



November 2014

INTELLECTUAL PROPERTY

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

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 According to CBP, it is not mandated to identify potentially outdated orders and request that ITC rescind them.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.

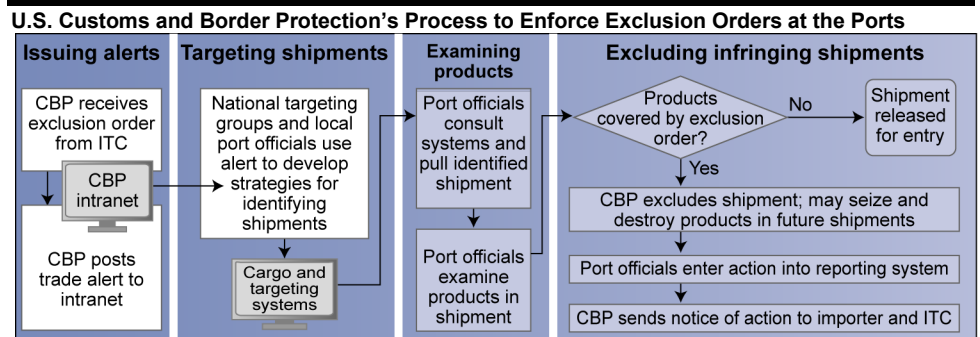
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U.S. Customs and Border Protection Could Better Manage Its Process to Enforce Exclusion Orders

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.

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Abbreviations

CBP	Customs and Border Protection
CROSS	Customs Rulings Online Search System
DHS	Department of Homeland Security
IPR Branch	Intellectual Property Rights Branch
IPR-NTAG	Intellectual Property Rights National Targeting and Analysis Group
ITC	International Trade Commission
OMB	Office of Management and Budget
USTR	United States Trade Representative

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November 19, 2014

The Honorable Ron Wyden
Chairman
The Honorable Orrin G. Hatch
Ranking Member
Committee on Finance
United States Senate

Intellectual property plays an important role in the U.S. economy. The nation's legal and regulatory system of intellectual property rights, according to a 2012 Department of Commerce report,¹ helps establish and sustain industries, drives innovation, and facilitates trade and commerce. Protecting intellectual property rights against infringement, however, is costly and complex. Companies may spend millions in litigation to protect their intellectual property rights, and determining whether specific imported products infringe on intellectual property rights can be complicated, particularly for technologically advanced products. Smartphones, for instance, combine software and hardware that undergo rapid changes in design and functionality. A single smartphone may have features and functions described in over 100,000 patents, including, for example, the phone's rounded corners or the particular finger movement needed to unlock the touch screen.

Under Section 337 of the Tariff Act of 1930 (hereafter referred to as Section 337), the U.S. International Trade Commission (ITC) investigates allegations of unfair import practices, including those that infringe on intellectual property rights, such as unlicensed use of patents, copyrights, and trademarks.² If ITC finds a violation of this law, it generally issues an exclusion order that directs the Department of Homeland Security's (DHS) U.S. Customs and Border Protection (CBP) to deny entry of infringing products into U.S. commerce.³ To enforce exclusion orders, CBP must determine whether products arriving at 328 U.S. ports of entry

¹Department of Commerce, *Intellectual Property and the U.S. Economy: Industries in Focus* (Washington, D.C.: March 2012).

²19 U.S.C. § 1337.

³ITC can issue a "cease and desist" order directing the violating parties to cease certain actions in addition to or in lieu of an exclusion order. 19 U.S.C. § 1337.

fall within the scope of exclusion orders, and as part of its mission, CBP endeavors to do so without inhibiting legitimate trade. In this report, we refer to the efforts that CBP undertakes to detect imports of infringing products as CBP's enforcement process at the ports. In addition to these enforcement efforts, CBP may be asked by companies to determine, in advance of importing certain products, whether those products are covered by a particular exclusion order, for instance, when a company has redesigned an infringing product such that it no longer infringes on the intellectual property right thereby falling outside the coverage of the exclusion order. In this report, we refer to these anticipatory efforts to facilitate enforcement as CBP's administrative ruling process.⁴

You requested that we review CBP's efforts to enforce exclusion orders. In this report, we (1) examine CBP's processes for enforcing exclusion orders and (2) assess CBP's management of its enforcement process at ports of entry. In this report, we neither take a position on, nor do we address, the matters pending in ongoing litigation between Microsoft and DHS related to CBP's enforcement of an exclusion order.⁵

To examine CBP's exclusion order enforcement processes and assess CBP management of its enforcement process at the ports, we (1) reviewed relevant laws, regulations, and CBP internal guidance, such as directives and procedures, and (2) interviewed CBP officials at headquarters, the field offices, and the ports, as well as officials at ITC and the Office of Management and Budget's (OMB) Office of the Intellectual Property Enforcement Coordinator. We selected ports with experience in enforcing exclusion orders as shown by CBP exclusions data from September 16, 2010, through April 30, 2014.⁶ We also selected ports where we could discuss and observe CBP's exclusion order enforcement process for shipments arriving in land, sea, and air environments. We visited the ports of Buffalo and John F. Kennedy

⁴See Administrative Rulings, 19 C.F.R. Part 177. These regulations detail CBP's general processes to respond to an importer's request to obtain certainty in its import transaction about the admissibility of its product.

⁵The litigation involves CBP's enforcement efforts pertaining to an exclusion order issued by ITC, finding a violation of Section 337 because certain Motorola products had infringed Microsoft's patent rights. *Microsoft Corporation v. Dep't of Homeland Sec. et al*, 1:13-cv-01063-RWR (D.D.C. July 12, 2013).

⁶We used data starting on September 16, 2010, because CBP started tracking exclusions in its exclusion order notification and tracking system on this date.

International Airport in New York and Los Angeles/Long Beach Seaport and Los Angeles International Airport in California. To understand CBP's future exclusion order enforcement efforts, we interviewed CBP officials from the Electronics Center of Excellence and Expertise in Los Angeles, California; the Industrial and Manufacturing Materials Center of Excellence and Expertise in Buffalo, New York; and the Pharmaceuticals, Health, and Chemicals Center of Excellence and Expertise in New York, New York. The information gathered from our site visits cannot be generalized to all ports and field offices. We evaluated CBP's management of its enforcement process at the ports against requirements established by its own internal guidance and by government-wide internal control standards.⁷ We reviewed all exclusion orders in effect as of April 30, 2014, and collected CBP data on internal trade alerts used for targeting shipments of potentially infringing products. We also analyzed CBP data on the number of shipments CBP excluded from entry from September 16, 2010, through April 30, 2014. Using ITC exclusion order issuance dates and CBP's data on trade alert issuance dates, we analyzed the number of workdays the CBP officials took to request a posting of trade alerts to the CBP intranet from exclusion orders issued from October 1, 2009, through April 30, 2014. To assess the reliability of the data CBP provided to us, we interviewed agency officials and reviewed information regarding the underlying data systems and the checks, controls, and reviews used to generate the data and ensure their accuracy and reliability. We found the data sufficiently reliable for our purposes. For more information about our scope and methodology, see appendix I.

We conducted this performance audit from November 2013 to November 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁷Office of Management and Budget, *Management's Responsibility for Internal Control*, OMB Circular No. A-123 (Washington, D.C.: Dec. 21, 2004) and GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

Background

CBP is responsible for enforcing exclusion orders, which ITC issues upon a final determination of a violation of Section 337 and after consideration of public interest factors enumerated in the law.⁸ Unlawful activities covered by Section 337 include importing into the United States articles that infringe upon certain intellectual property rights or other unfair import practices described by Section 337.⁹ According to ITC, most Section 337 investigations involve allegations of patent infringement. The ITC generally completes a Section 337 investigation within 12 to 18 months, according to ITC officials. The length of an investigation may be influenced by the number of companies alleged to be importing infringing products; the number of patent infringements, or other unfair import practices, involved in the allegations; the complexity of the technology involved; the ITC staff's workload; and other factors. The ITC's investigation process consists of the seven steps shown in figure 1 and briefly summarized below.¹⁰

Figure 1: Summary of the U.S. International Trade Commission's Section 337 Investigation Process



Source: GAO analysis of ITC data and interviews with officials. | GAO-15-78

1. **Section 337 complaint:** A complainant (e.g., the intellectual property rights holder) files a complaint containing detailed facts alleging a violation of Section 337 and names the proposed respondents—the companies alleged to be involved in the manufacture, production, sale, or importation of infringing products. In response to a *Federal Register* notice published upon receipt of the complaint, the respondents and members of the public may make comments on the public interest issues arising from the complaint and potential

⁸19 U.S.C. § 1337 (d)(1). The ITC may also issue a temporary exclusion order if the requirements of Section 337(e) are met (19 U.S.C. § 1337(e)) or where the named respondents are found in default under Section 337(g) (19 U.S.C. § 1337(g)).

⁹19 U.S.C. § 1337(a).

¹⁰Generally outlined in 19 C.F.R. Part 210 and 19 U.S.C. § 1337.

exclusion orders. The complainant may respond to these public interest submissions.

2. *Decision to institute investigation:* The ITC's Office of Unfair Import Investigations examines the complaint for sufficiency and compliance with all ITC rules and requirements. The ITC generally makes the decision to institute an investigation within 30 to 35 days.¹¹
3. *Public notice of investigation:* If the ITC determines to institute an investigation, it issues a public notice in the *Federal Register* commencing an investigation based on the complaint. The notice date establishes the official start of the Section 337 investigation. The ITC will serve a copy of the complaint and notice of the investigation to all respondents named in the investigation and to the embassies in Washington, D.C., of the foreign respondents' countries.
4. *Investigation:* The ITC delegates the investigation to the Chief Administrative Law Judge who assigns the case to an administrative law judge to preside over the proceedings. When appropriate, the Office of Unfair Import Investigations is also named as a party to the investigation. The presiding judge sets a target date by which the ITC investigation should be completed. The parties, including complainants and respondents, present information such as evidence and arguments with respect to alleged unlawful importations or sales.
5. *Initial determination:* The presiding administrative law judge holds a hearing approximately 8 to 10 months after the public notice of investigation. After the hearing, the judge issues an initial determination as to whether the respondents violated Section 337 and, if appropriate, a recommendation for remedy (the recommended determination). The initial determination is issued no later than 4 months before the target date set by the presiding judge for completion of the investigation. The ITC invites the parties and the public to submit comments regarding the public interest considerations through a *Federal Register* notice published within 30 days of the issuance of the recommended determination.
6. *Review:* The ITC may determine to review the initial determination within 60 days of its issuance. If the ITC decides to review the initial

¹¹The ITC will decide whether to institute an investigation within 30 days unless certain conditions apply such as exceptional circumstances that preclude adherence to the 30-day deadline. Moreover, the ITC will determine whether to institute an investigation within 35 days if a motion for temporary relief is filed with the complaint. 19 C.F.R. § 210.10(a).

determination, it identifies the issues under review, and requests briefings from the parties, including the complainants and respondents, on matters such as the substantive issues affecting whether there is a violation and on the remedy. The ITC also requests written submissions from the parties, other government agencies, and the public regarding remedy, bonding, and public interest.¹² At the end of the review period, the ITC issues a final decision to affirm the initial determination, modify it, reverse it, or refer the matter back to the presiding administrative law judge for further proceedings.

