or value of enforcement outcomes	Percent of total
Top ten ports' number of IP seizures	30,462	66%
Top ten ports' domestic value of IP seizures	\$463.2	73%
Top ten ports' number of IP penalty cases opened	1,208	84%
Top ten ports' penalty amounts assessed	\$1,135	97%

Source: GAO analysis of CBP data.

Notes: We analyzed CBP's seizure and penalty data for fiscal years 2001 through 2006. We used seizure data that captures various IP-related violations and penalty data that captures only trademark violations where penalties were assessed under 19 U.S.C. 1526(f).

In the law enforcement sensitive version of this report, ports were listed in the table according to their rank order in each enforcement category we analyzed. Port names have not been included in this table for law enforcement reasons. While the top 10 ports in each category are not the same, there is considerable overlap among them.

Some of the ports included in our analysis may have multiple processing environments, and seizures associated with such ports may stem from more than one processing environment. Because of inconsistencies in how CBP records seizures by ports, we were unable to fully determine how many processing environments are reflected in the above data.

Because of inconsistencies in the way CBP records seizures by port, it can be difficult to determine precisely which processing environments accounted for seizure outcomes. We were able to determine the seizure reporting practices of the seven ports that we visited. For example, at one port, CBP uses one port "code" to record IP seizures made at the seaport and the nearby airport. Seizure data for another port includes seizures made at the seaport and from the international mail processing environment but does not include other air-based seizures made at the

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nearby airport, which are reported separately. Neither OT nor its legacy OFO office at the headquarters level could provide us information to understand the seizure reporting practices of CBP's ports.

Among these top 10 ports, there is further concentration of activity. For example, we found that four ports ranked in the top 10 for all four categories and two ports ranked in the top 10 for three of the four categories. This indicates that the majority of enforcement outcomes were produced by a handful of ports over the 6-year time period. Appendix II contains additional analysis of these six ports' enforcement outcomes.

Outside of the most active seizing ports, seizure outcomes have been more disbursed and prone to fluctuation. CBP's seizure data showed that around 243 ports of entry made seizures at least once during the past 6 years. About 190 of those ports reported fewer than 100 aggregate seizure actions since 2001, and over 100 reported less than \$100,000 in 6 years' aggregate domestic value of seizures. Some of these ports had very little activity for 2001 through 2006, while others had occasional spikes in their seizure actions or domestic seizure values.

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## CBP's Approach to Improving IP Enforcement Lacks Integration and Has Produced Limited Results

CBP lacks an integrated approach across key offices for improving border enforcement outcomes, having focused on certain efforts that have produced limited results while not taking the initiative to understand and address the variations among ports' enforcement outcomes. While CBP's strategic plan notes the importance of IP enforcement under two of CBP's strategic goals, the plan lacks performance measures to guide CBP's IP border enforcement efforts and assess its agencywide progress. CBP efforts to improve its IP border enforcement process, led by OT or its legacy offices, have produced mixed results: (1) poor data collection during port-based pilots limits OT's ability to evaluate the effectiveness of a new risk model for IP targeting; (2) audits conducted to assess certain importers' IP-related controls have resulted in some penalties, but many audits are not yet complete; and (3) actual collections on IP penalties remain far below the assessed amounts. Meanwhile, CBP has not attempted to understand variations within or among ports' enforcement outcomes. Using CBP's own import and seizure data, we identified some factors that may have influenced enforcement outcomes and some enforcement anomalies among key ports that bear further investigation. We also performed a simple analysis that could help CBP identify ports with higher or lower than average seizure outcomes. For example, of 25 ports that accounted for over 75 percent of the value of total IP-type imports in fiscal year 2005, just 8 of them had higher than average shares

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of IP seizures (by value) compared with their IP imports (by value). Such analysis could be further refined by incorporating information about ports' import composition or by making comparisons across similar processing environments. Lacking an integrated approach, such analysis would likely be conducted by OT, but the responsibility for overseeing and influencing port operations lies with OFO.

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### CBP's Strategic Plan Lacks Performance Measures for IP Enforcement

In its agency strategic plan,<sup>46</sup> CBP notes the importance of IP enforcement under two strategic goals, however it has not included any performance measures to guide its IP border enforcement efforts and assess progress on its agencywide efforts. Leading organizations use strategic plans and performance measures to communicate their vision and priorities on an agency-wide basis and establish accountability. Under its strategic goal to facilitate legitimate trade and travel, CBP identifies the enforcement of relevant U.S. laws under its jurisdiction, including IP, as one of its strategic objectives. Although IP is included as a strategic objective, there are no specific IP performance measures under this goal. CBP also addresses IP enforcement under its goal to protect America and its citizens by prohibiting the introduction of illicit contraband, counterfeit goods, and other harmful materials. However, performance measures for this goal relate to prohibited agricultural items and narcotics. For example, there are three separate measures that address narcotics seizures, but none specific to IP.

CBP does measure and report internally on the number of IP seizure actions and estimated seizure value and has other indicators related to IP enforcement, but these measures and indicators are not included as performance measures in its strategic plan. These measures and indicators are found in CBP's IP Rights Trade Strategy, an internal document classified as "For Official Use Only" with limited distribution across CBP.<sup>47</sup> In our discussions with CBP, agency officials responsible for developing and overseeing the IP Rights Trade Strategy referred to it as an internal planning document on IP enforcement. The internal nature of this document, unlike an agency's strategic plan with performance measures, limits its usefulness in holding CBP accountable to Congress for its performance on IP enforcement.

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<sup>46</sup>*Protecting America: U.S. Customs and Border Protection 2005-2010 Strategic Plan.*

<sup>47</sup>Due to the status of IP enforcement as a Priority Trade Issue, CBP developed this internal planning document to articulate its approach for addressing this issue.

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**Legacy OT Offices Have Led Certain IP Improvement Efforts, but These Have Produced Mixed Results**

Offices that are now part of OT have taken the lead in carrying out certain efforts to improve IP border enforcement, but these efforts have produced limited results. In its IP Rights Trade Strategy, CBP states that its goal is to support the administration's Strategy Targeting Organized Piracy (STOP) and to focus on high value seizures and seizures related to public health and safety issues. Among the initiatives outlined in the document, key IP border enforcement efforts include (1) improving computer-based IP targeting, primarily by developing a statistical risk-assessment model to complement Cargo Selectivity; (2) using audits to assess certain importers' controls for preventing IP infringing imports; and (3) issuing guidance to give ports more discretion on when to assess IP penalties. Although computer-based targeting and audits are considered STOP priorities, none of these efforts have thus far significantly impacted CBP's efforts to focus on high value seizures or seizures related to public health and safety.

**Effectiveness of New Targeting Model Cannot Be Determined**

A key component of CBP's IP enforcement improvement efforts has been the development of a statistically driven risk assessment model. However, problems with implementation in the first field-based pilot test, and poor data collection in a second pilot test prevents OT from fully evaluating the model's results. CBP developed this model to improve its ability to target unknown IP violators. The model figures prominently in CBP's strategic plan and has been continually highlighted as one of CBP's main contributions to STOP.

CBP's risk model differs from Cargo Selectivity in two key ways: first, it uses statistical analysis of past seizures and certain other information to target future shipments, whereas Cargo Selectivity relies on human analysis to develop criteria. Second, CBP officials told us the model is designed to identify unknown violators based on its analysis of past seizure patterns, whereas Cargo Selectivity primarily targets known or suspected violators. However, pilot tests conducted in 2005 and 2006 revealed problems and produced limited results:

- In the first pilot, run for 1 month by the Los Angeles Strategic Trade Center, the model was more efficient at targeting IP violations than Cargo Selectivity, according to CBP. However, CBP's implementation methodology resulted in certain targeted shipments being released before they could be examined, affecting CBP's ability to fully evaluate the model's accuracy. Also, the model sometimes targeted the shipments of actual rights holders, forcing CBP analysts to intervene to prevent exams of authentic goods. The pilot helped CBP refine the risk threshold at which it should conduct examinations based on the model's targeting.

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- The second pilot was run for about 3 months at one seaport and two land border crossings, but OT is unable to determine how the model worked because of weaknesses and inconsistencies in the data that participating ports collected for the pilot, according to OT officials. For example, for some targeted shipments, the data does not contain any exam results, even though goods were ultimately seized from those shipments. In other instances, the data contains exam results for shipments that were too low risk to have been targeted by the model.

Although CBP has already cited the model as an accomplishment, it does not know how well the model works. OT officials said they plan to develop and carry out a third pilot by having the Los Angeles Strategic Trade Center keep track of what the model has targeted and what the exams revealed. However, this may be difficult because the center will have to communicate directly with ports involved in the pilot to determine what exams were conducted and what results were found. It is not clear whether further revisions will improve the model or what role the model will play in CBP's overall IP targeting strategy.

