

The Federal Circuit reminds that the ITC is accessible to smaller market segments

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On February 7, 2025, the United States Court of Appeals for the Federal Circuit in *Wuhan Healthgen Biotechnology Corp. v. Int'l Trade Comm'n* (ITC),¹ confirmed that small market segments can still be significant and substantial enough to satisfy the economic prong of the ITC's domestic industry requirement.²

Prior to the appeal, the ITC and Administrative Law Judge found that Ventria Bioscience Inc. (Ventria) satisfied the economic prong of the domestic industry requirement based on its investments in Optibumin – a plant-derived rHSA product.

This recent decision provides a useful reminder that the ITC and its powerful injunctive remedies are accessible to budding industries.

Specifically, the ITC found Ventria's Optibumin investments met the "significant" and "substantial" requirements of the Section 337 economic prong because 100% of those investments occur in the United States.³ The ITC further found that Ventria's Optibumin investments were significant and substantial based on a comparison of the investments to Optibumin's revenue.⁴

Appellant Wuhan Healthgen Biotechnology Corp. (Healthgen Biotech) argued that Ventria's claimed investments in Optibumin were "very low in both absolute and relative terms[,] and thus, could not be "significant" or "substantial."⁵

With respect to the comparison of the investments to Optibumin's revenue, Healthgen Biotech argued that the comparison led to "a facially impressive percentage simply because one small number is larger than another small number. But comparing two small numbers cannot magically transform a meager investment into something quantitatively 'significant.'"⁶

The Federal Circuit explained, however, that even if "it may have been relatively inexpensive for Ventria to develop and produce its patented product," this alone does not preclude a finding that the economic prong of the domestic industry requirement is met.⁷ Rather, the domestic industry analysis is very context dependent and requires a holistic review of all relevant considerations.

Accordingly, "[t]hough the dollar amounts of Ventria's Optibumin investments are small, the Commission found all of the investments are domestic, all market activities occur within the United States, and the high investment-to-revenue ratios indicate this is a valuable market. Under these circumstances, there is substantial evidence for the Commission's finding that the domestic industry requirement is satisfied."⁸

Strategic takeaways

This recent decision provides a useful reminder that the ITC and its powerful injunctive remedies are accessible to budding industries. The ITC "does not penalize a small business for making only small investments[.]"

And, as the Federal Circuit affirmed in this decision, "[s]mall market segments can still be significant and substantial enough to satisfy the domestic industry requirement."⁹

Rather than focusing on "absolute" size, complainants should place particular importance on evaluating the relative and/or contextual measure of its domestic industry investments, such as by comparing domestic investments to total investments (i.e., domestic plus foreign) and evaluating the value added by domestic operations, among other factors.

Notes:

¹ No. 2023-1389 (Fed. Cir. Feb. 7, 2025).

² *Wuhan Healthgen Biotechnology Corp. v. Int'l Trade Comm'n*, No. 2023-1389 at *9 (Fed. Cir. Feb. 7, 2025) (Op.).

³ *Id.* at *7.

⁴ *Id.* at *8.

⁵ Non-Confidential Brief of Appellant Wuhan Healthgen Biotechnology Corp. at 80, *Wuhan Healthgen Biotechnology Corp. v. Int'l Trade Comm'n*, No. 2023-1389 (Fed. Cir. May 26, 2023) (Dkt. 20) (Opening Br.).

⁶ *Id.* at 84.

⁷ Op. at *8.

⁸ *Id.* at *9.

⁹ Op. at *9 (citing 134 Cong. Rec. S10711-01, 1988 WL 174536 (Aug. 3, 1988) ("Smaller businesses should not be denied the right to seek relief merely because they may have made smaller financial investments than large companies....")).

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