7. *Final determination:* The ITC publishes notice of its final determination in the *Federal Register*. If the ITC determines that there is a violation, it also determines the appropriate remedy after considering the public interest. The remedies may include an exclusion order. The ITC's determination, the resulting orders, and the record supporting its determination are transmitted to the President of the United States, the United States Trade Representative (USTR), the Secretary of the Treasury, and CBP. The exclusion order is e-mailed to CBP on the date of issuance for enforcement.¹³ According to CBP officials, the ITC notifies CBP of the exclusion order by e-mail on the same day that it issues an exclusion order and thereafter meets with CBP regarding the involved exclusion order.

There are two types of exclusion orders: general and limited. General exclusion orders direct CBP to exclude all infringing products without regard to source; limited exclusion orders direct CBP to exclude infringing products from a specified company or companies. For example, a general exclusion order on infringing printer cartridges may affect all importers of printer cartridges, whereas a limited exclusion order directs CBP to exclude covered products from named respondents. Based on ITC data,

¹²Public interest includes consideration of public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles, and the interests of U.S. consumers.

¹³Upon the ITC's issuance of an exclusion order, the USTR, on behalf of the President, begins a 60-day review process to decide whether to disapprove the ITC's determination for policy reasons. During this review period, companies are allowed to continue importing if they secure a bond, assuming a bond is required. Usually the USTR takes no action with respect to the ITC's determination and the exclusion order remains in effect. The complainant can then be compensated for any infringing products imported during this period by recovering the bond money through an ITC administered process. If the USTR disapproves the ITC's determination, the products are permitted to enter U.S. commerce. The USTR has disapproved an ITC determination one time since the President assigned this authority to the USTR in 2005.

there were 94 exclusion orders in effect as of April 30, 2014, about half of which were general exclusion orders that affect a greater number of companies than limited orders.

Definitions of Patents, Trademarks, and Copyrights according to the U.S. Patent and Trademark Office

A **patent** is an intellectual property right granted by the government of the United States of America to an inventor “to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States” for a limited time in exchange for public disclosure of the invention when the patent is granted.

A **trademark** is a brand name or service mark that includes any word, name, symbol, device, or any combination, used or intended to be used to identify and distinguish the goods/services of one seller or provider from those of others, and to indicate the source of the goods/services.

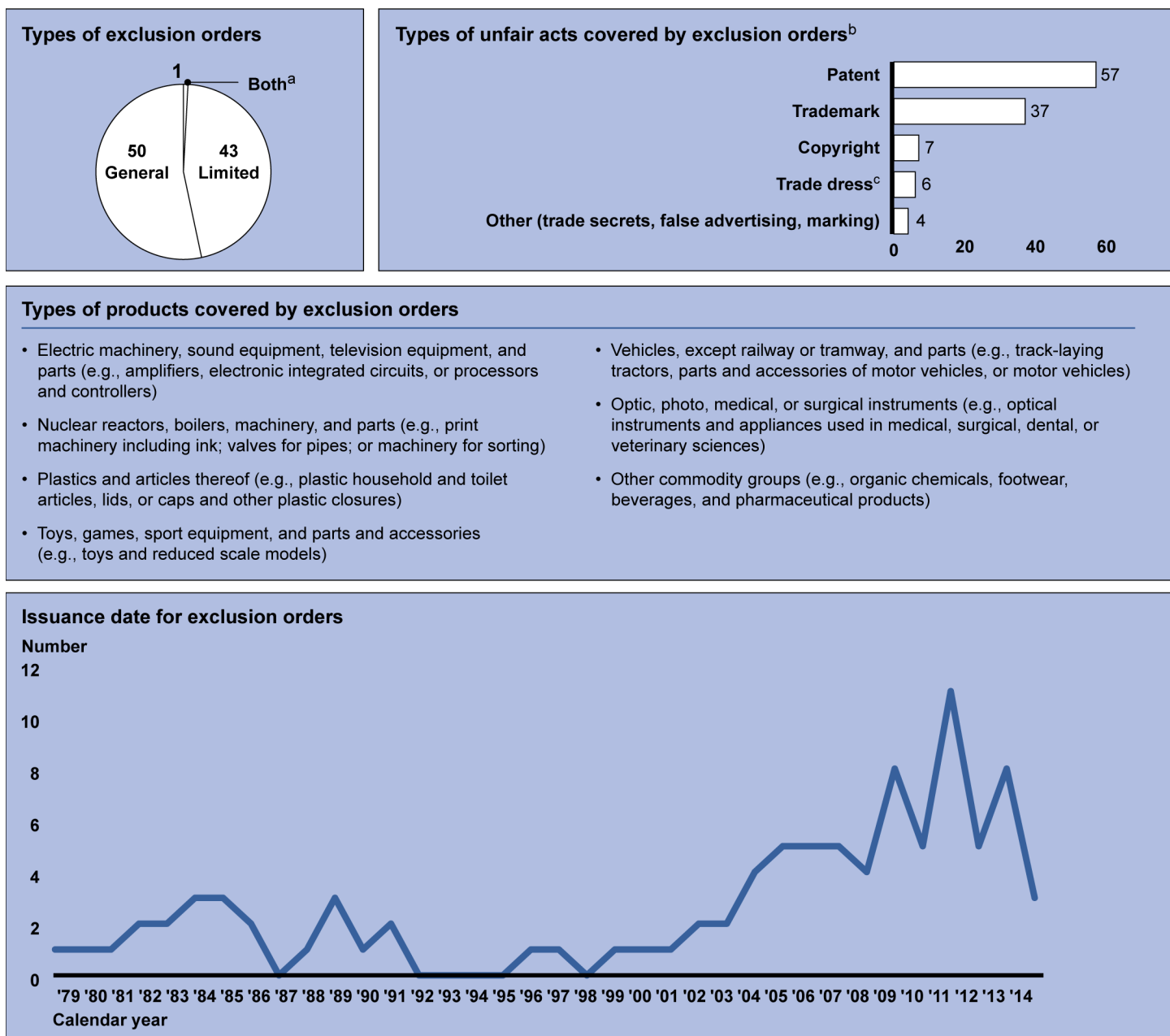
A **copyright** protects original works of authorship, such as writings, music, and works of art that have been tangibly expressed.

Source: U.S. Patent and Trademark Office | GAO-15-78

Exclusion orders cover a range of unfair acts, such as patent, trademark, and copyright infringement, as well as trade dress infringement, trade secret misappropriation, false advertising, and false designation of origin. Of the 94 exclusion orders in effect as of April 30, 2014, about 60 percent involved products such as integrated circuits, computer components, consumer electronics products, and chemical compositions that infringe U.S. patents. The 94 exclusion orders covered a range of products, such as electronic goods; machinery parts; plastic plates, lids, footwear, and toys; motor vehicle parts and accessories; energy drinks; and cigarettes. Of the 94 exclusion orders, more than half were issued in 2005 through 2014; the oldest was issued in 1979. Exclusion orders can be active until the protected intellectual property rights expire or ITC rescinds the orders.¹⁴ See figure 2 for an overview of exclusion order characteristics.

¹⁴For the purposes of this report, “rescission” refers to the revocation, cancellation, or repeal of an exclusion order. In this instance, ITC has the authority to rescind an exclusion order if it determines that the conditions that required the exclusion order have changed such that a rescission is appropriate. 19 U.S.C. § 1337(k) and 19 C.F.R. § 210.76 (a)(b).

Figure 2: Exclusion Orders: Types, Unfair Acts Covered, Product Categories, and Issuance Dates of Exclusion Orders in Effect as of April 30, 2014



Source: GAO analysis of U.S. Customs and Border Protection and U.S. International Trade Commission data. | GAO-15-78

^aU.S. International Trade Commission (ITC) Investigation Number 337-TA-487 resulted in both a limited exclusion order and a general exclusion order, but it is enforced by U.S. Customs and Border Protection as a single exclusion order.

^bThe types of unfair acts listed do not total 94 because some exclusion orders may cover multiple intellectual property rights. For example, Investigation Number 337-TA-780 covers a utility patent, a design patent, and a trademark.

^cAccording to ITC, trade dress is a product's total appearance and image, including features such as size, texture, shape, colors, and graphics.

CBP Uses Two Processes to Enforce Exclusion Orders, Depending on Whether Products Have Already Been Shipped

CBP uses two processes to enforce exclusion orders: 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. Enforcement efforts begin when CBP receives the exclusion order from the ITC.¹⁵ CBP's Office of International Trade and Office of Field Operations administer a process for enforcing exclusion orders at the ports that involves four phases: issuing trade alerts, targeting shipments, examining products, and excluding infringing shipments. CBP's Intellectual Property Rights (IPR) Branch within the Office of International Trade uses an administrative ruling process that upon request, determines in advance of importing whether products are covered by exclusion orders. (See app. II for an organization chart showing the CBP offices involved in the enforcement processes.) Companies with existing products or companies that have redesigned products such that they no longer infringe on the intellectual property rights, thereby falling outside the coverage of the exclusion order, may request that CBP determine through its administrative ruling process whether the companies can import the specified products without violating the order. CBP officials said that these companies generally submit their requests for an administrative ruling around the time when the exclusion order is issued.

