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Unfair Trade Practices and Section 337— Promises and Uncertainties

by Donald E. deKieffer*
David A. Hartquist**

I. Legislative History of Section 337

A. The Trade Act of 1974¹ left unchanged the substantive aspects of section 337² of the Tariff Act of 1930. Section 337 makes unlawful "unfair methods of competition and unfair acts in the importation of articles into the United States, or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States. . . ." However, the Trade Act introduced important procedural changes which breathe new vitality into the substantive rights created by section 337. For many years used virtually only in international patent cases, section 337 could, as amended, provide a viable remedy for redressing unfair trade practices in non-patent cases. Whether this desired result will be achieved is the subject of this article.

A glance at the pre-1974 application of section 337 is all that is necessary to understand the potential significance of the Trade Act amendments. Although the language of section 337 parallels the prohibitions of the Sherman and Clayton Acts, a peculiar twist in judicial construction early in the history of the section made the provision applicable almost exclusively in patent cases. This occurred even though there is no indication in its legislative history that anyone associated with passage of the section ever contemplated so narrow an application.³ The new procedural provisions added to the section were intended to broaden the scope of the law beyond its traditional application to patent cases. Thus, the range of section 337 apparently incorporates the entire range of antitrust violations including preda-

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¹ Trade Act of 1974, Pub.L. No. 93-618, 88 Stat. 1978, § 1, codified at 19 U.S.C. § 2101 *et seq.* (Supp. 1975).

² Tariff Act of 1930, ch. 497, § 337, 46 Stat. 703 (1930) (current version at 19 U.S.C. § 1337(e) (Supp. 1975)).

³ Fisher, *Protection Against Unfair Foreign Competition: Section 337 of the Tariff Act of 1930*, 13 VA. J. INT'L L. 158, 160 (1972).

tory pricing,⁴ refusal to deal,⁵ conspiracy in restraint of trade,⁶ price-fixing,⁷ monopolization⁸ and market division⁹ as well as certain types of subsidization¹⁰ and dumping.¹¹ However, latent scope of the law is one thing; its realization is quite another. While the final results are not yet in, the first two years' experience with enforcement of section 337 have been disappointing.

B. Major changes made by the Trade Act of 1974 as they affect non-patent cases

a. The Trade Act authorized the International Trade Commission [ITC] to order the exclusion of articles involved in unfair trade practices. Under prior law, the Secretary of the Treasury, at the direction of the President of the United States, was permitted to exclude articles.¹² Under current law the ITC can authorize exclusion of articles in all cases under section 337, whether patent or non-patent cases. The President has the authority to disapprove a determination of the ITC within sixty days after receiving notice of the determination. If he does not disapprove the determination, or if he notifies the Commission of his approval, the determination becomes final on the day after the close of the sixty-day period or on the day that the President notifies the Commission of his approval, as the case may be. The President has no authority to reverse or revise the Commission's finding of a violation of the statute;¹³ he is merely empowered to prevent enforcement of the statutory remedy.

b. As an alternative to issuing exclusionary orders, the Commission may issue cease and desist orders against any person violating, or believed to be violating, this section.¹⁴ If the offender fails to comply with the cease and desist order, the Commission may then order exclusion of the articles concerned.

c. New time limits have been established for action by the Commission in section 337 cases. The ITC must complete its investigation and make its determination at the earliest practicable time, but not later than one year, or eighteen months in more complicated cases, after the date on which notice of the investigation is published in the

⁴ 15 U.S.C. § 45 (1970).

⁵ *Id.* § 14.

⁶ *Id.* § 1.

⁷ *Id.*

⁸ *Id.* § 1-2.

⁹ *Id.* § 1.

¹⁰ 19 U.S.C. § 1303 (1970).

¹¹ *Id.* § 160.

¹² Tariff Act of 1930, ch. 497, § 337, 46 Stat. 703 (1930) (current version at 19 U.S.C. § 1337(e) (Supp. 1975)).

¹³ S. REP. NO. 93-1298, 93d Cong., 2d Sess. 199 (1974), *reprinted in* [1974] U.S. Code Cong. & Ad. News 7186, 7331-32. [Such a finding would, of course, be subject to judicial review.]

¹⁴ 19 U.S.C. § 1337(f) (Supp. 1975).