After the first pilot of the risk model, OFO officials said they began developing a set of rules to target IP violations using ATS. These rules were developed with input from the former Office of Strategic Trade (now part of OT) and were tested concurrently with the risk model during the second pilot. However, data collection weaknesses also limit CBP's ability to assess the effectiveness of these rules, and their role in future targeting is unclear.

### Audits Have Resulted in Some Seizures and Penalties, but Their Efficacy Is Limited

Another prominent undertaking that is discussed in CBP's strategic plan and represents a second CBP contribution to STOP is the use of audits to uncover IP violations among select importers. These audits, initiated by the former Office of Strategic Trade (now part of OT), are referred to as "post-entry" audits because they examine records of goods that have been imported and released into commerce. This single-issue audit is designed to evaluate the adequacy of an importer's internal controls over IP imports, test whether the internal controls provide reasonable assurance that the company is compliant with CBP laws and regulations, and potentially find previously undetected IP violations made by the importer. These audits are most likely to be effective when dealing with compliance problems of established importers and less so when dealing with importers that purposely evade federal scrutiny, as is the case for importers involved in counterfeit trade.

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The audits began in 2005 and have produced some enforcement outcomes, but they and the post-audit decision process have been time consuming. OT's Regulatory Audit Division, in consultation with the Los Angeles Strategic Trade Center, selected approximately 20 importers as audit candidates in each of fiscal years 2005 and 2006, some of which had a history of IP violations.<sup>48</sup> Of these 41 audits, 23 have been completed, 12 are in progress, 4 were suspended because they involved companies that ICE was investigating, and 2 have not yet started. CBP has selected about half of the next 20 companies to be audited for fiscal year 2007. The completed audits found evidence that some companies had imported IP infringing goods, some counterfeit goods had been released into commerce, and other infringing goods remained in company warehouses. According to agency officials, based on these violations, CBP decided to assess penalties against certain companies, but the intra-agency review process for the penalties took about 1 year because of intra-agency discussions about the legal basis for assessing penalties on goods that had already entered commerce. Although CBP has moved forward with penalties in certain cases—four companies were assessed penalties totaling over \$5.7 million—future penalty decisions must be deliberated on the facts in each case, according to CBP officials. CBP officials said they periodically monitor the import performance of these audited companies and found one additional instance of IP infringement. When audit findings are significant, CBP works with the importer to develop a Compliance Improvement Plan to help prevent further IP violations.

At CBP's December 2006 Trade Symposium, the Assistant Commissioner for Trade discussed CBP's plan to conduct a greater share of its trade enforcement using these post-entry audits rather than cargo exams. The time consuming nature of these audits and their greater efficacy with established importers than with smugglers indicates the difficulties that the agency will face in making this kind of enforcement shift.

New Penalty Guidance Reduces the Number of Uncollectible Penalties, but Actual Collections Remain Low

A third undertaking has been the development of new guidance to reduce the number of uncollectible penalties that CBP assesses, thereby freeing up port resources for other activities. CBP officials reported that significant resources are dedicated to processing penalty cases; however,

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<sup>48</sup>In 2005, staff at the Los Angeles Strategic Trade Center chose nine importers that were known IP violators, the statistical risk model was used to select nine importers, and three were chosen both by the risk model and because they were known violators. Since then, candidates chosen were either known violators or suspects; selection was not linked to the risk model.



they noted that few penalties are collected and such enforcement has little deterrent effect. We reviewed CBP penalty data and found that less than 1 percent of penalty amounts assessed for IP violations were collected annually during fiscal years 2001 through 2006 (see table 3).

**Table 3: CBP IP Penalty Amounts Assessed versus Collected, Fiscal Years 2001-2006**

Dollars in millions						
	2001	2002	2003	2004	2005	2006 <sup>a</sup>
Total penalty amount assessed	\$52.0	\$65.0	\$45.0	\$442.9	\$423.9	\$136.6
Total penalty amount collected	\$0.5	\$0.3	\$0.4	\$0.5	\$0.4	\$0.6
Percent collected	0.90	0.48	0.91	0.11	0.10	0.45

Source: GAO analysis of CBP data.

Note: Penalty data are based on penalties assessed under 19 U.S.C. 1526(f). CBP also assesses penalties for IP violations under 19 U.S.C. 1595a(b) and provided us information on these types of penalties, but because CBP could not identify which were IP related, these types of penalties are not included in the table.

<sup>a</sup>Fiscal year 2006 is reported based on data provided in January 2007. CBP officials said that the amount collected may change because some open penalty cases are still being processed, but they said that future adjustments are unlikely to significantly change the disparity between penalty amounts assessed and collected.

Various factors contribute to CBP’s limited collection rates on IP penalties, including petitions for mitigation or dismissal by the violator, dismissal due to criminal prosecutions, and the nature of counterfeit importation. CBP officials said that many violators petition to have a penalty mitigated or dismissed, and these actions often reduce the amount of the penalty that CBP collects.<sup>49</sup> One agency official explained that some penalties are dismissed as a result of the case going to criminal prosecution, in which the U.S. Attorney negotiates to have a penalty dropped in exchange for information or other evidence that will support the criminal case. Also, the deceptive nature of counterfeit importation makes it difficult for CBP to track violators and enforce penalties.

To address the problem of poor collections, OFO communicated new CBP guidance to ports in 2006 that caused new penalty cases and assessed amounts to drop, but this has had limited impact on narrowing the gap

<sup>49</sup>When a collection action goes to court, the Department of Justice’s U.S. Attorney Offices are responsible for prosecuting the government’s case. However, according to several CBP officials, U.S. Attorney Offices generally do not agree to pursue penalty cases because of their own resource limitations or because they view CBP’s penalty amounts as excessive.

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between the amounts assessed and collected. CBP's guidance addresses 10 problem scenarios under which penalties are unlikely to be collected so that Fines, Penalties, and Forfeiture offices will be able to avoid assessing penalties in those circumstances. The objective of the guidance is to reduce resources spent assessing uncollectible penalties as well as to reduce the gap between penalties assessed and collected. The total penalties assessed declined by two-thirds between fiscal years 2005 and 2006, from about \$424 million to about \$137 million, which CBP officials attribute to the new guidance. Despite an increase in the amount of penalties collected between fiscal year 2005 to 2006, from about \$406,000 to about \$614,000, less than 1 percent of the total penalties assessed was collected for each of the fiscal years we reviewed.

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### CBP Has Not Analyzed Variations in Port Enforcement Outcomes

Despite some of its improvement efforts, CBP has not undertaken any systematic analysis of its seizure and penalty activity to understand variations in enforcement outcomes within or across ports or to learn from ports that have been relatively more successful in capturing fraudulent IP goods. For example, CBP has not analyzed the potential reasons for fluctuations in seizure outcomes at key ports that have impacted its overall seizure outcomes, and it has not identified inconsistencies between seizure and penalty outcomes at certain ports. Performing this type of analysis raises questions about individual ports' performance outcomes and may help to inform CBP about potentially effective port practices for IP enforcement. For example, in our analysis of 25 ports that brought in over 75 percent of the total value of IP-type imports in fiscal year 2005, we identified 8 whose seizure rate (i.e., the percent of IP seizures out of IP imports at that port, by value) was higher than the average for the top 25 IP-importing ports. We also found that some of the largest IP-importing ports had very small seizure rates relative to other IP-importing ports. Such analysis can be performed using existing data and could help CBP focus on identifying the handful of ports with relatively stronger enforcement records and determining whether their strategies and practices could be expanded and used at other ports.

### CBP Has Not Analyzed Yearly Fluctuations in Port Enforcement Outcomes

CBP has not analyzed year-to-year fluctuations in ports' seizure activity or other enforcement outcomes that may seem inconsistent with a port's overall IP enforcement profile. In some years, fluctuations at key ports have had a significant impact on the agency's overall enforcement results. For example, the number of seizure actions at one port has accounted for a growing share of all seizure actions since fiscal year 2001, representing nearly half of all seizure actions in fiscal year 2006, while seizure actions at another port have gone down over time, representing 18 percent of total

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seizure actions in fiscal year 2002 and less than 1 percent in fiscal year 2006. Two ports have been leading contributors to total estimated seizure values. However, while the value of seizures made by one of these ports has generally risen from fiscal year 2001 to 2006, the value of seizures made by the other port has fluctuated significantly, representing about 60 percent of total seizure value in fiscal year 2002 and about 17 percent of total seizure value in fiscal year 2005. The identities of these ports have not been included in this report for law enforcement reasons.