CBP Uses a Four-Phase Process to Enforce Exclusion Orders at the Ports

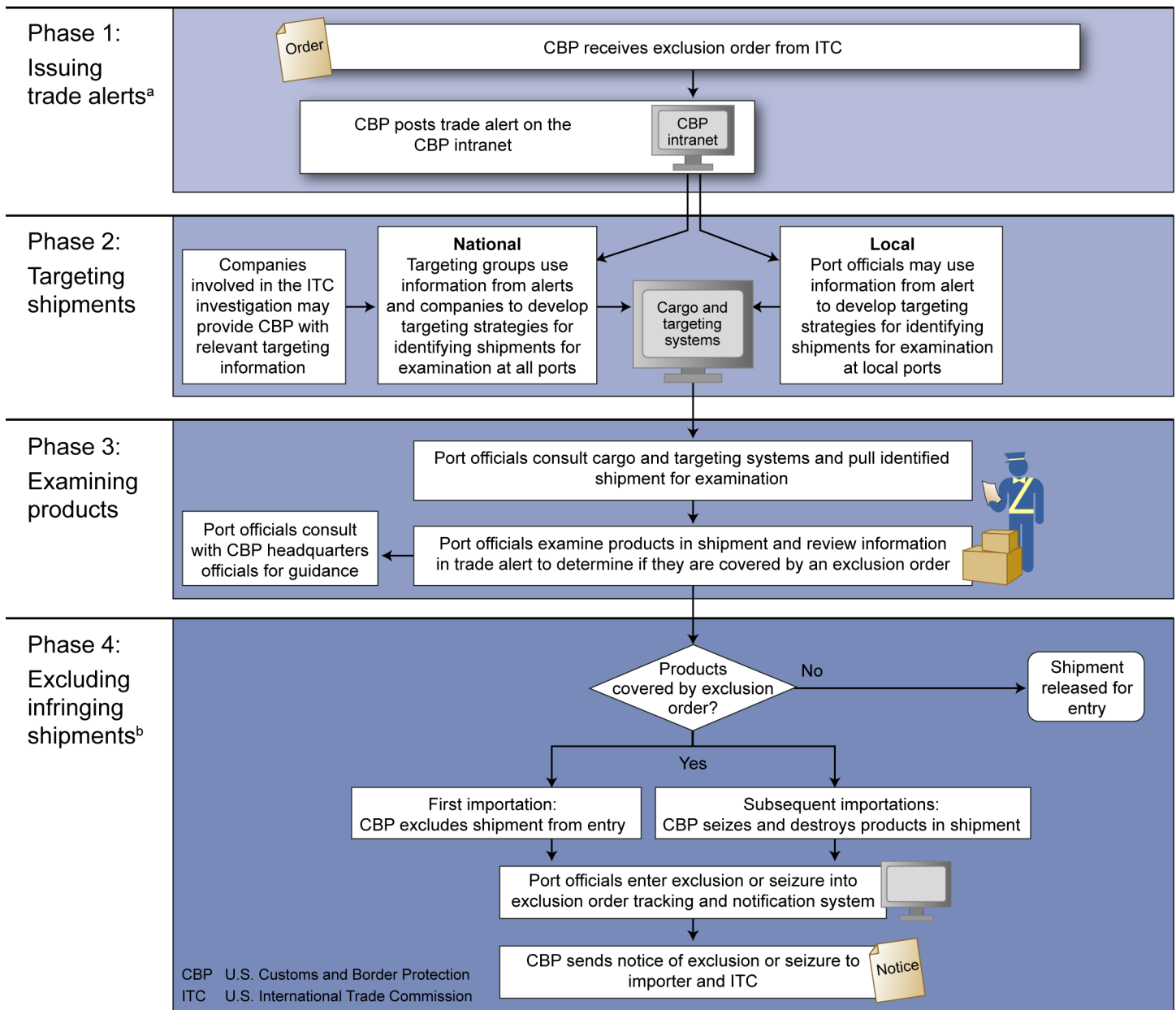
As shown in figure 3, CBP's process to enforce exclusion orders at the ports has four phases. In the first phase, upon receiving an exclusion order from ITC, CBP drafts a trade alert that provides enforcement instructions to CBP national targeting groups and officials at all ports of entry.¹⁶ IPR Branch officials said the trade alert generally triggers CBP's enforcement at the ports; without an alert, officials said, it would be difficult for CBP components to enforce an exclusion order. In the second

¹⁵19 U.S.C. § 1337(d)(1).

¹⁶CBP national targeting groups develop targeting strategies for identifying shipments with products subject to exclusion orders.

phase, the national targeting groups and local port officials may develop targeting strategies for each exclusion order to detect shipments with potentially infringing products for examination. In the third phase, port officials examine targeted shipments to determine whether the products are covered by exclusion orders. Lastly, port officials exclude or seize shipments with infringing products, notify importers and ITC of exclusions, and document exclusions in a CBP tracking system.

Figure 3: U.S. Customs and Border Protection's Process to Enforce Exclusion Orders at the Ports



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

Notes: Not shown in the graphic is CBP's exclusion order enforcement process during the United States Trade Representative's 60-day review period. During this review period, companies are allowed to continue importing if they secure a bond in advance of importing products, assuming a bond is required.

^aCBP officials said that companies interested in determining whether their existing or redesigned products are covered by exclusion orders generally submit their requests for an administrative ruling around the time that CBP receives notice of the exclusion order from ITC. See the discussion of CBP's administrative ruling process later in this section.

^bAfter an importer's first excluded shipment, ITC generally will issue a seizure and forfeiture order to CBP, which directs CBP to seize, rather than merely deny entry to, any future shipments of the same infringing products from the importer.

Phase 1: Issuing Trade Alerts

Using information from the exclusion order, IPR Branch officials, sometimes with assistance from CBP's Electronics Center of Excellence and Expertise (Electronics Center),¹⁷ draft trade alerts with enforcement instructions to national targeting groups and local port officials. The trade alert generally includes information such as a description of the protected intellectual property right, names of the companies known to import infringing products, specific enforcement instructions, and the CBP national groups responsible for targeting shipments. According to standard operating procedures, IPR Branch officials post the trade alert on the CBP intranet, an internal network that officials said is accessible to all CBP officials. Upon receipt of any additional information from the ITC or the complainants,¹⁸ the IPR Branch updates trade alerts as necessary. IPR Branch officials told us that the trade alert generally triggers CBP's enforcement at the ports; without an alert, officials said, it would be difficult for all CBP components to enforce an exclusion order.

Phase 2: Targeting Shipments

The second phase of CBP's enforcement process involves the development of national and local targeting strategies to help identify shipments with products covered by exclusion orders for possible examination.

¹⁷In fiscal year 2012, CBP launched Centers of Excellence and Expertise to provide a single point of contact for participating importers when processing their shipments. Each center provides support to importers within key industry sectors and consists of CBP staff at U.S. ports with related commodity expertise. As of November 2014, CBP officials said that 1 of the 10 centers—the Electronics Center—was fully established and participated in CBP's enforcement of exclusion orders. For more information on the centers, see app. III.

¹⁸Throughout this report, "complainant" refers to the party in an ITC investigation who initiated the investigation and whose intellectual property rights or domestic industry is protected by an exclusion order. "Respondent" refers to a party in an ITC investigation whose product or products are alleged to infringe the intellectual property rights of the corresponding complainant, or who has otherwise been proved to have committed unfair acts or methods of competition in violation of Section 337 (e.g., trade secret misappropriation).

National targeting: At the national level, the Intellectual Property Rights National Targeting and Analysis Group (IPR-NTAG) or the Electronics Center develops targeting strategies for identifying shipments with products covered by exclusion orders. Using information found in the trade alerts and other sources, officials from these groups analyze data on countries of origin, ports of entry, transportation modes, importers, shippers, and manufacturers to develop strategies. According to Electronics Center officials, information from meetings with complainants and respondents may help inform the development of their targeting strategies.

To carry out national targeting strategies, IPR-NTAG and Electronics Center officials primarily use two targeting methods: user-defined rules and cargo hold requests.

- *User-defined rules:* Based on their analysis, officials may create a user-defined rule, which is a set of criteria that is entered into CBP's national targeting system.¹⁹ If an incoming shipment meets the criteria established in the rule, the system will identify the shipment for potential examination. User-defined rules provide continuous targeting of shipments arriving at all ports for as long as the rule exists in the system. IPR-NTAG officials said they generally test a rule for 1 to 2 weeks to determine the number of shipments identified for examination and, of those shipments examined, the number found not to contain infringing products (negative exams). Based on the resulting proportion of negative exams, officials will adjust the rule to avoid overtargeting and ensure that the number of shipments identified by the rule does not inhibit the flow of legitimate trade. Officials said that targeting with user-defined rules is straightforward for limited exclusion orders because these identify infringing importers and may also specify the shipments' countries of origin and ports of entry. For example, officials developed a user-defined rule for a limited exclusion order covering certain digital televisions; the exclusion order listed the companies known to import infringing products. By contrast, officials said that national targeting with user-defined rules may not be feasible for general exclusion orders

¹⁹CBP's Automated Targeting System compares traveler, cargo, and conveyance information against law enforcement, intelligence, and other enforcement data to support CBP in identifying individuals and cargo that need additional review across the different means of transportation.

because these are broadly scoped and user-defined rules can only be refined up to a point. General exclusion orders tend to cover products that fall under a general description, such as rubber-soled shoes, with a large volume of shipments and from multiple companies and countries of origin. As a result, user-defined rules for some general exclusion orders would identify hundreds of shipments for examination at multiple ports, resulting in numerous negative exams, thus inhibiting the flow of legitimate trade.

Officials said that user-defined rules are revised based on targeting results and any new information from complainants and respondents. If user-defined rules do not result in the detection of infringing shipments over time, officials will terminate them. However, targeting officials may create a new user-defined rule if a complainant reports to the IPR Branch that it is finding products within U.S. commerce that should have been excluded, or if a complainant gains new information on companies that are importing infringing shipments.

- *Cargo hold requests:* Officials said that if they cannot create user-defined rules, as in the case of a general exclusion order, they may manually review the information in their cargo and targeting systems and identify incoming shipments for examination based on information in the trade alert.²⁰ When they identify such shipments, officials send cargo hold requests to specific ports designating the shipments to be pulled for examination. These cargo hold requests may provide information such as the relevant exclusion order; a link to the trade alert; examination instructions; information relating to the importer, manufacturer, or products; and contact information for any necessary follow-up communication with the targeting groups.

Unlike user-defined rules, cargo hold requests apply only to shipments at specific ports and occur only when officials conduct manual reviews of information on arriving shipments. IPR-NTAG officials said they review information on incoming shipments as part of their regular job duties, but they noted that exclusion order enforcement is one of many enforcement activities they must

²⁰In addition to its Automated Targeting System, CBP may also consult its Automated Commercial Environment, a system that processes information on shipments submitted by importers and exporters, enabling CBP to learn more about incoming shipments.

conduct.²¹ As a result, these officials said the number of cargo holds requested varies based on how individual officials prioritize their responsibilities to manage their workloads.

Local Operation: Interlocking Laminate Flooring

From March to May 2014, U.S. Customs and Border Protection (CBP) officials at the Port of Los Angeles/Long Beach said they conducted an operation targeting shipments of interlocking laminate flooring, which is covered by a general exclusion order. Based on their research, officials had found that 70 percent of the companies importing infringing products imported them through this port. Port officials said they targeted 58 shipments; 26 of the 58 shipments, or 45 percent, contained products that were covered by the exclusion order. As a result of the operation, officials said that the importers began sourcing their shipments from licensed manufacturers to comply with the exclusion order.

