

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

In the Matter of

**CERTAIN FOREIGN-FABRICATED
SEMICONDUCTOR DEVICES,
PRODUCTS CONTAINING THE SAME,
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-____
Docket No. 3809**

**PROPOSED RESPONDENT TAIWAN SEMICONDUCTOR MANUFACTURING
COMPANY LIMITED'S REQUEST FOR A 100-DAY INITIAL DETERMINATION**

Proposed Respondent Taiwan Semiconductor Manufacturing Company Limited (“TSMC”) requests that the Commission place the dispositive issue of domestic industry into the 100-day program under 19 C.F.R. § 210.10(b)(3). As discussed in detail below, Complainants admittedly have no domestic industry. Compl. ¶¶ 188-237. Rather, they rely entirely on purported non-exclusive licensee, third-party Intel Corporation (“Intel”). *Id.* Complainants do not, however, offer any confidential information to support their claims, nor do they represent that third-party Intel is willing to participate in this investigation or provide the necessary discovery. Without such participation or discovery, Complainants cannot maintain an investigation.

Accordingly, TSMC respectfully requests that the Commission direct the ALJ to make an early determination on the issue of domestic industry. At a minimum, all discovery unrelated to the issue of domestic industry should be suspended until it is determined that Intel will provide the information Complainants admit they need to maintain an investigation. Granting TSMC’s request will fulfill the 100-day program’s purpose by conserving significant resources for both the Proposed Respondents and the Commission through early resolution of this threshold issue. Alternatively, if the Commission believes that these circumstances do not warrant early disposition via the 100-day program, TSMC respectfully requests that the Commission postpone institution until Complainants demonstrate that they have the necessary information from Intel to maintain an investigation, or that Intel will provide such information promptly upon institution. 19 C.F.R. § 210.10(a)(1)(i).

I. COMMISSION POLICY SUPPORTS EARLY DISPOSITION ON DOMESTIC INDUSTRY WHEN COMPLAINANTS RELY SOLELY ON THIRD PARTIES

The Commission has a significant policy interest in granting TSMC’s request and placing the issue of domestic industry into the 100-day program. The 100-day program was implemented

at least in part to “limit unnecessary litigation, saving time and costs for all parties involved.”¹ This investigation presents the ideal circumstance for early disposition. Complainants concede that they do not have a domestic industry; rather, they are relying entirely on third-party Intel to establish both the economic and technical prongs. Compl. ¶¶ 188-237. Complainants further concede that they need “discovery from Intel to verify the investments and allocations thereof” set forth in the Complaint. Compl. n.14. But Complainants do not represent that Intel will participate in this investigation or otherwise provide that necessary discovery.

Thus, rather than force TSMC and the seven other Proposed Respondents to expend significant resources litigating all issues throughout an entire investigation—only to find that Complainants cannot show a domestic industry through Intel—the Commission should take a more judicious and economical approach and order early determination on the issue of domestic industry. Indeed, the Commission has put similar cases in the 100-day program in the past. In *Certain Active Matrix OLED Display Devices and Components Thereof*, the complainant, Solas OLED Ltd. (“Solas”), was a foreign non-practicing entity relying solely on U.S. third-party eMagin Corporation for a domestic industry—just like Complainants (also a foreign non-practicing entity) are doing here with Intel. *See* Inv. 337-TA-1225, Complaint at ¶¶ 11-18, 133-146 (Sept. 14, 2020). The complaint in that investigation, like the one here, also named numerous top industry leaders as respondents. *Id.* at ¶¶ 19-44. Under those circumstances, the Commission placed the issue of domestic industry into the 100-day program.² Inv. 337-TA-1225, Notice of Institution at 2 (Oct.

¹ https://www.usitc.gov/press_room/featured_news/pilot_program_will_test_early_disposition_certain.htm (last accessed Feb. 25, 2025).