Federal Register.¹⁵ However, these time limits may be illusory due to the loopholes incorporated in the Act. First, there is no statutory limit on the amount of time which can elapse between the date a complaint is filed and the date on which notice of investigation must appear in the Federal Register. The ITC can literally give itself more time by stalling its "official notice" while conducting an unofficial investigation in the interim period. Secondly, by exercising its discretion to suspend an entire investigation where other agencies or United States courts are concurrently considering similar questions on the same subject matter, the Commission may "stop the clock" on the twelve or eighteen-month investigation periods.

d. Under section 337(e), the ITC has the authority to temporarily exclude articles from entry during the course of an investigation if it finds reason to believe that a violation of the section exists. However, the Commission may decide not to exercise this authority after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers. The Commission directs exclusion from entry by notifying the Secretary of the Treasury, who then must refuse entry of such articles, except under bond. This is similar to the procedure under prior law, except that now the Commission, rather than the Secretary of the Treasury, has the authority to set bond.

e. Any exclusion from entry pursuant to a cease and desist order under section 337 continues in effect until the Commission finds, and in the case of exclusion from entry notifies the Secretary of the Treasury, that the conditions which led to the order or the exclusion from entry no longer exist and that therefore the exclusion or order is no longer necessary.¹⁷

f. The Trade Act clarified prior uncertainty with respect to the availability of defenses in such cases. Section 337(c) provides specifically that, "all legal and equitable defenses may be presented in all cases."

g. The Commission is required to consult with other departments and agencies during the course of each investigation of section 337 cases. Specifically, the Commission must consult with and seek advice and information from the Department of Health, Education and Welfare, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as it considers appropriate.¹⁸

h. Whenever, in the course of an investigation under section 337, the Commission has reason to believe, based on information before it,

¹⁵ *Id.* § 1337(b)(1).

¹⁶ *Id.*

¹⁷ *Id.* § 1337(h).

¹⁸ *Id.* § 1337(b)(2).

that the matter may come within the purview of section 303 (countervailing duties)¹⁹ or of the Antidumping Act of 1921,²⁰ the Commission must notify the Secretary of the Treasury so that action may be taken as is otherwise authorized by such section and such Act.²¹ There is considerable controversy as to the impact of this section on the jurisdiction of the International Trade Commission.

II. Historical Use of Section 337 in Non-Patent Trade Cases Prior to The Trade Act

Prior to the passage of the Trade Act of 1974, there were only two non-patent trade cases reported by the International Trade Commission under section 337. The first case, reported in 1966, involved watches, watch movements and watch parts.²² Elgin National Watch Company and Hamilton Watch Company alleged a combination and conspiracy, furthered by a variety of acts and practices, to restrain and monopolize United States trade and commerce in jeweled-lever watches, watch movements and watch parts. The complaint alleged that various United States importers and Swiss watchmaking industry organizations were engaged in activities in violation of section 337. During an investigation, the Commission searched for but failed to find unfair methods of competition or unfair acts in the importation or sale of the items in question, the effect or tendency of which was to restrain or monopolize trade and commerce in the United States. Many of the acts and practices alleged in the Elgin-Hamilton complaint had earlier been alleged by the Department of Justice in a civil action involving substantially the same parties under section 1 of the Sherman Act²³ and section 73 of the Wilson Tariff Act.²⁴ The United States District Court for the Southern District of New York had determined that the two Acts had been violated and the court issued an order enjoining the defendants from acting further in pursuit of the combination and conspiracy.²⁵ The defendants were also required to renounce undertakings which unreasonably restrained United States manufacture, imports, exports, or sale of watches, watch parts or watch making machinery.²⁶

¹⁹ 19 U.S.C. § 1303 (1970).

²⁰ Antidumping Act of 1921, § 201, 19 U.S.C. § 160 (1970).

²¹ 19 U.S.C. § 1337(b)(3) (Supp. 1975).

²² U.S. TARIFF COMMISSION PUB. NO. 177, WATCHES, WATCH MOVEMENTS, AND WATCH PARTS, Investigation No. 337-19 (June 1966).

²³ 15 U.S.C. § 1 (1970).

²⁴ 15 U.S.C. § 8 (1970).

²⁵ *United States v. Watchmakers of Switzerland Information Center, et al.*, [1963] 1 TRADE REG. REP. ¶70,600.