Source: CBP. | GAO-15-78

Local targeting: Local port officials may conduct local targeting for exclusion orders when resources are available and such targeting would not duplicate national targeting efforts. Port officials told us they specialize in the commodities that commonly arrive at their ports and use their expertise to analyze data on incoming shipments to identify suspicious shipments for examination. According to port officials, local targeting methods include developing local user-defined rules, generating cargo hold requests, and conducting port-based operations, which are targeting exercises conducted within a specific time frame on specific shipments of products at specific ports.²² Port officials also told us that the amount of local targeting conducted varies based on how individual officials prioritize their responsibilities to manage their workloads.

Phase 3: Examining Products

Based on the results of the various targeting methods, port officials may examine products in the identified shipments to determine whether the products are covered by exclusion orders. Officials at the ports we visited told us that they will frequently seek guidance from IPR Branch officials when determining whether a product is covered by an exclusion order. At the initiative of the complainant, CBP officials may receive training in determining how products in shipments may infringe upon the intellectual property rights of the complainant's product. For example, Electronics Center officials said that a company that produces inkjet printer cartridges contacted CBP and arranged to provide training to port officials on the features of its cartridges and how to determine if imported products violate the company's patents. In addition, CBP officials may use specialized equipment to gain additional information on the imported products. For example, to quickly determine if imported pills contain

²¹CBP enforces laws for 40 other government agencies, such as the U.S. Fish and Wildlife Service, the U.S. Department of Agriculture, and the Centers for Disease Control and Prevention.

²²IPR-NTAG officials said though they have initiated operations for other types of intellectual property enforcement, they had not initiated operations of this nature for exclusion order enforcement as of April 2014.

Phase 4: Excluding Infringing Shipments

formulas that are covered by an exclusion order, port officials told us they use handheld tools that can scan powder in pills and report the formula used. CBP officials can also consult a network of six internal labs to conduct analyses on products as part of their fact finding. For example, Electronics Center officials said they use the electronics lab in San Francisco, California, if they must examine a high-tech product with complex patents, such as mobile phone software or hardware.

If port officials determine that a product is covered by an exclusion order, CBP excludes the shipment from entering U.S. commerce and notifies the importer of its action. At this point, the importer may decide to return the shipment to the port of origin or export it to another country.²³ After an importer's first excluded shipment, ITC generally will issue a seizure and forfeiture order to CBP, which directs CBP to seize, rather than merely deny entry to, any future shipments of the same infringing products from the importer.²⁴ Once ITC issues the seizure and forfeiture order, CBP officials said they update the trade alert and targeting instructions in the targeting system so that port officials know to seize any future shipments of the infringing products.²⁵ However, if port officials determine that a product is not covered by an exclusion order, the shipment is released for entry into the United States.²⁶

Port officials enter data on excluded or seized shipments into CBP's exclusion order notification and tracking system. Developed in 2010 in response to a GAO recommendation, the system enables port officials to enter excluded shipments into the system and document the date, time,

²³According to an IPR Branch official, an ITC exclusion order generally allows an importer whose shipment has been excluded to request a warehouse entry or an application for foreign trade-zone admission from CBP. The official further explained that an importer can also protest an exclusion by filing a protest with the director of the port where the exclusion occurred.

²⁴19 C.F.R. § 210.75(b)(6).

²⁵According to CBP, if a shipment is seized pursuant to an ITC seizure and forfeiture order, the importer can file a petition for administrative relief pursuant to 19 U.S.C. § 1618 or, by filing a claim and cost bond, seek judicial review in accordance with 19 U.S.C. § 1608.

²⁶Port officials may allow a shipment to enter the country and then take up to 30 days to determine whether the product is covered by an exclusion order. If CBP determines that the product is covered by an exclusion order after it has entered into U.S. commerce, CBP will demand redelivery of the shipment. See 19 C.F.R § 113.62(d).

location, and action taken for each excluded shipment.²⁷ The system then electronically notifies the port director and the IPR Branch of the exclusion or seizure. The port director sends a letter explaining the exclusion or seizure to the importer, the IPR Branch, and the ITC.

When CBP seizes counterfeit products at ports, it notifies the affected intellectual property rights holders. However, when CBP denies entry to or seizes products that are covered by an exclusion order, CBP does not inform the complainants. In our 2008 report, we found that some companies do not consider CBP's enforcement of exclusion orders to be transparent because of this lack of communication from CBP, which may impede the complainant's ability to protect its intellectual property rights, independently and in collaboration with CBP. We recommended in that report that CBP examine whether it has the statutory authority needed to develop regulations that would allow CBP to notify complainants of infringing shipments that have been excluded, and if authorized, to develop such regulations.²⁸ CBP subsequently determined that it did not have the required statutory authority and identified the need for legislative action, which it believed would help strengthen enforcement efforts. According to CBP officials, increased communication with complainants regarding exclusions could provide complainants with the opportunity to provide CBP with information to help revise its targeting strategies. In March 2011, the administration recommended that Congress give DHS the authority to notify intellectual property rights holders when infringing products have been excluded or seized pursuant to an exclusion order.²⁹ According to CBP, as of September 2014, Congress had not enacted this recommendation into law.

²⁷ CBP developed this system in response to a recommendation in our 2008 report that CBP collect data on the number of exclusions (denials of entry), in total and per exclusion order. See GAO, *Intellectual Property: Federal Enforcement Has Generally Increased, but Assessing Performance Could Strengthen Law Enforcement Efforts*, [GAO-08-157](#) (Washington, D.C.: Mar. 11, 2008). CBP officials said that they do not track the number of examinations that did not result in exclusions.

²⁸ [GAO-08-157](#).

²⁹ Office of the Intellectual Property Enforcement Coordinator, *Administration's White Paper on Intellectual Property Enforcement Legislative Recommendations* (Washington, D.C.: March 2011).

CBP's enforcement of exclusion orders from fiscal years 2010 through 2014 resulted in the exclusion or seizure of 158 shipments of various kinds of products. See table 1.

Table 1: Number of Shipments and Examples of Products Excluded or Seized as a Result of U.S. Customs and Border Protection's Enforcement of Exclusion Orders, Fiscal Year 2010 through Fiscal Year 2014

Fiscal year^a	Number of shipments excluded or seized	Examples of products in excluded shipments
2010	4	Magic cube puzzles, ink cartridges, coaxial cable connectors
2011	22	Plastic plates and plastic lids, ink cartridges, cigarettes, coaxial cable connectors, transceivers, energy drinks
2012	64	Plastic food storage containers with resealable lids, ink cartridges, footwear, sucralose, cigarettes, coaxial cable connectors, phones, toner cartridges
2013	34	Ink sticks, ink cartridges, footwear, cigarettes, cell phone cases
2014	34	Laminate flooring, footwear, digital multimeters, cigarettes, cell phone cases, massagers
Total	158	

Source: GAO analysis of U.S. Customs and Border Protection (CBP) data. | GAO-15-78

^aFor fiscal year 2010, the data are incomplete. U.S. Customs and Border Protection (CBP) did not begin tracking exclusions in its exclusion order notification and tracking system until September 16, 2010. For fiscal year 2014, CBP provided data on exclusions through April 30, 2014.

CBP officials explained that several factors may limit the number of shipments that CBP excludes:

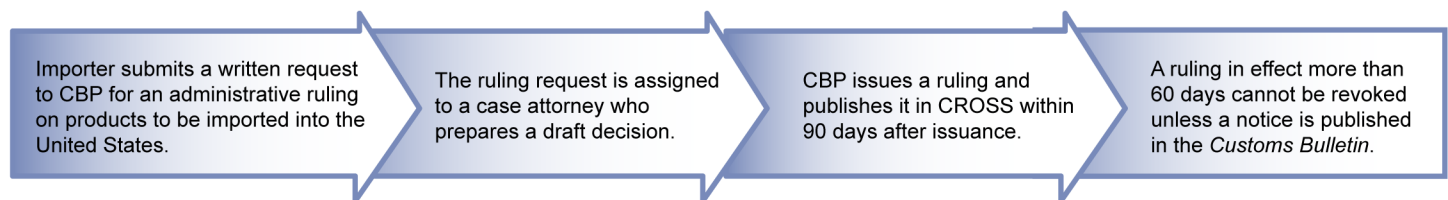
- First, unlike the importers of counterfeit products, the respondents in exclusion order cases tend to be legitimate companies that seek to be in compliance with trade laws; thus, they generally do not intentionally attempt to import infringing products.
- Second, respondents may work to resolve issues, such as finding new suppliers, obtaining licenses, or redesigning products, so that they do not have shipments of products excluded at the ports.
- Third, the conditions related to the underlying patent, trademark, or other protectable rights associated with the exclusion order may change, such that the complainant or respondent or both are no longer in business, or the infringing products are no longer made.
- Finally, CBP officials noted that data on excluded shipments are underreported because of alternative actions that can be taken by CBP for shipments of products that are covered by an exclusion order but are also protected by a recorded trademark. In such cases, CBP

officials will seize the shipment as a trademark violation rather than deny it entry under an exclusion order. Officials told us that complainants would rather have CBP seize these infringing products than risk the possibility that importers might try to reship the products to the United States through another port.

CBP Uses an Administrative Ruling Process in Advance of Importing to Determine Whether Products Are Covered by Exclusion Orders

Prior to importing, a company may request that CBP determine through its administrative ruling process whether its products fall within the scope of an exclusion order.³⁰ According to CBP officials, companies may redesign their products in an attempt to remove products from the scope of exclusion orders. In other instances, companies may request an administrative ruling before they start to import (1) a redesigned product, (2) a new product, or (3) a product that was not accused at ITC but is potentially within the scope of the exclusion order. Upon a company's request and when CBP determines it to be in the interest of the sound administration of customs and related laws, CBP will undertake to issue a ruling letter on whether the product in question is subject to exclusion. Figure 4 provides an overview of the administrative ruling process CBP uses to determine whether a new or redesigned product is covered by an exclusion order.

Figure 4: U.S. Customs and Border Protection Process for Administrative Rulings to Determine Prior to Importation Whether a Product Falls within the Scope of an Exclusion Order



CBP U.S. Customs and Border Protection
CROSS Customs Rulings Online Search System

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

Requests for an administrative ruling are submitted in writing to CBP's IPR Branch. Each request is entered in CBP's Regulations and Rulings Directorate's case management system. Upon receipt, a ruling request is

³⁰ 19 C.F.R. Part 177. These regulations detail CBP's general processes to respond to an importer's request to obtain certainty in its import transaction about the admissibility of its product.

assigned to a case attorney who reviews the request and other relevant materials, including the exclusion order, a sample of the product, the patent and the prosecution history, and the ITC's initial and final determinations. If the case attorney has a question about a specific point in the ITC record, the attorney may contact ITC to seek clarification on the specific issue.³¹ At this time, CBP also meets with the respondent to discuss the request for an administrative ruling.

