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International Trade Commission Settles Open Question on Filing of Third-Party Settlement Agreements When Terminating Investigations

In a typical federal district court litigation, parties need not disclose to the court the terms of a settlement agreement. Not so in Section 337 investigations before the U.S. International Trade Commission (ITC), a quasi-judicial federal agency in Washington, D.C. with broad investigative powers on matters of trade. In these investigations, when parties settle their dispute and move to terminate the investigation, Commission Rule 210.21(a) requires that they file “copies of the licensing or other settlement agreements, any supplemental agreements, any documents referenced in the motion or attached agreements, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation.” If the agreements contain confidential information, the filing party may file a redacted public version to protect such information—and, in some instances, may limit service of the confidential version to the settling parties.

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In recent years, there has been uncertainty regarding whether the rules only require filing copies of settlement agreements between the *parties* to an investigation—as opposed to a situation in which a third party intervenes and settles on behalf of one of the parties. This week, [the ITC issued an order](#) clarifying that the latter, broader rule applies—all settlement agreements concerning the subject matter of the investigation must be filed, regardless of who has entered into them. In *Certain Semiconductor Devices Having Layered Dummy Fill, Electronic Devices, and Components Thereof*, Inv. No. 337-TA-1342, complainant filed a motion to terminate the investigation because it reached an agreement with a third party that “fully resolve[d]” complainant’s infringement allegations. Respondents supported the motion but argued that complainant improperly failed to file a copy of the settlement agreement with the motion. Despite the absence of the settlement agreement, the administrative law judge issued an order granting the motion and terminating the investigation, finding that Rule 210.21(a) only requires submission of agreements “between the parties.”

In a rare move, the ITC *sua sponte* reviewed and vacated the order. The ITC held that Rule 210.21(a) does not just require submission of agreements “between the parties,” but, by its plain language, broadly requires submission of “any agreements concerning the *subject matter* of the investigation,” including the third-party settlement agreement. Therefore, complainant failed to comply with Rule 210.21(a). The Commission remanded the investigation back to the administrative law judge for further proceedings, noting that if complainant again sought to terminate the investigation, it must file any relevant settlement agreements it has with third parties relating to the subject matter of the investigation.

This clarification of Rule 210.21(a) is significant because ITC investigations are increasingly settled through third-party agreements, for at least two reasons. First, non-practicing entities often target downstream customers and—as in Inv. No. 337-TA-1342—suppliers may seek to settle disputes on behalf of these customers. Second, so-called “risk management” entities, such as RPX Corporation, sometimes attempt to settle disputes involving multiple ITC respondents—indeed, this has happened in several past investigations, including with a separate group of respondents earlier this year in Inv. No. 337-TA-1342. The ITC has now settled any ambiguity over whether such third-party settlement agreements must be filed.

The upshot is that while the ITC has strong protections in place for confidential business information and can sometimes limit service of the settlement agreements to only certain parties, both ITC litigants and third parties should be aware of their obligation to provide *any* agreement settling an ITC dispute.

If you have any questions about this Alert or Section 337 investigations generally, please contact [Matthew J. Rizzolo](#) or [Brendan F. McLaughlin](#).