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ATTORNEYS AND COUNSELORS AT LAW

Complying with US Customs Import Regulations

Key elements needed to minimize risk from Customs enforcement, including product classification and valuation, country of origin, forced labor, ADD/CVD, and C-TPAT.

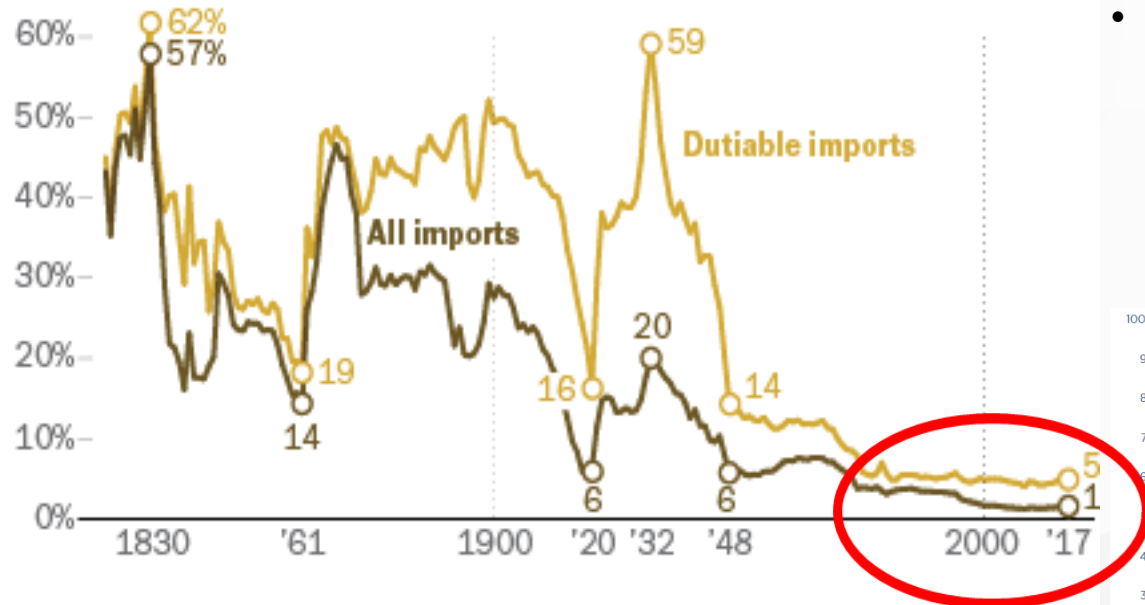
TPM²⁴ by **S&P Global**

March 5, 2024

TARIFFS

Once highly protective, U.S. tariffs are much lower today

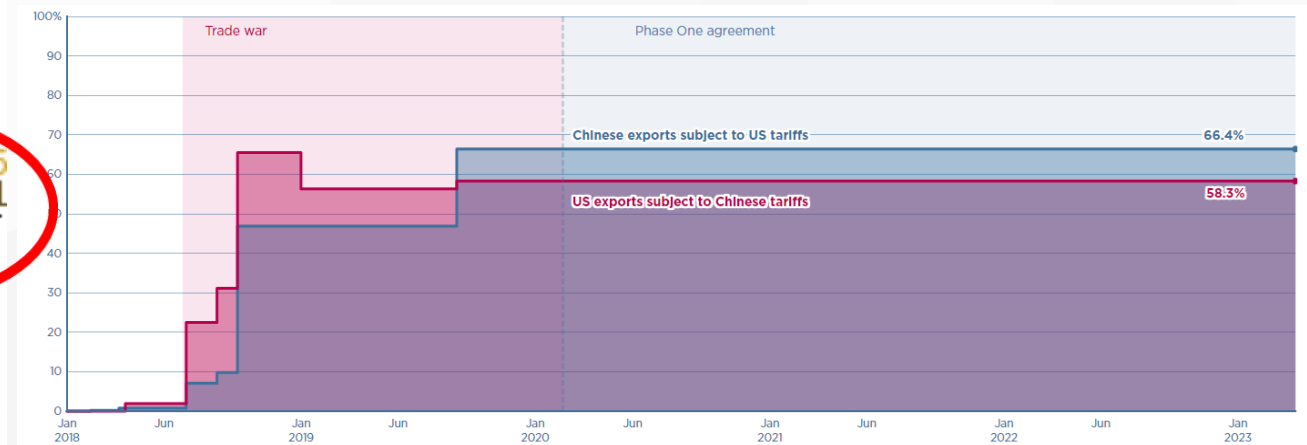
Duties as a share (%) of the total value of ____, 1821-2017



Note: "Dutiable imports" refers to the value, as appraised by the U.S. Customs Service, of all imported goods that are subject to import taxes or duties.
Source: U.S. International Trade Commission; Federal Reserve Bank of St. Louis.

