Insights: Perspectives

5 Key Takeaways | Key Takeaways from the ITC Litigation and Enforcement Conference

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The ITC Keeps Changing in 2024. **Aarti Shah** of Kilpatrick co-chaired American Conference Institute's **ITC Litigation and Enforcement Conference** in May, where many of these changes and trends were discussed.

Key takeaways from the conference include:

Procedural changes:
The ITC has issued some proposed changes to its procedural rules, some of which might significantly impact ITC practice, and more proposed rules changes are expected soon. In addition, the Administrative Law Judges continue to refine and update their rules, including a trend towards live witness testimony at hearings.

No Article III standing required at the ITC:
In a recent Commission opinion, the ITC reiterated that constitutional standing, the Article III requirements of the Constitution related to the authority of federal courts to adjudicate lawsuits, is not required for complainants at the ITC.

Increased scrutiny of complaints:
In the past year the ITC has scrutinized new complaints more carefully, particularly with respect to whether sufficient evidence is presented to support all the allegations against each of the named respondents. Potential complainants must bear this in mind when drafting new complaints.

Tailored remedies:
The recent trend towards more closely tailoring remedies has continued. At the same time the sufficiency of the evidence provided to obtain such remedies is being scrutinized more carefully. Together these mean that parties should pay more attention to this aspect of their cases.

Domestic industry clarity:
The analysis of whether complainants have fulfilled the requirement to satisfy the economic prong of the domestic industry requirement is one of the most complicated, rapidly changing, and somewhat

mysterious areas of ITC practice. However, in recent opinions the ITC has provided more guidance regarding its analysis of these allegations, providing practitioners with more guidance.

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