Comments on Proposed Amendment to 19 C.F.R. Part 210

Section 337 Adjudication and Enforcement: Financial Interest Disclosure Rule

Docket No. MISC-051

June 29, 2026

Introduction

The Business Software Alliance ("BSA")[1] respectfully submits these comments in response to the United States International Trade Commission's ("Commission" or "ITC") proposed amendment to 19 C.F.R. Part 210 concerning financial interest disclosure in Section 337 investigations (the Amendment).

BSA is the voice of the world's leading software and enterprise technology companies. As major innovators and responsible patent holders, BSA members hold hundreds of thousands of US patents and stand among the top US patent grantees in technologies critical to US economic and national security, including artificial intelligence, quantum computing, cloud computing, cybersecurity, industrial automation, and electronic design automation. The software industry accounts for more than one quarter of all US private-sector R&D and supports millions of American jobs. Through sustained investment in innovation, BSA members are committed to a US patent system that is both strong and credible: one that values high patent quality and durability and that is not distorted by the widespread assertion of invalid claims, improper financial speculation, or concealed foreign influence.

BSA Recommendations

BSA strongly supports the ITC's proposal to advance a new Disclosure Rule at 19 CFR Part 210.14a, with the rule applying to complainants, respondents, intervenors, and other parties to investigations under Section 337 of the Tariff Act of 1930 ("Section 337"). BSA offers several recommended adjustments to the proposed rule. We outline the proposed adjustments immediately below in redline.

> (a) Each nongovernment party to, or a nongovernment party who seeks to intervene~~,~~ in, a section 337 investigation shall file with the Secretary a disclosure statement that identifies:
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> (1) Any parent corporation and any [INSERT: other] entity, not including natural person(s), owning its stock;
>
> (2) Any person or entity that has the legal right based on the unfair act(s) asserted in the complaint to bring a section 337 investigation besides complainant; and
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> (3) Any person or entity, not including counsel representing the party in the investigation:
>
> (i) That provides funding [DELETE: ~~specifically~~] for [INSERT: , or in connection with,] the section 337 investigation, not including [DELETE: ~~personal loan(s),~~] [INSERT: *bona fide*] bank loans~~,~~ or insurance [INSERT: transactions entered into in the ordinary course of a bank's or insurance provider's business, as those terms are defined in paragraph (d) of this section], or

(ii) Whose approval is necessary [INSERT: or relevant to] [DELETE: for] litigation decisions or settlement decisions in the section 337 investigation, including the nature of the terms and conditions relating to that approval.

(b) For each corporation, entity, or person identified, include the identity, business address, and if a legal entity, place of formation [INSERT: , as well as copies of any contracts, funding arrangements, or other documentation that is related to the entity's relationship with, and support for, the Party."]

(c) With respect to paragraphs (a)(1) through (3) of this section, if no such corporations, entities, or person(s) exist or are known by said party, said party may state that there is no, or they are not aware of any, such parent corporation or entity under paragraph (a)(1) of this section and/or such person or entity under paragraphs (a)(2) and (3) of this section.

INSERT NEW DEFINITION: "For purposes of this section, the term "bank" has the meaning set forth in 31 C.F.R. § 1010.100(d), which encompasses commercial banks, savings institutions, credit unions, and other entities organized under federal or state banking law and subject to supervision by a federal banking agency or state bank supervisory authority. Hedge funds, private equity funds, litigation finance companies, and other non-depository investment vehicles are not "banks" within the meaning of this exception regardless of whether they structure their litigation-related investments as loans."

INSERT NEW DEFINITION: The term "insurance provider" means a person engaged within the United States as a business in the issuing or underwriting of insurance products, as set forth in 31 C.F.R. § 1025.100(g), and that is licensed or authorized as an insurer under the laws of at least one US State. The term does not include insurance agents, insurance brokers, litigation finance companies, or other investment vehicles that characterize their products as insurance but that do not issue or underwrite policies to policyholders in the ordinary course of a licensed insurance business.