PEW RESEARCH CENTER

- Section 232 Tariffs on Steel and Aluminum Imports: Initiated to safeguard U.S. national security, imposing 25% tariffs on steel and 10% on aluminum from most countries, with subsequent agreements introducing import quotas for specific partners to mitigate the impact on global trade. Section 232
- Section 301 Tariffs on Chinese Imports: Targeting approximately two-thirds of Chinese imports to combat unfair trade practices, significantly affecting global supply chains and necessitating strategic adjustments for compliance and cost management. Section 301



TARIFF CLASSIFICATION

It is the responsibility of the importer of record to use “reasonable care” to “enter,” “classify” and “value” the goods and provide any other information necessary to enable the CBP to assess the correct duties, collect accurate statistics, and determine whether all other applicable legal requirements are met. What Every Member of the Trade Community Should Know About: Tariff Classification.

The act of classifying goods requires an importer to be familiar with the Harmonized Tariff Schedule of the US.

To assist in meeting the reasonable care requirement, importers may request binding administrative rulings from the CBP, or may use the services of an expert in customs law and procedures to assist them. The CBP is responsible for fixing the final classification and valuation of the goods. CROSS



CBP VALUATION

Incoterms®
2020 by the International
Chamber of Commerce (ICC)



All merchandise imported into the United States is subject to appraisal. The Trade Agreements Act of 1979 (the Act), codified at 19 U.S.C. 1401a, et. seq., sets forth the rules for appraisal of imported merchandise. The Act sets forth six different methods of appraisal, and their order of preference. Under the Act, the preferred method of appraisal is transaction value.

- Transaction Value
- Transaction Value of Identical Merchandise
- Transaction Value of Similar Merchandise
- Deductive Value
- Computed Value
- Values if Other Values Cannot be Determined

COUNTRY OF ORIGIN

Country of origin (COO) refers to the country where a good is manufactured, produced, designed, or branded. Determining the origin of the goods is even more important in determining if a product is eligible for preferential tariff rates, including free trade agreement rates. When a good does NOT come entirely from a single country, the internationally recognized legal principle of substantial transformation is used to determine the origin of the good. Examples:

- Sugar from country A, flour from country B, dairy products from country C, and nuts from country D are taken to country E and undergo manufacturing to result in cookies. (The inputs were substantially transformed into a product of country E, in that a new type of goods resulted from processing)
- Fresh vegetables grown in various countries are taken to another country to be mixed together and frozen. (The vegetables were NOT substantially transformed into products of the country where mixing and freezing occurred, and the mixture must be labeled with the origin of each ingredient).
- Repackaging, dilution with water, and similar minor processes usually do NOT cause a substantial transformation. Assembly or disassembly may result in a substantial transformation, depending on the nature of the products involved and the complexity of the operations.

Rules of origin may vary.

301 and marking considerations.



FORCED LABOR

CBP enforces forced labor trade law under 19 U.S.C. 1307, which defines forced labor as all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer work or service voluntarily. This includes forced or indentured child labor.

CBP implements Section 307 of the Tariff Act of 1930 (19 U.S.C. §1307) through issuance of **Withhold Release Orders** (WRO) and Findings, and enforcement of the **Uyghur Forced Labor Prevention Act** (UFLPA) and Countering America's Adversaries Through Sanctions Act (CAATSA).