A CBP administrative ruling is generally effective upon its issuance by CBP. Within 90 days from issuance, the decision is made public and published in CBP's Customs Ruling Online Search System.³² Once the ruling is public, copies of the decision will be provided to the complainant and the ITC. For rulings that have been in effect for less than 60 days, generally, CBP may decide to revoke a ruling simply by giving written notice to the person to whom the original was issued.³³ A revocation may occur, for example, if CBP discovers that facts relevant to the ruling were misrepresented in the request, or if changing circumstances materially affect the basis of CBP's determination in the ruling. After 60 days, CBP must adhere to additional requirements if it decides to revoke a ruling, such as publishing a notice proposing the revocation and inviting public comment.³⁴ CBP officials noted that if CBP issues an administrative ruling that approves the new or redesigned product for entry, the product is still potentially subject to examination at the ports to ensure compliance. From September 16, 2010, through April 30, 2014, the IPR Branch issued 18 rulings, of which 13 ruled that the products were not infringing and could enter U.S. commerce. In addition, the importer with an administrative ruling that approves a redesigned product may also ask for a CBP certification on its product. The CBP certification confirms that the redesigned product is not covered by an exclusion order.³⁵

³¹CBP and ITC officials noted that ITC does not provide guidance to CBP on products that were not the subject of ITC's original Section 337 investigation.

³²The 90-day time frame is set by [19 C.F.R. § 177.10](#).

³³[19 C.F.R. § 177.12](#).

³⁴*Id.*

³⁵According to CBP officials, the approval of a certification is entirely at the discretion of CBP. CBP officials also noted that the acceptance of a certification for the purpose of entry does not establish any precedent as to CBP's acceptance of the certification for future shipments.

Currently, CBP's administrative ruling process is an *ex parte* process where only the importer requesting the ruling participates in the process, not the complainants in the original case that resulted in the exclusion order. IPR Branch officials told us that they are developing a proposal for an *inter partes* process within CBP's administrative ruling process that would enable the complainant as well as the importer that has requested a ruling to provide information before CBP issues its administrative ruling on the product. The proposed process would allow both the complainant and the importer to make arguments and rebut those of the other party. IPR Branch officials noted that the proposed *inter partes* process will have advantages over the current process because it will gather information from both the complainant and the importer, potentially enabling CBP to expedite its administrative ruling process. IPR Branch officials could provide no estimate as to when the proposed *inter partes* process will be finalized.³⁶

In anticipation of a possible request for an administrative ruling and to increase their understanding of the exclusion order in general, CBP officials may meet with officials from the ITC and with the complainants and respondents involved in the ITC's Section 337 investigations. Officials said that these meetings can provide them with useful information, especially if an administrative ruling is being considered or requested by the respondent. For example, since the summer of 2013, according to IPR Branch officials, CBP and ITC have regularly held meetings upon the issuance of a new exclusion order. CBP and ITC officials characterized the nature of these meetings as limited to CBP seeking clarification on issues that ITC addressed during its investigation. IPR Branch officials also access a secure web-based repository established by ITC to review the ITC's administrative record, such as the

³⁶According to CBP officials, a draft "notice of proposed rule-making" (notice) that would institute the *inter partes* process within its administrative rulings process has been completed. The notice explains the need for creating the *inter partes* procedures and proposes that a new subsection be added to existing regulations. The notice must be reviewed and cleared by CBP and approved by the Department of the Treasury. CBP will then give the public 60 days to submit comments on the notice. After the public comment period has closed, CBP must analyze the comments and respond to them and incorporate any changes to the proposed regulations. Once this process has been completed, the draft final rule must be reviewed and cleared again by CBP and approved by the Department of the Treasury prior to publication in the *Federal Register*. As of October 2014, the draft notice was with CBP's Trade and Commercial Regulations Branch, Regulations and Rulings Directorate, which is responsible for shepherding the document through the internal and interagency review process.

initial and final determinations and documentation of the ITC proceedings, to understand the questions of law and issues of fact raised in the investigation. In addition to their meetings with ITC, CBP officials from the IPR Branch and the Electronics Center may meet separately with complainants and respondents on an informal basis during the Section 337 investigation or after an exclusion order is issued. These meetings are typically initiated by the complainants and respondents, although the Electronics Center is in regular communication with companies it serves as part of its mission. During these meetings, the complainants may share useful information on the intellectual property rights at issue and highlight relevant findings in the investigation, while respondents may explore whether their products are covered by an exclusion order or discuss potential redesigns for their infringing products. Electronics Center officials said they met with 16 complainants and 31 respondents in fiscal year 2013 to discuss information on supply chains, transportation modes, ports of entry, and distribution networks. In addition, since fiscal year 2013, the Electronics Center has collaborated with the IPR Branch on five administrative rulings.

Management Weaknesses in CBP's Enforcement Process at Ports Result in Inefficiencies and Increased Risk of Infringing Products Entering U.S. Commerce

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. As a result of our audit, 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 our request for data. Without routinely taking action to ensure that trade alerts are posted to the intranet, there is an increased risk that 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.³⁷ As a result of our inquiry, CBP identified 6 exclusion orders as possible candidates for ITC rescission. Requesting rescission of exclusion orders could enable CBP to focus its enforcement efforts more effectively and efficiently. Third, CBP's

³⁷For the purposes of this report, "rescission" refers to the revocation, cancellation, or repeal of an exclusion order. In this instance, ITC has the authority to rescind exclusion orders if it determines that the conditions that required the exclusion order have changed such that a rescission is appropriate. 19 U.S.C. § 1337(k) and 19 C.F.R. § 210.76 (a)(b).

guidance lacks time frames for issuing trade alerts, which prevents CBP from monitoring timeliness. We 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. We reported on similar weaknesses in our 2008 report on federal intellectual property enforcement efforts at the border.³⁸

CBP Provides Exclusion Order Guidance within Several Documents

CBP's IPR Branch has issued official guidance on enforcing exclusion orders and tracking exclusion order enforcement. This guidance is found in a federal regulation,³⁹ an internal directive, and an internal document detailing standard operating procedures. IPR Branch officials said that the standard operating procedures issued in 2010 provide the most current guidance on exclusion order enforcement.

CBP Does Not Routinely Review ITC Exclusion Orders or Take Other Action to Ensure Enforcement Coverage and Efficiency

CBP does not routinely review ITC exclusion orders or take other action to ensure that trade alerts exist or to identify orders that may be candidates for rescission by ITC. As previously discussed, the first phase of the process for enforcing exclusion orders at the ports involves issuing trade alerts to trigger CBP's targeting and enforcement efforts. CBP guidance on exclusion order enforcement states that the IPR Branch will issue trade alerts with enforcement instructions to national targeting groups and local port officials; the IPR Branch issues trade alerts by posting them to the CBP intranet.⁴⁰ While federal internal control standards state that management should conduct periodic reviews, reconciliations, or comparisons of data to assess the quality of performance over time, CBP's guidance does not require IPR Branch

³⁸[GAO-08-157](#).

³⁹19 C.F.R. § 12.39.

⁴⁰Officials told us that the CBP intranet, which was developed in 2004, is accessible to all CBP staff in headquarters, field offices, and ports.

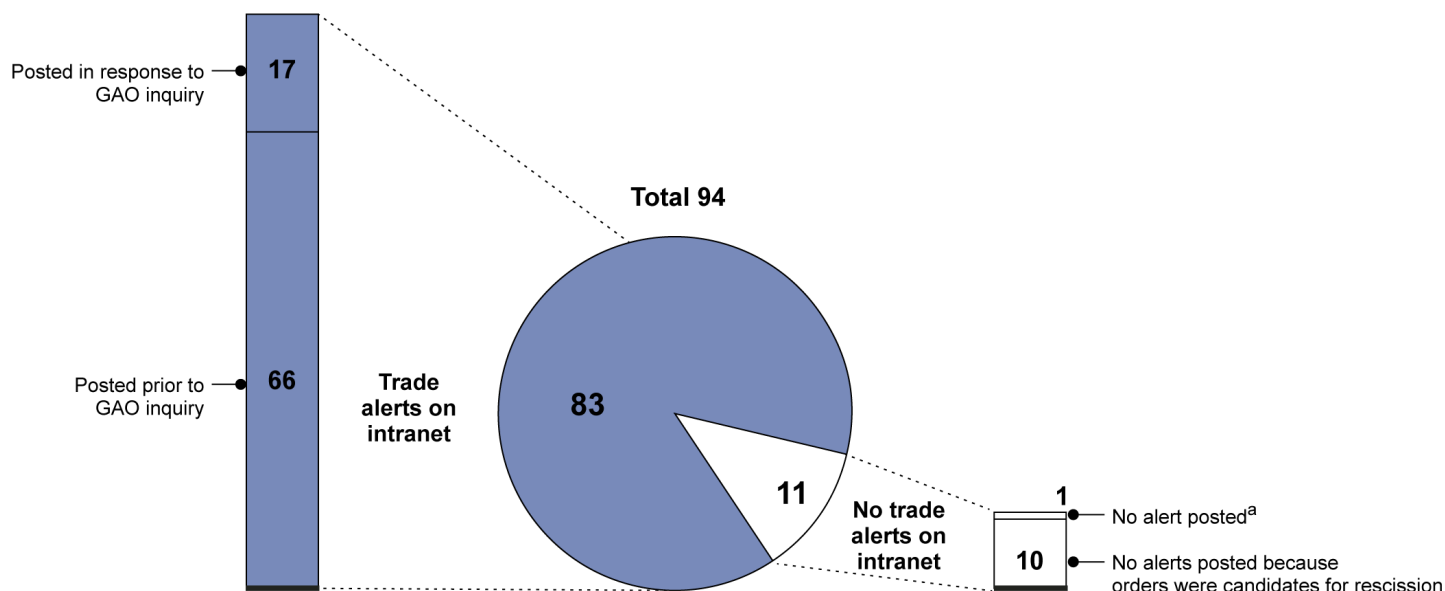
officials to conduct routine reviews of exclusion orders for these purposes.⁴¹

IPR Branch officials told us that they had not conducted a review of ITC's list of exclusion orders in 5 years. In response to our request for data, IPR Branch officials reviewed ITC exclusion orders in effect as of April 30, 2014, to determine whether the IPR Branch had issued a trade alert for each order. According to ITC data, there were 94 exclusion orders that CBP was required to enforce as of that date. The IPR Branch reported that it had posted trade alerts on CBP's intranet for 83 of the 94 exclusion orders. However, our analysis of the data found that the IPR Branch had posted trade alerts on the intranet for 17 of these orders in early April 2014, after receiving our data request.⁴² For the remaining 11 of the 94 exclusion orders, IPR Branch officials reported that they had not posted trade alerts to the intranet, as stated in CBP guidance. These 11 exclusion orders, plus the 17 exclusion orders posted on the intranet in April 2014, were part of a group of 28 older exclusion orders, for which IPR Branch officials explained that they had created trade alerts either in paper form or in another electronic system. However, they had never transferred these alerts to the intranet when CBP began issuing trade alerts on its intranet in 2004. As a result of our review, officials found they had not created a trade alert in any form for 1 of these 28 exclusion orders. Figure 5 shows the status of CBP's trade alerts for exclusion orders as of April 30, 2014.

