


USITC Commissioner Series: Commissioner Schmidtlein is Stepping Down, Which Could Lead to More Tailored Exclusion Orders

A photograph of a modern building's curved glass facade, showing multiple stories and windows, set against a light blue sky.

2 MIN READ

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This is an update to our 2024 USITC Commissioner Series. Read [part one here](#), [part two here](#), [part three here](#), [part four here](#), and [part five here](#).

On Thursday, January 16, 2025, the U.S. International Trade Commission (ITC) announced that Commissioner Rhonda K. Schmidtlein will step down on February 1, 2025. Commissioner Schmidtlein was sworn in on April 28, 2014 and served as Chair of the Commission from January 2017 to June 2018. As we previously reported, Commissioner Schmidtlein has been the most vocal dissenter in the Commission, particularly on issues relating to remedies. Her departure will leave only three Commissioners at the ITC (Commissioners Karpel, Johanson, and Kearns), which will likely impact the Commission's approach to several issues:

Commission's Discretion to Modify Remedies: Over the years, Commissioner Schmidtlein has been a reliable proponent of the position that the Commission's ability to curtail injunctive relief is limited and based only on public interest considerations. However, Commissioners Karpel and Kearns have repeatedly aired their disagreement with Commissioner Schmidtlein on this with their opinion that the ITC has broad discretion to modify the scope of remedies provided. With Commissioner Schmidtlein's departure, the Commission's current approach regarding its limited ability to tailor remedies may be subject to change. That is, the Commission may decide that it has the ability to tailor exclusion orders for any number of reasons, not limited to the public interest factors.

Cease and Desist Orders: Commissioner Schmittlein is also a particularly vocal dissenter on the standards for issuing a cease-and-desist order (CDO) where around a third of her dissenting opinions dealt with this issue. For example, Commissioner Schmittlein has repeatedly emphasized her belief that the presence of any infringing domestic inventory is sufficient to issue a CDO. Commissioner Schmittlein also frequently joined Commissioner Karpel in dissenting from the majority on CDO standards for defaulting respondents. Thus, Commissioner Schmittlein's departure may lead to a more unified Commission on the standards for this particular remedy.

However, it is quite unlikely that Commissioner Schmittlein's departure will be the only change to the Commission in 2025. On November 21, 2024, President Joe Biden nominated Jim Coughlan and Halie Craig to be members of the Commission. Both received a hearing before the Senate Finance Committee on December 18, 2024. The addition of one or both of them to the Commission could further shift the ITC's jurisprudence, not only on the topics discussed here, but on many others the Commissioners frequently split on.

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