² During pre-institution, the Office of Unfair Import Investigations also raised concerns over the complaint’s failure to “distinguish between investments made before, and investments made after, eMagin became a licensee” and requested supplementation of the complaint. *See* Inv. 337-TA-1225, Letter from P. Guarnieri to E. Langdon (Sept. 22, 2020). Solas supplemented its complaint

22, 2020). Notably, the Commission did so even though Solas alleged that “eMagin will provide discovery and give full cooperation, including producing witnesses for deposition and production of confidential technical and business documents relating to the Domestic Industry products.” Inv. 337-TA-1225, Complaint at ¶18 (Sept. 14, 2020). As noted, Complainants have not even made such an allegation here with respect to Intel.

Placing the issue of domestic industry in the 100-day program further alleviates policy concerns about Category 2 non-practicing entities like Complainants using purported third-party licensees like Intel who have not agreed to participate in the investigation or otherwise provide the discovery necessary for Complainants to maintain an investigation. On May 18, 2023, Representatives David Schweikert (R-AZ) and Don Beyer (D-VA) introduced Congressional Bill H.R. 3535, which would amend Section 337 to prevent a complainant from doing exactly what Complainants are doing here: using an unwilling licensee as basis for a domestic industry. H.R. 3535, 118th Cong., 1st Sess. (2023) at 3:5-12 (proposing the following language after the first sentence of Section 337(b)(1): “For a complaint under oath, a person may be relied upon to qualify as an industry under subsection (a)(2) only if the person joins the complaint under oath, except that nothing in this sentence shall be construed to compel such a person to join the complaint.”).³ Although H.R. 3535 has not been enacted, using the 100-day program here comports with the spirit of the Bill because doing so would dispose of this investigation expeditiously if it is found that Complainants cannot establish a domestic industry through Intel.

to purportedly address those concerns on September 30, 2020. *See* Inv. 337-TA-1225, Letter from E. Langdon to Sec. Barton (Sept. 30, 2020).

³ This Bill, which is titled “Advancing America’s Interests Act,” was also introduced in the 116th and 117th Congresses as H.R. 8037 and H.R. 5184, respectively.

At a minimum, all discovery unrelated to the issue of domestic industry should be suspended until it is determined that Intel will provide the necessary information in this investigation. 19 C.F.R. § 210.10(b)(3) (granting the ALJ discretion “to stay discovery of any remaining issues during the pendency of the 100-day proceeding.”).

II. THE NEED FOR THIRD-PARTY DISCOVERY DOES NOT COUNSEL AGAINST EARLY DISPOSITION

The fact that Complainants need discovery from third-party Intel does not make the issue of domestic industry too complicated or complex such that early disposition is inappropriate. When announcing the 100-day program, the Commission recognized both (1) the potential need for third-party discovery on domestic industry, and (2) complainants should file cases with that information firmly in hand:

The Commission recognizes that resolving issues in pilot program investigations will be challenging for the ALJs and the parties. However, it notes that the complainant controls the timing of the complaint’s filing and should be prepared to prove its case, including such elements as domestic industry, importation, and standing, without extensive discovery on these issues. *While some complainants rely on licensees’ activities to satisfy the domestic industry requirement, such complainants should have acquired the necessary information from licensees prior to filing the complaint and have a well-developed plan for obtaining any necessary discovery immediately upon institution.*⁴

Thus, any argument from Complainants that the issue of domestic industry is too complex or too complicated for a 100-day proceeding is unavailing.

Additionally, to the extent the Commission finds that the 100-day program is inappropriate, the Commission should postpone institution pursuant to 19 C.F.R. § 210.10(a)(1)(i) until Complainants demonstrate that they have the “necessary information” from Intel to maintain an investigation, or that Intel will provide such information promptly after institution.

⁴ https://www.usitc.gov/press_room/featured_news/pilot_program_will_test_early_disposition_certain.htm (emphasis added) (last accessed Feb. 25, 2025).

III. CONCLUSION

For the foregoing reasons, TSMC respectfully request that the Commission place the issue of domestic industry in the 100-day program, and that all discovery unrelated to the issue of domestic industry be suspended pending resolution of the 100-day program. Alternatively, TSMC respectfully requests that the Commission postpone institution until Complainants demonstrate that they have the necessary information from Intel to maintain an investigation, or that Intel will promptly provide such information upon institution.

Dated: March 4, 2025

Respectfully submitted,

/s/ S. Alex Lasher

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