²⁶ *Id.*

The Commission, in refusing to recommend that the President issue an exclusionary order, stated that:

Had the order of the U.S. District Court not intervened in the period before the institution of the Commission's investigation and after the acts and practices on the basis of which the Court found violation of the Sherman and Wilson acts, the issues before the Commission might have been different. Section 337, however, does not provide for refusal from entry in perpetuity, but only until the President finds that the conditions which led to such refusal from entry no longer exists. Therefore, and because the intervening order of the court was followed by corrective measures taken in compliance therewith, the Commission has confirmed its conclusions generally to the circumstances extant after the court's final order.²⁷

However, the Commission finding was that the respondents were not "currently engaged in unfair methods of competition or unfair acts in the importation of watches, watch movements, or watch parts into the United States, or in their sale, of sufficient viability to bring them within the proscriptions of section 337 and the application of its sanction."²⁸ In describing the rationale for its findings, the Commission pointed out that section 337 does not restrict the freedom of foreign companies to operate as they please overseas. Only if trade and commerce in the United States is affected does section 337 come into play:

The existence of such an arrangement of foreign producers, the products of which enter in and are sold in substantial amount in the United States, does not *per se* establish a violation of the provisions of section 337. The provisions of section 337 do not inhibit the freedom of foreign concerns to organize themselves or conduct their commercial operations in foreign countries (not affecting trade and commerce in the United States) as they please and as the applicable law permits. Nor does section 337 penalize mere success in the United States domestic market. If, however, in the importation or sale of articles such an organization imposes unreasonable restraints upon trade and commerce in the United States, or monopolizes such trade and commerce, or engages in unfair methods of competition tending to so restrain or monopolize trade and commerce in the United States, section 337 may be applicable.²⁹

The second non-patent trade case reported by the Commission was the Tractor Parts case; it involved two separate findings. The first report³⁰ recommended an exclusion order to remedy the alleged unfair

²⁷ U.S. TARIFF COMMISSION PUB. NO. 177, WATCHES, WATCH MOVEMENTS, AND WATCH PARTS, Investigation No. 337-19 (June 1966), at 8.

²⁸ *Id.* at 10.

²⁹ *Id.* at 13.

³⁰ U.S. TARIFF COMMISSION PUB. NO. 401, TRACTOR PARTS I, Investigation No. 337-22 (June 1971), at 6.

trade practices (boycott). Six months following the original report, the Commission issued a second report in the Tractor Parts case.³¹ By a vote of two to one, the Commission reversed its earlier recommendation that the President issue an order excluding certain tractor parts from entry. The decisions were notable in that they both stressed the Commission's broad antitrust jurisdiction. Commissioner Sutton, speaking for the majority in the second report, found that while violations of section 337 had occurred, the violations no longer existed. Commissioner Sutton stated that,

Inasmuch as a violation of section 337 does not continue to exist in this case, the public interest will not be served by the exclusion of Berco tractor parts from entry into the United States. A different situation might exist if section 337 provided, as a remedy, the issuance against the conspirators of an order to cease and desist from their illegal acts. Such an order would allow business to continue, while also enjoying the continuation or resumption of the unfair methods or acts; section 337, however, provides only for an *in rem* action against the imported goods (*i.e.*, exclusion from entry), and such action, if taken, would have the effect of terminating trade in the tractor parts in question.³²

As previously noted, Congress added cease and desist authority to section 337 in the Trade Act of 1974.

III. Non-Patent Cases Following Enactment of Trade Act

a. Electronic Audio and Related Equipment: On July 10, 1973, District Sound, Inc. filed a complaint with the ITC alleging *inter alia* that a major Japanese stereo producer [JVC] refused to sell its products to District Sound due to the latter's refusal to maintain minimum "fixed prices" suggested by JVC. Almost three years later, the Commission finally issued its decision.³³ The Commission concluded that JVC had in fact refused to sell to District Sound, Inc., but that the refusal was based upon District Sound's failure to provide reasonable merchandising facilities (a "sound room") required by the enfranchisement contract rather than upon a "conspiracy" alleged in the complaint. The ultimate decision in *District Sound* was much less significant than the method by which it was reached and the "ground rules" adopted by the Commission. Following *District Sound*, there was little doubt about what the Commission thought its legal scope of authority ought to be. The allegations in *District Sound* were similar to those generally found

³¹ U.S. TARIFF COMMISSION PUB. NO. 443, TRACTOR PARTS II, Investigation No. 337-22 (Dec. 1971).

³² *Id.* at 9.

