



# Border Control in China

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Presented by Lei (Ray) Zhao



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# Self-introduction



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North-West University of  
Politics and Law



UNIVERSITY OF SAN FRANCISCO



International  
Trademark  
Association

ECTA

EUROPEAN COMMUNITIES  
TRADE MARK ASSOCIATION



The Identity of Brand Owners

[https://www.linkedin.com/profile/view?id=221498598&trk=nav\\_responsive\\_tab\\_profile](https://www.linkedin.com/profile/view?id=221498598&trk=nav_responsive_tab_profile)



# 1. China's exposure to counterfeit trade import/export

- ❖ According to China Customs, China's foreign trade volume stood at **CNY 24.33 trillion** (about 3.5 trillion US dollars) in 2016 and it stands at **CNY 17.93 trillion** from January to August in 2017, 17.1% increase
- ❖ Approximately **70%** of Chinese exports consisting of manufactured goods, the amount of counterfeit trade import/export is still large either from China to other countries or from other countries to China,
- ❖ However enforcement keeps being strengthened, in 2016 custom enforcement measures were taken more than **19.5 K times**, total case number of seized products **17.4 K** and total seized suspected infringing products more than **42 M pieces**

## 2. Measures available to trademark owners

- ❖ Regulation on the Customs Protection of Intellectual Property Rights (CPIP 2010 Revision) and Implementing Measures of CPIP (2009)
- ❖ Customs enforcement of IPRs refers to the measures taken by the Customs against the import and export of IPR-infringed goods, also referred to as the Border Measures regarding the IPRs in TRIPS



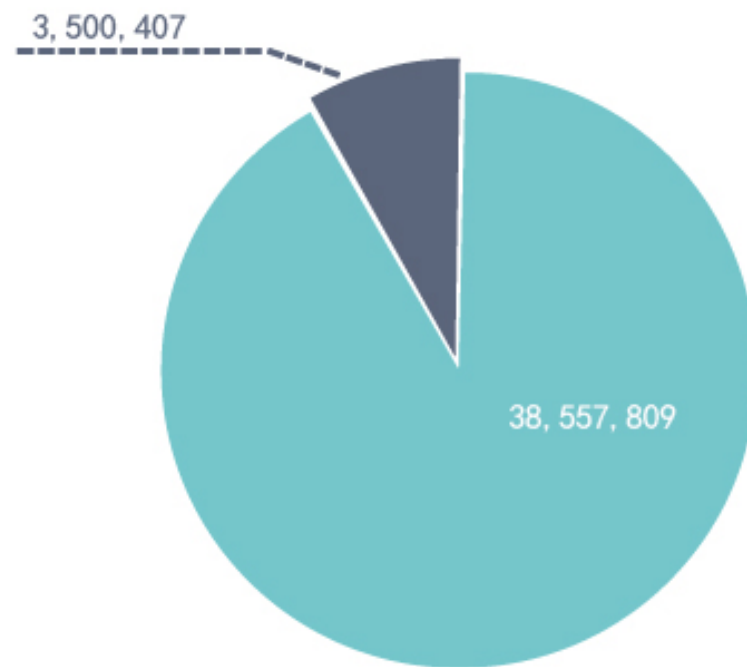
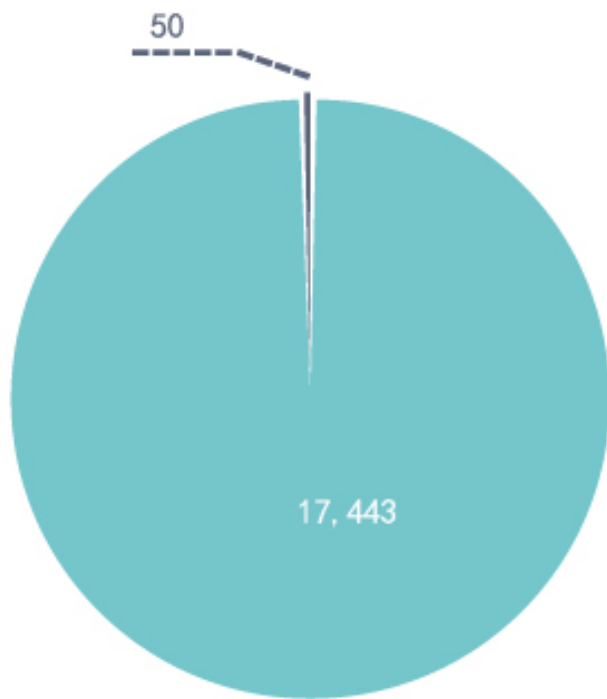
## 2. Measures available to trademark owners

