

## **Government/Authorities Meeting on Semiconductors**

### **Chairman's Summary**

Fukuoka, Japan

October 16, 2014

1. The Government/Authorities Meeting on Semiconductors (GAMS) took place on October 16, 2014 in Fukuoka, Japan, chaired by Japan. In attendance were delegations from China, Chinese Taipei, the European Commission, Japan, Korea, and the United States.
2. Based on the report of the World Semiconductor Council (WSC) meeting held in Taipei, Chinese Taipei on May 22, 2014 and its recommendations to GAMS, GAMS discussed: Effective Protection of Intellectual Property; Multi-component ICs; Encryption; Promoting Healthy Long-Term Growth; Worldwide Customs and Trade Facilitation; Regional Stimulus; Fighting the Proliferation of Semiconductor Counterfeiting; Cooperative Approaches in Protecting the Global Environment; and other issues of interest to the worldwide semiconductor industry.
3. Given the impact and relevance of worldwide trade in MCOs, GAMS takes note of the recommendation of the WCO Customs Cooperation Council to adopt an amendment to the HS2017 include MCOs in 8542 through Note 8b (renumbered 9b) in the HS 2017. GAMS members agree that successful conclusion of an expanded ITA is the most expeditious and effective way to accomplish duty-free treatment for MCOs, based on the definition as proposed in the ITA expansion negotiations. GAMS members commit to working constructively with their trading partners to achieve the conclusion of ITA expansion to include MCOs as soon as possible.
4. GAMS welcomes the recommendations of WSC to address the problems caused by abusive litigation by patent holders (including NPEs/PAEs), and welcomes further work. GAMS acknowledges that the subject of abusive patent litigation is a complex issue. GAMS supports balanced and appropriate initiatives to address abusive patent litigation in order to help advance innovation and improve patent systems. GAMS encourages further updates from GAMS members regarding domestic developments on this issue, and to report next GAMS meeting.

5. With regard to Utility Models, GAMS takes note of the WSC's recommendation to drive improvement of national utility model laws with regards to examination, proper subject matter, patentability, and legal enforcement, so as to bring legal certainty and predictability to right-holders, product developers, and manufacturers worldwide. GAMS takes note that national utility model laws vary from region to region, and that WSC recommends each GAMS member to examine possible initiatives that could lead to improving its respective system of national utility model.
6. GAMS reiterates its support to the continuation and deepening of cooperation between Patent Offices of GAMS parties in order to increase patent quality, notably by harmonizing classification and patent examination methods, information exchange, cooperation in the training of examiners, increasing coordination in processing patent applications, and improving machine-translation systems. GAMS welcomes and supports the cooperation between WSC and the World Intellectual Property Organization (WIPO) to improve patent quality.
7. GAMS takes note of the WSC's concern that the theft of trade secrets is a growing problem, and that present protection through existing means – unfair competition law, employment law, and other branches of law – is often inadequate. Furthermore, GAMS notes the WSC's concerns with regard to difficulties in enforcing trade secrets. Taking into account these concerns, GAMS will endeavor to find ways to advocate for enhanced trade secret protections in trade agreements and domestic laws. GAMS requests that the WSC provide additional information and a report on examples and cases of trade secret infringement to be considered at the next GAMS meeting.
8. GAMS notes the WSC recommendation that licensee's decisions to have agreements remain in effect should be respected even if one of the licensors files for bankruptcy. GAMS confirmed that patent cross-licensing is important to semiconductor industries, and all GAMS members agreed to further examine the issue with increased scrutiny.
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9. GAMS congratulates Japan as Chair of the successful and productive 2014 *GAMS Seminar on Commercial Best Practices in Encryption Licensing & Certification* for information exchange and mutual understanding, held on the 14th of October 2014

in Fukuoka, Japan. After intensive discussion and exchange among experts in information security, encryption, and trade, GAMS members agree to review specific concerns related to regulatory practices in their region. GAMS reiterates its commitment to encourage all GAMS members and governments to observe the WSC Encryption Principles. Those encryption principles make it clear that in order to avoid negative impact on the industry's competitiveness, it is important to prevent unnecessary restrictions to trade.