In addition, CBP has not analyzed individual ports' seizure and penalty outcomes to identify potential inconsistencies in the use of certain enforcement tools. We identified some ports with high seizure outcomes that have not had correspondingly high penalty outcomes. While ports may not necessarily assess penalties on all of their seizure outcomes, particularly if the seizure value is limited, we identified ports with relatively high average seizure values but limited penalty outcomes. For instance, three ports ranked among the top 10 ports for seizure value for fiscal years 2001 through 2006, with average seizure values ranging from about \$83,000 to about \$123,000, but none of these ports ranked among the top 10 for penalty cases opened, and only one of them ranked among the top 10 for penalty amounts assessed. The penalty cases these ports opened during this period ranged between 3 and 7 percent of their seizures. In comparison, the second highest ranked port for seizure value, with an average seizure value of about \$88,000, was also one of the most active ports for penalty actions, opening penalty cases for about 37 percent of its seizures. Moreover, during our audit, we identified a sharp drop in penalty outcomes for one of the top 10 ports, starting in fiscal year 2004, that neither OT nor OFO had identified. In investigating the reason for the drop, OFO determined that the port was not following proper procedures for assessing and reporting its IP penalties. We asked OT officials to explain these anomalies between seizure and penalty outcomes, and they responded that such analysis had not been conducted.

We asked officials in OT and its legacy offices whether they had analyzed port enforcement outcomes in this way and to what they attributed these fluctuations and inconsistencies. These officials said that imports vary among ports, seizures fluctuate according to changes in the nature of counterfeit trade, and ports have different priorities for performing IP enforcement. Overall outcomes or fluctuations might also be due to variations in ports' enforcement techniques or changes in IP enforcement resources or the availability of skilled personnel. For example, an official at one port we visited told us that during fiscal year 2004, the port made an important change in its methods for performing trade-related targeting, by

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disbanding a seven-person team that had focused solely on trade targeting and shifting these resources to security targeting. During our February 2005 visit to this port, the port official stated that this change had contributed to significantly lower seizure activity at the port in 2005. When we discussed seizure outcomes at another port with OT officials—which have resulted predominantly from the manual targeting skills of port staff—they compared the workload created by these seizures with their limited impact given that these are predominantly small value seizures. OT officials said neither they, nor their legacy offices, have conducted any analysis of individual ports’ seizure and penalty outcomes. Additional analysis of selected ports’ enforcement outcomes are contained in appendix II.

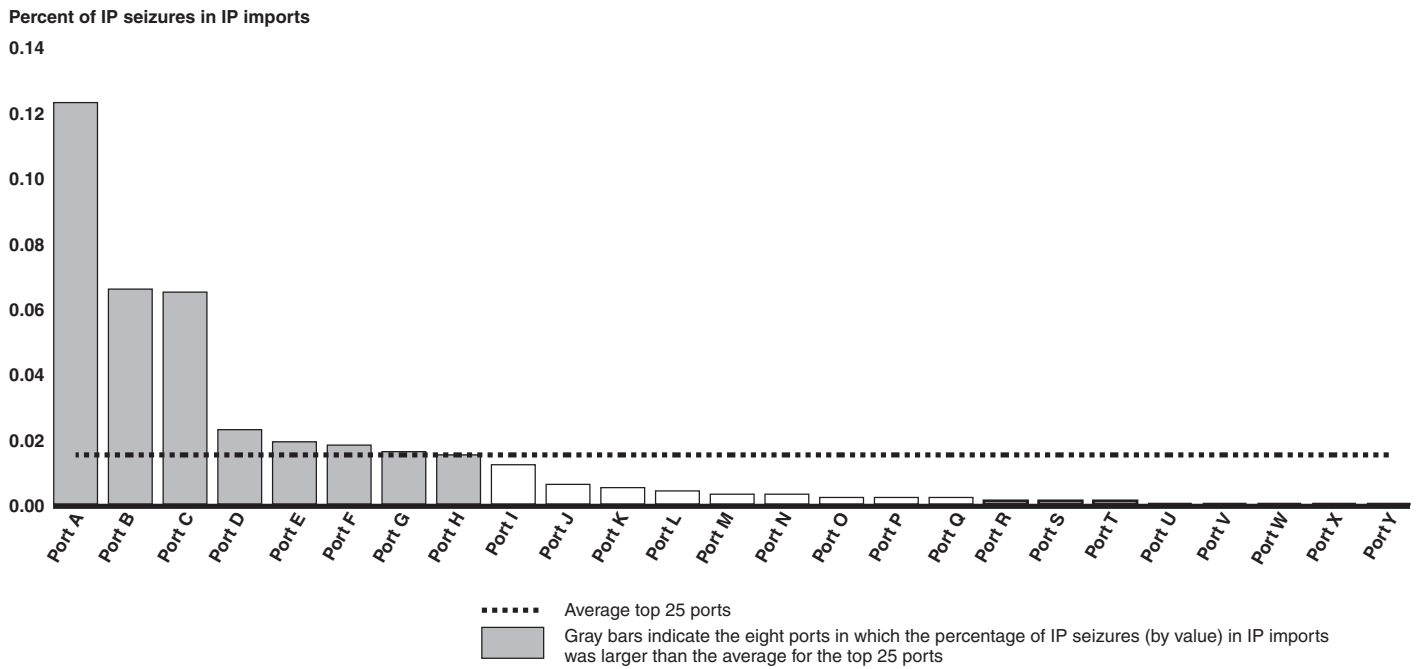
**CBP Has Not Analyzed Relative IP Enforcement Outcomes among Ports**

CBP has also not conducted any analysis of ports’ relative enforcement outcomes. One way to conduct this analysis is to identify ports whose seizure rate—the share of their IP seizures (by value) out of their total IP imports (by value)—is relatively higher or lower than other ports. For example, in fiscal year 2005, we focused on the top 25 ports that account for over 75 percent of the value of all IP imports into the United States.<sup>50</sup> Of these 25 ports, we found that 8 had seizure rates higher than the group average seizure rate of 0.015 percent. Surprisingly, the port with the highest seizure rate, seizing about 0.123 percent of its fiscal year 2005 IP import value, was also the port with the smallest value of IP imports among the ports we examined. This port accounted for only about 1 percent of all IP import value that year, but over 7 percent of total seizure value. In contrast, the IP seizure rates for several ports with relatively larger IP import values were well below the group average. Figure 6 shows the top 25 IP-importing ports by value in fiscal year 2005 and ranks them by their seizure rate that year. The eight ports in which the seizure rate is greater than the average (shown by the dotted line on the figure) are highlighted in grey. The figure also shows that many ports had very low seizure rates relative to the average. Port names have not been included for law enforcement reasons.

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<sup>50</sup>These 25 ports account for 77 percent of the value of all IP imports into over 300 ports of entry into the United States, as well as 71 percent of the value of IP seizures in fiscal year 2005.

**Figure 6: Top 25 IP-Importing Ports' Seizure Rates: Percent of IP Seizures in IP Imports (by Value), Fiscal Year 2005**



Source: GAO analysis of CBP data.

Note: Port names are not included in this figure for law enforcement reasons.

Figure 6 illustrates the differences across ports in terms of IP seizures compared with IP imports in fiscal year 2005, the most recent year for which we had IP import data. We also examined these data over previous years and found similar results. For example, Port A had the first or second highest rate of any port in the top 25. Also, the eight ports with above-average ratios in fiscal year 2005 are consistent with prior years. Because of the wide range of factors that affect IP seizures (including the unknown amount of goods actually involved in IP violations transiting a given port), these data alone are not a complete measure of port performance. Ports can be compared relative to each other, but port performance in even those ports that appear relatively more successful could still be potentially improved. For example, the majority of these top 25 ports had IP seizures that accounted for less than one hundredth of a percent of their IP import value. Table 4 further illustrates the variability in seizure actions and the range of seizure rates among the top IP-importing ports.

**Table 4: IP Seizure Rates of Top 25 Ports (by IP Import Value), Fiscal Year 2005**

Port <sup>a</sup>	IP imports (billions US\$) <sup>a</sup>	IP seizures (number)	IP seizures (thousands US\$) <sup>a</sup>	IP seizure rate (IP seizures/IP imports) (percent)
Port A		38		0.123
Port B		215		0.066
Port C		245		0.065
Port D		2,737		0.023
Port E		177		0.019
Port F		318		0.018
Port G		391		0.016
Port H		42		0.015
Port I		9		0.012
Port J		22		0.006
Port K		197		0.005
Port L		29		0.004
Port M		10		0.003
Port N		91		0.003
Port O		154		0.002
Port P		21		0.002
Port Q		52		0.002
Port R		62		0.001
Port S		17		0.001
Port T		16		0.001
Port U		1		0.000
Port V		13		0.000
Port W		22		0.000
Port X		1		0.000
Port Y		8		0.000
<b>Subtotal: Top 25 ports</b>	<b>\$430</b>	<b>4,888</b>	<b>\$66,419</b>	<b>0.015</b>
<b>Subtotal: Remaining ports</b>	<b>\$125</b>	<b>3,134</b>	<b>\$26,816</b>	<b>0.021</b>
<b>Total all ports</b>	<b>\$555</b>	<b>8,022</b>	<b>\$93,235</b>	<b>0.017</b>

Source: GAO analysis of CBP data.

