

## UNITED STATES COURT OF INTERNATIONAL TRADE

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INTEL CORPORATION, and  
INTEL AMERICAS, INC.

Plaintiffs,

v.

Court No. 21-00492

THE UNITED STATES;  
OFFICE OF THE UNITED STATES TRADE  
REPRESENTATIVE;  
KATHERINE C. TAI, IN HER OFFICIAL  
CAPACITY AS U.S. TRADE  
REPRESENTATIVE;  
UNITED STATES CUSTOMS AND BORDER  
PROTECTION; and  
TROY A. MILLER, IN HIS OFFICIAL  
CAPACITY AS ACTING COMMISSIONER  
OF U.S. CUSTOMS AND BORDER  
PROTECTION,

Defendants.

**COMPLAINT**

Plaintiffs Intel Corporation and Intel Americas, Inc., by and through their attorneys, bring this civil action, alleging the following:

**SUMMARY**

1. This action concerns Defendants' imposition of tariffs purportedly promulgated pursuant to Section 301 of the Trade Act of 1974 ("Trade Act"), 19 U.S.C. § 2411 in furtherance—and escalation—of an unprecedented trade war with the People's Republic of China. Specifically, Intel challenges Defendants' unlawful imposition of a third and fourth round of Section 301 tariffs on certain imported merchandise of Chinese origin, referred to as the "List 3" and "List 4A" tariffs. *Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 83 Fed. Reg. 47,974 (Sept. 21, 2018)

(publishing List 3); *Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 84 Fed. Reg. 43,304 (Aug. 20, 2019) (publishing List 4A).

2. Article I, Section 8 of the U.S. Constitution entrusts the power “{t}o regulate Commerce with foreign Nations” to Congress. The President and subordinate organs of the executive branch—including Defendants—may regulate commerce with foreign nations only pursuant to a valid delegation of power by Congress. The Trade Act is such a limited delegation of Congressional power, pursuant to which the Office of the United States Trade Representative (“USTR”) may initiate an investigation to determine whether a foreign nation has engaged in unfair trade practices and, within twelve months, determine what action the United States shall take to respond to those unfair trade practices. The Trade Act does *not* bestow upon Defendants unbounded trade war powers or provision them with an unlimited arsenal for waging that trade war at the time of Defendants’ choosing and by whatever means Defendants may choose.

3. On August 18, 2017, USTR initiated an investigation into China’s unfair intellectual property policies and practices pursuant to Section 301. Pursuant to Section 304 of the Trade Act, 19 U.S.C. § 2414, USTR had to determine what action to take, if any, within 12 months after initiation of that investigation, i.e., by August 18, 2018, which is precisely what USTR initially did. After determining that China’s intellectual trade practices imposed an unfair burden on U.S. trade, and that the appropriate action in response would be a 25 percent *ad valorem* tariff on merchandise imported from China with an aggregate annual trade value of approximately \$50 billion, USTR implemented this 25 percent tariff via “List 1” on June 20, 2018 and “List 2” on August 16, 2018. List 1 (covering approximately \$34 billion in aggregate annual imports) and List 2 (approximately \$16 billion) explicitly addressed the Chinese intellectual property practices that

were the subject of USTR's Section 301 investigation and conformed to the \$50 billion aggregate import value that USTR determined to be an appropriate response.

4. List 3 and List 4A bear little resemblance to those earlier trade actions. First, USTR did not promulgate either List 3 (September 21, 2018) or List 4A (August 20, 2019) within the twelve-month window provided by Section 304, which expired August 18, 2018. Second, neither List 3 nor List 4A were promulgated in response to the Chinese intellectual property practices that were the subject of USTR's Section 301 investigation. Rather, USTR promulgated List 3 and List 4A in response to China's imposition of certain retaliatory tariffs and other Chinese actions unrelated to intellectual property. Thus, Defendants lacked power under Section 304 to promulgate or implement the List 3 and List 4A tariffs.