³³ U.S. INTERNATIONAL TRADE COMMISSION, CERTAIN ELECTRONIC AUDIO AND RELATED EQUIPMENT, Investigation No. 339-TA-14, 41 Fed. Reg. 9010 (1976).

in cases involving Section 1 of the Sherman Act³⁴ and Section 5 of the Federal Trade Commission Act.³⁵ The Commission's opinion is replete with direct references to these provisions, and the Commission adopted the entire antitrust lexicon to sustain its findings. No less than twenty antitrust cases were cited as authority. Commissioner Minchew, author of the Recommended Determination, underscored this point, referring with approval to Bart Fisher's 1972 article³⁶ noting:

... [T]he language contained in 337 echoes 'the antitrust semantics of the Sherman and Clayton Acts and the unfair competition admonitions of the Federal Trade Commission Act.'

Not a single Commissioner expressed the slightest doubt that section 337 was, in fact, a virtual replacement for almost all the other major American antitrust laws where international trade was even tangentially involved.

b. Color Television Sets: GTE Sylvania, Inc., filed a complaint on January 15, 1976 (amended May 24, 1976) against thirteen respondents, including both Japanese firms and United States subsidiaries of Japanese companies.³⁷ Sylvania alleged that respondents were engaging in unfair and anticompetitive acts and practices individually, as well as in furtherance of an unlawful contract, combination or conspiracy in restraint of United States trade or commerce in the color television industry and were engaging in a combination or conspiracy to monopolize or attempt to monopolize such trade or commerce or parts thereof, thereby causing substantial injury to the domestic industry. Specifically, the Sylvania complaint alleged predatory pricing schemes under which Japanese companies import and sell color television sets in the United States at prices below cost or at unreasonably low prices. The complaint also alleged that the respondents receive certain incentives and other economic benefits from the Japanese government which facilitate below cost pricing. The complaint noted that such incentives and other economic benefits do not fall within the technical definitions of "bounties and grants" as set forth in section 303 of the Tariff Act of 1930, as amended.³⁸ Even so, Sylvania alleged, the receipt of such economic benefits constituted an unfair method of competition. Additionally, the Japanese companies allegedly received benefits from a government-industry partnership alien to the United States system of free private enterprise. Among other things, the Japanese color television market is, and always has

³⁴ 15 U.S.C. § 1 (1970).

³⁵ *Id.* § 45.

³⁶ Fisher, *supra* note 3.

³⁷ U.S. INTERNATIONAL TRADE COMMISSION, CERTAIN COLOR TELEVISION RECEIVING SETS, Investigation No. 337-TA-23.

³⁸ Tariff Act of 1930, ch. 497, § 303, 46 Stat. 703 (1930) (current version at 19 U.S.C. § 1303 (Supp. 1975)).

been, closed to competitors from the United States, according to the complaint.

The color television case has given rise to substantial controversy within the executive branch. The Departments of Treasury, State and Justice, and the Federal Trade Commission each wrote letters to the International Trade Commission requesting that consideration of this case be terminated and that the issues be turned over to the proper departments and agencies.³⁹ The ITC administrative law judge hearing the case ruled that the Commission, despite the opposition by other agencies, did have jurisdiction over the case.⁴⁰ His decision was immediately appealed both to the full Commission⁴¹ and to the United States District Court for the District of Columbia. The full Commission ruled to retain jurisdiction over the case and directed its general counsel to oppose the appeal in the District Court.⁴² The District Court upheld the ITC's jurisdiction.⁴³ However, when lawyers for GTE Sylvania prepared to visit Japan to investigate Japanese business practices, their visas were revoked. Significantly, their visit had been specifically authorized by the "discovery" procedures of section 337. When attorneys for Sylvania protested, and demanded they be given a "judgment on the pleadings" since they were denied access to the background material, counsel for the Japanese companies objected, claiming they could not be held responsible for the acts of their government. This was too much for the Commission, and in December, 1976, they suspended the GTE Sylvania proceeding.⁴⁴ However, on March 23, 1977, the Commission voted to reopen the investigation in regard to the alleged predatory pricing.

c. Chicory Root: The *Chicory*⁴⁵ case was the first to allege a full range of antitrust violations including price fixing, predatory pricing, refusals to deal, restraint and monopoly on trade and commerce, and conspiracy in restraint of trade. Filed in June 1976, *Chicory* involved issues clearly within the scope of Sherman (1) and (2).⁴⁶ The complainant was a New Orleans-based chicory producer which charged that its ex-

³⁹ 41 Fed. Reg. 55,948 (1976).