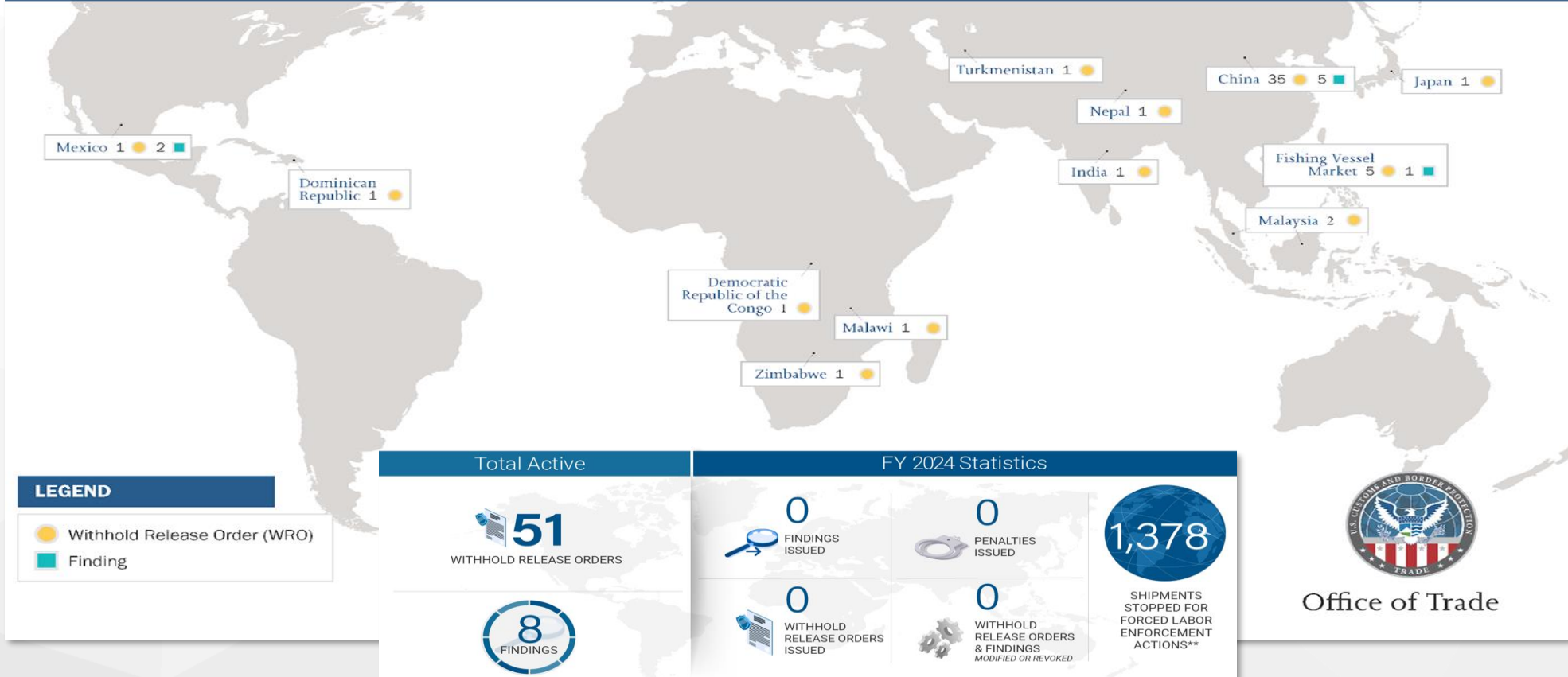
- CBP video [Understanding Forced Labor, U.S. Laws and CBP Enforcement](#) (11/2023).
- CBP [webinar on Forced Labor](#).



FORCED LABOR

Active Withhold Release Orders & Findings

This map provides an overview of all active WROs and findings around the world. CBP is currently enforcing 51 active WROs and 8 Findings across the globe.

