

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

In the Matter of CERTAIN VIDEO CAPABLE ELECTRONIC DEVICES, INCLUDING COMPUTERS, STREAMING DEVICES, TELEVISIONS, AND COMPONENTS THEREOF	 Inv. No. 337-TA-1380
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**STATEMENT OF NON-PARTIES ITC MODERNIZATION ALLIANCE
AND HIGH TECH INVENTORS ALLIANCE
IN RESPONSE TO THE COMMISSION'S
NOTICE OF REQUEST FOR SUBMISSIONS ON THE PUBLIC INTEREST**

The ITC Modernization Alliance (“IMA”) and High Tech Inventors Alliance (HTIA) submit the following statement in response to the Commission’s request for public interest comments.

The ITC Modernization Alliance (IMA) is a coalition of leaders in the technology, telecom, and automotive industries dedicated to modernizing the International Trade Commission (ITC) 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, IMA members strongly believe in the core purpose of the ITC and appreciate the opportunity to provide input through the public interest inquiry process.

The High Tech Inventors Alliance (HTIA) represents leading technology providers and includes some of the most innovative companies in the world. HTIA’s member companies are some of the world’s largest funders of research and development, collectively investing more than \$165 billion in these activities annually. They are also

some of the world's largest patent owners and have collectively been granted nearly 350,000 patents.

I. THE IMPORTANCE OF CONSIDERING THE EFFECT OF REMEDIAL ORDERS ON COMPETITIVENESS AND CONSUMERS

The ITC was established to protect the United States and U.S. industry from unfair foreign competition. With that mandate in mind, Congress wisely and specifically required the ITC to carefully evaluate the effect on the economy and consumers before excluding products from the U.S. market as part of its trade authority. 19 U.S.C. § 1337(d)(1); 19 U.S.C. § 1337(f)(1). This evaluation – referred to as a “public interest” analysis – requires the ITC to consider factors including the availability of substitute products, impact on consumers, potential harm to U.S. industries, competition concerns in U.S. markets, and public health and welfare. The ITC has the difficult but critical task of balancing its unique intellectual property enforcement authority with broader societal, economic, and competitiveness concerns. These are important inquiries at a time when U.S. global competitiveness and technology leadership is at the core of the nation's national security.

As an independent federal agency, the ITC is charged with a broader public purpose than an Article III court. The ITC, unlike a district court, exists to address unfair trade practices and protect domestic industries, and not to simply resolve a dispute between two private parties. It does so through the issuance of exclusion orders after the infringement of a valid and enforceable U.S. patent has been found, provided there is an industry in the U.S. making use of that patent, and the ITC's public interest consideration of the effect on competitiveness and consumers does not merit that it refrain from issuing such an order. This helps to ensure that the ITC's actions are

consistent with its overall mission as a forum to protect American industry and jobs. The public interest inquiry in ITC section 337 cases therefore plays a crucial role in balancing the interests of complainants alleging patent infringement and requesting the exclusion of products from the U.S. market, with the broader impact of such exclusion on consumers and the U.S. economy.

Despite the statutory mandate and clear importance of the public interest inquiry to national security and economic prosperity, it seems too often to be considered as just a procedural step, rather than a major factor in most cases. The last time the ITC used its public interest authority to decline to issue an exclusion order was in 1984, which is remarkable considering the ITC has conducted over 1,000 section 337 investigations in the forty years since that time. The lack of meaningful use of the public interest inquiry can only be seen as leading to atrophy of the process and a practical presumption against the application of the public interest. Such a presumption, in addition to being against the obvious intent of Congress, does not serve US industries that are innovating, creating jobs, and protecting US national security and competitiveness. Such a result is inconsistent with the ITC's statute, Congressional intent, and the Commission's status as an independent agency.

II. WHY THE UNITED STATES NEEDS A ROBUST PUBLIC INTEREST INQUIRY

A robust public interest inquiry ensures that the ITC's actions are not harmful to U.S. competitiveness and the economy, and are in the best interests of the American public. By carefully considering the potential benefits and harms of its exclusion orders as provided in section 337, the ITC can make informed decisions that respect valid and enforceable intellectual property rights while also promoting competition, innovation,

and consumer welfare for the nation. U.S. global technology leadership and our national security are what's at stake. The ITC, like every part of the U.S. government, must keep these goals in mind, and the statutorily-required public interest inquiry gives a clear opportunity to make that analysis.

A robust public interest inquiry, consistent with the statute, would ensure that the ITC carefully weighs the potential benefits of an exclusion order against these potential harms, ensuring that the decision is made in the best interests of the country. The effect of ITC exclusion orders can be far-reaching, going well beyond the parties to the proceeding. Exclusion orders prohibit the importation of infringing products into the United States, which can disrupt supply chains and U.S. manufacturing, limit consumer's access to products, raise prices for goods, and stifle competition and innovation. A careful analysis of these factors is essential to fulfilling the mission of the ITC.

We do not take a position on the facts of the case in question. However, we take a strong position on the critical need for the ITC to make the public interest inquiry a robust and thoughtful exercise in this case, and in all section 337 investigations. In so doing, the ITC will ensure that its remedies are consistent with its statutory mandate to protect the United States, U.S. industry, and consumers from unfair foreign competition.

III. CONCLUSION

IMA and HTIA appreciate the opportunity to share our views on the importance of the ITC's public interest inquiry and our recommendations for its proper and robust application in this and other cases.

Dated: January 30, 2025

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'David Jones', with a stylized, flowing script.

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