INSERT NEW DEFINITION: The term "bona fide bank loans or insurance transactions entered into in the ordinary course of business" has the meaning set forth in 16 C.F.R. § 802.63(a), and encompasses loans, extensions of credit, and lease financing arrangements made by a bank or insurance provider in the regular conduct of its regulated lending or insurance business. The term does not include arrangements in which (A) any portion of the lender's return is contingent on or calculated by reference to the outcome, settlement, or proceeds of the section 337 investigation or any related litigation; (B) the lender holds any contractual right to direct, approve, or influence litigation or settlement decisions; or (C) the effective interest rate is more than two percentage points above or below the Wall Street Journal Prime Rate published on the date the arrangement is executed.

DISCUSSION

BSA's Interest in the ITC's Proposed Financial Interest Disclosure Rule

BSA and its members have a direct and substantial stake in the operation of Section 337 of the Tariff Act of 1930. Section 337 is a powerful trade remedy. It was designed by Congress to protect US domestic industries from unfair import practices. The domestic industry requirement at the heart of Section 337 reflects a foundational principle: the remedy exists to protect productive US economic activity, not to serve as a litigation vehicle for entities with no substantial US investments, no US workers, and no genuine stake in the health of American industry.

That foundational principle is under growing stress. Non-practicing entities (NPEs) – shell companies that hold patents but produce no goods or services based on those patents – have increasingly turned to Section 337 as a tool to impose exclusion order pressure on US manufacturers and importers, even when NPEs

themselves support little meaningful US domestic industry. USITC actions by NPEs against productive enterprises are increasing. Across USITC and district court litigation, NPEs have sued 1,500 US manufacturers – more than any other category of firm – in recent years. NPEs impose roughly $29 billion per year in direct litigation costs on their US litigation targets. A single NPE case can cost up to $4.5 million in district court or $8 million at the USITC. NPE litigation correlates with lower venture capital investment, declines in startup formation, reduced patenting activity, and measurable drops in R&D spending.

Compounding the problem, NPEs are often tied to foreign interests – a fact that Congress's original domestic industry framework did not anticipate and that current disclosure rules do nothing to illuminate. From 2021 to 2023, four of the top five NPEs were based outside the US or ultimately owned by non-US persons. NPEs have been linked to interests in China, Saudi Arabia, France, and elsewhere. Third-party litigation funding (TPLF) – in which non-party investors provide capital in exchange for a share of litigation proceeds – is the mechanism that most effectively conceals this foreign dimension. According to industry data, litigation funders had more than $16 billion in assets under management in the United States in 2024. The vast majority of TPLF activity operates in secrecy, with no generally applicable federal or local rule requiring disclosure of funding arrangements, beneficial ownership, or the identity of the foreign entities that may ultimately be directing the litigation.

The convergence of NPE litigation and undisclosed TPLF in Section 337 proceedings is particularly problematic because it erodes the integrity of the remedy from the inside out. When an entity with no US domestic industry uses a TPLF-financed Section 337 complaint to threaten US manufacturers with exclusion orders against critical inputs – while the identity and nationality of the real financial beneficiary remains hidden – Congress's intent is undermined. The Commission, its Administrative Law Judges (ALJs), and the parties themselves are deprived of information that is foundational to evaluating whether the proceeding serves the statutory purposes that justify the remedy.

BSA strongly supports the Commission's decision to require transparency regarding TPLF arrangements in Section 337 proceedings. We urge the Commission, however, to adopt revisions to the proposed Amendment that are necessary to make the rule effective. Those revisions are reflected in the recommendations above. As explained below, these revisions are essential if the rule is to accomplish its stated objectives of identifying conflicts of interest, facilitating informed settlements, and protecting the integrity of Commission proceedings from hidden financial interests, including those with foreign ties.

TPLF in ITC Proceedings Raises Concerns That Warrant a Robust Disclosure Rule

The ITC is a particularly attractive venue for litigation funders for several reasons. First, the majority of Section 337 investigations often involve patent infringement allegations where the threat of an exclusion order creates immediate and powerful settlement leverage. The threat to a respondent US manufacturer or service provider of being barred from importing essential inputs and components into the United States creates strong financial pressure on such a respondent to settle, often on terms that serve funders' financial interests without regard to the merits of the underlying legal claims.