- ❖ Protection of Ex Officio (active protection, majority)
  1. Custom recordal of IPRs
  2. Infringement found by customs
  3. Against products infringing recorded IPRs
  4. Stop shipment and notify owners of recorded IPRs
  5. Investigation and possible penalty
  
- ❖ Protection upon request (passive protection )
  1. Requested by owners of recorded and non-recorded IPRs
  2. Infringement found by owners of IPRs
  3. Stop shipment but no investigation initiated by customs
  4. Owners need to bring lawsuits before courts

## 2.Measures available to trademark owners

2016 Enforcement statistics

■ Ex Officio  
■ upon request



total case number of seized products    total seized suspected infringing products

# 3. Basis for actions

- ❖ Trademark (majority)
- ❖ Copyright
- ❖ Patent
- ❖ Olympic symbols
- ❖ World Expo symbols

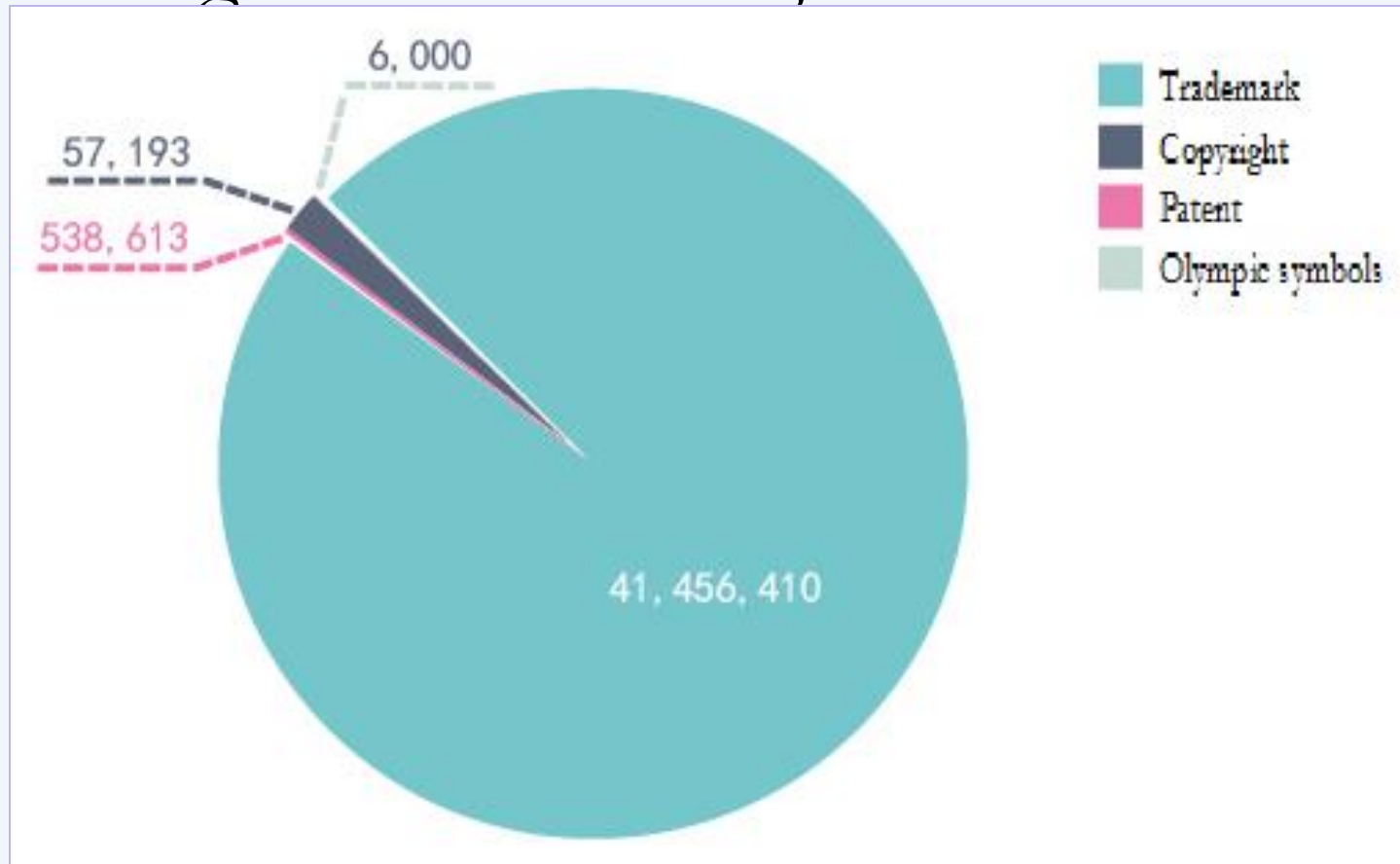
!



