

USITC Commissioner Series: Top Dissenting Issues

A photograph of a modern building's curved glass facade, showing multiple floors with large windows, set against a clear blue sky.

2 MIN READ

April 22, 2024, 8:36 AM

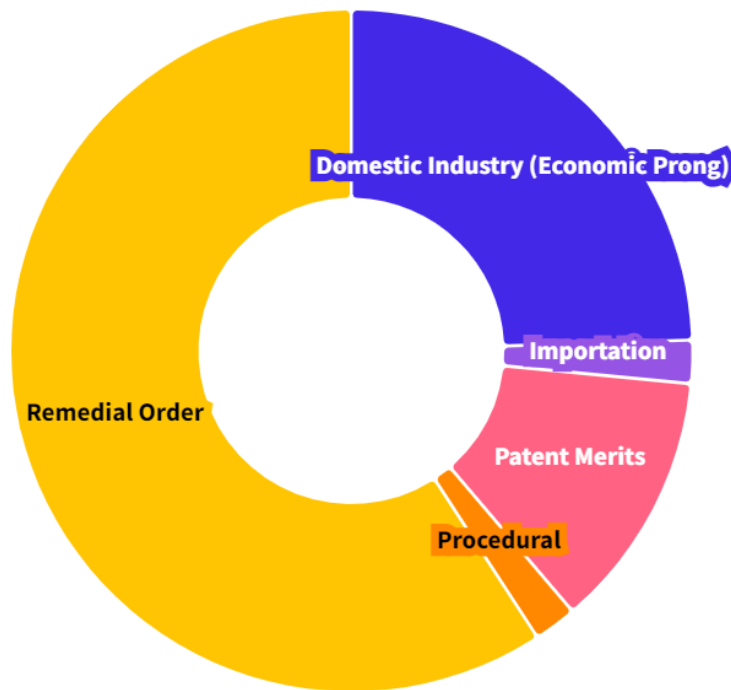
By: Brian P. Johnson, Ian Swan, Ramya Auroprem

This is part three of our **USITC Commissioner Series**.

Read part one [here](#), part two [here](#), part four [here](#) and part five [here](#).

Following my colleagues' efforts in this series, this post examines the dissent/concurrence practice of the Commissioners at the U.S. International Trade Commission (USITC) – specifically the “hot” issues that drew the most dissents in the past 10 years.

In terms of broad categories, the data our team gathered (visualized below) shows that issues relating to remedial orders drew the vast majority (61%) of the dissents/concurrences, followed distantly by the economic prong of the domestic industry (DI) requirement (24%). Patent merits issues (e.g., patent infringement, invalidity, and the technical prong of DI) made up only 12% of the dissents/concurrences, with the remaining 4% evenly split between importation issues and procedural issues.



Most-Dissented Remedial Order Issues

Within the dissents/concurrences on remedial order issues, about 60% relate to the proper standards for issuing cease-and-desist orders (CDOs). As my colleagues previously analyzed, Commissioner Schmidlein has been the leading dissenter in this area, especially with respect to whether a respondent’s domestic inventory of infringing articles must be “commercially significant” in order to issue a CDO. The question of whether repair or replacement exemptions should be granted for components of infringing articles was also the subject of a considerable amount (13%) of dissents/concurrences.

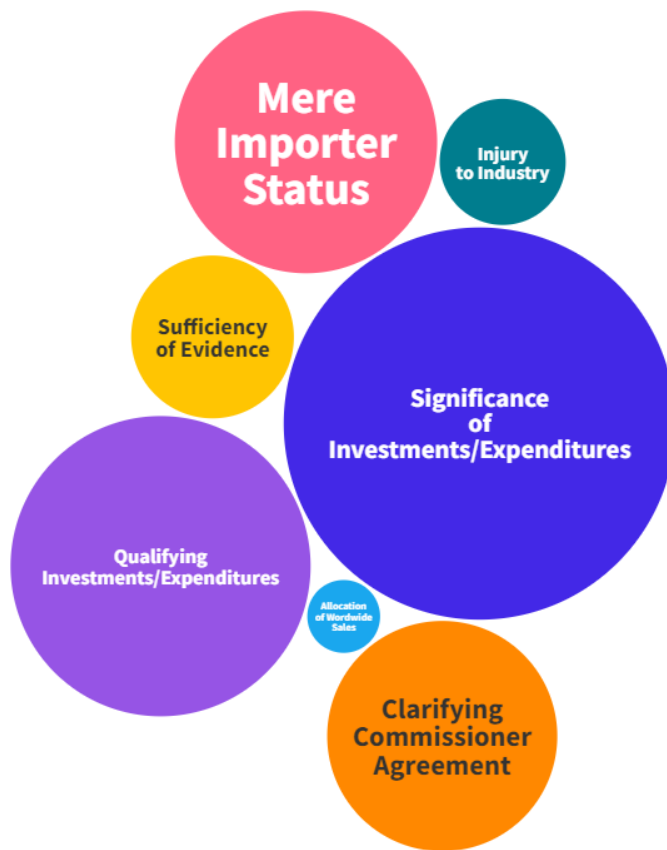


Most-Dissented DI Economic Prong Issues

With respect to DI economic prong issues, the top dissented issue was the “significance” of qualifying investment/expenditures, making up 37% of the dissents/concurrences on economic DI issues. As my colleagues noted, Commissioner Kearns has been leading the charge on this issue. Other top economic DI issues drawing dissents/concurrences include questions on what types of investments/expenditures qualify for DI considerations (22%) and whether a complainant’s activities are different from those of a “mere importer” (17%).

■ Significance of Investments/Expenditures ■ Qualifying Investments/Expenditures ■ Mere Importer Status
■ Clarifying Commissioner Agreement ■ Sufficiency of Evidence ■ Injury to Industry
■ Allocation of Worldwide Sales

0.03% ○○ 0.05%



I dissent.

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