

# Combating counterfeits – lessons to be learned from CBP seizure statistics

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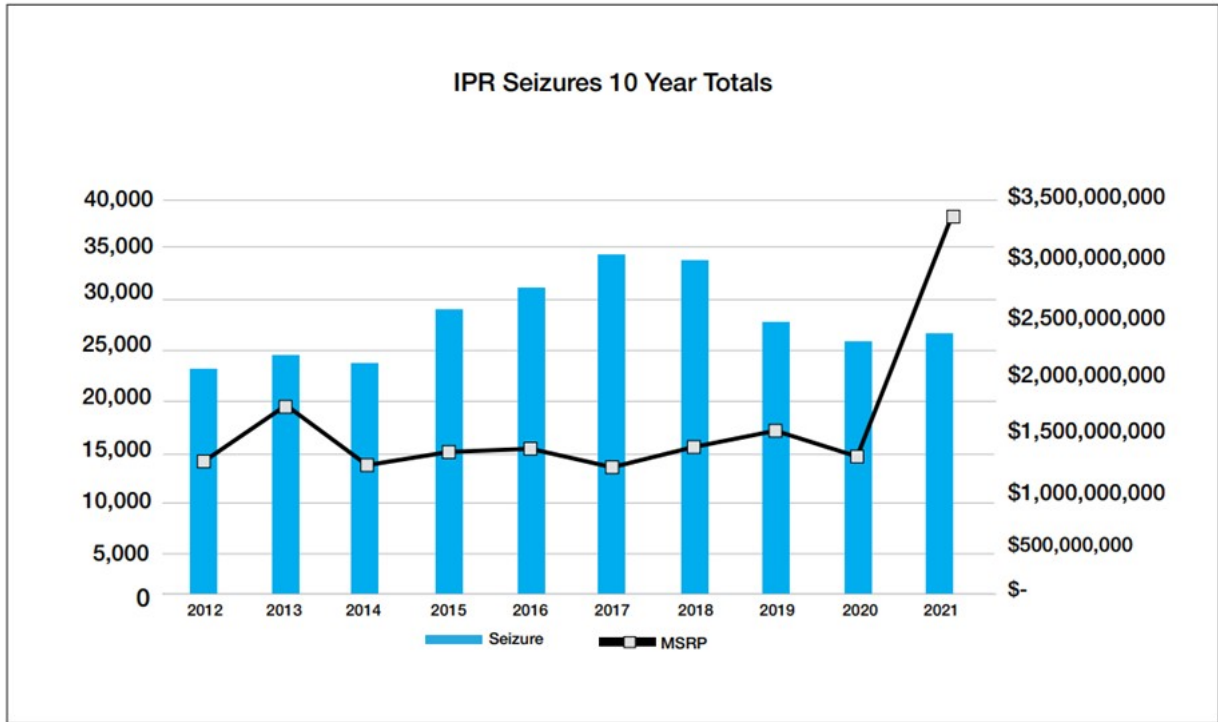


Counterfeiting is an ever-growing problem for brands and consumers around the world, and the problem is only getting worse – with the Organisation for Economic Co-operation and Development estimating that 3.3% of global trade is counterfeit products (up from 2.5% in the 2013 report).

The US Customs and Border Protection (CBP), the primary federal agency responsible for securing America's borders, is also charged with the protection of intellectual property rights and guarding against the infringement of US copyrights and trademarks. While the customs offices of other countries, such as China, focus on seizing outgoing shipments of counterfeit products, the CBP is primarily focused on seizing incoming counterfeit goods before they enter the American mainstream economy. Its enforcement efforts have also been steadily increasing, offering copyright and trademark owners a strategic tool for enforcing their rights against counterfeit and infringing products.

A deep dive through the CBP's most recent annual seizure statistics for its Fiscal Year (FY) 2021 reveals some interesting findings.