Note: Although we report fiscal year 2005 values here for illustration, we conducted the analysis for each of fiscal years 2002 through 2005 and found similar results. In each year, the top 25 ports identified here accounted for between 75 and 78 percent of total IP imports and their average ratio of IP seizures to IP imports ranged from 0.015 percent to 0.030 percent.

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<sup>a</sup>Port names and data on the ports' fiscal year 2005 IP imports and value of IP seizures are not included in this table for law enforcement reasons. For fiscal year 2005, the IP import values for these ports ranged from about \$5 billion to about \$89 billion. The domestic value of their IP seizures ranged from about \$1,000 to about \$18.9 million.

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### Lack of Integration across Key Offices Impedes Further Improvements in IP Enforcement

CBP lacks an integrated approach across key offices for further improving border enforcement outcomes. Our analysis of CBP's data is one illustration of the kind of work that the agency could do using existing data to understand differences in IP enforcement outcomes across ports, potentially identifying areas where improvements could be made, and more effectively managing its resources to meet the agency's goals and objectives. CBP could refine this analysis by comparing across similar ports and processing environments, such as seaports to seaports and airports to airports, however inconsistencies in how CBP currently captures seizure activity across ports, as previously discussed, makes this refinement more difficult. CBP could use its experience and practical knowledge of some of the factors affecting trade flows at their ports to further inform the analysis. When we discussed our analysis with CBP, OT officials said they have not conducted this type of analysis because they do not have any responsibility or authority to oversee and influence port operations, which is under the purview of OFO. However, OT is responsible for overseeing CBP's implementation of its Priority Trade Initiatives, and it has access to data that could inform OFO's understanding of port IP enforcement practices and outcomes and inform CBP's resource allocation decisions.<sup>51</sup>

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## Conclusions

Enforcing IP protection at U.S. borders has become progressively more challenging for CBP as the volume of trade entering the United States increases, and as the of types of IP-infringing goods expand. CBP needs to

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<sup>51</sup>CBP is required under section 403 the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), P.L. 109-347, to develop a Resource Allocation Model for determining optimum staffing levels required to carry out CBP commercial operations, including IP enforcement. The legislation requires CBP to submit the model to the Senate Finance Committee and House Ways and Means Committee no later than June 30, 2007, and every 2 years thereafter. In addition, the conference report (H. Rept. No. 109-699) accompanying DHS' fiscal year appropriations legislation (P.L. 109-295) directed CBP to submit, by January 23, 2007, a resource allocation model for current and future years' staffing requirements that specifically assesses optimal staffing levels at all land, air, and sea ports of entry and provides a complete explanation of CBP's methodology for aligning staffing levels to threats, vulnerabilities, and workload across all mission areas. CBP has completed one component of the model for air passenger processing and expected to complete others by March 31, 2007.

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maximize its IP enforcement efforts in an environment strained by the need to balance its primary mission to protect homeland security with trade facilitation and enforcement of U.S. trade laws, among other objectives. While CBP has publicly cited increases in enforcement outcomes based on larger numbers and higher values of IP seizures, indicating its success, it has not fully disclosed the composition of those seizures or analyzed what has accounted for the increases. However, as indicated by our review, a limited number of ports have driven overall IP enforcement activity.

CBP's strategic plan lacks measures to guide agencywide IP enforcement efforts, and the efforts of two key offices responsible for carrying out IP enforcement, OT and OFO, are not well integrated. So far, the agency's main efforts to improve IP enforcement have involved initiatives carried out primarily by OT, and these have produced limited results. However, neither OT nor OFO has been engaged in trying to assess the effectiveness of CBP's core IP border enforcement efforts—namely, the targeting, examination, seizure, and penalty activities undertaken by CBP's front-line port operations. CBP's ability to fully assess ports' IP enforcement activities is hampered by inconsistencies in the way IP enforcement data are recorded at the ports. In addition, OT does not have responsibility or authority to oversee or influence port operations.

As demonstrated by our own analysis of CBP data, the agency has sufficient information available despite the data's limitations to conduct a more comprehensive review of IP border enforcement outcomes in ways that would provide insights about targeting, examination, seizure, and penalty assessment practices across ports. Certain improvements to existing data could make this type of review even more powerful. In addition, such analysis could prove useful as CBP responds to congressional directives to develop resource allocation models in order to determine the optimal staffing levels needed to carry out its commercial operations and other missions. CBP would be able to make more measurable links between its strategic objectives and enforcement outcomes, leading to more effective management practices and allocation of limited resources. Given the challenging environment in which CBP must process a vast influx of goods into the United States every day, it is particularly important that the agency consistently collect key data, perform useful analysis of the data, and use the data to better inform policies and practices and make decisions to focus its use of limited resources.



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## Recommendations for Executive Action

To develop a more effective approach to IP border enforcement, we recommended in the law enforcement sensitive report that the CBP Commissioner direct the Offices of International Trade and Field Operations to work together to take the following three actions:

- Clarify agencywide goals related to IP enforcement activity by working with the Office of Management and Budget to include in its agency's strategic plan measures to guide and assess IP enforcement outcomes;
- Improve data on IP enforcement activity by:
  - Determining the completeness and reliability of existing IP enforcement data and identifying aspects of the data that need to be improved;
  - Ensuring uniformity in port practices to overcome any weaknesses in data reporting;
- Use existing data to understand and improve IP border enforcement activity by:
  - Analyzing IP enforcement outcomes across ports and other useful categories, such as modes of transportation;
  - Reporting the results of this analysis internally to provide performance feedback to the ports, better link port performance to performance measures in CBP's Strategic Plan, and inform resource allocation decisions.

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## Agency Comments and Our Evaluation

We provided a draft of the law enforcement sensitive report to DHS for review by CBP and ICE. Through DHS, CBP commented that it generally agreed with our recommendations and provided certain additional comments. Specifically, CBP said it would consider developing IP enforcement measures and include them in the agency's strategic plan to clarify agencywide goals. CBP concurred with our second recommendation to improve its IP enforcement data.

Regarding our third recommendation, CBP generally agreed to use existing data to understand and improve IP border enforcement activity. It stated that strong data analysis and targeting are critical to successful IP enforcement and agreed to improve the linkages between the agency's IP enforcement objectives and port performance. However, CBP did not regard our analysis of ports' IP seizures relative to IP imports as a useful

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tool for addressing the threat of IP infringement and identified a range of limitations with our analysis. We disagree. This simple presentation can be a powerful tool to generate discussion among IP policymakers and port management and staff about IP seizure patterns, risks, and outcomes. CBP has not yet attempted to complete even this basic analysis or initiate such discussions. Doing so would invariably lead to potential refinements of the analysis; we suggest a number of these in the report, some of which CBP identifies in its comments. We encourage CBP to refine this analysis and develop and use other types of analysis to ensure that ports are helping the agency achieve its IP enforcement objectives.

CBP made certain additional comments about the draft law enforcement sensitive report. For example, CBP said that our report focused on transaction-level seizures and penalties, while not fully recognizing the importance of additional elements of its IP enforcement approach. We focused on seizures and penalties because they are the core IP enforcement activities for which CBP is responsible, and we found that CBP had not systematically analyzed its own performance of these activities. However, we also discuss the risk model, the audits, and the new penalty guidance; and these elements are reasonable components of a broader approach, but we believe their effect on overall IP enforcement has been limited. Moreover, we believe that CBP needs to continue to ensure the robustness of its core enforcement activities. CBP also stated that our report failed to note that the formation of OT in October 2006 was designed in part to address the lack of integration between OT and OFO. We disagree that the formation of this office has, in itself, addressed the lack of integration that we identify in the report regarding IP enforcement. Although OT consolidates CBP's trade policy and program development functions, including those related to IP enforcement, front-line implementation of policies and programs continue to be carried out at the ports under the leadership of OFO. OT and OFO will need to work closely together to overcome the historic lack of integration regarding IP policy and program development and execution. CBP and ICE also provided technical comments, which we incorporated in the law enforcement sensitive report as appropriate.

