

Section 337 of the Tariff Act of 1930

Under Section 337 of the United States Tariff Act of 1930, imported products that allegedly violate United States intellectual property rights can be barred from entry into the United States. Complaints under Section 337 are made to the United States International Trade Commission (ITC), and generally involve allegations of infringement of intellectual property rights, i.e. patents, trademarks or copyrights. Relief, in the form of an exclusion order (import prohibition of a specific article) or a cease and desist order (an order prohibiting a party from importing) or both, may be granted to the successful complainant.

Section 337 gives U.S. intellectual property owners a major advantage over foreign competitors, who face expensive litigation and the threat of harassment. Section 337 provisions contain more direct remedies against alleged violators than available against alleged domestic violators in U.S. domestic courts. Foreign firms also face more onerous administrative procedures in the ITC than in U.S. domestic courts.

A 1989 GATT Panel determined, *inter alia*, that Section 337 violated U.S. GATT obligations by providing different procedures for claims against foreign defendants than were provided for domestic defendants. U.S. commitments under the TRIPS Agreement and the NAFTA, in addition to reflecting those in the GATT, also provides in cases where a civil remedy is ordered as a result of administrative procedures for those administrative procedures to be in conformity with principles equivalent in substance to those provided in judicial proceedings.

The U.S. Uruguay Round implementing legislation has reduced some of the inconsistencies with U.S. obligations, by:

- preventing simultaneous ITC and District Court proceedings involving the same issues;
- providing for counterclaims;
- requiring the complainant to post a bond when seeking cease and desist orders;
- providing for indemnification of aggrieved defendants; and
- restricting the authority to issue exclusion orders.

The legislation and new ITC regulations, however, do not remove the threat of discriminatory treatment for non-U.S. defendants who will continue to face the risk of an additional burden.