⁴⁰ Determination Under Rule 210.60(b), Allowing Application for Review with respect to his Ruling Denying Amended Motions to Terminate and Dismiss of July 12, 1976 (August 6, 1976), 41 Fed. Reg. 55,948 (1976).

⁴¹ Application for Review of Denial of Respondents' Motion to Terminate the Proceedings and Dismiss the Complaint, International Trade Commission Motion No. 23-20 (August 6, 1976), 41 Fed. Reg. 55,948 (1976).

⁴² Certain Color Television Receiving Sets, Motion 23-3A (November 8, 1976), 41 Fed. Reg. 55,948 (1976).

⁴³ *Melco Sales Inc. v. ITC*, Action 76-1932 (November 15, 1976).

⁴⁴ U.S. International Trade Commission Memorandum Opinion, Investigation No. 337-TA-23 (December 20, 1976).

⁴⁵ U.S. INTERNATIONAL TRADE COMMISSION, *CHICORY ROOT, CRUDE AND PREPARED*, Investigation No. 337-TA-27 (June 1976).

⁴⁶ 15 U.S.C. §§ 1, 2 (1970).

president had conspired with European suppliers to fix prices in the American market and had shared customer lists with competitors. It was also charged that, following the ex-president's departure from the company, European competitors refused to supply the complainant with raw materials and dropped their own prices to artificially low levels.

Complainant moved for a temporary exclusion order pursuant to section 337(e). That section provides in pertinent part:

(e) Exclusion of Articles From Entry During Investigation Except Under Bond — If, during the course of an investigation under this section, the Commission determines that there is reason to believe that there is a violation of this section, it may direct that the articles concerned, imported by any person with respect to whom there is reason to believe that such person is violating this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. The Commission shall notify the Secretary of the Treasury of its action under this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry, except that such articles shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary.

On September 7, 1976, the Commission denied complainant's motion, finding little merit in any of complainant's assertions. But "little merit" must be viewed in terms of the standards adopted by the Commission. Citing section 337(e), the decision observed "... [T]he Commission [must] make three determinations of findings before it can find that temporary relief is appropriate.

- (1) There is a *reason to believe* that there is a violation of section 337.
- (2) There is a need for temporary relief; and
- (3) The public interest factors do not outweigh the need for temporary relief." [emphasis supplied]

The Commission never reached criteria (2) and (3) in disposing of the *Chicory* case. The entire decision rested upon the phrase "reason to believe." The Commission's reasoning on this issue was circuitous. First, the decision established an initial hurdle; the determination of "reason to believe that there is a violation" involves both (a) finding a reason to believe that there is an unfair method of competition or unfair act; and (b) finding a reason to believe that there is the requisite effect or tendency as a result of such unfair practice. Secondly, even though the term "prima facie violation" never appears in the statute or its legislative history, the Commission decided "reason to believe" really meant proof of a prima facie case. Thirdly, a finding of a "prima facie violation" according to the *Chicory* decision involves (a) seeking

and considering responses, legal and equitable defenses, and information from alleged violators and interested parties; (b) holding a hearing under the Administrative Procedure Act; (c) finding a preponderance of the evidence demonstrating *both* a violation *and* injury.

All this would be only slightly peculiar were it not for the explicit language of the legislative history of the act. The Senate Report of the Committee on Finance states⁴⁷ ". . . when the Commission has reason to believe during the course of an investigation under section 337, that an article is offered or sought to be offered for entry in the United States in violation of section 337, *but the Commission does not have sufficient information to establish to its satisfaction* that the section is being violated. . ." then the Commission may exclude the article from entry until the conclusion of the investigation. [emphasis added] The Commission, seizing the phrase "to its satisfaction," has rewritten the obvious intent of Congress. It apparently felt free to establish any standards it wished in determining whether temporary exclusion orders were justified.

In view of the vague language of the Act, and its legislative history, it is unlikely that the Commission's criteria could be successfully challenged. It is certain, however, that the Commission was, and is, straining to avoid making affirmative decisions under section 337.