We also provided DHS a draft copy of this public report for a sensitivity review by CBP and ICE. CBP and ICE agreed that we have appropriately removed information that they considered law enforcement sensitive.

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We are sending copies of this report to appropriate congressional committees and the Librarian of Congress; the Secretaries of the Departments of Commerce, Homeland Security, Justice, and State; the Commissioner of U.S. Customs and Border Protection; the Assistant Secretary for U.S. Immigration and Customs Enforcement; the Directors of the U.S. Patent and Trademark Office and the U.S. Food and Drug Administration; the Chairman of the U.S. International Trade Commission; and the U.S. Trade Representative. We will make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>. We provided copies of the law enforcement sensitive report to the Secretary of the Department of Homeland Security, the Commissioner of U.S. Customs and Border Protection, the Assistant Secretary for U.S. Immigration and Customs Enforcement, and appropriate congressional committees with a need to know.

If you or your staff have any questions about this report, please contact me at (202) 512-4347 or [yagerl@gao.gov](mailto:yagerl@gao.gov). Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix IV.

Sincerely yours,

A handwritten signature in black ink that reads "Loren Yager". The signature is written in a cursive, flowing style.

Loren Yager, Director  
International Affairs and Trade

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# Appendix I: Scope and Methodology

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The Ranking Minority Member of the Senate Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia, Committee on Homeland Security and Governmental Affairs asked us to (1) examine key aspects of the U.S. Customs and Border Protection's (CBP) process to carry out enforcement of intellectual property (IP) at U.S. borders; (2) analyze CBP's border enforcement outcomes during fiscal years 2001 through 2006; and (3) evaluate CBP's approach for improving border enforcement.

To examine key aspects of CBP's border enforcement process, we reviewed documents and interviewed officials at CBP headquarters in Washington, D.C., and at selected port locations. At headquarters, we met with officials in the Office of International Trade (OT) and Office of Field Office Operations (OFO) and obtained documents. We reviewed agency strategic plans, annual performance accountability reports, laws, regulations, and policies that addressed agency goals and the roles and responsibilities of these two key offices and field locations in enforcing IP rights at the border, including CBP's internal plan for addressing IP enforcement as a Priority Trade Issue. We also reviewed documents and interviewed officials at OT's Los Angeles Strategic Trade Center, which has been responsible for developing and implementing CPB's approach to IP enforcement since approximately 2002. We analyzed data that the center provided on the use and outcomes of using Cargo Selectivity criteria to target for IP violations. In addition, we reviewed documents and interviewed CBP officials at four field offices and seven ports (the names of the ports where we conducted field work are not included in this report for law enforcement reasons). We selected these ports in order to observe CBP's IP enforcement practices at ports with high and medium import levels (measured by value) and across a range of processing environments. Five of these ports were among the top 25 IP-importing ports in fiscal year 2005, and five of them were among the six most active CBP ports as measured by selected IP enforcement outcomes. We reviewed documents on CBP's organizational structures at these ports and the ports' approaches for carrying out their overall missions, including IP enforcement. The CBP officials we interviewed at these ports were responsible for identifying, examining, seizing, and assessing penalties on goods that involve IP violations. In addition, we reviewed relevant papers, studies, and our reports that addressed key aspects of CBP's mission and its IP border enforcement responsibilities. We also met with officials from the Department of Homeland Security's Immigration and Customs Enforcement, the Department of Commerce's Patent and Trademark Office, the Department of Justice, the U.S. Copyright Office, and the U.S.

International Trade Commission, to discuss their respective roles in registering IP rights and investigating and prosecuting IP violations.

To analyze CBP's border enforcement outcomes, we obtained and reviewed seizure and penalty enforcement data covering fiscal years 2001 through 2006. First, to measure the value of IP-related trade entering U.S. ports, we identified products, using detailed product codes, that are likely to embody intellectual properties and obtained CBP data on the importation of these products by port over fiscal years 2002 to 2005. In order to identify these products, we reviewed the broad product groups that CBP uses to categorize seizure actions and domestic value and then identified all individual products that are covered by these groups within the U.S. harmonized tariff schedule. We discussed our detailed product list with CBP, which concurred with our list, and we obtained import data from them according to the list. We reviewed these data for internal consistency and any known limitations on its quality. We determined that these data were sufficiently reliable to provide the value of IP imports by port over the time period we examined. Second, we assessed CBP's IP enforcement efforts on an aggregate, product, and port basis by analyzing its seizure and penalty data. Specifically, we obtained data from CBP on seizure and penalty outcomes for individual ports of entry for fiscal years 2001 through 2006. For fiscal years 2003 through 2006, we obtained data on the mode of transport or processing environments in which seizure were made. Finally, we obtained data on seizures by product category and source country from CBP's external Web site.<sup>1</sup> To assess the reliability of the seizure and penalty data, we examined them for internal consistency and discussed with CBP how the data are collected and reviewed. We also reviewed our prior work that reported on CBP's seizure data.<sup>2</sup> Based on this prior work and our discussions with CBP officials, we identified some limitations in the seizure data related to the precision of the seizure value estimates and the veracity of the fields that indicate product types and modes of transport or processing environments. We also found some inconsistencies in the various data sets we received, which we reported to CBP. The limitations and inconsistencies we identified, however, did not indicate large discrepancies in the data, and we found the data to be sufficiently reliable for the purposes of reporting on broad trends in seizures and penalties over time and among ports. Based on our

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<sup>1</sup>[http://www.cbp.gov/xp/cgov/import/commercial\\_enforcement/ipr/seizure](http://www.cbp.gov/xp/cgov/import/commercial_enforcement/ipr/seizure).

<sup>2</sup>GAO, *Intellectual Property: U.S. Efforts Have Contributed to Strengthened Laws Overseas, but Challenges Remain*, GAO-04-912 (Washington, D.C.: Sept. 8, 2004).

discussions with CBP headquarters and port officials, we selected four types of enforcement actions by which to analyze port outcomes: (1) number of seizure actions, (2) domestic value of seizures, (3) number of penalty cases opened, and (4) penalty amounts assessed. We aggregated the data on these enforcement actions for fiscal years 2001 through 2006, ranked ports by each of the enforcement actions, and identified the top 10 ports for each of the categories.

To evaluate CBP's approach for improving border enforcement, we discussed CBP's efforts with knowledgeable OT and OFO officials in Washington, D.C., and the field offices and ports we visited. We reviewed CBP's and OFO's strategic plans, CBP's annual performance and accountability reports, and CBP's internal plan for addressing IP enforcement as a Priority Trade Issue to identify CBP's goals, objectives, and plans for conducting and improving IP enforcement at the border. We also examined documents related to the administration's Strategy Targeting Organized Piracy. From this, we identified key initiatives that CBP has undertaken to improve the effectiveness of IP border enforcement and discussed the status of these initiatives with knowledgeable CBP officials. We also assessed the initiatives to determine how they relate to CBP's IP enforcement goals. We analyzed IP enforcement outcomes across ports, identified fluctuations that have significantly impacted CBP's overall IP enforcement outcomes and inconsistencies in outcomes at certain ports, and discussed these observations with CBP officials. We compared IP seizures with IP imports on a value basis for the top 25 IP-importing ports for fiscal years 2002 through 2005, determined the average seizure rate for these ports, and compared the ports' individual seizure rates with the average. While estimated domestic value of seizures and values for IP imports are not equivalent measurements, we determined that these were sufficiently reliable proxies for the purpose of seizure to import comparisons. We also conducted interviews with CBP officials in headquarters and field locations to obtain information on how OT and OFO carry out their operations and in final meetings discussed ways in which OT and OFO could better use their data to improve IP enforcement.

This report is based on a law enforcement sensitive report issued on March 20, 2007, as a restricted report, copies of which are available for

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official use only.<sup>3</sup> This public version does not contain certain information that DHS regarded as law enforcement sensitive and requested that it not be included. We provided DHS a draft copy of this public report for a sensitivity review by CBP and ICE, which agreed that we had appropriately removed law enforcement sensitive information.

We conducted our work from November 2005 through January 2007 in accordance with generally accepted government auditing standards.

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<sup>3</sup>GAO, *Intellectual Property: Better Data Analysis and Integration Could Help U.S. Customs and Border Protection Improve Border Enforcement Efforts*, GAO-07-350SU (Washington, D.C.: Mar. 20, 2007).