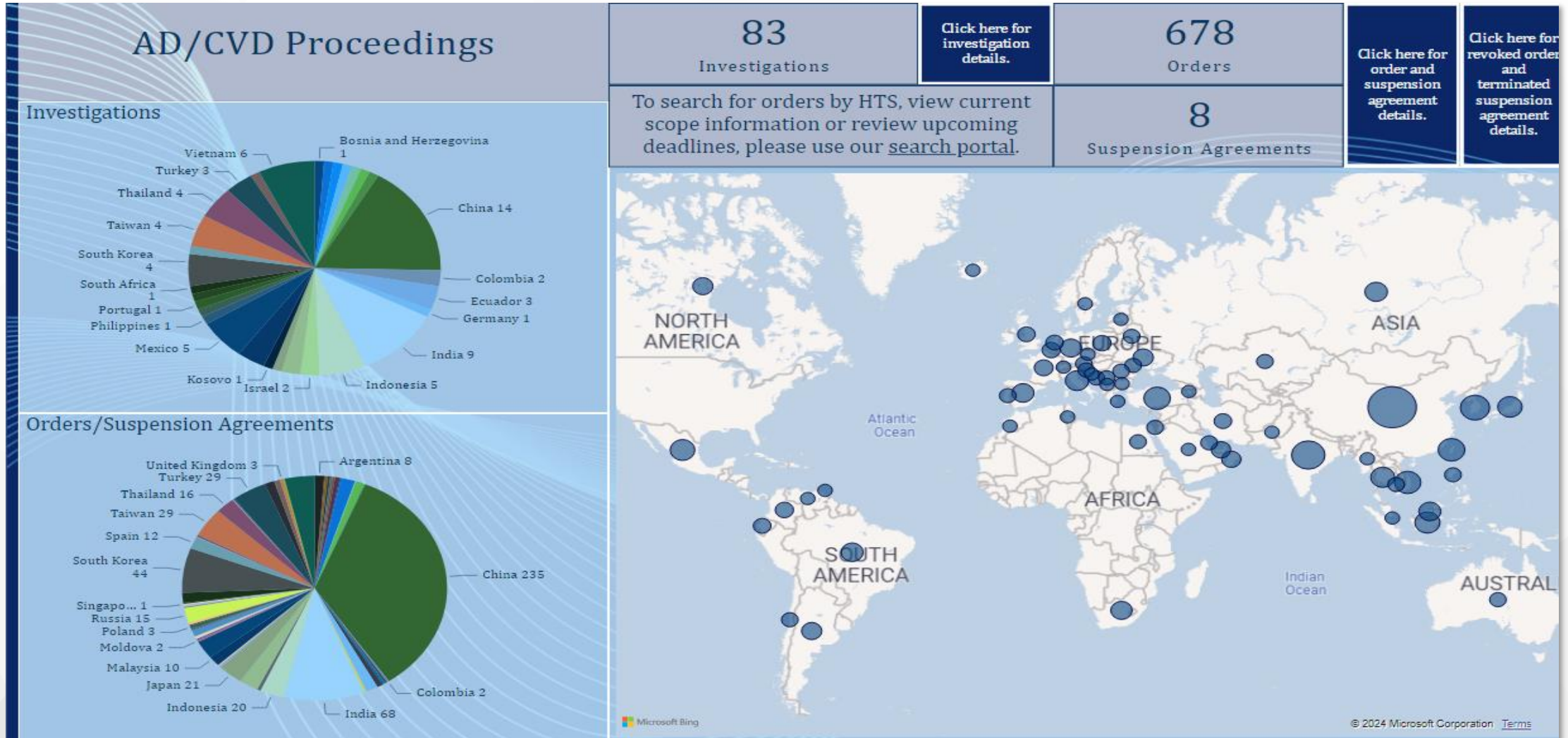


FORCED LABOR - SAMPLE CONTRACT CLAUSE



- **Forced Labor.** Buyer prohibits all forms of Forced Labor in its supply chain and will reject any shipment containing goods that involve the use of Forced Labor. Seller confirms that no form of Forced Labor was involved at any processing stage, directly or indirectly, e.g., in the sourcing, mining, production or manufacture in whole or in part, of any goods sold to Buyer. “Forced Labor” includes any form of child, prison, indentured, bonded, coerced or involuntary labor or labor obtained through human trafficking or other forms of exploitation as well as situations where any of the indicators provided by the International Labor Organization exist.
- **Subcontractors -** The Facility agrees to employ only persons whose presence is voluntary. The Facility agrees not to use any forced or involuntary labor, whether prison, bonded, indentured or otherwise. 强迫劳动：该基金同意只雇用人员，其存在是自愿的。该基金同意不使用任何强迫或非自愿劳动，无论是监狱，保税，契约或其他方面

