UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

Before the Commission

In the Matter of **CERTAIN FOREIGN-FABRICATED SEMICONDUCTOR DEVICES, PRODUCTS CONTAINING THE SAME, AND COMPONENTS THEREOF**	Inv. No. 337-TA-_____ Docket No. 3809

PROPOSED RESPONDENT APPLE INC.'S ACTION REQUEST NOT TO INSTITUTE AND PUBLIC INTEREST STATEMENT UNDER COMMISSION RULE 210.8(C)

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Proposed respondent Apple Inc. submits this response to the Commission's solicitation of comments on public interest issues implicated by the complaint filed by Complainants Longitude Licensing Ltd. and Marlin Semiconductor Limited. 90 Fed. Reg. 10515 (Feb. 24, 2025). Neither Longitude nor Marlin has operations in the United States nor manufactures any product, let alone any semiconductor device.[1] Instead, they are the latest in a series of foreign non-practicing entities that consume American Federal and private party resources by initiating litigation at the Commission to try to extract inflated license fees from their targets, including Apple.[2] Here, the Complaint names Apple as a proposed respondent but only concerns Apple as an alleged downstream customer of semiconductor fabrication and semiconductor companies. The relief requested in the Complaint also contravenes public policy announced by the White House on March 3, 2025, and behind the CHIPS and Science Act of 2022 ("CHIPS Act"), because the relief targets and diverts valuable resources from semiconductor companies that are making large investments to increase semiconductor manufacturing in the United States. The Commission should deny institution of the proposed investigation on these bases. Alternatively, should the Commission institute an investigation, Apple requests that the Commission: (1) rename the investigation "Certain Semiconductor Devices, Products Containing the Same, and Components Thereof," removing "Foreign-Fabricated" from the caption (because it is argumentative and redundant of the relief requested in section 337 investigations and thus not meaningful); and (2) delegate public interest factfinding to the ALJ given serious public interest issues here.

A. The Commission Should Deny Institution Because the Proposed Relief Contravenes Public Policy Behind the March 3, 2025 White House Announcement and the CHIPS Act, and Threatens Harm to U.S. National Security, Competitiveness, and Innovation.

Congress passed the CHIPS Act to enhance domestic semiconductor R&D and manufacturing for purposes of enhancing U.S. security, competitiveness, and innovation. The Semiconductor Industry Association

[1] https://www.longitudelicensing.ie/about_us.shtml (Marlin acquires patents and Longitude conducts the licensing of Marlin's portfolio).

[2] Since 2019, Irish NPEs, like Marlin and Longitude, have filed 10 section 337 complaints at the International Trade Commission. To date, none of those 10 investigations have resulted in a section 337 violation. *See* Inv. No. 337-TA-1308, Doc. ID 763126 (Feb. 11, 2022); Inv. No. 337-TA-1280, Doc. ID 748382 (July 30, 2021); Inv. No. 337-TA-1268, Doc. ID 743241 (May 24, 2021); Inv. No. 337-TA-1267, Doc ID. 743107(May 21, 2021); Inv. No. 337-TA-1243, Doc. ID 729019 (Dec. 28, 2020); Inv. No. 337-TA-1225 Doc ID 719529, (Sept. 14, 2020); Inv. No. 337-TA-1193, Doc. ID 702601 (Feb. 14, 2020); Inv. No. 337-TA-1162, Doc ID 676671 (May 22, 2019); Inv. No. 337-TA-1150, Doc. ID 668638 (Feb. 28, 2019).

estimates that the United States will triple its domestic semiconductor manufacturing capacity between 2022 and 2032, growing its share of advanced logic (below 10 nm) manufacturing from 0% to 28% of global capacity.[3] The relief requested by the Complaint contravenes the public policy behind the CHIPS Act for two reasons.

First, the requested relief targets and would divert valuable resources from proposed semiconductor respondents working to increase manufacturing capabilities in the United States. On March 3, 2025, the White House announced that TSMC was making a $100 billion U.S. semiconductor manufacturing investment on top of a prior $65 billion commitment, remarking that the move was a "tremendous move" and "a matter of economic security."[4] In the wake of the CHIPS Act, Qualcomm announced it was more than doubling its "existing strategic global long-term semiconductor manufacturing agreement" with GlobalFoundries that "supports U.S.-based manufacturing through capacity expansion at GF's most advanced semiconductor manufacturing facility in Malta, New York."[5] Last year, TSMC announced plans to build a third fab at TSMC Arizona "to meet strong customer demand leveraging the most advanced semiconductor process technology in the United States."[6] TSMC credited the CHIPS Act with the opportunity, stating: "Our U.S. operations allow us to better support our U.S. customers [… and] expand our capability to trailblaze future advancements in semiconductor technology."[7] While the CHIPS Act has put the United States on track to increase domestic production of semiconductors, the relief requested by non-practicing entities like Complainants threatens to undermine that progress. The requested exclusion and cease and desist orders would block the proposed semiconductor respondents' U.S. sales, imports, sales for importation, and engineering and other U.S. support of accused chips, diminishing revenue and resources needed to increasingly shift semiconductor manufacturing to the United States.