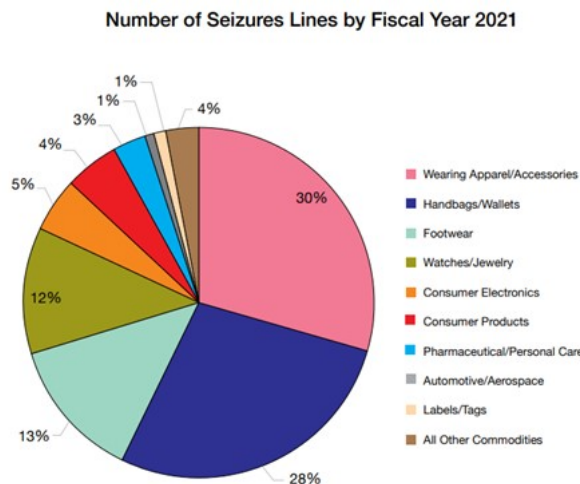
In FY2021, the number of IP right seizures increased slightly over FY2020, but the manufacturer's suggested retail price (MSRP) was a whopping \$3.3 billion, which represents an increase of 152% over FY2020 (when goods seized for IPR violations were valued at \$1.3 billion MSRP).

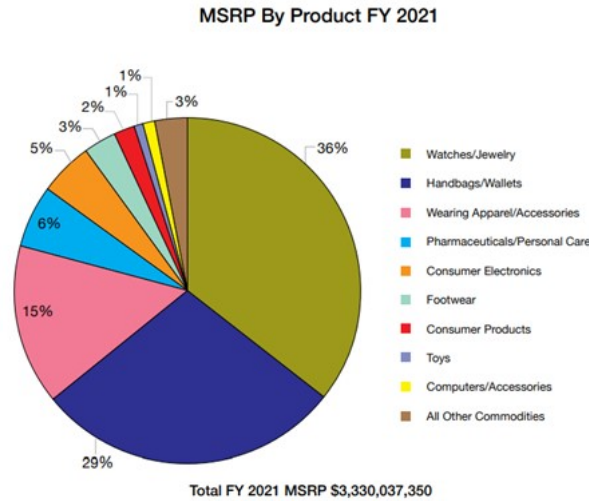


The number of seizures were still down almost 7,000-8,000 from the height of FY2017 and FY2018, which were the years with the highest total of seizures in the past decade. However, the large jump in MSRP value shows that counterfeiters are targeting high end and expensive products where they can anticipate a greater return on their nefarious investment. Thus, high-end, luxury brands would do well to shore up their anti-counterfeiting efforts.

Interestingly, while there were 27,000 seizures, only about 711 were inquiries sent in by brand owners to the CBP. The rest were the result of the CBP's active measures in scouring incoming shipments for IP violations. This disparity highlights an issue for brands combating counterfeits. How can you seek assistance from the CBP when you don't know where or when the counterfeits are coming from? Brand owners could try to glean this important information by registering their rights with international customs offices, which may increase the chances of finding the sources of counterfeits. This information could then be shared with the CBP, which would then be able to look out for shipments from these sources.

Of the seizures that occurred in FY2021, 83% involved the seizure of fashion-related products, including wearing apparel, accessories, footwear, watches, jewelry, handbags, and wallets.





This is up slightly from 79% in FY2020, but represents a shift of about 30% over FY2016, when 53% of seizures involved fashion-related products, including wearing apparel, accessories, footwear, watches, jewelry, handbags, and wallets. Consumer electronics were down 3% in FY 2021 over FY2020.

Evaluated on an MSRP value, watches/jewelry remain the leader, with 36% of total MSRP value of seized products (a 3% increase over FY2020). Handbags/wallets saw an increase of 7% to 29% for FY2021 over 22 % for FY2020. Using this data, brand owners can look at whether their products are in these high risk categories, and, if so, take steps to shore up their anticounterfeiting measures.