ANTIDUMPING AND COUNTERVAILING



ANTIDUMPING AND COUNTERVAILING DUTY

- Antidumping (AD) and countervailing duties (CVD) are trade remedies that help US industries and workers when they are harmed by imports.
- AD duties are imposed on imports that are sold at less than fair market value. This can include goods that have been sold for export at a lower price than the cost of production or domestic prices. AD duties are intended to help level the playing field for domestic industries that are hurt by unfairly traded imports.
- CVD duties are imposed on imports that have benefited from government subsidies in their country of origin. This can result in substantially lower than normal prices. For example, if one country provides large subsidies to oil and gas firms, another country may impose a CVD on oil and gas from that country to put domestic oil and gas producers on an equal footing with foreign competitors.
- AD/CVD laws are intended to detect and deter circumvention of the law, while also facilitating legitimate trade. Commerce works closely with US Customs and Border Protection (CBP) on AD/CVD proceedings and are responsible for enforcing them.

CBP website on [Antidumping and Countervailing](#).

DOC – ITC website on [Antidumping and Countervailing](#)

ANTIDUMPING AND COUNTERVAILING SEARCH



The screenshot shows the homepage of the International Trade Administration (ITA) website. The header includes the ITA logo, navigation links (Contact Us, Careers, Help, FAQs, Find Local Export Assistance), a Zip Code field, and a Search bar. The main navigation bar lists categories: ABOUT ITA, TRADE TOPICS, SERVICES, DATA & ANALYSIS, PROGRAMS, PUBLICATIONS, and PRESS. The left sidebar contains links for Scope Information (Scope Descriptions, Supplemental Information, How to Request a Scope Ruling) and Contact Information (Enforcement and Compliance Customs Liaison Unit, Enforcement and Compliance International Trade Administration). The main content area is titled "Antidumping and Countervailing Duty Final Scope Rulings" and contains text explaining the ITA's role in providing scope descriptions for AD and CVD orders. It includes instructions on how to select a country from a drop-down menu to view product listings.

INTERNATIONAL TRADE ADMINISTRATION

Contact Us | Careers | Help | FAQs | Find Local Export Assistance | Zip Code

ABOUT ITA | TRADE TOPICS | SERVICES | DATA & ANALYSIS | PROGRAMS | PUBLICATIONS | PRESS

► **Scope Information**

- Scope Descriptions
- Supplemental Information
- How to Request a Scope Ruling

► **Contact Information**

Enforcement and Compliance
Customs Liaison Unit
(202) 482-0984

Enforcement and Compliance
International Trade
Administration

Antidumping and Countervailing Duty Final Scope Rulings

The International Trade Administration, Enforcement and Compliance Unit provides descriptions of the scope of products covered by antidumping (AD) and countervailing duty (CVD) orders.

Select from the list of countries below to view its list of products subject to rulings and to access any applicable determinations that clarify, or specifically include or exclude products from the scope of an AD or CVD order. These lists will be updated quarterly.

Supplemental information about these determinations can be found [here](#). If you have questions about this information, contact the Customs Liaison Unit.

Select a country in the drop down box for a listing of products subject to an AD or CVD order.

▼

ANTIDUMPING AND COUNTERVAILING SEARCH

U.S. Customs & Border Protection
U.S. Department of Homeland Security

Search

Message #/Case #

Clear

Search

[Advanced Search](#)

What's New

Updated in last 7 days 19


Total of 34,395 AD/CVD Messages

Count last updated: 2/25/24, 11:15 AM

Technical Support

Please contact CBP Technology Service Desk for any technical issues:
Call (800) 927-8729 or email cbp.technology.service.desk@cbp.dhs.gov
Please request that a ticket be directed to the ACE App Analysis & Support Team.

Public Message(s) ONLY: Search Results



Filter Search Results

Filter

Reset

Message #	Case Number & Short Case Name	Status	Message Date	Type	Subtype	POI/POR	Period Covered	Message Title
– No records to display –								