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# Appendix II: Analysis of Top Six Ports' IP Enforcement Outcomes

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To analyze IP enforcement outcomes across ports, we selected four categories of enforcement outcomes from the data CBP provided: (1) number of seizure actions, (2) domestic value of seizure, (3) number of penalty cases opened, and (4) penalty amounts assessed. We analyzed data by port location for fiscal years 2001 through 2006. For four of these categories, we found that six ports accounted for the bulk of enforcement activity (see fig. 7). Four of these ports ranked in the top 10 for all four IP enforcement categories and 2 ranked in the top 10 for three out of the four categories. These ports may include multiple processing environments (e.g., land, sea, air modes), and seizure associated with such ports may stem from more than one processing environment. Because of inconsistencies in how CBP records seizures by port, we were unable to fully determine how many processing environments are reflected in the enforcement data. We were able to determine the seizure reporting practices of the seven ports that we visited. For example, at one location, CBP has one port “code” that includes seizures made at the seaport as well as the nearby airport. However, seizure data for another location includes seizures made at the seaport and from the international mail processing environment, but does not include other air-based seizures made at the nearby airport, which are reported separately. Neither OFO nor OT officials at the headquarters level could provide us information to understand the seizure reporting practices of CBP’s ports.

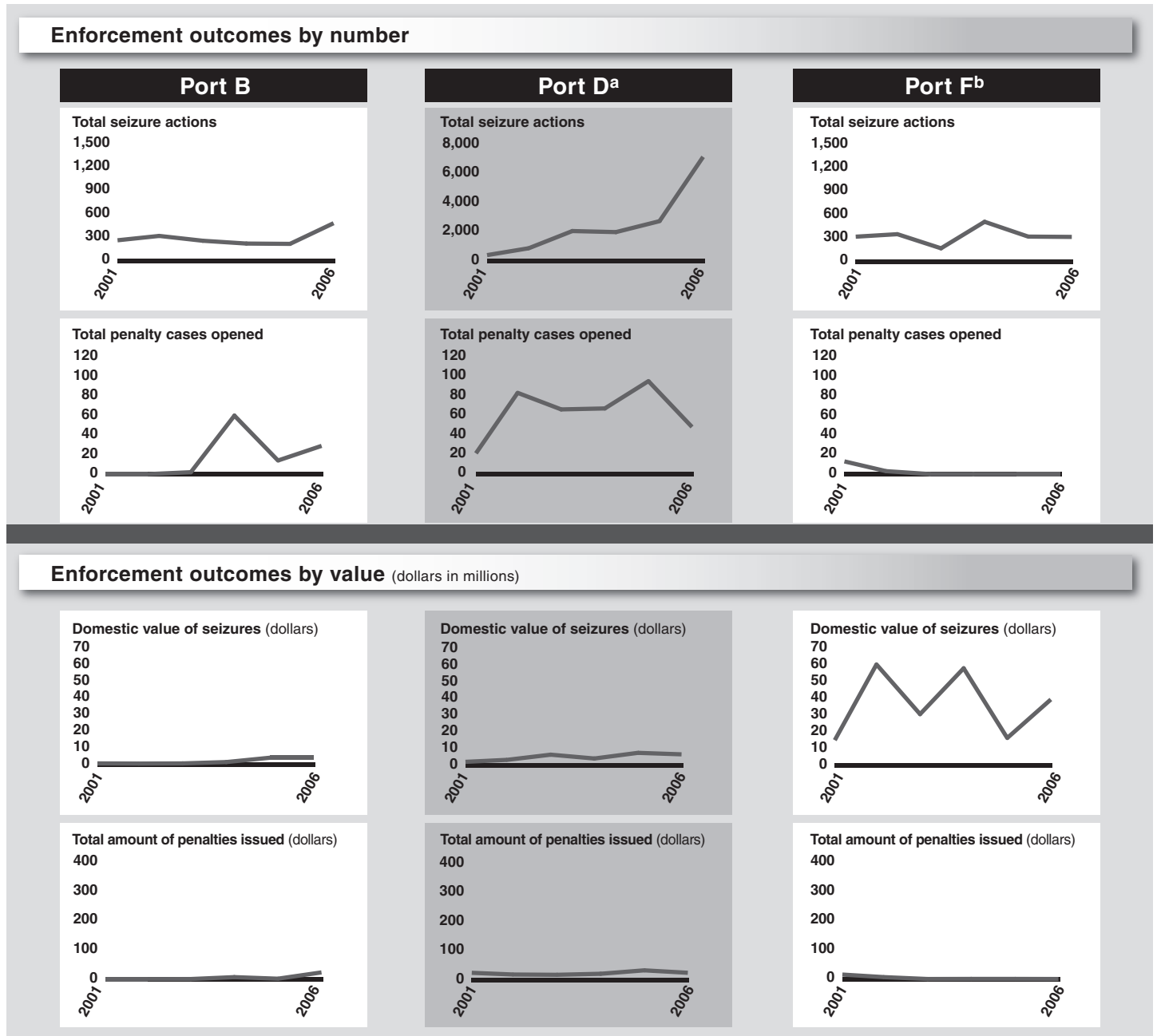
As figure 7 illustrates, CBP’s data can be used to compare enforcement outcomes across the ports (left to right) or compare outcomes within a single port (top to bottom). With the exception of Port D, the scales are uniform. When analyzing IP enforcement outcomes both across ports and within a single port, we found wide variability when comparing outcomes from year to year and among the enforcement categories. For example, the Port F experienced increases in the number of seizure actions for fiscal years 2002 and 2004; but in alternating years, the number dropped, in some cases by as much as 50 percent. Penalty outcomes also fluctuated by port location. For example, Port G had relatively constant numbers of penalty cases opened and penalty amounts assessed until fiscal year 2005, when these outcomes peaked, and then fell off sharply in fiscal year 2006. When examining outcomes within a single port, we found that the fluctuations in seizure outcomes did not mirror fluctuations in penalty outcomes. For example, Port C had a relatively steady number of seizure actions between fiscal years 2003 and 2006, but the number of penalty cases opened fluctuated greatly during the same time period. While we did not expect to find a direct correlation between seizure and penalty outcomes, given that the seizure data consists of all IP-related activity and penalty data limited to only those assessed under 19 U.S.C. 1526(f), we did not expect to find



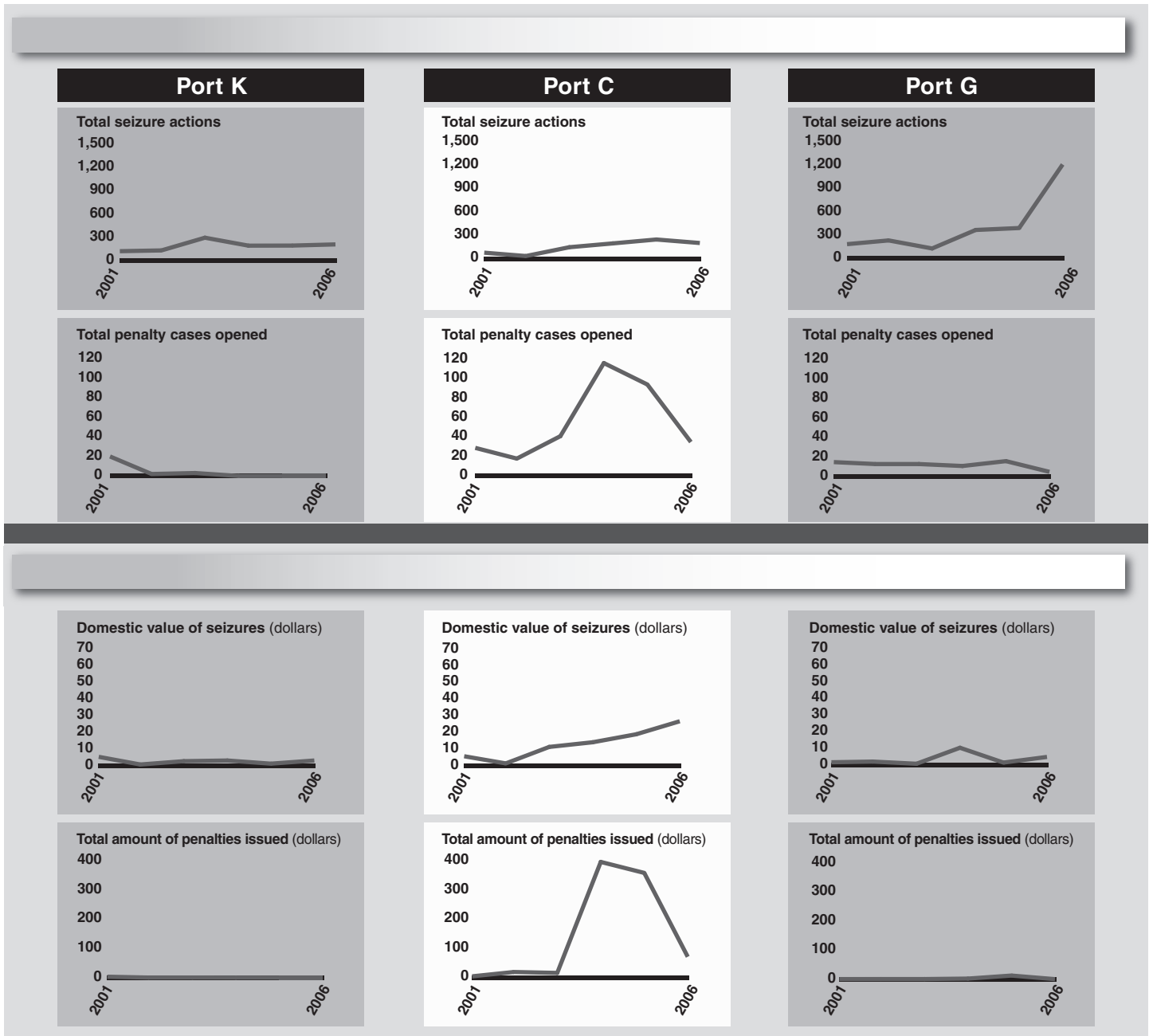
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such wide variations within the most active ports during the 6-year time period we reviewed.