It is likely that the pandemic caused wearing apparel/accessories to bump up from the fourth most-seized product based on MSRP in FY2020, to third in FY2021, while pharmaceutical/personal care products jumped from sixth to fourth (tripling in MSRP value). As FY2021 only accounts for a portion of the world's covid-19 slowdown, we would expect wearing apparel/accessories and pharmaceutical/personal care products to continue their ascension to most-seized products as the world emerged from its post-pandemic hangover.

**MSRP by product (FY2021)**

Products	MSRP	Percentage
Watches/jewelry	\$1,186,747,146	36%
Handbags/wallets	\$972,495,390	29%
Wearing apparel/accessories	\$487,370,983	15%
Pharmaceuticals/personal care	\$185,043,493	6%
Consumer electronics	\$171,010,749	5%
Footwear	\$96,690,708	3%
Consumer products	\$72,075,495	2%
Toys	\$25,420,514	1%
Computers/accessories	\$24,553,282	1%
All other products	\$108,629,590	3%
<b>Grand total</b>	<b>\$3,330,037,350</b>	<b>100%</b>
<b>Number of seizure lines</b>	<b>102,490</b>	

**MSRP by product (FY2020)**

Products	MSRP	Percentage
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Watches/jewelry	\$435,249,467	33%
Handbags/wallets	\$282,702,448	22%
Consumer electronics	\$173,829,670	13%
Wearing apparel/accessories	\$157,226,661	12%
Footwear	\$63,146,456	5%
Pharmaceuticals/personal care	\$56,190,152	5%
Consumer products	\$49,695,611	4%
Labels/tags	\$25,420,514	2%
Automotive/aerospace	\$11,063,561	1%
All other products	\$60,228,693	5%
<b>Grand total</b>	<b>\$1,309,156,510</b>	<b>100%</b>
<b>Number of seizure lines</b>	<b>72,537</b>	

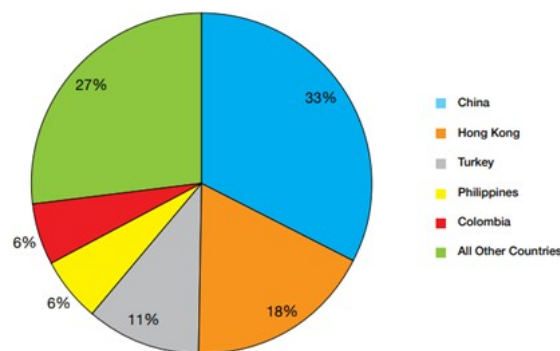
Naturally, some of the rise in seizures of pharmaceutical/personal care products could be a result of the CBP's enhanced focus on counterfeit, unauthorised, and substandard COVID related products over the past two years. FY2021 included seizures of 38,154 Food and Drug Administration-prohibited covid-19 test kits, 35 million counterfeit face masks, and 8,677 FDA-prohibited hydroxychloroquine tablets.

In total, 53% of the seizures occurred in the express consignment environment, 18% were discovered in incoming mail, and roughly 31% originated in China. This represents an almost three-fold increase in the number of counterfeit face masks seized. At the same time, the number of prohibited covid-19 test kits fell from 180,000, and hydroxychloroquine tablets fell from 38,000 in FY2020, presumably because more authorised test kits were available, the efficacy of hydroxychloroquine for fighting covid was called into question, and other treatments came online during FY2021. These numbers are perhaps shocking given the nature of the products and the fact that they could cause catastrophic results for consumers who unwittingly use substandard products.

China remains the top source or producer of goods seized by the CBP, though China fell from 37% in FY2020 to 33% in FY2021. Interestingly, Hong Kong fell from 32% in FY2020 to 16%, while we saw increases from Turkey, Philippines, and Colombia. Turkey continues to grow as a source country.