Items per page: 10 0 of 0

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TRADEANDCARGO.COM

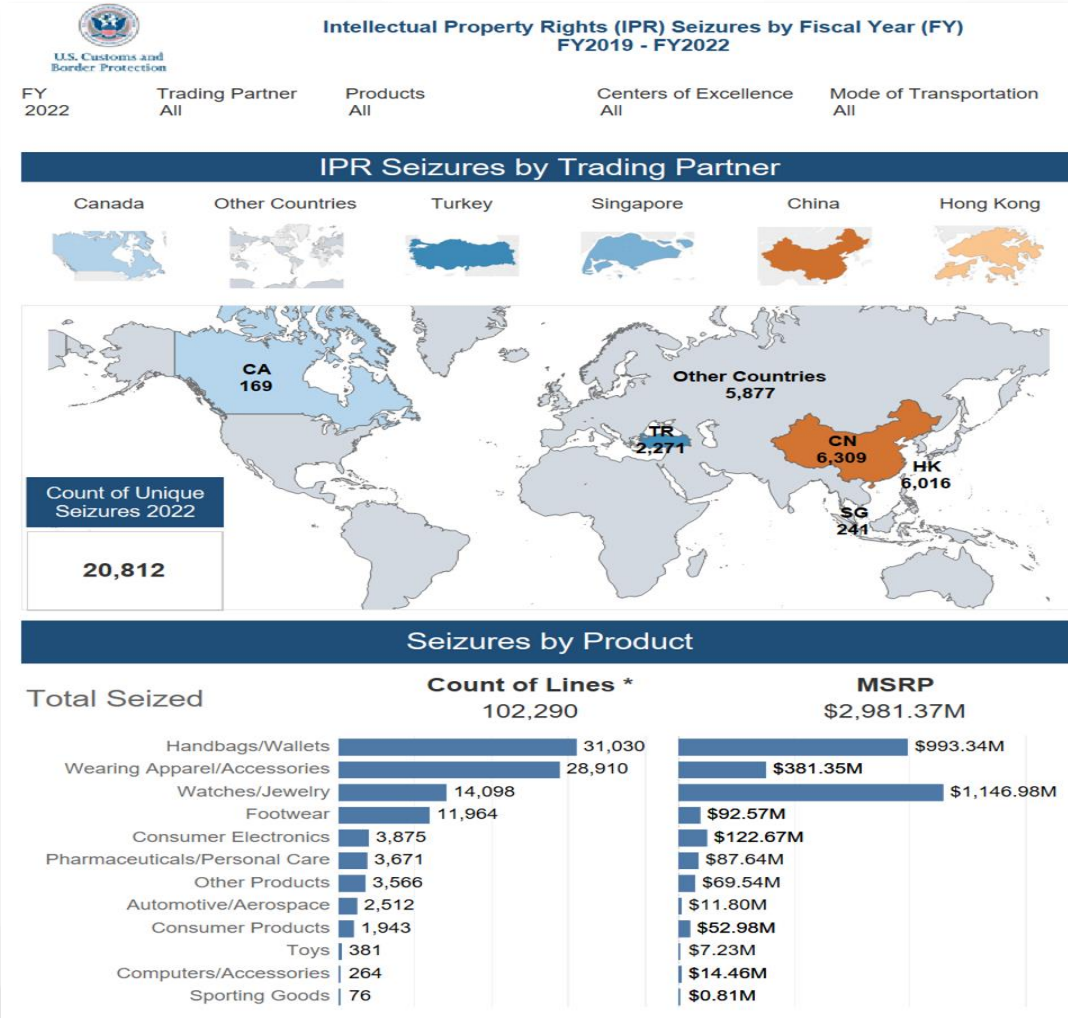
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AD and CVD - SAMPLE CONTRACT CLAUSE

“Seller represents, warrants, certifies and covenants that all sales made hereunder are made in circumstances that will not give rise to the imposition of new anti-dumping or countervailing duties under United States law (19 U.S.C. Sec. 1671 et seq.), European Union (Council Regulation (EC) No. 384/96 of December 22, 1995, Commission Decision No. 2277/96/ECSC of November 28, 1996), similar laws in such jurisdictions or the law of any other country to which the goods may be exported. To the full extent permitted by law, Seller will indemnify, defend and hold Buyer harmless from and against any costs or expenses (including any countervailing duties which may be imposed and, to the extent permitted by law, any preliminary dumping duties that may be imposed) arising out of or in connection with any breach of this warranty. In the event that countervailing or anti-dumping duties are imposed that cannot be readily or legally recovered from Seller, Buyer may terminate this Order with no further liability of any nature whatsoever to Seller hereunder.”



INTELLECTUAL PROPERTY



Authorized

Must be from the correct person at the company
(CBP will call this person).

Form

Approval must be in the form of a license, or letter of authorization.