5. Nor may USTR fall back on its authority—under Section 307 of the Trade Act, 19 U.S.C. § 2417—to “modify” a prior action under Section 301. Section 307 only permits USTR to modify its prior action when the unfair trade practice *that was the subject of the Section 301 investigation* either increases or decreases, or to terminate or otherwise limit its prior action when USTR determines that the action “is no longer appropriate.” Section 307 does *not* permit USTR to impose new tariffs for a reason different from the unfair trade practices it investigated under Section 301.

6. The arbitrary manner in which Defendants implemented the List 3 and List 4A tariff actions also violates the Administrative Procedure Act (“APA”). USTR (1) failed to provide sufficient opportunity for comment, particularly because it required interested parties to submit affirmative and rebuttal comments on the same day; (2) failed to consider relevant factors when making its decision, such as whether there was any “increased burden” imposed on U.S. commerce due to the unfair intellectual property practices that it originally investigated; and (3) failed to

connect its decisions to the factual record. Indeed, despite receiving over 6,000 comments, including comments from Plaintiffs, USTR provided no analysis regarding how those comments shaped its final promulgation of List 3 or List 4A. USTR's preordained decision-making bears no resemblance to the standards that the APA demands.

7. The Court should set aside Defendants' actions as *ultra vires* and otherwise contrary to law, as well as order Defendants to refund (with interest) any duties paid by Plaintiffs pursuant to List 3 and List 4A.

### JURISDICTION

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1581(i)(1)(B), which provides that "the U.S. Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for . . . tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue."

### PARTIES

9. Plaintiff Intel Corporation ("Intel") is a publicly traded company (NASDAQ INTC) headquartered in Santa Clara, California. Intel Corporation is a world leader in the design and manufacturing of essential products and technologies that power the cloud and an increasingly smart, connected world. The company has approximately 110,600 employees worldwide, approximately half of which are in offices around the United States. Intel Corporation has made numerous entries of merchandise subject to List 3—including, but not limited to Intel NUC (Next Unit of Computing) small form factor computers, server systems, computer components, server components, bare printed circuit boards, power supplies, static converters, Intel RealSense cameras, cables, glass wafers, quartz sleeves, and copper laminates, which fall under HTSUS subheadings 7020.00.60, 7409.19.50, 8471.50.01, 8471.80.10, 8473.30.11, 8473.30.51,

8504.40.60, 8504.40.95, 8534.00.00, 8537.10.91, 8544.20.00, 8544.42.20 and 8544.42.90—and as importer of record has paid the additional *ad valorem* duties for these subject products. Intel Corporation has also made numerous entries of merchandise subject to List 4A—including, but not limited to solid state drives, network interface cards, fiberoptic network components, antennas, EMI (electro-magnetic interference) shields, and computer systems, which fall under HTSUS subheadings 8471.49.00, 8517.62.00, 8517.70.00 and 8523.51.00—and as importer of record has paid the additional *ad valorem* duties for these subject products.

10. Plaintiff Intel Americas, Inc. (“Intel Americas”), is a wholly-owned subsidiary of Intel headquartered in Santa Clara, California. Intel Americas purchases products from Intel and certain affiliates and resells them to third parties. The company has approximately 2,700 employees. Intel Americas has made numerous entries of merchandise subject to List 3—including, but not limited to Intel NUC small form factor computers, server systems, computer components, server components, bare printed circuit boards, power supplies, static converters, Intel RealSense cameras, cables, which fall under HTSUS subheadings 8471.50.01, 8471.80.10, 8473.30.11, 8473.30.51, 8504.40.60, 8504.40.95, 8534.00.00, 8537.10.91, 8544.20.00, 8544.42.20 and 8544.42.90—and as importer of record has paid the additional *ad valorem* duties for these subject products. Intel Americas has also made numerous entries of merchandise subject to List 4A—including, but not limited to solid state drives, network interface cards, fiberoptic network components, antennas, and EMI shields, which fall under HTSUS subheadings 8517.62.00, 8517.70.00 and 8523.51.00—and as importer of record has paid the additional *ad valorem* duties for these subject products.

11. Defendant United States is the recipient and beneficiary of the List 3 and List 4A tariffs at issue and is the statutory defendant under 5 U.S.C. § 702 and 28 U.S.C. § 1581(i)(1)(B).

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