### 3. Basis for actions

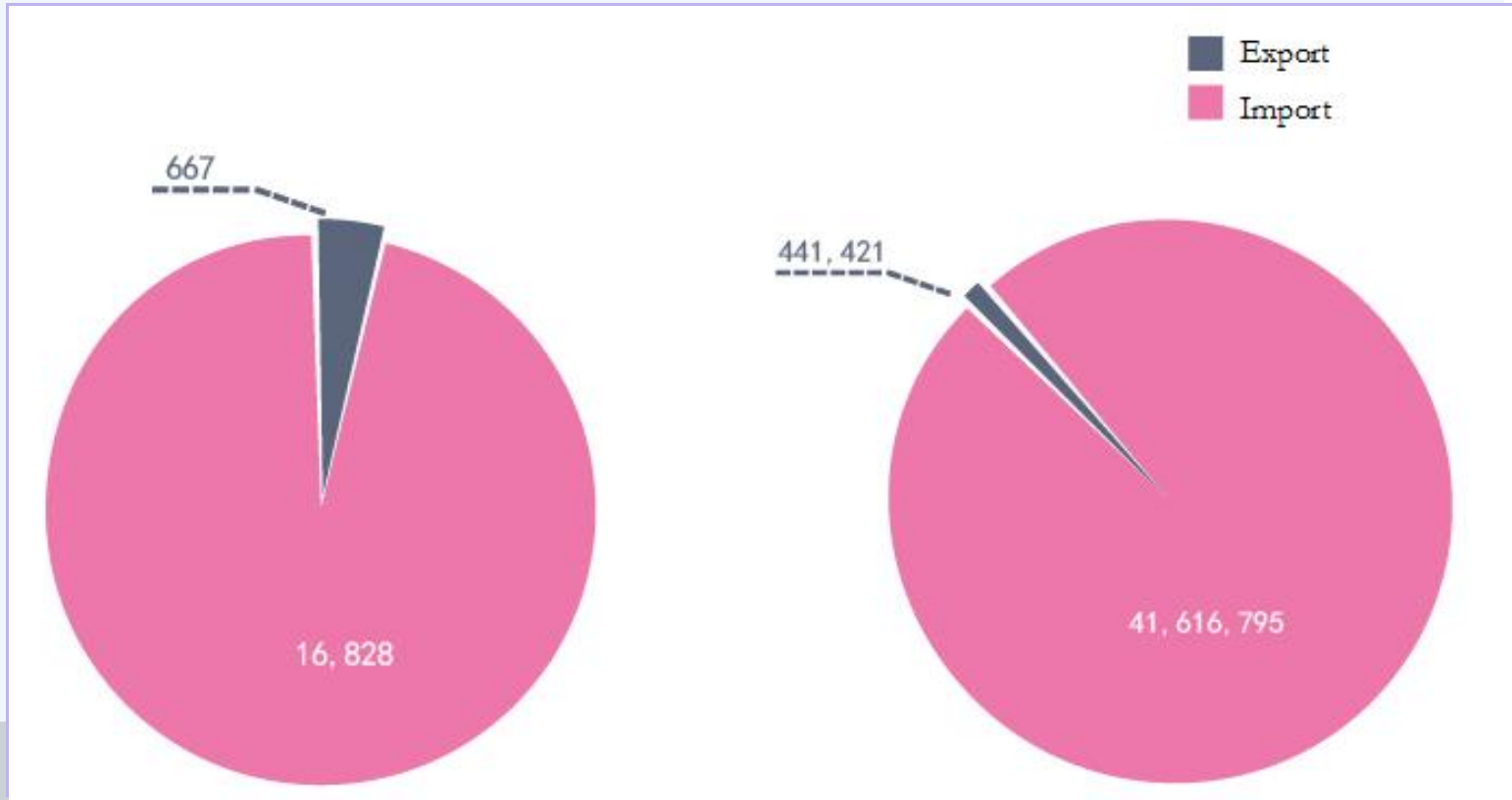
In 2016, total number of suspected trademark infringement 41.46 M, 98.56 %