Timing

Must be dated prior to the importation

MITIGATING RISK OF TRADEMARK ENFORCEMENT

United States Customs and Border Protection (CBP) has the authority to detain, seize, forfeit, and ultimately destroy merchandise seeking entry into the United States if it bears an infringing trademark or copyright that has been registered with the United States Patent and Trademark Office (USPTO) or the United States Copyright Office (USCOP), and has subsequently been recorded with CBP.

As an intellectual property right (IPR) owner, you can partner with CBP to receive border enforcement of your registered trademarks and copyrights through [CBP's e-Recordation Program](#).



Customs Recordation Number TMK 22-00675		CBP Recordation Effective Date 2022-08-19
		CBP Recordation Expiration 2031-01-03

Recordation Information	
Title	UL & DESIGN
Product	IC ELECTRICAL EQUIPMENT, USUALLY NOT OF A VOLTAGE EXCEEDING 600 V; FIRE FIGHTING AND FIRE PREVENTION EQUIPMENT; CHEMICALS SUCH AS DETERGENTS, FLAMMABLE LIQUIDS, ADHESIVES, PLASTICS, COATINGS, FUMIGANTS, SOLVENTS, FLAME RETARDANTS, REFRIGERANTS, CHEMICALS TO TREAT WATER AND SIMILAR CHEMICALS; BUILDING MATERIALS AND EQUIPMENT; HYDRAULIC EQUIPMENT; EQUIPMENT FOR HANDLING AND UTILIZATION OF HAZARDOUS LIQUIDS AND GASES, INCLUDING HEATERS, AIR CONDITIONERS, AND REFRIGERATION EQUIPMENT; EQUIPMENT AND SYSTEMS FOR PROTECTION AGAINST BURGLARY, THEFT, AND FIRE; SAFETY APPLIANCES AND AIR DUCTS; FABRICS AND DECORATIVE MATERIALS; PREFABRICATED COMMERCIAL, INDUSTRIAL AND RESIDENTIAL BUILDINGS OR BUILDING UNITS; RECREATIONAL VEHICLES; PLUMBING EQUIPMENT; AUTOMOTIVE EQUIPMENT; MARINE EQUIPMENT; MOTORS; MEDICAL INSTRUMENTS; LIGHTING EQUIPMENT; HEATING EQUIPMENT; INDUSTRIAL VEHICLES; PROTECTIVE CLOTHING AND FOOTWEAR; INSULATED AND INSULATING HAND TOOLS; POWDER ACTUATED TOOLS, MUSICAL INSTRUMENTS; OFFICE APPLIANCES, BUSINESS EQUIPMENT AND HOUSEHOLD CLOCKS; GAS AND OIL EQUIPMENT; ROOFING MATERIALS AND SYSTEMS; ELECTRICAL APPLIANCE AND UTILIZATION EQUIPMENT; AND ELECTRICAL CONSTRUCTION EQUIPMENT
Description	UL inside a circle line border. The certification mark as used by persons authorized by applicant certifies that representative samplings of the goods conform to the requirements of the applicant.
Owner of Intellectual Property Right	UI LLC.
Gray Market Importations Restricted	Yes
Registration Number	2391140
Point of Contact	Katrina Poole Email: katrina.d.poole@ul.com Phone: 9195491905

TRADEMARK - SAMPLE CONTRACT CLAUSE

“Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a perpetual, worldwide, exclusive, sub-licensable right and license to make, have made, use, sell, offer for sale and import products and provide services under the Licensed Intellectual Property throughout the License Term for the sole purpose of commercializing products and/or services in any and all commercial markets.

Such license will be exclusive, even as to Licensor. Licensor shall be given prior written notice of any sublicense or transfer of Licensee’s rights hereunder. The foregoing license will only be transferable to a party that agrees in writing to be bound by the terms of this Agreement in connection with any merger, acquisition, consolidation, or other business combination, or sale of all or substantially all of Licensee’s assets relating to the Licensed Intellectual Property.”

