

The ITC Modernization Alliance¹ (“ITCMA”) submits the following in response to the International Trade Commission’s (“ITC or Commission”) request for public comments on its Draft Strategic Plan for FY 2026-2030. The ITCMA is a coalition of leaders in the technology, telecom, and automotive industries dedicated to modernizing the Commission and promoting trade practices that safeguard American industry, workforce, and consumers. As some of the world’s largest patent holders, and with experience as parties to ITC proceedings, ITCMA members strongly believe in the core purpose of the ITC and appreciate the opportunity to provide input through the comment process. Our recommendations for the Strategic Plan are set forth below, and an Appendix is attached with proposed redlines

I. Increasing Transparency in Proceedings

In Strategic Objective 1.1 of the Draft Strategic Plan, the Commission cites transparency as a key goal. Specifically, the Commission notes that “Transparency is also critical to ensuring reliable proceedings” and “The Commission promotes transparency and understanding of its proceedings by ensuring that accurate public information is readily available.” We strongly agree with the goal of transparency, particularly as it relates to the ITC’s section 337 proceedings, but we recommend that the Strategic Plan further specify the importance of transparency with respect to the presence of third party litigation funding and the domestic industry analysis. With the increasing complexity of proceedings before the Commission, and their potential impact on America’s global competitiveness, the Strategic Plan should reflect the importance of these issues to carrying out the ITC’s Mission.

Full transparency of all parties with an interest in ITC proceedings is essential to achieve the Commission’s goal. This includes transparency into whether there are any third parties providing funding for the proceeding. The ITCMA believes that disclosure of such funding, and the transparency it brings about, are important for a number of reasons. At a fundamental level, disclosure is needed to ensure fairness to the parties in a matter, which is a fundamental concept of American jurisprudence. A party has a right to know the true identity of the opposing party, and to determine whether the complainant possesses all substantive rights needed to adjudicate the conflict.² Transparency is also necessary for the ITC to assess any conflicts that may be present. In addition, transparency is necessary for the Commission and the public to execute other parts of the section 337 process.

In addition to transparency into any third party litigation funding sources, another area requiring attention is the threshold domestic industry inquiry. Properly determining whether there is a domestic industry to protect requires increased transparency from the complainant. It has been recently noted that complainants are increasingly redacting information from the domestic

¹ A list of IMA members is available at itcmalliance.org.

² See Comments from ITC Modernization Alliance (Docket No. MISC–049).

industry analysis.³ The failure of Complainants to disclose basic information, is not consistent with the important goal of transparency. Improper redaction or omission of information prevents named parties, the public, and other interested entities from providing the ITC with timely, relevant information and jeopardizes the original purpose of the proceeding. The Commission should be aggressive in policing such activity.

Finally, transparency fulfills a crucial role for both the parties and the public to provide the ITC with relevant information to enable it to conduct the “public interest” analysis required under the ITC’s statutory authority.⁴ The public interest requirement cannot be properly assessed without knowledge of the actual parties in interest. For example, it is particularly important for the Commission to ensure party transparency to enable a true evaluation of the public interest where a proceeding is funded or initiated by foreign interests. Such circumstances are increasingly possible given the increased complexity of corporate structures and litigation funding mechanisms in the IP space. Such information may reveal national security concerns, which impacts statutory factors in the public interest analysis—the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the U.S., and U.S. consumers. Transparency in this case, ensures the parties and the public are served.

In the era of global competition, information is even more important. It is essential for both respondents and the general public to understand exactly on whose behalf the U.S. Government is taking action. The Commission notes in its draft that the important goal of transparency must be balanced with the need for confidentiality, stating “The aim of providing complete information in a timely and transparent manner, however, must be balanced against the legal requirement to protect proprietary, confidential, unclassified, and national security information from disclosure.” While we agree a balance is appropriate, we believe a reassessment of the Commission’s historic assessment of the proper equilibrium is warranted in the current environment where global competition with China is a top priority for the Trump Administration. At the very least, it is necessary to weigh those global competition concerns as part of transparency analysis.