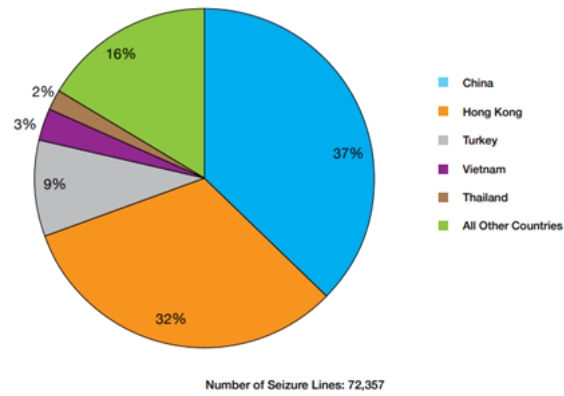
However, when compared to FY2016 and 2015, when China and Hong Kong accounted for over 80% of seizures based on MSRP, we are now seeing a spreading of the number of countries producing seized goods. In FY2020 Colombia and the Philippines did not account for 2% of the seizures, but in FY2021 each accounted for 6%. This highlights the need for enhanced focus on the Philippines and Colombia. Companies should step up their trademark filings in both of those countries and in Turkey, and work on ways to combat counterfeits on the ground there. This may include registering their marks with local customs agencies. A periodic review of the CBP's statistics of source countries can also help companies focus their enforcement efforts so that they are more effective.

Seizure Lines By Economy FY 2021



Number of Seizure Lines: 102,490

Seizure Lines By Economy FY 2020



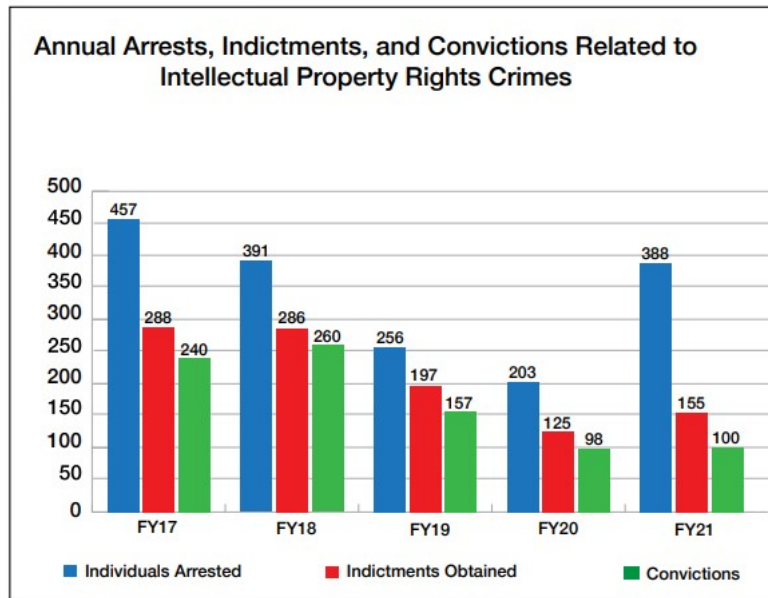
## Seizures lines and related MSRP by economy (FY2021)

Trading Partner	Seizure lines	% of total	MSRP
China	33,323	33%	\$1,888,298,761
Hong Kong	18,466	18%	\$613,462,655
Turkey	10,781	11%	\$60,347,048
Philippines	6,416	6%	\$45,692,010
Colombia	5,912	6%	\$23,980,798
All other countries	27,592	27%	\$698,256,079
<b>Grand total</b>	<b>102,490</b>	<b>100%</b>	<b>\$3,330,037,350</b>

