Federal Circuit Bar Association BENCH & BAR®

citba.org
Customs and International Trade Bar Association

October 28, 2026

Lisa R. Barton
Secretary to the Commission
U.S. International Trade Commission
500 E Street SW
Washington, DC 20436

Re: Response to Request for Comments Regarding Implementation of 19 U.S.C. § 1338(g), Docket No. MISC-053

Dear Secretary Barton,

On behalf of the Federal Circuit Bar Association and the Customs and International Trade Bar Association (together, Associations), we respectfully submit these comments in response to the Commission's request for public input regarding the implementation of Section 338(g) of the Tariff Act of 1930, 19 U.S.C. § 1338(g).[1] These comments are timely filed.[2]

In its request inviting comments from the public, the Commission observes that while it "previously played a robust and active role implementing" Section 338 and its predecessor statute, it "does not currently have an established practice for identifying applicable discriminatory actions, collecting information relevant to those allegedly discriminatory actions from the public or other sources, or providing the President with the information it collects and its subsequent recommendations."[3] As a result, the Commission "is considering whether establishing a practice will help it better fulfill its statutory obligations" and, to that end, seeks feedback from the public on over a dozen discrete questions.[4] The Commission underscores that "{t}horoughness, impartiality, and nonpartisanship are essential to carrying out {its} work" under Section 338 and that it "is committed to these principles."[5]

The Associations' comments are limited to general institutional and procedural principles relevant to the Commission's implementation of Section 338(g). The Associations take no position in this submission on Section 338's substantive standards, the treatment of any particular foreign practice, or any specific recommendation to the President. These comments do not reflect the position of any individual member of the Associations or their respective clients on those matters.

---

[1] *See Request for Comments Regarding Implementation of 19 U.S.C. 1338(g)*, 91 Fed. Reg. 57,387 (Sept. 9, 2026).

[2] *Id.* at 57, 387 (setting November 9, 2026 as the deadline for comments).

[3] *Id.* at 57,387, 57,388.

[4] *Id.* at 57,388.

[5] *Id.* at 57,388.

The memberships of the Associations include practitioners who counsel U.S. manufacturers, U.S. importers, domestic and foreign industry associations, foreign manufacturers, and foreign sovereigns that navigate issues falling within the scope of Section 338. We applaud and appreciate the Commission's solicitation of comments from the public to determine whether establishing practices would help it better fulfill its statutory obligations. We encourage the Commission to carefully consider all tendered comments and respectfully submit that establishing such practices will bring greater clarity, predictability, and appropriate transparency to the Commission's work under Section 338(g). We also fully endorse the Commission's honorable commitment to "thoroughness, impartiality, and non-partisanship" as it seeks to fulfill its statutory obligations.

In response to Topics 3 and 4,[6] the Associations encourage clear public guidance on the information sought, timelines for Commission action, submission and evaluation procedures, and requests for confidential treatment. We encourage the Commission to consider whether disclosure of a submitter's identity or participation could deter submissions, including because of the risk of reprisal. Procedural transparency should be consistent with applicable law and appropriate protection of confidential information and sources. We also encourage the Commission, when feasible, to provide an opportunity for public comment on proposed practices before adoption.

Finally, the Associations recognize that Commission notices and certain protective-order acknowledgments already advise submitters of possible use of their information in the original or a related proceeding.[7] The Commission should clarify whether and how it intends to use information from other investigations under Section 338 and vice versa. Information requests and submission instructions should identify those uses and applicable confidentiality protections. Commission practices should require additional notice before any use beyond previously disclosed purposes to comply with applicable statutory and regulatory restrictions and consent requirements.

* * *

Thank you in advance for the Commission's consideration of these comments. Please contact the undersigned if the Commission has any questions regarding this letter.

Respectfully submitted,

/s/ Sandra Kuzmich
Sandra Kuzmich
President
Federal Circuit Bar Association

/s/ Elizabeth Drake
Elizabeth Drake
President
Customs and International Trade Bar Association

[6] *Id.* at 57,388 (identifying Topic 3 and its subparts as concerning "How the Commission should obtain relevant information" and Topic 4 and its subparts as concerning "How the Commission should analyze information provided by the public, and how the Commission should convey information and recommendations to the President").

[7] *E.g.*, *id.* at 57,389.