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Will the Third Time Be the Charm for ITC Reform? Bipartisan Bill Reintroduced in Effort to Restrict NPE Activity at the ITC

On May 18, 2023, Representatives David Schweikert (R-AZ) and Don Beyer (D-VA) co-sponsored and reintroduced the “[Advancing America’s Interests Act](#)” (AAIA), also known [this Congress as H.R. 3535](#).¹ 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, which are powerful remedies similar to injunctions 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. This is not the first—or second—time Congress has considered this bill. Representatives Schweikert and Suzan DelBene (D-WA) introduced identical versions of this bill during the [116th](#) and [117th](#) Congresses. [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 was introduced in the House but was never passed in previous sessions of Congress. Like the Trade Protection Not Troll Protection Act, the AAIA did not make it out of committee during the 116th and 117th Congresses. 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, Sonrai Memory Limited, DivX, Daedalus Prime, VideoLabs, and Bell Semiconductor.

The 2023 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 bill has received some initial support from the business community, being praised as a “plan [to] return[] the ITC to its original mission” of protecting the public interest, “a critical piece of legislation that will bring much-needed reform to the International Trade Commission’s Section 337 process,” and “pivotal legislation [that] promises to return the International Trade Commission to its mission—protecting American innovators from unfair global competition and shielding them from exploitative third-party litigation-funded lawsuits,” it remains to be seen whether this version will garner support and fare better than the previous iterations. Ropes & Gray will keep you posted here on [Capital Insights](#) with more developments on the IP legislative front.

¹ Representative Schweikert posted the text and a summary of the AAIA on her congressional website. See https://schweikert.house.gov/wp-content/uploads/2023/05/SCHWEI_019_xml.pdf and <https://schweikert.house.gov/2023/05/18/schweikert-beyer-introduce-legislation-to-modernize-etc-protect-american-industry-workers-and-consumers-from-patent-trolls/>.