
S. Alex Lasher
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The Domestic Industry Requirement

An industry in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent, copyright, trademark, mask work, or design concerned-

(A) significant investment in plant and equipment;
(B) significant employment of labor or capital; or
(C) substantial investment in its exploitation, including engineering, research and development, or licensing.”

19 U.S.C. § 1337(a)(3)
Historic Roots


“An act to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, to protect American labor, and for other purposes.”

“Unfair methods of competition and unfair acts in the importation of articles into the United States, or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry . . .”

Tariff Act of 1930, Pub. L. No. 71-361
Historic Roots (cont’d)

The Trade Act of 1974

“in cases involving the claims of U.S. patents, the patent must be exploited by production in the United States, and the industry in the United States generally consists of the domestic operations of the patent owner, his assignees and licensees devoted to such exploitation of the patent.”

Historic Roots (cont’d)

The Omnibus Trade and Competitiveness Act of 1988

“[to allow] complaints to be filed by persons who have made substantial investment in facilities or activities relating to the exploitation of a patent, copyright, trademark, or mask works, including research and development, licensing, sales and marketing . . . Such a change will enable universities and small businesses who do not have the capital to actually make the goods in the United States to still have access to the ITC forum for the protection of their rights.”

Recent Trends

Foreign Complainants

- From 1989 – 1999, the ITC instituted 136 section 337 investigations. 14 of those investigations involved foreign complainants (10%).

- From 2000 – 2010, the ITC instituted 283 section 337 investigations. 70 of those investigations involved foreign complainants (24%).

- The ITC has instituted 11 section 337 investigations so far this year. 6 of those investigations involve at least one foreign complainant (55%).
Recent Trends (cont’d)

Section 337 Investigations

Number of Investigations

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<tr>
<th>Period</th>
<th>Total</th>
<th>Foreign Complainants</th>
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<tr>
<td>1989-1994</td>
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<td>1995-1999</td>
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ALSTON + BIRD LLP
Recent Trends (cont’d)

Non-Practicing Entities (“NPEs”)  

- Since 2007, at least 13 investigations have been instituted based on complaints filed by NPEs.
Thank you

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