

GAO Highlights

Highlights of [GAO-15-78](#), a report to the Committee on Finance, U.S. Senate

Why GAO Did This Study

Under Section 337 of the Tariff Act of 1930, ITC investigates allegations of unfair import practices, including unlicensed use of intellectual property rights such as patents, copyrights, and trademarks. If ITC finds a violation of this law, it generally issues an exclusion order that directs CBP to deny entry of infringing products into U.S. commerce. CBP must determine, without inhibiting legitimate trade, whether products arriving at 328 U.S. ports are covered by exclusion orders.

GAO was asked to review CBP's enforcement of exclusion orders. This report (1) describes CBP's processes for enforcing exclusion orders and (2) assesses CBP's management of its enforcement process at ports of entry. GAO analyzed CBP and ITC documents and data from October 2009 through April 2014 and interviewed CBP and ITC officials.

What GAO Recommends

GAO recommends that CBP update its internal guidance with requirements to (1) routinely ensure that trade alerts are posted to the CBP intranet for each exclusion order, (2) routinely identify any orders whose changed conditions merit a CBP request that ITC rescind them, and (3) monitor timeliness of trade alert issuance. CBP concurred with recommendations one and three and described actions planned or under way to address them. However, CBP did not concur with recommendation number two. According to CBP, it is not mandated to identify potentially outdated orders and request that ITC rescind them. GAO continues to believe the recommendation is valid for reasons discussed in the report.

View [GAO-15-78](#). For more information, contact Kimberly M. Gianopoulos at (202) 512-8612 or gianopoulosk@gao.gov.

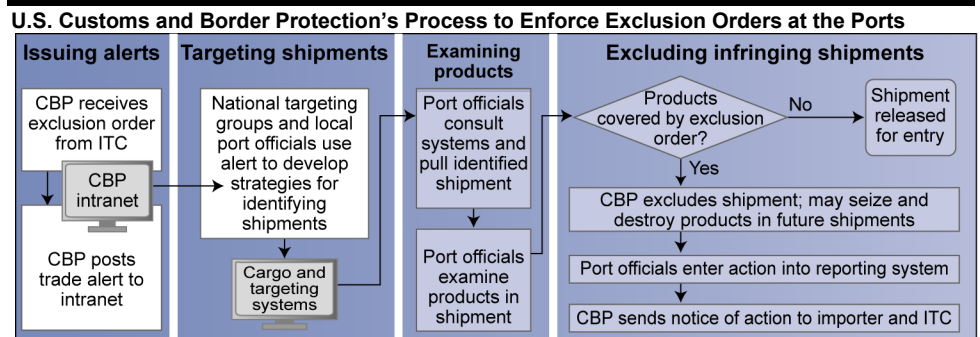
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INTELLECTUAL PROPERTY

U.S. Customs and Border Protection Could Better Manage Its Process to Enforce Exclusion Orders

What GAO Found

The Department of Homeland Security's U.S. Customs and Border Protection (CBP) uses two processes to enforce exclusion orders issued by the U.S. International Trade Commission (ITC): a four-phase process to detect and deny entry to or seize infringing products at U.S. ports and an administrative ruling process that determines in advance of importing whether products are covered by exclusion orders. In the first phase of the process to enforce exclusion orders at the ports, CBP drafts a trade alert that provides enforcement instructions to CBP national targeting groups and local officials at all ports of entry to identify shipments for examination; without an alert, officials said, it would be difficult for CBP components to enforce an exclusion order. From September 2010 through April 2014, CBP excluded 158 shipments of products, such as ink cartridges and footwear. Before a company attempts to import a certain product, it may request that CBP determine through its administrative ruling process whether the product is covered by a particular exclusion order.



Source: GAO analysis of CBP documents and interviews with CBP officials. | GAO-15-78

CBP U.S. Customs and Border Protection
ITC U.S. International Trade Commission

CBP's management of its exclusion order enforcement process at the ports contains weaknesses that result in inefficiencies and an increased risk of infringing products entering U.S. commerce. First, CBP does not routinely review ITC's list of exclusion orders or take other action to ensure that a trade alert has been posted to its intranet for each order. At GAO's request, CBP reviewed ITC's list of exclusion orders as of April 30, 2014, and reported that it had posted trade alerts for 83 of the 94 exclusion orders; however, it posted 17 of the 83 trade alerts after GAO's request for data. Without routinely taking action to ensure that trade alerts are posted to CBP's intranet, infringing products could enter into U.S. commerce. Second, CBP does not routinely review ITC's list of exclusion orders to identify orders that may be candidates for rescission by ITC. Requesting rescission of exclusion orders could enable CBP to focus its enforcement efforts more effectively and efficiently. Third, CBP's guidance lacks time frames for issuing trade alerts, which prevents CBP from monitoring timeliness. GAO found that it took CBP from 2 days to 3 months to request a posting of a trade alert to the intranet during the period from October 2009 through April 2014. Without actively managing trade alerts and establishing time frames for posting alerts, CBP management cannot hold staff accountable for timely enforcement of exclusion orders, and there is an increased risk of infringing products entering U.S. commerce.