↓



### 3. Basis for actions

In 2016, total case number of seized export products **16.8 K, 96.20%** and total seized suspected export infringing products more than **42 M pieces, 98.95%**, **export is majority**



## 4. Procedure for Customs Registration

- ❖ Also known as IPR Recordal(online application only)
- ❖ <http://www.haiguanbeian.com/> IPR Registration System for Customs Protection
- ❖ Foreign information should be submitted with Chinese translations
- ❖ Foreign owners of IPRs shall file application through their Chinese subsidiaries or their agencies

# 4. Procedure for Customs Registration

Application form requires:

1. Name and Address in Chinese and English, nationality ,contact info
2. Name, class, goods, picture, term of registered trademark,; name, creation date, class, picture, of copyright; name, type, application date of patent; assignment, change, renewal information of trademark, copyright and patent if any
3. Information of license, name of licensee, term, goods
4. Name of goods, place of production, customs for import and export, price and major features
5. Known manufacturers, distributors, place of import/export, major feature and price of infringing products.

## 4. Procedure for Customs Registration

### **CUSTOMS RECORDAL** requires

1. ID or incorporation certificate of applicants
2. Registration Certificate for the IPR
3. Photos of the designated goods and their packaging;
4. The name of the known infringers, if any;
5. Information about licensed use of the right, photocopy of licensing contract (if any) , or information including the name list, contents and term concerning the licensing in case of no contract
6. Known evidence of infringing products

※ The certificates and proof documents of identity should be color scanned.

# 4. Procedure for Customs Registration

The screenshot shows a web browser window displaying the 'Intellectual Property Customs Protection System' (知识产权海关保护系统). The browser's address bar shows the URL 'http://202.127.48.148/'. The website has a blue header with the system's name in large white characters. Below the header, there are several sections:

- 最近更新 (Latest Updates):** A box containing statistics: '最新更新: 2014-03-27', '注册用户: 10626 (权利人用户: 10479 代理人用户: 147)', '知识产权备案: 22339 (商标权: 16024 著作权: 992 专利权: 5323)'.
- 系统查询指南 (System Query Guide):** A box with text: '知识产权权利人通过本系统可以向海关总署办理知识产权海关保护备案、向海关申请扣留侵权嫌疑货物和举报进出口侵权货物。使用本系统,需要事先注册为本系统的用户。详见“系统使用指南”。
- 备案申请须知 (Filing Application Notice):** A box with text: '根据《中华人民共和国知识产权海关保护条例》,知识产权权利人可以将其商标专用权、著作权和与著作权相关的权利、专利权向海关总署备案。详见“备案申请须知”。
- 查询有效备案 (Query Effective Filing):** A box with text: '从事进出口业务的外贸企业和生产企业需要了解有关知识产权在海关总署备案的情况的,可以通过本系统查询当前有效的知识产权备案的情况。详见“查询有效备案”。' Below this is a red warning: '\* 未经许可,擅自使用他人未在海关总署备案的受中国法律和行政法规保护的知识产权,仍然属于侵权行为,应当承担法律责任。'
- 通知公告 (Notice and Announcement):** A list of recent notices, including: '[2014年02月28日]海关总署关于启用知识产权海关保...', '[2014年03月03日]关于保存出现“服务器异常”的解...', '[2014年03月05日]如何找回正确的用户账号', '[2014年02月28日]备案费缴纳须知提醒', '[2014年02月28日]用户登录“证件号码”的说明', '[2014年03月10日]用户上传附件必须使用原件彩色扫...', and '[2014年03月03日]登录账号请勿用旧系统用户编号'.
- 功能菜单 (Function Menu):** A vertical sidebar with buttons for '系统使用指南', '备案申请须知', '下载文书格式', '查询有效备案', and '常见问题解答'.
- 用户登陆 (User Login):** A button at the bottom right of the main content area.