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[3] https://www.semiconductors.org/america-projected-to-triple-semiconductor-manufacturing-capacity-by-2032-the-largest-rate-of-growth-in-the-world/.
[4] https://apnews.com/article/trump-tsmc-chip-manufacturing-tariffs-42980704ffca62e823182422ee4b7b83.
[5] https://www.qualcomm.com/news/releases/2022/08/globalfoundries-and-qualcomm-announce-extension-of-long-term-agr.
[6] https://pr.tsmc.com/english/news/3122; https://www.commerce.gov/news/press-releases/2024/11/biden-harris-administration-announces-chips-incentives-award-tsmc; https://www.cnbc.com/2025/01/19/tsmc-confident-in-continued-chips-act-funding-under-trump-says-cfo.html.
[7] *Id.*

Second, as further described below in conjunction with the public interest factors, excluding the semiconductor chips at issue from the United States would have serious detrimental impacts on U.S. national security, as well as competitiveness and innovation in artificial intelligence ("AI"). TSMC plays a critical role in manufacturing and packaging chips with advanced AI capabilities for U.S. public and private sectors.[8] In the event of any remedy, no non-respondent companies would have sufficient capacity to make up for the shortfall of secure, advanced chips needed in the United States. The Commission therefore should decline to institute an investigation because it undermines public policy.

B. Alternatively, the Commission Should Rename the Investigation and Delegate Public Interest Factfinding to the ALJ.

1. The Commission Should Remove "Foreign-Fabricated" from the Investigation Title.

If the Commission institutes an investigation, it should remove "Foreign-Fabricated" from the title. "Foreign-Fabricated" is argumentative because the Complaint targets companies that are increasing U.S. manufacturing and is not meaningful as redundant of relief requested in most Section 337 investigations.

2. Given the Significant Public Interest Concerns, the Commission Should Delegate Public Interest Factfinding to the ALJ.

The adverse impact of the requested relief on each of the four public interest factors overwhelms the interest in protecting the patent rights at issue, which Complainants did not develop and do not practice.

a. The Requested Relief Will Harm Public Health, Safety, And Welfare.

Headquartered in Cupertino, California, Apple is an American success story with more than 80,000 employees. One of the biggest job creators in the U.S., Apple is responsible for nearly three million jobs in all 50 states.[9] Last week, Apple announced a $500 billion investment in the U.S. over the next four years, including expanded support for U.S. manufacturing and hiring another 20,000 U.S. employees.[10] The White House immediately praised Apple's investment as a "historic venture."[11] Remedial orders excluding Apple iPhone, iPad,

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[8] https://www.tradingview.com/news/gurufocus:a5aee94b5094b:0-tsmc-is-likely-the-biggest-winner-in-the-ai-era/.
[9] https://www.apple.com/job-creation/.
[10] https://www.apple.com/newsroom/2025/02/apple-will-spend-more-than-500-billion-usd-in-the-us-over-the-next-four-years/.
[11] https://www.whitehouse.gov/articles/2025/02/monday-morning-wins-historic-investment-border-security/.

Apple Watch, and MacBook Air products would significantly harm public health and welfare in the U.S. *See* Compl. ¶¶ 110, 112. Apple accused products and applications designed for them have wide uses in business, healthcare, government, education, and safety.[12] Apple accused products support widely used health applications and are used by first responders, hospitals, public health and safety agencies, and physically disabled individuals. They also are important research tools employed in a number of clinical trials.[13] Further, telehealth continues to grow exponentially and has tremendous implications for how patients and practitioners use the Apple accused products to access essential health services. The requested remedy would reduce this access and likely increase costs for consumers related to delayed diagnosis of chronic conditions such as atrial fibrillation (AFib).

The requested remedy also would negatively impact safety, including national security. The proposed semiconductor respondents supply a significant percentage of secure, advanced chips, including AI chips. Disrupting the U.S. supply of secure, advanced chips, including AI chips, would harm safety and national security.

b. Insufficient Like or Directly Competitive Articles or Capacity Exist.