⁴¹OMB Circular No. A-123 and [GAO/AIMD-00-21.3.1](#). Internal control, in the broadest sense, includes the plan of organization, methods, and procedures adopted by management to meet its goals.

⁴²ITC issued these 17 exclusion orders between 1990 and 1997.

Figure 5: Status of U.S. Customs and Border Protection's Trade Alerts for Exclusion Orders as of April 30, 2014



CBP U.S. Customs and Border Protection

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

^aThis exclusion order was issued by the U.S. International Trade Commission (ITC) in February 2005. An official from CBP's Intellectual Property Rights Branch said CBP did not issue a trade alert for this exclusion order because CBP had no record of having received a notice from ITC that the exclusion order had been issued. ITC officials provided us with a copy of an ITC letter notifying CBP of the exclusion order; however, these officials did not have documentation confirming CBP's receipt of the letter. According to ITC officials, in 2005 CBP officials would receive hand-delivered copies of the exclusion order; however, ITC officials now transmit exclusion orders via e-mail. As a result of our review, CBP officials said they contacted the complainant involved in the exclusion order in July 2014 and were informed that the complainant was unaware of any infringing importations following the exclusion order's issuance in February 2005. CBP issued a trade alert for this exclusion order in July 2014.

For 10 of the 11 exclusion orders that did not have trade alerts on the intranet, IPR Branch officials said they decided not to post trade alerts to the CBP intranet in April 2014 because officials considered these orders candidates for ITC rescission. According to a federal regulation, any person may file a petition to request that ITC rescind an exclusion order if he or she believes that changes in conditions of fact or law or the public interest require rescission.⁴³ According to an IPR Branch official, CBP believed that the conditions related to the underlying patent, trademark, or

⁴³19 C.F.R. § 210.76(a).

other protectable rights for these 10 orders had changed; for example, the complainant named in one exclusion order was no longer in business. IPR Branch officials later decided that they would not request that ITC rescind 2 of these orders because discussions with complainants established that the exclusion orders should remain active; the IPR Branch posted trade alerts for these to the intranet in July 2014. In addition, according to IPR Branch officials, the intellectual property rights protected by 2 other exclusion orders that were candidates for rescission expired in July 2014. As a result, the IPR Branch sent a letter to ITC in August 2014 requesting that it rescind 6 exclusion orders.⁴⁴

CBP's lack of routine reviews of exclusion orders has resulted in gaps and inefficiencies in CBP's exclusion order enforcement. For the 27 exclusion orders with trade alerts in either paper form or in another electronic system, IPR-NTAG reported that it had not implemented national targeting strategies for these exclusion orders. If any targeting occurred, IPR Branch officials said it would have been initiated at the port level.⁴⁵ As a result of these targeting gaps, there is an increased risk that infringing products could have entered into U.S. commerce.⁴⁶ For the 1 exclusion order without a trade alert, a routine review of ITC's exclusion orders by CBP officials would have identified the error sooner. In addition, with routine reviews of ITC's list of exclusion orders, officials could have identified the ones that were candidates for rescission sooner and requested that ITC rescind them, potentially allowing CBP to more effectively and efficiently focus its enforcement efforts. This is not a new problem. In our 2008 report, we found similar weaknesses.⁴⁷ We reported

⁴⁴Based on CBP's letter to the ITC, the ITC published a notice in the *Federal Register* seeking public comments as to whether the 6 exclusion orders should be rescinded in whole or in part based on changed conditions of fact or law or the public interest pursuant to 19 C.F.R. § 210.76. See 79 Fed. Reg. 64214 (Oct. 28, 2014). Written submissions are due on December 22, 2014, and reply submissions on January 15, 2015.

⁴⁵While CBP does not track local targeting efforts, CBP records excluded shipments and the national targeting methods used to identify them. Our analysis of CBP's data on exclusions related to the 27 exclusion orders without trade alerts posted on the intranet found two exclusions that were the result of local targeting. These two exclusions occurred in fiscal year 2010 and were related to 1 of the 27 orders with no trade alert on the intranet.

⁴⁶IPR Branch officials said that 2 of the 27 exclusion orders were older trademark-based orders and seizures were made because of trademark violations.

⁴⁷[GAO-08-157](#).

that CBP had posted trade alerts to its intranet for 24 of the 66 orders that were in effect as of July 2007, and had not yet transferred paper alerts for 15 older exclusion orders to the intranet because of limited resources. We also noted that CBP had trade alerts for 5 orders that had expired or had been rescinded.

CBP Lacks Established Time Frames for Issuing Trade Alerts

IPR Branch officials have not established a time frame in CBP's guidance for issuing trade alerts, which prevents officials from monitoring timeliness. Federal internal control standards state that management should establish procedures, such as time frames, to ensure that the agency is meeting its objectives and document these procedures in policies or directives. In addition, monitoring the effectiveness of internal control activities, such as determining timeliness, should occur in the normal course of business.⁴⁸

An IPR Branch official said that the IPR Branch's approach to issuing trade alerts has evolved since 2006 toward an increased emphasis on timeliness. IPR Branch officials said they generally try to post a trade alert to the CBP intranet within 5 workdays of receiving an exclusion order from ITC. Prior to 2006, the official told us that the IPR Branch wanted to gain a full understanding of the exclusion order and the intellectual property rights in question before issuing a trade alert, but more recently, according to this official, the IPR Branch has placed more importance on providing information as quickly as possible so the national targeting groups can more promptly develop targeting methods.

Our analysis of CBP's data shows that for 33 exclusion orders issued from October 1, 2009, through April 30, 2014, the IPR Branch generally took anywhere from 2 days to about 3 months to request a posting of a trade alert to the intranet.⁴⁹ For 9 of the 33 exclusion orders, about 27 percent, CBP requested a posting of trade alerts to the CBP intranet within 5 workdays of exclusion order issuance. Without established time frames for issuing trade alerts in its guidance on enforcing exclusion orders, CBP cannot do the following:

⁴⁸OMB Circular No. A-123 and [GAO/AIMD-00-21.3.1](#).

⁴⁹In our 2008 report, we found that it took CBP more than 60 days to post trade alerts for 14 of the 18 exclusion orders for which it could provide such data. See [GAO-08-157](#).

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- CBP cannot monitor and assess its performance on timeliness, which increases the risk of enforcement gaps. The longer it takes the national targeting groups to receive trade alerts and develop targeting approaches that will identify shipments for examination at the ports, the greater the risk that infringing products covered by an exclusion order may be permitted entry into U.S. commerce.
 - CBP management cannot hold staff accountable for timely enforcement. Effective internal control, such as establishing time frames for performance, is a key factor in achieving agency missions and program results through improved accountability.⁵⁰

Conclusions

CBP uses two processes to enforce exclusion orders: one that identifies shipments with infringing products arriving at the ports and one that determines in advance of importing whether products are covered by exclusion orders. These processes leverage information from both the complainants and respondents involved in Section 337 cases adjudicated by the ITC that result in exclusion orders. CBP's management of its process for enforcing exclusion orders at the ports has weaknesses that result in inefficiencies and enforcement gaps. First, CBP does not routinely review exclusion orders to ensure that trade alerts exist for all ITC exclusion orders. We found that for about one-fourth of the exclusion orders in effect during our review, CBP had not posted trade alerts on its intranet until after our data request. Without an alert, it would be difficult for CBP components to enforce an exclusion order. Second, CBP lacks an established procedure that would enable it to routinely determine those exclusion orders that are candidates for ITC rescission, potentially resulting in fewer exclusion orders and trade alerts to manage, which would allow CBP to better focus its enforcement efforts. Third, CBP has not established a time frame for trade alert issuance in CBP's guidance, which prevents management from monitoring timeliness in issuing trade alerts. In our 2008 report examining CBP's intellectual property enforcement, we found similar weaknesses in its management of exclusion order enforcement. Lacking guidance on time frames for key steps in exclusion order enforcement, CBP officials cannot hold staff accountable for timely enforcement, which is critical to reducing the risk of infringing products entering U.S. commerce.

⁵⁰OMB Circular No. A-123.

Recommendations for Executive Action

To improve CBP's management of its process for enforcing exclusion orders, we recommend that the Secretary of Homeland Security direct the CBP Commissioner to take the following three actions to update CBP's internal guidance with requirements to

- Routinely ensure that trade alerts are posted on the CBP intranet for each exclusion order.
- Routinely identify any orders whose changed conditions merit a CBP request that ITC rescind them.
- Monitor timeliness by establishing time frames for issuing trade alerts for exclusion orders and reviewing performance against these standards.

Agency Comments and Our Evaluation

We provided a draft of this report to CBP, ITC, and USTR for their review and comment. We received technical comments from CBP, ITC, and USTR, which we incorporated where appropriate. We also received written comments from CBP through DHS that are reprinted in appendix IV.

In its written comments, CBP concurred with two of our three recommendations: to update CBP's internal guidance with requirements to routinely ensure that trade alerts are posted on the CBP intranet for each exclusion order and monitor timeliness by establishing time frames for issuing trade alerts for exclusion orders and reviewing performance against these standards. As part of its efforts to implement these two recommendations, CBP reported that it is developing a template for case attorneys to use in developing future trade alerts and that it is updating its internal standard operating procedures with requirements for CBP staff to monitor the timeliness of posting trade alerts on the CBP intranet. While these are positive actions, it is not yet clear whether they will address the recommendations to the full extent. We will continue to monitor CBP's actions in this area.