## Seizures lines and related MSRP by economy (FY2020)

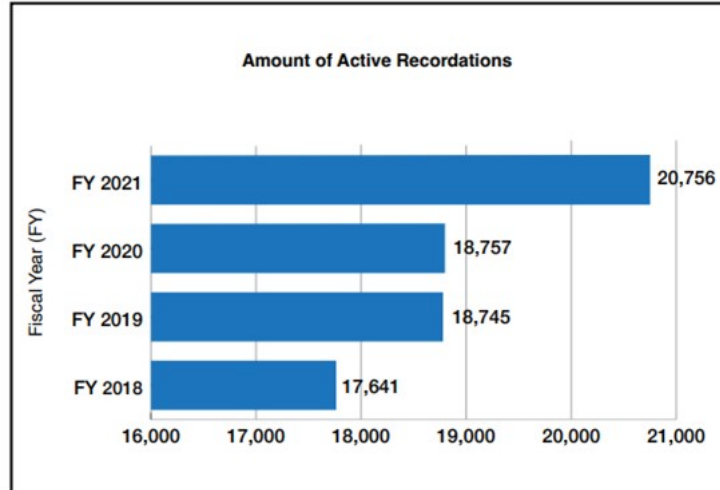
Trading Partner	Seizure lines	% of total	MSRP
China	26,985	37%	\$660,767,476
Hong Kong	23,493	32%	\$428,961,694
Turkey	6,831	9%	\$31,237,035
Vietnam	2,123	3%	\$25,803,755
Thailand	1,445	2%	\$12,601,807
All other countries	11,480	16%	\$149,784,743
<b>Grand total</b>	<b>72,357</b>	<b>100%</b>	<b>\$1,309,156,510</b>

These seizures led to the arrest of 388 individuals by the CBP, leading to 155 indictments and 100 convictions related to intellectual property crimes. These numbers are on par for the past few years.



In view of the increasing number of infringing goods entering into US commerce, an important but sometimes overlooked tool for brand owners is the recordation with the CBP of federally registered trademarks, and copyrights registered with the US Copyright Office. The CBP does not have a patent registry but patent holders may be able to use the ITC or federal courts to try to curb infringing products from being sold in the US. The CPB enters these recordations on its enforcement database, which it uses to evaluate whether incoming goods are counterfeit. The CBP concentrates its IP border enforcement efforts on these recordations. The ability to record these valuable IP rights with the CBP is an important benefit and incentive to federally register marks with the USPTO and creative works with the US Copyright Office.

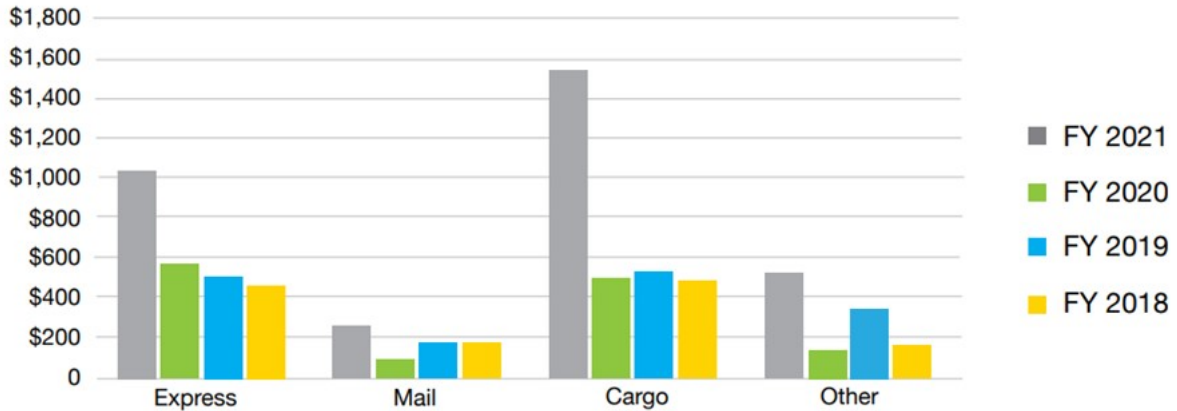
In FY2021, the CBP added over 2,000 recordations to their enforcement database. As of September 30, 2021, the CBP was enforcing 20,758 active recorded copyrights and trademarks. This marks the highest level in the last four years.