Figure 7: IP Enforcement Outcomes for Top Six Ports, Fiscal Years 2001-2006



Appendix II: Analysis of Top Six Ports' IP Enforcement Outcomes



Source: GAO analysis of CBP data.

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**Appendix II: Analysis of Top Six Ports' IP  
Enforcement Outcomes**

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<sup>a</sup>The scale for Port D is not uniform because it had substantially more seizure actions compared with other ports, making it difficult to compare in a uniform scale.

<sup>b</sup>Penalty data for Port F was not available for fiscal years 2003 through 2006 due to a change in the way the port records its IP-related penalties. CBP was unable to provide more complete information for this port. As a result, total IP penalty outcomes for this port are likely underrepresented in the above figure.

# Appendix III: Comments from the Department of Homeland Security

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

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

2007 MAR -7 PM 12:44



**Homeland  
Security**

March 6, 2007

Mr. Loren Yager  
Director  
International Affairs and Trade  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Yager:

Thank you for the opportunity to review and comment on the Government Accountability Office's (GAO's) draft report GAO-07-350SU entitled, *INTELLECTUAL PROPERTY: Better Data Analysis and Integration Could Help U.S. Customs and Border Protection Improve Border Enforcement Efforts*.

The Department's U.S. Customs and Border Protection (CBP) provides the following general comments. First, the report cites a lack of integration between key offices involved in Intellectual Property Rights (IPR) enforcement, which CBP acknowledges was a problem during the review period. However, the report fails to note action already taken by Congress and CBP to address this issue. Congress recognized the integration issue, and with the passage of the SAFE Port Act in 2006, mandated creation of the Office of International Trade (OT) to solve this problem. OT, established by CBP in the last quarter of calendar year 2006, has authority to set IPR policy and direction for ports. Throughout the report, GAO misrepresents this major change in CBP's organizational structure by referring inaccurately to OT, which did not exist during the review period, rather than the Office of Strategic Trade (OST), which actually existed during the review period. OST and OT are very different organizations. In addition, the lack of integration cited by GAO has been addressed by combining all IPR policy and program functions into the Office of International Trade. This includes the IPR policy and program functions that formerly were the responsibility of Office of Field Operations (OFO). Hence, OT has responsibility for establishing direction, setting policy, and creating programs for ports with regard to IPR enforcement.

Second, throughout the report, GAO promotes a simple analysis of seizure outcomes among ports as the key approach for improving IPR enforcement at the border. As discussed with GAO during the audit, CBP disagrees that this analysis is useful for addressing IPR threat, let alone representing a major weakness in the agency's approach. GAO bases its analysis on "IP-type" imports, which it defines as tariff classifications previously associated with at least one IPR seizure. A fundamental flaw with this approach is that it fails to recognize relative risk and assumes that all similar commodities

[www.dhs.gov](http://www.dhs.gov)

See comment 1.

See comment 2.

See comment 3.

form a universe at equal risk for IP infringement. As “IP-type” imports, GAO includes the value of all goods entered under tariff classifications such as furniture used infrequently to try to smuggle counterfeit products, but for which the overwhelming majority of imports are highly unlikely to be IPR infringing. In addition, both products bearing trademarks or copyrighted works and products that do not (e.g., trademarked T-shirts as well as plain T-shirts with no mark) are included in the value of “IP-type” imports.

See comment 4.

Further, GAO does not take into account a number of additional factors known to be relevant to IPR risk such as source country, shipping patterns, and shipments entered by right holders and their licensees. Instead, GAO assumes that there is a direct correlation between “IP-type” imports and IPR infringement threat. However, no evidence supporting this assumption is presented. GAO also performs this analysis on ports that are or include express consignment or mail facilities. For such ports, the value of “IP-type” imports cannot be determined because entry is not required and therefore values are not available for the vast majority of packages entered at these facilities. For these reasons, CBP finds GAO’s analysis to be incomplete and unreliable as a basis for action to improve enforcement or allocate resources.

See comment 5.

Third, the report focuses on the transaction-level seizures and penalties elements of CBP’s IPR enforcement strategy, and while these are important, the agency’s strategy is more comprehensive than this limited approach. In order to minimize the IPR threat, CBP takes a multilayered approach to IPR enforcement that expands and complements the seizure of IPR infringing goods and issuance of penalties. The agency’s strategy expands the border outward by using audit techniques to assess and improve the internal control systems that importers use to prevent imports of IPR infringing goods and to issue penalties on imported counterfeit goods that have been distributed into commerce; collaborating with other U.S. government agencies and trading partners to improve enforcement; cooperating with right holders; and training both CBP employees and officials of foreign customs administrations. This approach addresses counterfeiting at the organizational source to deter future violations rather than only addressing the immediate violation. As GAO notes, only one subsequent IPR violation has been found among importers that have been audited for IPR, an indication of the success of this approach.

See comment 6.

Finally, the report states several times that CBP lacks performance measures for IPR, but this is inaccurate. CBP acknowledges that the CBP Strategic Plan does not contain specific measures for IPR enforcement. However, CBP’s National IPR Trade Strategy does contain performance measures for IPR, and it is this strategy that guides CBP’s IPR enforcement efforts. The following excerpt from CBP’s National IPR Trade Strategy, which was provided to GAO, describes CBP’s IPR performance measures.

See comment 7.

**Appendix III: Comments from the Department  
of Homeland Security**

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OBJECTIVE	MEASURE	TARGET
<p>1. Apply risk model to:</p> <ul style="list-style-type: none"> <li>• Identify high risk shipments for cargo exams;</li> <li>• Identify accounts at high risk for importing IPR infringing products.</li> </ul> <p>IPR risk model is a Strategy Targeting Organized Piracy (STOP) deliverable.</p>	<p>Evaluate targeting efficiency of risk model using cargo selectivity criteria efficiency as a baseline</p> <p>Evaluate effectiveness of model in identifying high risk accounts based on lack of internal controls to prevent imports of IPR infringing goods and/or proving IPR violations</p>	<p>15% increase in targeting efficiency</p> <p>Conduct post-entry verifications to assess effectiveness.</p>
<p>2. Manage targeting in order to minimize impact on front line resources, facilitate legitimate trade and increase effectiveness of cargo exams relative to IPR PTI goals:</p> <p>a) Reduce/eliminate inefficient cargo exam;</p> <p>b) Conduct targeting based on IPR Priority Trade Issue (PTI) goals.</p>	<p>Evaluate targeting efficiency by comparing the total number of discrepancies to the total number of exams performed.</p> <p>Evaluate effectiveness based on the number and value of IPR seizures that meet IPR PTI goals</p> <p>Evaluate facilitation by reduction in unproductive criteria hits</p>	<p>15% increase in targeting efficiency</p> <p>15% increase in number and value of seizures meeting PTI goals</p> <p>10% reduction in unproductive criteria hits</p>
<p>3. Conduct post-entry verifications (“IPR audits”) to enforce IPR and prevent future violations. Post-entry verification is a STOP deliverable.</p>	<p>Evaluate effectiveness of post-entry verification based on finding of lack of internal controls to prevent future imports of IPR infringing goods and/or finding of additional IPR violations</p>	<p>Conduct 20 post-entry verifications.</p>
<p>4. Collaborate with ICE, other agencies and foreign governments to enhance international protection and enforcement of IPR.</p> <p>International cooperation is a STOP component.</p>	<p>US Joint Commission on Commerce and Trade (JCCT) Pilot paper being drafted.</p> <p>Evaluate the effectiveness based on the results of the information provided.</p>	<p>Establish a benchmark to utilize as a baseline to measure success.</p>

