

September 9, 2021

## Representatives Schweikert and DelBene Reintroduce Bipartisan Advancing America’s Interests Act to Curtail Intellectual Property Enforcement at the International Trade Commission

On September 7, 2021, Representatives Suzan DelBene (D-WA) and David Schweikert (R-AZ) reintroduced the “[Advancing America’s Interests Act](#)” (AAIA) this Congress as H.R. 5184.<sup>1</sup> The AAIA would amend Section 337 of the U.S. Tariff Act of 1930, which is the enabling statute of the U.S. International Trade Commission (ITC), a quasi-judicial federal agency in Washington, D.C. with broad investigative powers on matters of trade. Among other responsibilities, the ITC conducts investigations under Section 337 concerning unfair methods of competition or unfair acts in importation, including the importation of products that infringe intellectual property rights (such as patents, trademarks, copyrights, and trade secrets). The ITC has the ability to issue exclusion orders, powerful remedies similar to injunction but that are enforced by U.S. Customs to stop infringing products at the border from importation into the United States. Central to the ITC’s Section 337 authority is the notion of protecting so-called “domestic industries” from unfair trade practices and the consideration of the “public interest” in issuing its remedial orders.

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And indeed, domestic industry and the public interest are the key areas sought to be addressed by the AAIA. Yet this is not the first time Congress has considered this bill. In August 2020, Representatives DelBene and Schweikert [introduced an identical version of the AAIA during the 116th Congress](#). [As explained in greater detail in a previous Alert](#), the AAIA would amend Section 337 to inhibit the ability of non-practicing entities (NPEs, also called patent assertion entities, and sometimes derisively referred to as patent trolls) to bring Section 337 complaints. The AAIA is the latest iteration of a similar bill—the [Trade Protection Not Troll Protection Act](#)—that had been introduced in the House, but never passed, in previous Congresses. Similarly to the Trade Protection Not Troll Protection Act, and, [as expected](#), last year’s version of the AAIA did not make it out of Committee and died at the close of the 116th Congress. Since the introduction of the 2020 version of the bill, the ITC has seen several complaints filed by a variety of NPEs, including Neodron Limited, Solas OLED, Pictos Technologies, Evolved Wireless, Arigna Technology Limited, Proven Networks, and Sonrai Memory Limited.

The 2021 iteration of the AAIA was referred to the House Committee on Ways and Means the same day that it was introduced. So far, no other Representatives have cosponsored the bill, and a companion bill has not been introduced in the Senate. While the AAIA has received some initial support from the business community, praising the bill as “[modernizing the ITC process to prevent gaming of the system, especially by entities that produce no goods or services](#),” “[curb\[ing\] abusive patent litigation plaguing American businesses](#),” and “[enable\[ing\] the ITC to focus on its core trade mission of protecting US jobs and our economy](#),” it remains to be seen whether this version will fare better than last year’s. Ropes & Gray will keep you posted here on [Capital Insights](#) with more developments on the IP legislative front.

<sup>1</sup> Representative DelBene posted the text of the AAIA and a Summary of the AAIA on her congressional website. See [https://delbene.house.gov/uploadedfiles/itc\\_bill\\_full\\_text.pdf](https://delbene.house.gov/uploadedfiles/itc_bill_full_text.pdf); [https://delbene.house.gov/uploadedfiles/itc\\_bill\\_one-pager.pdf](https://delbene.house.gov/uploadedfiles/itc_bill_one-pager.pdf).