Second, ITC proceedings are frequently paired with parallel district court litigation involving the same intellectual property. As many as 80 percent of ITC proceedings are accompanied by such parallel actions, and the ITC's faster resolution timeline can amplify pressure on respondents who face exclusion orders while simultaneously defending related lawsuits. These dynamics make ITC proceedings an attractive investment target for third-party funders seeking outsized returns.

Third, the litigation discovery process in ITC proceedings is particularly fast-paced and intense. Long before an ALJ or the Commission will address the merits of a proceeding, an NPE or other TPLF-backed complainant may demand:

- Interrogatories requiring detailed written disclosures of design processes, engineering decisions, product architecture, encryption methods, semiconductor layouts, and manufacturing tolerances;
- Production of source code, CAD/CAM design files, lithography masks, process development kits, chemical formulae, and composite material recipes;

- Depositions of engineers and scientists, including those holding security clearances or working in classified environments;
- Site inspections of cleanrooms, fabrication facilities, testbeds, and sensitive manufacturing sites;
- Third-party subpoenas to suppliers of critical and emerging technologies, federal contractors, and suppliers to the defense industrial base.

OSTP Director Michael Kratsios warned of adversarial threats due to "foreign access to sensitive data" and "misuse, theft, and disruption" of US science and technology resources. The absence of meaningful TPLF disclosure rules increases the risks that ITC discovery processes may be abused to gain access to a Respondent's trade secrets or other sensitive information, in potential contravention of ITC protective orders. The mere threat of such improper access by a competitor hidden from view due to opaque TPLF arrangements and NPE shell company structures greatly increases the ITC's proposed Disclosure Rule.

Without a disclosure requirement, these funding arrangements operate entirely in secret. The Commission, its ALJs, and parties to an investigation are left without critical information about who is actually driving litigation decisions, what financial interests those parties hold, and whether those interests align with or diverge from the procedural and substantive integrity of the proceedings.

TPLF Funders Exercise Influence Over ITC Litigation and Settlement Decisions

Despite routine public representations that litigation funders operate as passive investors, the available evidence—drawn from the limited number of funding arrangements that have become public—tells a different story. Funders routinely embed contractual rights that give them meaningful control or influence over the cases they finance.

Court decisions and disclosed funding agreements have documented arrangements in which funders held rights to approve or veto settlement decisions, required plaintiff consent before changing attorneys, or structured agreements such that funders' financial interests made reasonable settlements financially unattractive or contractually impermissible. One major US patent litigation funder owned by Mubadala, the Abu Dhabi sovereign wealth fund has publicly acknowledged that it 'sit[s] on the board' and 'advis[es]' the entities it funds, describing the firm as a 'super funder' that is both 'funding the case' and acting as 'a client.'[2]

The Commission, its ALJs, and the parties to Section 337 investigations cannot effectively evaluate litigation dynamics, settlement incentives, or potential conflicts if they do not know who is actually financing and directing the proceeding.

Foreign-Backed TPLF Poses National and Economic Security Risks Directly Relevant to ITC Proceedings

BSA is particularly concerned about the national and economic security dimensions of foreign-sourced TPLF in Section 337 proceedings. The ITC's mission is to protect US industry from unfair import practices – yet the absence of TPLF disclosure requirements has created conditions in which foreign adversaries may exploit ITC proceedings to achieve the opposite.

Academic experts and senior government officials have documented how foreign entities –including sovereign wealth funds – can use US litigation to obtain proprietary commercial information, impose asymmetric costs on US companies, and advance strategic interests that may undermine US economic and national security. A 2023 bipartisan report by the House Select Committee on Strategic Competition with China identified this risk explicitly, recommending that Congress determine what guardrails are needed to prevent foreign adversaries from using third-party litigation funding to acquire sensitive intellectual property through US adjudicatory proceedings.