CBP did not concur with our recommendation to update its guidance with a requirement to routinely identify any orders whose changed conditions merit a CBP request that ITC rescind them. CBP noted that there is no statutory or regulatory authority mandating that it monitor the ITC's list of exclusion orders to determine if changed conditions of law or fact would warrant the rescission of any of the orders. In addition, CBP asserted that ITC, as the issuing agency of exclusion orders, and the relevant complainants, or both have responsibility for ensuring that the list of

outstanding exclusion orders is current. As we state in the report, any person may file a petition to request that ITC rescind an exclusion order if he or she believes that changes in conditions of fact or law or the public interest require rescission. While CBP is not specifically mandated to conduct a routine review of exclusion orders to identify candidates for ITC rescission, CBP is the enforcement agency of exclusion orders. Based on internal control standards, we reiterate that it is good management practice for CBP to conduct these reviews that could potentially allow it to more effectively and efficiently focus its efforts by reducing the number of exclusion orders it is responsible for enforcing. For example, in response to our audit, CBP conducted such a review, identified six exclusion orders that it believed were candidates for ITC rescission, and submitted a letter requesting that ITC rescind the orders. Thus, we continue to believe that our recommendation is valid and that CBP should fully implement it.

CBP also noted in its written response that the report would have been more value-added if it had included additional discussion on the challenges of making patent infringement determinations at the border under the time constraints imposed by statute, or on the development of the *inter partes* process. These issues CBP mentions were outside the scope of our review. However, our report does discuss CBP's current *ex parte* administrative ruling process and provided details on CBP's development of an *inter partes* process that would enable both the complainant and the importer to provide information during the administrative ruling process. As of October 2014, CBP officials could not provide an estimate as to when the *inter partes* process would be finalized.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Homeland Security, the Chairman of the U.S. International Trade Commission, the United States Trade Representative, and other interested parties. In addition, the report is available at no charge on GAO's website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8612 or gianopoulosk@gao.gov. Contact points for our

Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.

A handwritten signature in black ink, reading "Kimberly M. Gianopoulos". The signature is written in a cursive, flowing style.

Kimberly M. Gianopoulos
Director
International Affairs and Trade

Appendix I: Objectives, Scope, and Methodology

This report reviews the efforts of U.S. Customs and Border Protection (CBP) to enforce exclusion orders issued by the U.S. International Trade Commission (ITC). Specifically, we (1) examine CBP's processes for enforcing exclusion orders and (2) assess CBP's management of its enforcement process at ports of entry. In this report, we neither take a position on, nor do we address, the matters pending in ongoing litigation between Microsoft and the U.S. Department of Homeland Security related to CBP's enforcement of an exclusion order.¹

To provide an overview of ITC exclusion orders, we first reviewed the list of exclusion orders on the ITC website as of April 30, 2014, to determine the number of exclusion orders that CBP was responsible for enforcing. Though ITC's list named 96 exclusion orders, we interviewed agency officials to assess the reliability of the data, and ITC provided clarification on duplicate orders or consolidated investigations. As a result of our interviews, ITC confirmed that 94 exclusion orders were in effect as of April 30, 2014. We also interviewed ITC officials regarding the underlying data systems and the checks, controls, and reviews used to generate the data and ensure their accuracy and reliability. We found the data sufficiently reliable for the purpose of this report. We then analyzed CBP data on these exclusion orders to determine characteristics such as the type of exclusion order (general or limited); the protected intellectual property rights (e.g., trademark, copyright, patent); and the Harmonized Tariff Schedule categorization numbers for the products covered by the exclusion orders. We analyzed these numbers to determine the types of commodities protected by exclusion orders. To assess the reliability of CBP's data, we interviewed agency officials regarding the underlying data systems and the checks, controls, and reviews used to generate the data and ensure their accuracy and reliability. We found the data sufficiently reliable for the purpose of this report.

To examine CBP's process for enforcing exclusion orders at ports of entry, we reviewed CBP's internal guidance related to exclusion order enforcement. We interviewed agency officials at CBP, ITC, the Office of Management and Budget's Office of the Intellectual Property Enforcement Coordinator, and the Office of the United States Trade Representative in

¹The litigation involves CBP's enforcement efforts pertaining to an exclusion order issued by ITC, finding a violation of Section 337 because certain Motorola products had infringed Microsoft's patent rights. *Microsoft Corporation v. Dep't of Homeland Sec. et al*, 1:13-cv-01063-RWR (D.D.C. July 12, 2013).

Washington, D.C., to discuss each agency's role in facilitating or informing CBP's enforcement of exclusion orders. We interviewed CBP headquarters officials to understand CBP's process for issuing trade alerts and communicating them to national targeting groups and local port officials. Using the list of exclusion orders on ITC's website as of April 30, 2014, we analyzed CBP data to determine whether CBP had issued a trade alert for each exclusion order. To assess the reliability of CBP's data, we reviewed issued trade alerts for each of the exclusion orders and interviewed agency officials regarding the checks, controls, and reviews used to generate the data and ensure their accuracy and reliability. We found the data sufficiently reliable for the purpose of this report.

To determine how CBP develops targeting strategies for enforcing exclusion orders, we interviewed agency officials from CBP's national targeting groups for exclusion order enforcement: the Intellectual Property Rights National Targeting and Analysis Group in Long Beach and the Electronics Center of Excellence and Expertise in Los Angeles. To understand how CBP examines products and excludes infringing shipments at the ports, we interviewed agency officials at four ports: Buffalo, New York; John F. Kennedy International Airport in Jamaica, New York; Los Angeles/Long Beach Seaport in Long Beach, California; and Los Angeles International Airport in Los Angeles, California. We selected ports with experience in enforcing exclusion orders based on CBP exclusions data from September 16, 2010, through April 30, 2014;² during this period, a total of 12 ports excluded shipments as part of CBP's enforcement of exclusion orders. We also selected ports where we could discuss and observe CBP's exclusion order enforcement process when processing shipments arriving by land, sea, and air. One selected port, Buffalo, processes shipments arriving by land; two ports, John F. Kennedy International Airport and Los Angeles International Airport, process shipments arriving by air; and one port, Los Angeles/Long Beach Seaport, processes shipments arriving by sea. We interviewed port officials to obtain information on training received and equipment used by CBP officials to determine whether products in shipments are covered by exclusion orders. In addition to interviewing port officials, we observed them as they targeted and examined shipments, and seized shipments as

²We used data starting from September 16, 2010, because CBP started tracking exclusions in its exclusion order notification and tracking system on this date.

required. The information gathered from our site visits cannot be generalized to all ports and field offices.

To understand CBP's future exclusion order enforcement efforts, we interviewed CBP officials from the Industrial and Manufacturing Materials Center of Excellence and Expertise in Buffalo, New York, and the Pharmaceuticals, Health, and Chemicals Center of Excellence and Expertise in New York, New York. Officials from these centers provided us with an overview of how they will eventually take responsibility for enforcing exclusion orders related to the industry sectors that their centers cover.

We analyzed CBP data on the number of shipments excluded from entry from September 16, 2010, through April 30, 2014, including the number of exclusions by fiscal year and the types of products excluded during this period. CBP officials noted that data on excluded shipments are underreported because of alternative actions that can be taken by CBP for shipments of products that are covered by an exclusion order but are also protected by a recorded trademark. In such cases, CBP officials said they will seize the shipment as a trademark violation rather than exclude it under an exclusion order. To assess the reliability of CBP's data, we interviewed agency officials regarding the underlying data systems and the checks, controls, and reviews used to generate the data and ensure their accuracy and reliability. We found the data sufficiently reliable for the purpose of this report.

To assess how CBP manages its exclusion order enforcement process, we evaluated CBP's management of the process against CBP criteria in its exclusion order guidance, found in a CBP regulation,³ an internal directive, and a document outlining standard operating procedures. We also evaluated CBP's management of the process against requirements established in federal internal control standards, such as establishing procedures to ensure that the agency is meeting its objectives, documenting these procedures in policies or directives, and monitoring the effectiveness of internal control activities in the normal course of

³19 C.F.R. § 12.39.

business.⁴ We interviewed CBP officials from the Intellectual Property Rights Branch in the Regulations and Rulings Directorate to discuss how they manage the issuance of trade alerts. We reviewed CBP's written guidance on exclusion order enforcement to determine whether CBP documents time frames for issuing trade alerts. Using ITC exclusion order issuance dates and CBP's data on trade alert issuance dates, we analyzed the number of workdays that CBP officials took to request posting of trade alerts to the CBP intranet for exclusion orders issued from October 1, 2009, through April 30, 2014. To assess the reliability of CBP data, we interviewed agency officials and reviewed underlying data sources. CBP trade alert data are for the dates on which CBP officials requested a posting of trade alerts to the CBP intranet and not the dates on which the alerts were actually posted. We found the data sufficiently reliable for the purpose of this report.

To describe CBP's process for determining, in advance of importing certain products, whether those products are covered by exclusion orders, we reviewed regulations outlining CBP's administrative ruling process.⁵ We also interviewed CBP officials from the Intellectual Property Rights Branch in the Regulations and Rulings Directorate to discuss how the ruling process works and CBP's proposed changes to the process. We interviewed ITC officials to discuss the extent to which ITC informs this process by providing information on the exclusion orders and the administrative records associated with ITC investigations.