II. Increasing Efficiency in Proceedings

The Commission’s Draft Strategic Plan cites efficiency as a key goal in Strategic Objective 1.1, noting that “Timely decisions and analyses are critical to domestic industries that are harmed by unfairly traded imports and to policymakers trying to better understand the impact of trade on competitive conditions in the United States and foreign markets.” While efficiency is important to the complainant and policymakers, it is equally important to the respondent to a proceeding given the impact of a pending investigation on a company’s product development. And with the increasing usage of the ITC by foreign complainants requesting investigations of domestic respondents, efficiency – like transparency – can impact global competitiveness issues as well.

³ See Matthew Rizzolo, “No More Secrets: The ITC should require more domestic industry-related disclosure,” IAM Magazine (Oct. 4, 2025).

⁴ 19 U.S.C. 1337(d)(1).

One effort the Commission has undertaken to achieve greater efficiency is the 100 Day Program, originally announced in August 2013. As the Commission noted then, it launched the program "to test whether early rulings on certain dispositive issues and some section 337 investigations could limit unnecessary litigation, saving time and cost for all parties involved."⁵ The program was formalized following the Commission's decision to use a similar process in *Certain Products Having Laminated Packaging, Laminated Packaging, and Components Thereof*, Inv. No. 337-TA-874. Properly leveraged, the program would provide an efficient mechanism for early resolution of dispositive issues. Unfortunately, in the years since the program's inception, it has been rarely used. The ITCMA has long supported the 100 Day Program. We believe more frequent application of the program application in cases that present such case-dispositive issues would create the desired efficiency.

III. Avoiding Duplicative Proceedings

The Commission's goals of efficiency and transparency in its proceedings, as outlined in Strategic Goal 1.1 of Draft Strategic Plan, are important. Likewise, as part of Strategic Goal 3, the Commission cites the perennial goal of "stewardship of taxpayer funds." The ITCMA agrees this should be a primary objective for all federal agencies and courts. With that mind, we believe there is some level of duplication in the enforcement of intellectual property laws that results in unnecessary, duplicative use of taxpayer funds.

In recent years, over 80% of patent cases filed at the ITC also have a counterpart case filed in U.S. Federal District Court.⁶ Professor Jorge Contreras testified before Congress on this fact in 2024.⁷ Adjudicating these duplicative cases at the ITC – which are labor-intensive and high-stakes – require appropriations of millions of dollars each year. In some cases, these cases are brought by foreign companies against American businesses, happening 31% of the time in 2022 and 2023.⁸ This is twice the amount it was in 2005.⁹ And these days, many of the cases at the ITC are brought by patent licensing entities – businesses that aggregate patents to pursue licenses against productive businesses – that are either foreign themselves or with backing from often nondisclosed foreign sources.

The ITC was never intended to be a parallel patent enforcement venue. And given the mission of the agency to protect American industry and jobs from unfair foreign competition, it certainly was not meant to be a forum for foreign interests to bring suits against U.S. companies. The intent was the opposite: the ITC was created to provide a pathway for U.S. businesses to keep

⁵ "Pilot Program Will Test Early Disposition of Certain Section 337 Investigations," News Release 13-059, USITC, Released June 24, 2013

http://www.usitc.gov/press_room/news_release/2013/er062411.htm

⁶ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4840731

⁷ <https://www.congress.gov/118/meeting/house/117532/witnesses/HHRG-118-JU03-Wstate-ContrerasJ-20240723.pdf>

⁸ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4840731

⁹ <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1051&context=wmlr>

infringing goods from coming into the country when the infringer could not be sued in a district court.

According to the ITC's data from 2008-2022, only 6.5% of the time does an ITC proceeding involve solely domestic companies bringing the dispute, and solely foreign companies on the receiving end.¹⁰ With the power to stop goods at the border, including key elements of the supply chain for American manufacturers, plaintiffs using the ITC to bring suits against productive American businesses is not just a waste of taxpayer money, but is also harmful to the U.S. economy and consumers. In view of this, the ITCMA recommends that the Strategic Plan establish a goal to study the issue of duplicative litigation between the Commission and district courts, and determine the appropriations that would be saved if such duplication were no longer permissible. By doing so, the ITC will provide Congress with the needed insights to ensure that taxpayer funds are appropriately used.

Sincerely,

A handwritten signature in black ink that reads "Sarah Beth Jansen". The signature is written in a cursive, flowing style.