In one widely reported example, a China-based TPLF entity has funded several patent suits against Samsung Electronics.[3] The Chinese TPLF entity's involvement was disclosed only because Chief Judge Colm Connolly of the District of Delaware issued a standing order in April 2022 requiring disclosure of third-

party litigation funding in cases before him — not because any generally applicable rule required it.[4] Subsequently, Samsung alleged in federal court that the China-backed entity and an associated law firm had used Samsung's confidential information without authorization to support the patent infringement claims.[5]

The Department of Justice's FARA Unit has identified three specific risks from undisclosed foreign TPLF: foreign entities using US litigation to impose competitive disadvantages on domestic firms; funders gaining access to sensitive commercial information through discovery; and foreign adversaries funding litigation to advance divisive political agendas. Each of these risks is directly relevant to the high-stakes, discovery-intensive environment of ITC proceedings. And in the Section 337 context, they raise a further concern: that foreign-backed NPEs may be exploiting a trade remedy intended to protect US domestic industry as a tool to harm the very industries it was designed to shield.

These types of TPLF risks in ITC and other patent litigation have also been the subject of executive and legislative branch investigations and hearings, as discussed below. For example,

- Senators have raised concerns, including one who warned in a letter to the Chief Justice and the Attorney General that "[m]erely by financing litigation in the United States against … corporations or highly sensitive sectors, a foreign actor can advance its strategic interests in the shadows."
- Lawmakers in the House of Representatives have warned that "China has weaponized our legal system by financing lawsuits that target American firms in expensive litigation and with the intent, in many cases, to mine … proprietary information'; "we have documented instances of foreign funding from China, Russia, and other sources who use shell companies to hide where they come from"; and Chinese and other foreign-backed entities are using patent litigation "as a means of achieving other strategic goals …, including harming strategic or geopolitical competitors or using the courts and the litigation discovery process as a conduit to gain access to sensitive trade secrets and confidential intellectual property that would otherwise be shielded from view."
- A former USG official responsible for China IP issues warned the Senate Judiciary Committee that foreign adversaries are using US evidentiary processes in patent litigation in a way that "pose[s] a risk of legalized trade secret misappropriation by foreign countries."
- The House Select Committee on US-China Strategic Competition called for safeguards to "prevent foreign adversaries from obtaining intellectual property through third party litigation funding."
- A Justice Department investigation was launched in 2024 to examine "whether foreign entities are investing in US patent litigation to gain proprietary information that would help their own industries."
- A Government Accountability Office Report contains testimony that "funding of US patent litigation from foreign entities has become significant in recent years... including [from] China, Saudi Arabia, and France" as have efforts to "gain access to sensitive company information during … discovery."

As a US economic and national security imperative, TPLF transparency in USITC cases should be structured to be as robust as possible.

DISCUSSION OF RECOMMENDATIONS

The Proposed Amendment Should Be Strengthened in Several Respects

BSA supports the Commission's proposal to require disclosure of TPLF arrangements in Section 337 proceedings. However, the Amendment as drafted contain several gaps that could significantly undermine its effectiveness.

A. The Loan Exception Should Be Narrowed

The Amendment excludes from its disclosure requirements loans provided by banks or other lenders. As a categorical matter, that exclusion is sensible – ordinary commercial lending does not raise the concerns

that motivate the disclosure requirement. However, the exception as drafted sweeps too broadly and would shield significant TPLF activity from disclosure.

Some litigation funders have increasingly structured their arrangements as special purpose (and often high-interest) loans to law firms, with the lender taking a collateralized interest in the attorney's fees generated by the funded cases. These arrangements are functionally equivalent to traditional TPLF investments – the funder provides capital, expects a substantial return tied to the litigation's outcome, and retains leverage over the borrowing firm through its ability to call the loan, withhold additional funding, or resist extensions. The fact that these arrangements are structured as loans rather than equity-style investments does not change the underlying dynamic.