INTELLECTUAL PROPERTY RIGHTS AND INTERNATIONAL TRADE: AN OVERVIEW OF U.S. CUSTOMS AND BORDER PROTECTION’S ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

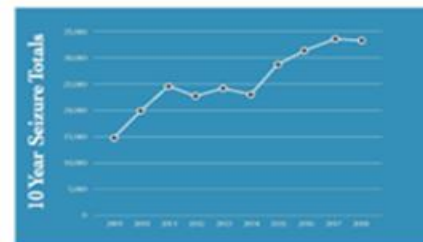
I. INTRODUCTION

On January 24, 2020, The Wall Street Journal reported:¹

The Trump administration is moving to curb the sale of imported counterfeit goods over the internet, warning electronic commerce platforms and warehouse operators of greater scrutiny and penalties if they don’t help ferret out fakes.

The Department of Homeland Security is set to release a report Friday outlining its immediate actions and longer-term goals for enlisting e-commerce players to combat counterfeit products that officials say undermine U.S. technology and manufacturing, harm bricks-and-mortar retailers and endanger consumers.

The new initiative, led by U.S. Customs and Border Protection and the White House,² comes the same month as an initial trade agreement with China that requires Beijing to take steps against counterfeiters or risk enforcement actions that could trigger new tariffs.



Source: U.S. Customs and Border Protection, “Intellectual Property Rights Fiscal Year 2018 Seizure Statistics” (August 2019) https://www.cbp.gov/sites/default/files/assets/documents/2019-Aug/IPR_Annual-Report-FY-2018.pdf



Bruce A. McDonald*



Cameron W. Roberts**

Intellectual property theft is a widespread commercial concern³ affecting international trade,⁴ national security,⁵ and public safety.⁶ United States (US) Customs and Border Protection (CBP) seizures of imported merchandise⁷ that violate intellectual property rights (IPR) are on the rise.⁸ The incidence of infringing merchandise at US borders has increased from 3,244 seizures in 2000 to 33,810 in 2018, according to the US Department of Homeland Security data.⁹

This article provides an overview of US and international IPR law from the standpoint of IPR owners¹⁰ and importers, describes the measures necessary for registration and enforcement of IP rights at the US border, and outlines common issues that arise in enforcement proceedings involving counterfeit and infringing merchandise. This article also summarizes the issues facing intellectual property owners and importers when allegedly counterfeit and pirated merchandise is seized by the government, either in an administrative proceeding brought by CBP or in a criminal proceeding by the US Justice Department. In short, this article facilitates a general understanding of IPR, how to protect IPR, and how to report and prevent infringement.¹¹

Customs Trade Partnership Against Terrorism



The Customs-Trade Partnership Against Terrorism is a voluntary supply-chain security program led by U.S. Customs and Border Protection focused on improving the security of private companies' supply chains with respect to terrorism.

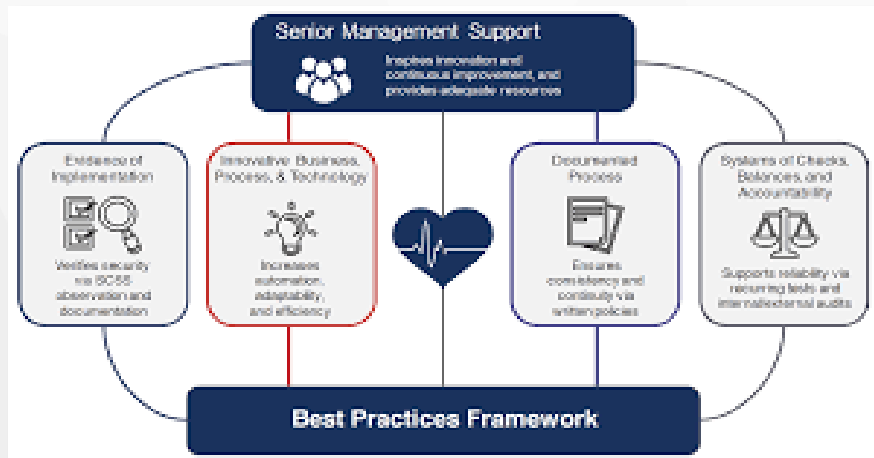
CTPAT Trade Compliance Program is a voluntary program that provides the opportunity for importers who have made a commitment of resources to assume responsibility for monitoring their own compliance in exchange for benefits. CBP will provide the new forced labor benefits to the greatest extent possible and practical.

[CTPAT website.](#)

[CTPAT introductory video.](#)

[CTPAT Five Steps to Risk Assessment Process Book.](#)

[CTPAT Trade Compliance Program Handbook \(2023\).](#)



QUESTIONS?



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