

COVID-19: The U.S. International Trade Commission Extends the Postponement of All-Person Hearings in Section 337 Proceedings Until at Least June 10, 2020

April 16, 2020

Key points:

- In response to the COVID-19 outbreak, the United States International Trade Commission (ITC) extended the postponement of all in-person hearings, including all evidentiary hearings/trials, until June 10, 2020.
- The Administrative Law Judges (ALJs) of the ITC are directed to reschedule all in-person hearings until after June 10, 2020.
- The ITC has previously postponed all in-person hearings until May 12, 2020.
- Recent changes to ITC procedures and practices remain in effect while the ITC continues to remain open for business.

In view of the ongoing COVID-19 outbreak, the United States ITC issued a Notice on April 15, 2020 (link [here](#)), stating that the ITC has extended the ongoing postponement of all in-person hearings (e.g., evidentiary hearings/trials, claim construction hearings) under section 337 of the Tariff Act of 1930, as amended 19 U.S.C. 1337 ("Section 337"), until June 10, 2020.

Previously, on March 12, 2020, the ITC had ordered the ALJs assigned to Section 337 investigations to postpone any hearings until after May 12, 2020, stating that the situation would be re-evaluated in April. In the Notice issued on April 15, 2020, the ITC again directed the ALJs to notify all affected parties of the postponement and to re-schedule new dates for Section 337 hearings as appropriate, and to otherwise conduct their investigations in accordance with their established procedures. Despite this extended postponement and the continued closure of the ITC Building to the public until further notice, all discovery is to continue and any essential outside participation by the ITC's Office of Unfair Import Investigations (OUII) will be decided on a case-by-case basis.

To allow continued access to the ITC for Section 337 investigations during the COVID-19 outbreak, the ITC had previously modified certain practices and procedures. For

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example, the ITC modified a rule to allow the ITC Secretary's Office to accept only electronic filing of documents, and certain items that were previously filed in paper form, such as complaints, must now be filed electronically. In addition, whereas public documents issued by the ITC and the ALJs continue to be made available for download on the ITC's electronic filing system, confidential documents, which are normally served by the ITC or the ALJs in paper form, will be made available by the ITC for download only by each party's lead counsel from the secure file-sharing application Box. In addition, when a Section 337 investigation is currently instituted by the ITC, the Complainant, and not the ITC, must now serve the traditional institution package (i.e., the non-confidential copies of the complaint and attachments) on each proposed respondent and the appropriate embassy. Finally, although all ITC employees have been teleworking full-time since March 17, 2020, the OUII remains available to receive and review draft complaints to be filed under Section 337.

Since the ITC's initial postponement of the dates for all in-person hearings, ALJs have suspended, cancelled or issued revised dates for in-person hearings, including evidentiary hearings/trials and in-person claim construction hearings, while permitting discovery and other aspects of Section 337 proceedings to continue. In addition, the ALJs have also modified the procedural schedules in Section 337 investigations and extended the target dates to conclude investigations because of the "extraordinary circumstances arising from the global outbreak of COVID-19," such as travel prohibitions and concerns about public health. In addition, ALJs have suggested they may be open to conduct hearings using testimony by live videoconference for witnesses located outside the United States in the event in-person hearings continue to be postponed for an extended time. As such, while the COVID-19 outbreak may present significant consequences for parties engaged in Section 337 investigations, the ITC remains open for business and continues its efforts to conclude Section 337 investigations and issue its determinations at the earliest practicable time.

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