We conducted this performance audit from November 2013 to November 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

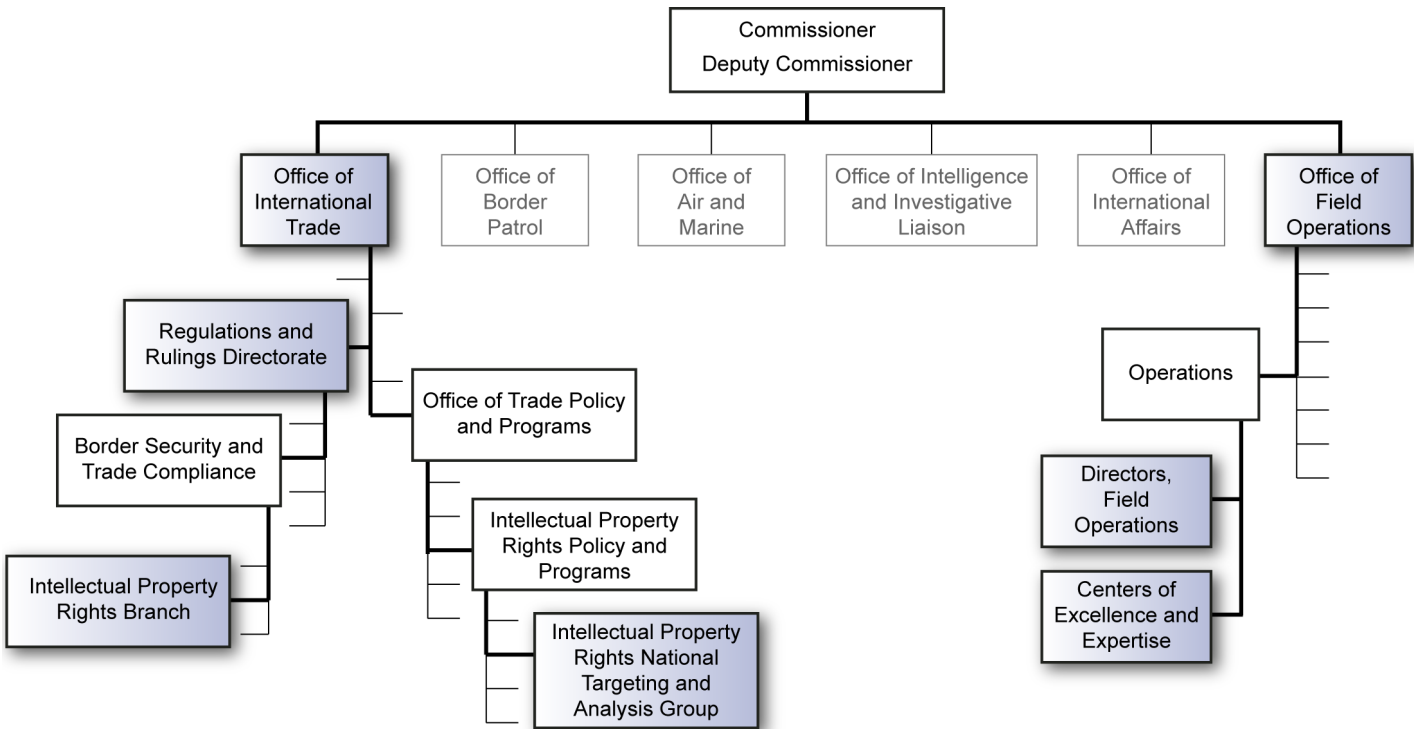
⁴Office of Management and Budget, *Management's Responsibility for Internal Control*, OMB Circular No. A-123 (Washington, D.C.: Dec. 21, 2004) and GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999)

⁵19 C.F.R. § 177.10 Part 177.

Appendix II: U.S. Customs and Border Protection Offices Responsible for Exclusion Order Enforcement

U.S. Customs and Border Protection’s (CBP) Office of International Trade and Office of Field Operations are responsible for coordinating CBP’s efforts to enforce exclusion orders. Several units under these two offices have key responsibilities in CBP’s enforcement process and its related administrative ruling process (see fig. 6).

Figure 6: Key Customs and Border Protection Offices Involved in Exclusion Order Enforcement



Shaded boxes are CBP offices responsible for exclusion order enforcement

CBP U.S. Customs and Border Protection

Source: GAO analysis of CBP documents. | GAO-15-78

Appendix III: U.S. Customs and Border Protection Centers of Excellence and Expertise

In 2012, U.S. Customs and Border Protection (CBP) established 10 Centers of Excellence and Expertise to provide trade information and processing for the trade community and U.S. government partners. While in their early stages, the centers are intended to facilitate legitimate trade, increase CBP’s industry-based knowledge, and assist CBP in addressing risks and protecting intellectual property rights more efficiently and effectively. Each center is specific to a single industry sector (see table 2).

Table 2: U.S. Customs and Border Protection Centers of Excellence and Expertise	
Centers	Location
Agriculture and Prepared Products	Miami
Apparel, Footwear, and Textiles	San Francisco
Automotive and Aerospace	Detroit
Base Metals	Chicago
Consumer Products and Mass Merchandising	Atlanta
Electronics	Los Angeles
Industrial and Manufacturing Materials	Buffalo
Machinery	Laredo
Petroleum, Natural Gas, and Minerals	Houston
Pharmaceuticals, Health, and Chemicals	New York

Source: U.S. Customs and Border Protection. | GAO-15-78

The centers, with staff located at ports of entry throughout the United States, operate as virtual organizations that centralize industry sector expertise. For example, the Electronics Center of Excellence and Expertise is located in Los Angeles but has staff located in other ports that deal with imports of electronics, such as El Paso, Texas; Memphis, Tennessee; Cleveland, Ohio; and San Diego, California. Of the 10 centers, this is the one with a role in the enforcement of exclusion orders as of November 2014 (see sidebar).

Electronics Center of Excellence and Expertise, Los Angeles, California

The Electronics Center of Excellence and Expertise (Electronics Center) is the most developed of the U.S. Customs and Border Protection's (CBP) 10 industry-specialized virtual centers. As of November 2014, it was the only center with a role in enforcing exclusion orders, specifically the enforcement of electronics-related exclusion orders. In fiscal year 2013, the Electronics Center conducted targeting for 32 exclusion orders.

Electronics Center staff members meet informally with the complainants and respondents involved in an investigation before the U.S. International Trade Commission (ITC) issues an exclusion order. CBP intends for this model of advanced collaboration to speed up the exclusion order enforcement process because staff will better understand the products involved and the complainant and respondent companies' trading patterns. In addition, the center's specialists assist CBP's Intellectual Property Rights (IPR) Branch in developing trade alerts for exclusion orders involving electronic technologies and products. The IPR Branch has collaborated with the Electronics Center in proactively working with companies to avert the importation of infringing products at ports and to place CBP in a better position to rule on admissibility, rulings, and certification. The Electronics Center also conducts its own targeting of shipments for exclusion order enforcement, with assistance, if necessary, from CBP's Intellectual Property Rights National Targeting and Analysis Group.

Source: U.S. Customs and Border Protection. | GAO-15-78

All centers employ trade specialists with a range of account management and operational skills, including import, supply chain, and operations specialists. Importers can go directly to their assigned center for assistance, instead of consulting CBP officials at multiple ports of entry. Center officials are expected to continuously update their industry-related expertise for exclusion orders by attending and participating in industry conferences, trade forums, enforcement seminars, and online training.

Appendix IV: Comments from the Department of Homeland Security

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



**Homeland
Security**

October 31, 2014

Kimberly M. Gianopoulos
Acting Director, International Affairs and Trade
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Draft Report GAO-15-78, "INTELLECTUAL PROPERTY RIGHTS: Customs and Border Protection Could Better Manage Its Process to Enforce Exclusion Orders"

Dear Ms. Gianopoulos:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO's) work in planning and conducting its review and issuing this report.

The Department appreciates GAO's recognition of the important role the U.S. Customs and Border Protection (CBP) has in protecting Intellectual Property Rights. CBP, without inhibiting legitimate trade, must determine whether products arriving at 328 U.S. ports of entry fall within the scope of exclusion orders issued by the U.S. International Trade Commission (ITC). Additionally, companies request that CBP determine, in advance of importing certain products, whether items are covered by an existing exclusion order.

CBP believes this report would have been more value-added had it included additional discussion on the challenges of making patent infringement determinations at the border under the time constraints imposed by statute, or on the development of the inter partes procedure. Unlike trademark and copyright border enforcement, which is purely a factual issue (did the right owner authorize the use of the protected mark or work) where CBP regulations provide a mechanism for soliciting the right owner's advice as to whether the protected mark or work was used with authorization, exclusion order enforcement requires that CBP adjudicate mixed questions of law and fact. In many cases the imported article was not accused and found to infringe at the ITC. Such adjudications frequently involve questions of claim construction and other complex legal issues that are not susceptible of a rapid response. Thus, at the border CBP is often faced with the task of determining, in thirty days or less, questions that the ITC, under their processes (which involve a hearing on the record, expert testimony) would typically be able to adjudicate over a much longer period of time.

Even with the aforementioned challenges, CBP has taken positive steps to improve exclusion order enforcement, along with developing a draft notice of proposed rulemaking to amend

CBP's current ex parte rulings procedure and establish an inter partes procedure that would allow both parties to the dispute to participate in CBP's adjudication of the infringement question. CBP will continue working with the trade community and 337 practitioners to strengthen the transparency and enforcement of ITC exclusion orders.

The draft report contained three recommendations with which the Department concurs with two and non-concurs with one. Specifically, GAO recommended that the Secretary of Homeland Security direct the CBP Commissioner to:

Recommendation 1: Routinely ensure that trade alerts are posted on the CBP intranet for each exclusion order.

Response: Concur. To ensure the timely posting of exclusion order trade alerts to CBPnet, CBP has already taken steps through the development of a template that will be readily available for case attorneys and can form the basis of all exclusion order trade alerts. In addition, CBP's Office of International Trade (OT) is updating its internal standard operating procedures for the enforcement of trade alerts within OT's Regulations and Rulings Directorate. This will include additional information on OT's Intellectual Property Right (IPR) Branch's processing of an exclusion order after it is received, such as, the assignment to an IPR attorney who will draft the alert and highlighting branch chief responsibilities to monitor time deadlines and ensure timely posting to the field officers on CBPnet. Estimated Completion Date (ECD): January 31, 2015.

Recommendation 2: Routinely identify any orders whose changed conditions merit a CBP request that ITC rescind them.

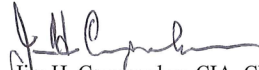
Response: Non-concur. There is no statutory or regulatory authority mandating that CBP monitor the ITC's list of exclusion orders in order to determine if there are changed conditions of law or fact that would warrant rescission. The ITC as the issuing agency for exclusion orders, and/or complainants, has responsibility for ensuring the list of outstanding exclusion orders is current. Accordingly, CBP requests that GAO consider this recommendation resolved and closed.

Recommendation 3: Monitor timeliness by establishing time frames for issuing trade alerts for exclusion orders and reviewing performance against these standards.

Response: Concur. To ensure the timely posting of exclusion order trade alerts to CBPnet, CBP has already taken steps through the development of a template that will be readily available for case attorneys and can form the basis of all exclusion order trade alerts. In addition, CBP's Office of International Trade (OT) is updating its internal standard operating procedures for the enforcement of trade alerts within OT's Regulations and Rulings Directorate. This will include additional information on OT's IPR Branch's processing of an exclusion order after it is received, such as, the assignment to an IPR attorney who will draft the alert and highlighting branch chief responsibilities to monitor time deadlines and ensure timely posting to the field officers on CBPnet. ECD: January 31, 2015.

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you in the future.

Sincerely,



Jim H. Crumpacker, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

Kimberly M. Gianopoulos, (202) 512-8612 or gianopoulosk@gao.gov

Staff Acknowledgments

In addition to the contact named above, Christine M. Broderick (Assistant Director), Marisela Perez (Analyst-in-Charge), Christina Bruff, David Dayton, Etana Finkler, and Bonnie Ho made key contributions to this report. Lorraine Ettaro, Jeffrey Isaacs, and Grace Lui also provided assistance.

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