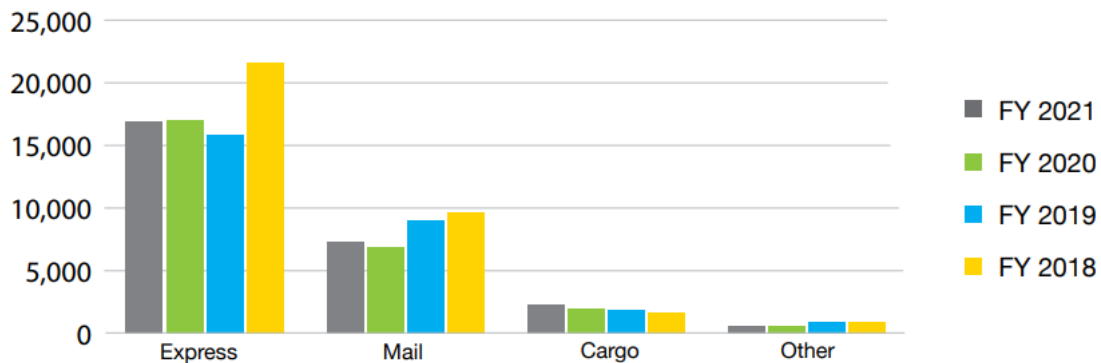
Based on these recordations, the CBP will detain, seize or exclude infringing goods and notify the rights owner if CBP discovers a suspect shipment. The rights owner will be provided with the date of importation, port of entry, description and quantity of goods, country of origin and names and addresses of manufacturer, exporter, and importer. Such information is highly valuable in preventing further infringement and in future enforcement actions. It can also help identify the source of the infringements so they can be snuffed out. Rights owners can increase the effectiveness of their recordations by preparing product identification guides for CBP agents, conducting product trainings at high-risk ports of entry to help agents spot counterfeits, and providing further information on suspected infringers via the CBP’s online allegation reporting system.

In FY2021, 16,926 seizures were of express mail, 7,293 were by mail and 2,274 were by cargo shipment. While these seizures appear to be in-line with years past when viewed by the number of seizures, a review of modes of transportation by MSRP reveals a huge jump in express and cargo seizures based on total MSRP value.

### Modes of Transportation by MSRP (in millions)



### Modes of Transportation by Seizures



With over \$3.3 billion in infringing goods seized last year in the US, one can only imagine the value of the counterfeit and pirated products that managed to make it through our borders and ports. It is impossible for the CBP to inspect each of the over 11 million maritime containers arriving at US seaports, the 11 million containers arriving by truck, and the 2.7 million containers arriving by rail. Nor can the CBP monitor each of the 213 million express shipments and 94 million international mail shipments it processed in FY2021. The import of such goods has a direct negative impact on brand owners, their bottom-lines, and the US economy as a whole.

E-commerce continues to be a rapidly growing segment of the retail economy in the US and globally. Per the US Census Bureau, e-commerce made up 10.7% the total retail sales in 2019 at \$578.5 billion. In 2020, e-commerce sales grew over 40% and accounted for 14% of total retail sales in the US, reaching \$791.8 billion in value.

As e-commerce continues to grow, we can expect that the number of small shipments will increase. The days of finding a 40-foot container full of counterfeit shoes may be numbered, and the CBP admits that it lacks full visibility into the e-commerce supply chain. The overwhelming volume of small packages makes the CBP’s ability to identify and interdict high risk packages difficult.

To assist with the herculean effort, the CBP has undertaken two pilot programmes aimed at increasing transparency with these vast, small shipments. One of these programmes is called the Section 321 Data Pilot. Started in 2019, it is a voluntary collaboration between online marketplaces, carriers, technology firms, and logistics providers. Its goal is to enhance

enforcement efforts by requiring more information on the identity of the originator of shipments. This allows authorities to focus enforcement efforts on high-risk shipments and those from sellers who are not trusted trade partners.

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