OBJECTIVE	MEASURE	TARGET
<p>5. Communicate IPR risks and strategy to increase employee knowledge/skill levels in such areas as:</p> <ul style="list-style-type: none"> <li>• IPR strategy objectives and initiatives</li> <li>• Legal authorities and procedures</li> </ul>	<p>Number of employees that received training (sort by job category and specify area of training).</p>	<p>Provide IPR enforcement training to 100% of ICE and CBP employees attending the Advanced Fraud Course (Glynco).</p> <p>Train 100% of ICE and CBP Attaché personnel newly assigned to foreign ports.</p> <p>Train all major ports and additional ports as necessary and requested on legal authorities and procedures.</p>
<p>6. Conduct industry outreach to familiarize IPR holders on how to work with CBP/ICE to protect IPR at the border.</p> <p>Industry outreach is a STOP component.</p>	<p>Evaluation by participants.</p>	<p>90% approval rating</p>
<p>7. Deter IPR violations through the issuance of fines and penalties.</p>	<p>Issuance of fines in accordance with newly established guidelines.</p>	<p>Establish baseline</p>

The report makes three recommendations to the Commissioner of CBP. The agency concurs in part with recommendation one, concurs with recommendation two, and concurs in part with recommendation three of the draft report. The following discusses the report's recommendations and CBP's response.

**Recommendation 1:** Clarify agency-wide goals related to IP enforcement activity by developing measures to guide and assess IP enforcement outcomes and including them in CBP's strategic plan.

**Response:** Concur in part. The Office of International Trade (OT) will review CBP's Intellectual Property (IP) enforcement measures and consider creating the appropriate strategic measure(s) to be inserted into the strategic plan.

See comment 8.



**Recommendation 2:** Improve data on IP enforcement activity by:

- a) Determining the completeness and reliability of existing IP enforcement data and identifying aspects of the data that need to be improved;
- b) Ensuring uniformity in port practices to overcome any weaknesses in data reporting

**Response:** Concur. OT will issue guidance to the ports regarding policy/procedures for the input of seizure and exam findings data and coordinate with the Office of Field Operations to provide ports with periodic progress reports on their compliance with the data quality guidelines.

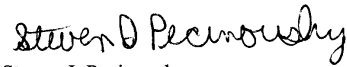
**Recommendation 3:** Use existing data to understand and improve IP border enforcement activity by:

- a) Analyzing IP enforcement outcomes across ports and other useful categories, such as modes of transportation;
- b) Reporting the results of this analysis internally to provide performance feedback to the ports, better link port performance-to-performance measures in CBP's Strategic Plan, and inform resource allocation decisions.

**Response:** Concur in part. CBP agrees that strong data analysis and targeting are critical to the success of the IPR enforcement strategy and that the link between port performance and CBP IPR Trade Strategy measures needs to be more clearly defined. Although the performance metrics proposed by GAO are inadequate to meet this end, CBP will work to improve measures linking tactical activities (exams, audits, training, penalties, etc.) to CBP IPR Trade Strategy objectives.

Thank you again for the opportunity to comment on this draft report and we look forward to working with you on future homeland security issues.

Sincerely,



Steven J. Pecinovsky  
Director  
Departmental GAO/OIG Liaison Office

See comment 9.

The following are GAO's comments on the Department of Homeland Security's letter dated March 6, 2007, which commented on GAO's law enforcement sensitive report.

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## GAO Comments

1. We disagree that OT's formation has, in itself, addressed the lack of integration that we identify in the report regarding IP enforcement. Although OT consolidates its legacy offices' trade policy and program development functions—specifically, the Office of Strategic Trade, the Office of Regulations and Rulings, and a headquarters component of the Office of Field Operations, front-line implementation of policies and programs continue to be carried out at the ports under the leadership of OFO. Because there is still separation between the office that sets policy and the office that implements policy, there is no evidence that the creation of OT will address the lack of integration that initiated congressional action and that we identified in our review. OT and OFO will need to work closely together to overcome the lack of integration between policy development and implementation that we refer to in the report. Regarding CBP's comment that we inaccurately refer to OT throughout the report, we modified the report to clarify references to OT and its legacy offices.
2. CBP mischaracterizes the purpose and usefulness of our analysis of IP imports and enforcement activity at its ports. Seizing IP infringing goods is a core IP enforcement activity for which CBP is responsible, but CBP has not conducted systematic analysis of its own data to examine variations in enforcement outcomes over time or among ports. This simple analysis can be a powerful tool to generate discussion among IP policymakers and port management and staff about IP seizure patterns, risks, and outcomes and to improve CBP's approach to IP enforcement. We do not suggest using it to target imports. We clearly state that our analysis is only illustrative of the types of analysis that CBP could undertake and that CBP should refine and develop its own approach. We support CBP's decision to follow our recommendation to conduct such analysis.
3. Our measure of IP imports is broader than CBP suggests, but it is not intended as a measure of risk. CBP does not currently have such a measure, and we believe our measure, which we reviewed with CBP, is useful. Our measure is intended to identify the overall relative volume of potential IP traffic that ports process, which is lower than total import volume. Doing so enables us to examine IP seizure activity relative to a meaningful measure of port volume. Our measure is based not only on tariff classifications where CBP actually found IP

violations but also their related products groups. These classifications may include both IP and non-IP goods that are not separated out in the tariff schedule. Doing so is appropriate because CBP cannot easily distinguish, based on the tariff information, whether goods involve IP protection, have been purposely misclassified, or are being used to smuggle infringing products. The draft report explained our selection process and methodology, but we added clarity to further explain our measure and how we developed it. We also state that this analysis is one logical way to examine port performance and do not suggest, as CBP states in its response to our third recommendation, that the seizures-to-imports ratio is, in itself, a complete performance measure.

4. We also agree that CBP should consider the range of factors that affect IP goods in conducting its analysis. We clearly stated in the report that our analysis was only one way to examine port performance. Our analysis was not intended to be used for risk analysis or targeting, but only to provide a measure of seizure activity relative to port size, and we did not assume a direct correlation between the volume of IP imports and risk.
5. We agree that CBP's import data does not fully capture IP import values at express consignment and mail facilities, but even with this likely underreporting of such imports, several ports at which such facilities are dominant ranked among the top IP importing ports. As we state in the report, we agree that CBP should take differences across port environments into account in developing its own analysis.
6. We focused on "transaction-level seizures and penalties" because these are the core IP enforcement activities for which CBP is responsible, and we found that CBP had not systematically analyzed its own performance of these core activities. We also address additional elements of CBP's approach to improve IP enforcement that fell within the scope of our audit, including its IP audits. However, we found that these efforts have had a limited impact on overall IP enforcement, while perhaps drawing attention away from improvements to its core activities. For example, CBP acknowledges that its audits, completed thus far on 41 companies during a 2½-year period, are most effective for improving IP enforcement among legitimate importers, but these importers likely do not account for the bulk of IP infringing goods that enter the United States.
7. CBP mischaracterizes our analysis by asserting that our report states across-the-board that CBP lacks performance measures for IP enforcement. Our draft report stated that the agency's strategic plan lacks specific measures for IP enforcement, but noted that CBP does

indeed measure and report internally on the number of IP seizure actions and estimated seizure value. The draft report also discussed certain actions that CBP has taken under its “Intellectual Property Rights Trade Strategy,” an internal planning document that is the same as what CBP calls the “National IPR Trade Strategy” in its letter. However, we disagree with CBP’s assertion that this document serves as an agencywide guide for CBP’s IP enforcement efforts. In our discussions with CBP about this document, CBP officials said the document was written for internal planning purposes. We found that the distribution of this document has been limited. For example, CBP documents show that revisions to the IP Rights Trade Strategy have not been distributed to the field since 2003. Moreover, certain CBP officials told us that the ports are generally not familiar with this document. Finally, given the document’s classification as “For Official Use Only,” it is not distributed to Congress or the public, unlike the agency’s strategic plan, which limits its usefulness for holding CBP accountable for its performance on IP enforcement. We added information in our report to clarify the importance of agencywide strategic plans and performance measures in communicating priorities on an agencywide basis and establishing accountability. We added information that the IP Rights Trade Strategy contains other indicators related to IP enforcement. We also modified our recommendation to clarify that we recommend that CBP include IP enforcement-related measures in its strategic plan. Given the Office of Management and Budget’s role in the strategic planning process, we also clarified that CBP should work with the Office of Management and Budget to include IP-enforcement related measures in its strategic plan.

8. See comment 7.
9. See comments 2 and 3.

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# Appendix IV: GAO Contact and Staff Acknowledgments

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## GAO Contact

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## Staff Acknowledgments

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