

U.S. INTERNATIONAL TRADE COMMISSION

FY 2011 AT A GLANCE



OPERATION 2: Intellectual Property Import Investigations

WHAT WE DO

The Commission adjudicates complaints brought under section 337 of the Tariff Act of 1930 that allege infringement of U.S. intellectual property rights and other unfair methods of competition in connection with imported goods. Most complaints filed under this provision involve allegations of patent infringement or trademark infringement.

If the Commission determines that there is a violation of section 337, it may issue remedial orders that would exclude the products from entry into the United States and/or order entities to cease and desist from certain actions.

USITC determinations in section 337 investigations can be appealed to the Court of Appeals for the Federal Circuit.

HOW WE DO IT

Section 337 investigations are conducted in accordance with the Administrative Procedure Act and the Commission's Rules of Practice and Procedure and require formal evidentiary hearings before an Administrative Law Judge (ALJ). The parties conduct discovery, present evidence, and make legal arguments before an ALJ and, ultimately, the Commission. Section 337 procedures protect the public interest and provide the parties with timely adjudication of investigations.

After the Commission has instituted an investigation, the matter is referred to the USITC's Chief Administrative Law Judge. Cases are assigned to one of the

USITC's ALJs, who, after an extensive discovery process, holds a hearing. The judge considers the evidentiary record and the arguments of the parties and makes an initial determination, including findings of fact and conclusions of law. Temporary relief may be granted in certain special cases where additional requirements are met.

The Commission may review and affirm, reverse, modify, or set aside the ALJ's initial determination, or remand for further proceedings. If the Commission does not review the judge's decision, it becomes the Commission's final determination.

If the Commission finds a violation of section 337 and issues remedial orders, those orders are effective when issued and become final 60 days after issuance unless disapproved for policy reasons by the U.S. Trade Representative within that 60-day period.

SECTION 337 CASES

- New section 337 investigations instituted: 70
- New section 337 ancillary proceedings: 8
- Total active section 337 investigations and related (ancillary) proceedings: 129
 - Patent-based: 126
 - Solely trademark-based: 2
 - Solely based on trade secret misappropriation, unfair competition, and copyright infringement: 1
- General exclusion orders issued: 4
- Limited exclusion orders issued: 5
- Cease and desist orders issued: 26

PRODUCTS INVOLVED

55 percent of the investigations active during FY 2011 involved telecommunications and computer equipment, such as:

- cellular telephones and modems
- integrated circuits, i.e. memory chips
- display devices, i.e. digital televisions

10 percent of the investigations active during FY 2011 involved other small electronic products, including game systems and GPS devices

Other investigations involved diverse consumer items, such as ink cartridges, caskets, and handbags; others focused on a variety of chemical and medical technologies





UNDERSTANDING INVESTIGATIONS OF INTELLECTUAL PROPERTY INFRINGEMENT AND OTHER UNFAIR PRACTICES IN IMPORT TRADE (SECTION 337)

Under section 337 of the Tariff Act of 1930, the USITC determines whether there is unfair competition in the importation of products into, or their subsequent sale in, the United States. Section 337 declares the infringement of a U.S. patent, copyright, registered trademark, or mask work to be an unlawful practice in import trade. Section 337 also declares unlawful other unfair methods of competition and unfair acts in the importation and subsequent sale of products in the United States, the threat or effect of which is to destroy or substantially injure a domestic industry, prevent the establishment of such an industry, or restrain or monopolize trade and commerce in the United States.

Section 337 investigations require formal evidentiary hearings in accordance with the Administrative Procedure Act (5 U.S.C. 551 et seq.). The hearings are held before an administrative law judge (ALJ). Parties to these investigations include complainants and respondents, and when appropriate, a USITC attorney who, among other things, advises the Commission on issues unique to section 337, such as the domestic industry requirement, importation, jurisdiction, remedy, the public interest, and bonding, as well as other issues uniquely affecting Commission practice and policy. Following the evidentiary hearing, the ALJ issues an initial determination on all issues related to violations of section

337. The Commission may review and adopt, modify, or reverse the ALJ's decision. If the Commission does not review the initial determination, it becomes the USITC's decision. If a violation is found, the USITC may issue orders barring the importation of certain products into the United States. In addition to requesting long-term relief, complainants also may move for temporary relief pending final resolution of the investigation based on a showing of, among other things, irreparable harm in the absence of such temporary relief.

When: After receipt of a complaint alleging, under oath, a violation of section 337, the USITC determines whether the complaint satisfies the requirements of the Commission's rules and an investigation should be instituted. Following institution, the USITC conducts an investigation to determine whether the statute has been violated.

Duration: The USITC is required to conclude its investigation at the earliest practicable time, and must, within 45 days after an investigation is instituted, establish a target date for issuing its final determination.

Finding: If the accused imports are determined to infringe a valid and enforceable U.S. patent, copyright, registered trademark, or mask work, the USITC may issue orders excluding the products from entry into the United States and/or directing the violating parties to cease and desist from certain actions. Where such infringement is shown, injury need not be shown to establish a violation of section 337. In cases involving other unfair methods of competition or unfair acts, if the USITC finds that the importation of the accused articles substantially injures or threatens to substantially injure an industry, prevents the establishment of such an industry, or restrains or monopolizes trade and commerce in the United States, it may also issue exclusion and/or cease and desist orders. USITC orders are effective when issued and become final 60 days after issuance unless disapproved for policy reasons by the U.S. Trade Representative within that 60-day period. Appeals of USITC determinations may be taken to the U.S. Court of Appeals for the Federal Circuit. Violators of USITC section 337 orders are liable for civil penalties of up to \$100,000 a day or twice the value of the imported articles.