The browser's taskbar at the bottom shows the system tray with 'Internet | 保护模式: 禁用' and a 100% zoom level.

# 4. Procedure for Customs Registration

备案查询 - Windows Internet Explorer  
http://202.127.48.148/zscq/search/jsp/vBrandSearchIndex.jsp

## 知识产权海关保护系统

查询条件

权利人名称	<input type="text"/>	权利名称	adidas
备案权利类别	商标权	权利人国别	-请选择-
备案内容类型	全部	备案号	<input type="text"/>
商品分类	全部	权利号	<input type="text"/>

模糊查询 精确查询

备案查询

权利标识	权利名称	权利人名称	权利人国别	权利号	备案号	权利类别	备案状态	备案开始日期	备案截止日期
adidas	adidas	阿迪达斯有限公司	德国	162239	T2012-27557	国内注册	生效	2012-11-26	2022-09-14
adidas	adidas	阿迪达斯有限公司	德国	7599496	T2012-27193	国内注册	生效	2012-10-15	2020-11-20
adidas	adidas	阿迪达斯有限公司	德国	3303129	T2012-27116	国内注册	生效	2012-10-08	2014-07-27
adidas	adidas	阿迪达斯有限公司	德国	259535	T2009-15488	国内注册	生效	2009-05-27	2016-08-19
adidas	adidas	阿迪达斯有限公司	德国	873379	T2009-15487	国内注册	生效	2009-05-27	2016-09-20
ADIDAS	ADIDAS	阿迪达斯有限公司	德国	71087	T2005-06505	国内注册	生效	2005-03-31	2014-12-23

完成 Internet | 保护模式: 禁用 0KB/S 0KB/S 3% 100%

## 5. Timeframe and cost for the filing procedure

1. Come into effect in 1-2 months after filing
2. Protection period: 10 years after approval, or shorter than 10 years if the remaining validity period of the trademark is earlier
3. Renewal: on the basis of effective IPR, available to renew within 6 months before the expiration of recordal
4. Cost: CNY 800 per registration

※ Any change/withdraw of the registration should be applied to the GACC within 30 days after it happens to the IPR.



# 6. Effectiveness of Customs

Warranty – storage fees will be deducted

The owner of IPR could pay the warranty by case or by year. The warranty yearly paid is a more convenient choice if the infringing goods appear frequently.

Cost:

- Protection on Request: Equivalent with the value of the seizure goods
- Protection Ex Officio: The warranty per case should be no more than CNY 100,000.

The yearly paid warranty should be equal with the fees last year (including the storage fees, and other fees relating to it)

※ Yearly paid warranty cannot be applied to patent, copyright, Olympic symbols and World Exposition symbols.

Procedures for GACC after seizure:

- Protection on Request: 20 days to wait the court's order of suspension, if not, release
- Protection Ex Officio: 30 days for investigation, estimating the infringement and decide the next moves—confiscate/destruction

# 7. Strategy for good border control

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## 8. Examples of interesting legal topics decided by **courts and interesting topics**

As much as GACC needs

Border control is not responsibility for some specific country. It needs cooperation across countries to provide maximum protection to IPR and the owners.

Case from top 10 important cases in IPR protection by GACC:

[In March and April 2016, together with CBP and ICE from U.S., GACC initiated special enforcement on IPR issues. In the enforcement, GACC has seized more than 2,000,000 infringed goods, relating to the trademarks “NBA”, “OAKLEY”, “NFL”, “ADIDAS”, “REEBOK”, worth millions. After finding the infringed goods, the GACC and ICE jointly crack the criminal cases, many of which were conspiring cases conducted by citizens from China and U.S. In the end, the suspects were arrested to wait for the legal sanctions. ]

## 8. Examples of interesting legal topics decided by **courts and interesting topics**

Reveal as much as GACC needs

Customs training



## 9. Examples of interesting legal topics

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# Q & A



**Thank You !**