No evidence supports that sufficient like or directly competitive articles exist or that any other company has capacity to produce them. The requested remedy seeks to bar articles made from or incorporating (in whole or in part) semiconductor devices using TSMC's 7nm and smaller process nodes. Analysts report that, as of the third quarter of 2024, TSMC had 64% of market share in the global foundry industry.[14] Complainants cite no evidence that purported licensee Intel or other "ample suppliers" have the capacity to fill the void caused by the exclusion of semiconductor devices using TSMC's 7nm and smaller process nodes, particularly given TSMC's market share

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[12] https://www.apple.com/healthcare/; https://www.apple.com/education/; https://www.apple.com/business/; https://www.apple.com/newsroom/2019/09/apple-announces-three-groundbreaking-health-studies/; https://www.apple.com/newsroom/2025/02/new-holistic-apple-health-study-launches-today-in-the-research-app/; https://www.apple.com/ios/research-app/.

[13] https://clinicaltrials.gov/study/NCT04196595?spons=Apple&rank=7; https://clinicaltrials.gov/study/NCT04172766?spons=Apple&rank=8; https://clinicaltrials.gov/study/NCT04198194?spons=Apple&rank=6; https://clinicaltrials.gov/study/NCT04276441?spons=Apple&page=2&rank=14; https://clinicaltrials.gov/study/NCT06500988?spons=Apple&page=3&rank=21; https://clinicaltrials.gov/study/NCT04304495?spons=Apple&page=3&rank=22.

[14] https://www.counterpointresearch.com/insights/global-semiconductor-foundry-market-share/; https://www.statista.com/statistics/867223/worldwide-semiconductor-foundries-by-market-share/#:~:text=In%20the%20third%20quarter%20of,the%20third%20quarter%20of%202024.

and reports that Intel's foundry business is "floundering."[15] Complainants' PI Statement at 2. The same holds true for downstream products targeted by the Complaint. The proposed downstream respondents were responsible for at least 75% of U.S. smartphone shipments in Q4 2024,[16] at least 56% of U.S. tablet shipments in 2024,[17] approximately 20% of smartwatch global shipments in Q3 2024,[18] and more than 35% of global shipments for laptops.[19] No evidence supports that "non-party consumer electronic companies" could supply the same volume.

c. The Requested Relief Would Adversely Impact the Production of Like or Directly Competitive Articles in the United States.

As discussed above, the Complaint targets semiconductor companies investing in U.S. manufacturing. Halting U.S. imports, sales, importations for sale, and engineering and other U.S. support of accused chips, would undermine the proposed semiconductor respondents' ability to invest in the United States and slow the timeline for doing so. Indeed, business difficulties faced by Complainants' purported licensee Intel appear to have delayed Intel's construction of semiconductor plants in Ohio by at least five years.[20]

d. The Requested Relief Would Harm Consumers.

The Complaint threatens to disrupt significant percentages of U.S. semiconductor, smartphone, tablet, personal computing, and smartwatch sales. That disruption would create shortages and price spikes and would substantially harm U.S. consumers. Even short-term exclusion of accused semiconductors and devices containing them "would have a significant impact not only on [Respondent] and its employees but on consumers, merchants and institutions that rely on [their] products." *See Certain Audio Processing Hardware and Software, and Prods. Containing the Same,* Inv. No. 337-TA-1026, ID at 94 (Dec. 6, 2017). Moreover, global chip shortages from 2020 to 2023 demonstrated that global supply is tight, and the consequences of excluding accused semiconductors can cascade into other industries.[21]

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[15] https://money.usnews.com/investing/articles/will-intel-stock-recover-in-2025#:~:text=On%20top%20of%20those%20pressing,lacks%20a%20meaningful%20AI%20accelerator.
[16] https://www.counterpointresearch.com/insights/us-smartphone-market-share/.
[17] https://gs.statcounter.com/vendor-market-share/tablet/united-states-of-america.
[18] https://www.counterpointresearch.com/insights/global-smartwatch-shipments-market-share/.
[19] https://www.idc.com/getdoc.jsp?containerId=prUS53061925.
[20] https://www.nytimes.com/2024/11/26/business/economy/intel-chips-award-biden.html.
[21] https://researchbriefings.files.parliament.uk/documents/POST-PN-0721/POST-PN-0721.pdf (global chip shortage impacted no fewer than 169 industries).

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Respectfully submitted,

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I, Debby Brady, hereby certify that on March 4, 2025, a copy of *Proposed Respondent Apple Inc.'s Action Request Not to Institute and Public Interest Statement Under Commission Rule 218.8(c)* was served on the following as indicated:

The Honorable Lisa R. Barton Secretary to the Commission U.S. International Trade Commission 500 E Street, S.W. Washington, DC 20436	☒ Via EDIS ☐ Via Hand Delivery ☐ Via Overnight Courier
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