Additionally, the term "bank" is undefined and could be read to exclude hedge funds and other non-bank financial institutions that are among the most active providers of litigation finance. That reading would gut the rule. To address these challenges, we recommend the following changes:

First, BSA endorses a narrower disclosure exception that defines a "bank" as those entities that meet the Treasury Department's definition under 31 C.F.R. § 1010.100(d) or the Federal Depost Insurance Act's definition under 12 U.S.C. § 1813(h).[6] BSA also endorses the inclusion of a definition for "insurance provider," consistent with 31 C.F.R. § 1025.100(g).

Second, the disclosure exception should also be limited to regulated banks and insurance providers that offer loans that meet the definition of "bona fide bank loan or insurance transaction entered into in the ordinary course of business," based on existing regulatory disclosure requirements. This requirement is necessary to ensure that the loan exception does not improperly insulate from disclosure obligations entities that are, in fact, maintaining a degree of interest, involvement, or control over the litigation that should be disclosed to meet the rule's underlying objectives.

Indicia of such interest, involvement or control can be found in any "loan" arrangements that diverge from ordinary commercial lending practices. For example, a low-interest loan made on preferential terms could indicate that the lender derives additional non-monetary value beyond the loan's financial terms due to the section 337 investigation's interference with the litigation target's (i.e., the Respondent's) business operations. Conversely, a high-interest loan may also indicate a financial arrangement that is not a typical arm's length arrangement between a regulated commercial lender and a commercial borrower.

For example, when a foreign state-backed entity provides financing to an NPE complainant at 0-2% interest – effectively a grant dressed as a loan – to support strategic patent litigation against a US competitor. The below-market rate is the mechanism by which the foreign backer exerts control and provides subsidy without appearing on the face of the transaction as an equity investor or litigation funder.

Likewise, a parent entity, affiliate, or co-investor in the patent itself may provide a nominally structured "loan" to the litigation vehicle at a below-market rate, creating an economic relationship that functions identically to direct investment but avoids characterization as "funding specifically for the investigation."

Third, BSA urges the Commission to remove the reference to "personal loans." "Bank loans" that are further defined in the ITC regulations and that are otherwise subject to US regulatory, reporting and transparency requirements would reasonably fall within the disclosure exception. Conversely, "personal loans" that are left undefined and that are not subject to legal requirements of "bank loans" – e.g., personal loans that are 'off-the-books' – are not properly subject to the disclosure exception. Any such loans should be fully disclosed.

Fourth, the Commission should also delete the word "specifically" from the proposed rule, which would otherwise create an unintended loophole for portfolio loans that span multiple cases. Instead, the Disclosure Rule should apply to funding made "for or in connection with" a Section 337 investigation.

Finally, to avoid circumvention of the Disclosure Rule, the litigation / settlement decision approval standard should encompass entities whose approval is "necessary or relevant to" litigation / settlement decisions.

B. Disclosure Should Include Underlying Funding Agreements

The Amendment as proposed requires parties to disclose the identity of litigation funders and describe the nature of any approval rights those funders hold. That is a useful starting point, but it is insufficient.

The available evidence – from the limited set of funding agreements that have come to light through litigation – demonstrates that the operative terms of TPLF agreements frequently diverge from funders' public representations. Agreements that facially disclaim funder control may nonetheless contain provisions that give funders decisive authority over settlement timing, amounts, or strategy through interest structures, loan terms, or approval mechanisms that are not labeled as "control" but function as such. The only way to evaluate whether a funding arrangement presents the kind of influence risk that the Commission's rule is designed to address is to examine the actual agreement.

BSA recommends that the Commission revise Section 210.14a to include an additional subsection requiring parties to attach a copy of any TPLF agreement that falls within the scope of the disclosure requirement, subject to the Commission's authority to issue protective orders limiting or conditioning production in appropriate circumstances. This approach – disclosure as the default, with the ability to seek protection for sensitive terms – is consistent with how other similarly sensitive litigation information is handled in federal proceedings.

CONCLUSION

Section 337 was designed to protect American industry – the domestic manufacturers, technology developers, and workers whose livelihoods depend on fair competition and the integrity of the US patent system. BSA and its members – major US patent holders who invest billions annually in research and development – have a direct stake in ensuring that the remedy works as Congress intended and is not corrupted by undisclosed financial interests, foreign adversaries, or entities with no genuine connection to US domestic industry.