IV. Uncertainty Regarding Scope of Section 337 and Jurisdiction of International Trade Commission

Although the Commission was found to have jurisdiction in the Sylvania case, many jurisdictional questions remain, as well as uncertainty concerning the scope of section 337. Some of these issues were discussed in a panel before the International Trade Subcommittee and the Antitrust Subcommittee of the American Bar Association on December 10, 1976. Commissioner Daniel Minchew, now Chairman of the ITC, stated that the Commission has jurisdiction over a case if the following criteria are met:

- (1) A domestic industry is prevented from being established or an existing domestic industry is injured as a result of unfair methods of competition and unfair acts in the importation or sale of articles.
- (2) Articles which are the subject of unfair methods of competition and unfair acts are imported into the United States.
- (3) Such articles are sold in the United States.
- (4) The sale constitutes an unfair method of competition and an unfair act.

⁴⁷ S. REP. NO. 93-1298, *supra* note 13, reprinted in [1974] U.S. Code Cong. & Ad. News 7186, 7330.

Interestingly, Commissioner Minchew pointed out that in his judgment the Commission may not refuse to exercise jurisdiction following the filing of a complaint. He noted that under section 337(b)(1), the Commission "shall investigate any alleged violation of this section . . .". The statute is not discretionary with respect to jurisdiction. If a complaint is in proper form, the Commission must investigate and must make its determination within the time periods provided.

Panel member David Clanton, Commissioner of the Federal Trade Commission, argued that there must be a limit to the jurisdiction of the International Trade Commission, particularly after goods have entered the United States. Commissioner Clanton pointed out that the Trade Act is directed at import situations. The ITC is clearly in a better position than the Federal Trade Commission or the Justice Department to enforce judgments involving international trade. There should, however, be some nexus to the importation of goods or the foreign manufacture of goods giving rise to their importation into the United States. After goods reach the United States, however, the Federal Trade Commission is in a better position to deal with unfair trade practices because of its procedures and because of its discretion with respect to remedies. Clanton argued that the remedies in the Trade Act are extreme and may not be appropriate to the particular situation.

Commissioner Minchew also pointed out uncertainties as to what constitutes unfair methods of competition or unfair act within the context of section 337. The language "sounds like antitrust language," but the key question is whether the scope of section 337 extends beyond traditional antitrust violations. In this regard, Douglas Rosenthal, Assistant Chief of the Foreign Commerce Section, Antitrust Division, Department of Justice, pointed out that section 337 seeks to promote several values which may conflict with each other. First, section 337 protects property rights. This may conflict with antitrust interests if the property rights are being misused to restrain trade. Secondly, section 337 protects industry from unfair foreign competition. Apparently, the section is designed to promote competition. In contrast, it is not the purpose of the antitrust laws to help firms survive but rather to promote competition. Unfair trade practices may themselves constitute open and vigorous competition. Rosenthal expressed concern as to how far the Commission will go beyond traditional antitrust jurisprudence. The International Trade Commission, he said, should not be "used" in cases brought in the guise of encouraging competition but which actually constitute efforts to thwart competition.

None of the panelists anticipated an effort to seek legislation clarifying the jurisdiction of the respective agencies, but rather expected that such issues would be determined on a case-by-case basis.

V. Conclusion

That the Commission has been unable to effectively handle non-patent section 337 cases is a product of both the weakness of the law itself and the inexperience of the ITC in antitrust matters. On its face, section 337 is one of the broadest fair competition statutes ever written. Unfortunately, passage of this section has raised more questions than it has answered. Issues likely to arise upon enforcement of section 337 were never considered, much less answered, by the Congress when it enacted this legislation. Unlike other "fair competition" statutes which have libraries of precedent considering the meaning of virtually every comma, the Commission has practically no guidelines to assist it in administration of this section. This problem is further compounded by statutory time limits for disposition of proceedings. While it would be almost unthinkable for a major antitrust case in United States District Court to be completed in anything under five years, the Commission would be required to dispose of the identical proceeding in eighteen months.⁴⁸

Finally, the Commission is ill-equipped to fulfill its statutory responsibility. With a total staff of less than five hundred, the ITC has only one administrative law judge, a general counsel's staff in excess of thirty-five, and an investigative force of only two hundred to handle all the Commission's functions. Few of the Commission employees have any experience in complex antitrust legislation. It is unfair to expect this agency to be capable of effectively administering the most sweeping antitrust law passed in the last quarter century. Until the law is clarified and the Commission provided with the means to administer it, section 337 will continue to be a legal quagmire.

⁴⁸ See text accompanying note 15, *supra*.