Sarah Beth Jansen
Executive Director
ITC Modernization Alliance

10

Appendix Draft Redlines

Consistent with our comments, we offer the following redlines to the Draft Strategic Plan.

Strategic Objective 1.1

Efficient: Conduct expeditious and transparent proceedings

Commission investigations involve many industries, product markets, and parties, often representing a broad array of interests. From single inventors (as in some investigations) and companies with revenues of less than one million dollars, to the largest multinational companies and unions representing thousands of workers, parties to Commission proceedings benefit from reliable processes that ensure fair, timely, and transparent decisions, consistent with applicable U.S. laws.

The Commission's governing statutes set specific deadlines for determinations in investigations of subsidized or dumped imports and of increased imports alleged to injure a domestic industry (import injury investigations) and require that investigations of imports that allegedly infringe domestic intellectual property rights or are otherwise unfairly imported (unfair import or section 337 investigations) be resolved at the earliest practicable time. In addition, each factfinding investigation has a deadline set by the requester of the study or by statute. Timely decisions and analyses are critical to the parties to an investigation ~~domestic industries that are harmed by unfairly traded imports~~ and to policymakers trying to better understand the impact of trade on competitive conditions in the United States and foreign markets. The 100 Day Program for section 337 investigations was established to support timeliness and efficiency.

The Commission's governing statutes also set forth threshold requirements for being permitted to bring an investigation. In the case of section 337 investigations, a complainant must demonstrate that there is a domestic industry to protect. Transparency into the domestic industry is therefore necessary to ensure the proceeding is consistent with the Commission's Mission.

Transparency is also critical to ensuring reliable proceedings. The Commission promotes transparency and understanding of its proceedings by ensuring that accurate public information is readily available. The aim of providing complete information in a timely and transparent manner, however, must be balanced against the legal requirement to protect proprietary, confidential, unclassified, and national security information from disclosure. Such protection is also necessary to ensure that participants are willing to provide the information needed to build a full record in investigations.

The increasing complexity of investigations has brought challenges to the ability of the Commission to meet its timeliness goals. In recent years, the complexity of all investigations has increased, whether it is the number of countries or complicated industry structure involved in an import injury investigation, the types of allegations and technology presented in an unfair import

investigation, or the scope of questions presented for factfinding investigations. Also contributing to the increased complexity of investigations is the potential presence of third party litigation funding sources.

The Commission's strategies for meeting Strategic Objective 1.1 include:

- improving the timeliness of Commission investigations through continual assessments of its investigative processes;
- ensuring that the Commission meets statutory and external deadlines in Commission investigations, and accurately assesses threshold requirements for bringing an investigation;
- posting on a timely basis documents and information related to Commission investigations on the Commission website;
- establishing disclosure requirements to bring visibility to the presence of any third party litigation funding sources; and
- advancing our use of technology to present information that is timely, clear, searchable, and easy to navigate.

Strategic Objective 3.2

Money: Ensure responsible, diligent, and transparent stewardship of taxpayer funds

The Commission relies on the effective use of limited financial resources to achieve its strategic goals. Stewardship of appropriated funds and financial oversight are fundamental to establish the accountability and transparency that taxpayers demand, and to fulfill the presidential directive given to Federal agencies--to improve government efficiency.

The Commission continuously assesses and enhances its budget formulation and execution, acquisition activities, accounting operations, internal controls, internal rules and the identification and consideration of organizational risks. This strategic objective promotes consistency and integrity throughout the organization as the Commission makes efficient and effective use of available resources.

To be a good steward of appropriated funds, it is also important to identify and evaluate when the Commission's work may be duplicative of other work, which would cause taxpayers funding substantially similar work across government. This can be the case with respect to section 337 investigations brought at the Commission at the same time as a district court litigation for patent infringement.

The Commission's strategies for meeting Strategic Objective 3.2 include:

- evaluating the need for resources across agency activities, aligning funds to strategic goals and objectives through risk analysis and prioritization, and incorporating the information in budget preparation and execution;
- studying the presence and financial impact of duplicative proceedings between the Commission and district courts;
- promoting the use of outcome-based metrics when evaluating acquisition requests, and ensuring that requests align with strategic needs; and
- advancing the accuracy, completeness, and timeliness of financial data to support transparent reporting and reinforcing public trust in the Commission's stewardship of funds.