

# Federal Circuit Clarifies Appeal Deadlines in Mixed ITC Determinations and Affirms Limited Exclusion Orders Against Defaulting Respondents

January 8, 2026

On January 8, 2026, the Federal Circuit issued an important decision addressing when ITC determinations become final and appealable in investigations involving mixed outcomes—i.e., no-violation findings as to some respondents and issuance of remedial orders as to others—and clarifying the Commission’s authority to issue limited (but not general) exclusion orders against defaulting respondents under Section 337(g)(1).<sup>1</sup>

The Court dismissed Crocs’s appeal of the Commission’s no-violation finding as untimely, holding that such findings become final immediately upon issuance and are not subject to Presidential review, even where the same Commission opinion also finds a violation of the statute and issues an exclusion order against other respondents. The Court also affirmed the Commission’s decision to issue only a limited exclusion order (“LEO”) as to goods of defaulting respondents, rejecting Crocs’s argument that a general exclusion order (“GEO”) was required.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or to the Cleary authors below.

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<sup>1</sup> *Crocs, Inc. v. Int’l Trade Comm’n*, No. 24-1300, slip op. at 2 (Fed. Cir. Jan. 8, 2026).  
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**I. Background.** Crocs filed a Section 337 complaint alleging that imported footwear infringed or diluted its registered three-dimensional trademarks covering features of its Classic Clog shoes. The investigation proceeded against two groups of respondents: (i) Active respondents, who participated in the evidentiary hearing; and (ii) Defaulting respondents, who failed to appear and were found in default prior to the hearing.<sup>2</sup>

The Administrative Law Judge issued an initial determination finding no violation as to all respondents, including on infringement and dilution, and further concluded that Crocs had waived its infringement contentions against the defaulting respondents.

On review, the Commission:

- Affirmed the no-violation finding as to the active respondents<sup>3</sup>; but
- Set aside the ALJ’s waiver analysis as inapplicable to defaulting parties and issued a limited exclusion order against the defaulting respondents pursuant to 19 U.S.C. § 1337(g)(1).<sup>4</sup>

Crocs appealed both rulings.

**II. The Court’s Key Holdings.** The Court issued two key rulings.

**First**, the Federal Circuit dismissed Crocs’s appeal of the no-violation finding as untimely, holding that the 60-day appeal period began to run on the date the Commission issued the no-violation determination, notwithstanding the simultaneous finding of violation and issuance of an exclusion

order against other respondents. Specifically, the Court held<sup>5</sup> that in investigations with mixed results:

- No-violation determinations are final when issued and not subject to Presidential review;
- Remedial orders (e.g., exclusion orders) are subject to the 60-day Presidential review period before becoming final; and
- These distinct determinations therefore have separate appeal deadlines, even if issued in a single Commission opinion.

The Court relied on longstanding precedent, including *Allied Corp. v. ITC* and *Broadcom Corp. v. ITC*, to reject Crocs’s argument that a single Commission opinion must be treated as a unitary, non-final determination until Presidential review concludes.<sup>6</sup>

Crocs’s notice of appeal—filed more than 60 days after the Commission issued its no-violation finding—was therefore dismissed as untimely.<sup>7</sup>

**Second**, the Court separately affirmed the Commission’s issuance of an LEO against the defaulting respondents and its refusal to issue a GEO.<sup>8</sup>

Section 337(g)(1) requires the Commission, upon default, to: (i) Presume the facts alleged in the complaint to be true; and (ii) issue an exclusion order “limited to that person,” unless the public-interest factors counsel otherwise.<sup>9</sup> Applying this language, the Court held that once the Commission proceeded under § 337(g)(1), it lacked authority to issue a GEO and was statutorily constrained to an LEO.<sup>10</sup> The Court emphasized the Commission’s

<sup>2</sup> *Id.* at 3.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 3–4.

<sup>5</sup> *Id.* at 7–8.

<sup>6</sup> *Id.* at 6–9.

<sup>7</sup> *Id.* at 10.

<sup>8</sup> *Id.* at 10–12.

<sup>9</sup> *Id.* at 12.

<sup>10</sup> *Id.*

broad remedial discretion, reaffirming that its choice of remedy will be upheld unless arbitrary, capricious, or contrary to law—a standard Crocs failed to meet.<sup>11</sup>

**III. Practical Implications.** This decision has several important implications for parties litigating before the ITC:

- *Appeal deadlines must be analyzed issue-by-issue.* A Presidential review period applicable to remedial orders does not extend the time to appeal adverse no-violation findings.
- *Determinations of no violation are immediately appealable.* Practitioners should calendar appeal deadlines for no-violation determinations from the date of issuance, even where the Commission opinion also issues remedies as to other parties or issues.
- *Default practice limits available relief.* Where at least one respondent appears, complainants proceeding under § 337(g)(1) should expect limited—not general—exclusion orders, absent reliance on § 337(g)(2).
- *Form will not override substance.* The Commission’s decision to issue a single opinion does not alter statutory finality or appealability.

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<sup>11</sup> *Id.*