The Commission's proposed TPLF disclosure rule is a necessary step toward that goal. BSA urges the Commission to strengthen it by narrowing the loan exception and requiring production of underlying funding agreements. Together, these revisions will give the Commission, its ALJs, and the parties the information they need to evaluate who is actually driving Section 337 proceedings – and whether those interests are consistent with the statutory purposes of the trade remedy being invoked.

BSA appreciates the opportunity to submit these comments and welcomes further engagement with the Commission on this issue.

Sincerely yours,

Joseph Whitlock
Senior Director
Business Software Alliance

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[1] The Business Software Alliance (www.bsa.org) is the global trade association of the enterprise software industry, representing companies that are leaders in artificial intelligence, cybersecurity, cloud computing, quantum, and other breakthrough technologies. We work in over 20 markets in the US, Europe, and Asia, advocating for policies that build trust in technology so that every industry sector and the public can benefit from innovation.

BSA's members include: Adobe, Alteryx, Amadeus, Asana, Atlassian, Autodesk, Avalara, Bentley Systems, Box, Cisco, Cohere, Cohesity, Dassault Systemes, Databricks, Datadog, Docusign, Dropbox, Elastic, EY, Graphisoft, HubSpot, IBM, Kyndryl, MathWorks, Microsoft, Notion, Okta, OpenAI, Oracle, PagerDuty, Palo Alto Networks, PTC, Rubrik, Salesforce, SAP, ServiceNow, Shopify Inc., Siemens Industry Software Inc., TrendAI, TriNet, Veeam, Workday, Zendesk, and Zoom Communications Inc.

[2] VLSI's Fortress Ties to Take Center Stage in Intel Patent Trial, Bloomberg Law (May 27, 2025).
[3] *Lawmakers Push for Transparency to Combat Foreign Influence in Litigation Funding*, Daily Journal (Apr. 30, 2024); *Staton Techiya Files Lengthy and Revealing Disclosures After Assignment to Judge Connolly*, Mondaq (Oct. 6, 2023).

[4] *Id.*; *see also* Bressler Risk Blog (Nov. 8, 2023) ("Purplevine's role was revealed because a Delaware federal judge, Colm F. Connolly, issued a standing order in April 2022 insisting that litigation finance be disclosed for cases in his courtroom.").
[5] *Samsung Says Chinese Litigation Funder Misused Its Trade Secrets*, Bloomberg Law (July 2, 2024), https://news.bloomberglaw.com/ip-law/samsung-says-chinese-litigation-funder-misused-its-trade-secrets.
[6] Hedge funds, private equity funds, and special-purpose litigation finance vehicles are not banks under any of these definitions. Loans from such funds or special-purpose vehicles should not be exempted from disclosure. Key distinctions include:

- No charter, no deposit-taking. A "bank" under 31 C.F.R. § 1010.100(d) accepts deposits and is organized under a banking statute. Hedge funds and litigation funders raise capital through private placements to accredited investors — they hold no banking charter and take no deposits.

- No prudential supervision. Banks are subject to ongoing examination by the Fed, OCC, FDIC, or NCUA for capital adequacy, liquidity, and safety and soundness. Hedge funds are registered (if at all) with the SEC or CFTC as investment advisers — a lighter-touch disclosure-based regime, not a prudential one. Litigation funders are not registered with or examined by any federal financial regulator at all. FinCEN explicitly distinguishes "loan or finance companies" from banks, noting that "a loan or finance company is not a financial institution as defined in the regulations in this part."

- No AML/KYC obligations as lenders. Because litigation finance companies do not qualify as "banks" or most other enumerated "financial institutions" under 31 C.F.R. § 1010.100(t), they have no Bank Secrecy Act obligation to file suspicious activity reports, maintain beneficial ownership records, or identify the ultimate beneficial owner of the capital they deploy — which is exactly the transparency gap that creates the foreign-influence risk in ITC proceedings.

- No interest rate regulation. Banks making commercial loans operate within interest rate frameworks tied to their cost of funds and prudential oversight.