GAMS views the seminar as an important step towards the implementation of the WSC principles which emphasize the importance of WTO rules and open, voluntary, transparent, and consensus-based international standards, norms and practices. GAMS agrees to continue structured dialogue on encryption through a back- to-back seminar on encryption with the 2015 GAMS meeting involving information security, encryption and trade experts. In the spirit of the 2014 seminar, in preparation of the 2015 seminar and as part of a structured dialogue, GAMS members agree to transparency among them with regard to relevant regulatory developments through information exchanges between GAMS members at an early stage. The encryption seminar will take place based on an agenda proposal to be developed in 2015 WSC recommendations. In preparation, GAMS invites WSC to continue engaging in a structured dialogue mechanism, as well as developing specific points for next year's agenda.

10. GAMS recognizes the potential of semiconductor technology to enhance global health, safety, and efficiency; specifically in the sectors of health care, automobiles, and energy. GAMS reiterates that markets need to remain open also in these potential growth areas. GAMS notes the potential of the Environmental Goods Agreement, which was launched in July by 14 WTO members, including all GAMS members, to include environmental goods that are enabled by semiconductor technology. GAMS expects the WSC to continue its work for more detailed recommendations on these issues.
11. Recognizing the importance of trade facilitation in achieving free and open markets and reducing barriers to trade, GAMS reaffirms its support for the implementation of the TFA, which was concluded at the Bali Ministerial in December 2013. GAMS further urges their negotiators to consult on a way forward in the WTO, and notes the continued importance of implementing the specific customs and trade provisions

in the agreement. GAMS further supports the adoption of national, regional, and multilateral trade facilitation procedures and related customs regulations that implement the WSC's Trade Facilitation Principles. GAMS takes note of the WSC's ongoing work to identify existing different interpretations of the Harmonized System for semiconductor products. GAMS also takes note of the requirements in the Note 8, heading Chapter 85 of the HS.

12. Regarding regional stimulus, GAMS recognizes that government action should be guided by market-based principles and that competitiveness of companies and their products, not the interventions of government and authorities, should be the principal driver of industrial success and international trade. GAMS advocates transparency among governments and authorities. In this context, GAMS notes the continuation of discussions within the WSC on regional stimulus issues, including a notification and consultation mechanism within the existing GAMS meeting, and on the means to exchange appropriate information on relevant government support programs in the semiconductor sector, especially with reference to the WTO agreement on subsidies and countervailing measures. GAMS understands that consensus has not been reached at the WSC, but notes that constructive discussions have been taking place in the WSC, and that the WSC is working towards consensus on the development of a consultation mechanism on regional government support programs. GAMS welcomes the sharing of information in the WSC and discussion of relevant government support programs in the semiconductor sector in the WSC, and requests further information on such programs. GAMS invites the WSC to continue its discussion and report back on the progress achieved.
13. As regards to the enforcement of Intellectual Property Rights (IPR), GAMS reconfirms its commitment to fighting the phenomenon of semiconductor counterfeiting, a global issue which is increasingly affecting all parts of the world. GAMS supports the WSC commitment to intensify anti-counterfeiting work activities, with the aim of reducing and eliminating counterfeited semiconductors on the global market. In that regard, GAMS welcomes the WSC Anti-Counterfeiting White Paper. GAMS encourages the members to continue the activities that are described in the White Paper. Providing training and sharing relevant intelligence information with enforcement authorities are essential elements to fight this phenomenon. Raising awareness with concrete examples of risks created to health, public safety and critical infrastructure, with not only enforcement authorities but

also within the industry supply chain, should be another key element of anti-counterfeiting activities. On this basis, GAMS members agree to work with their customs and law enforcement authorities' agencies to intensify the implementation of IPR enforcement measures, including information-sharing activities, aimed at combating the trafficking of counterfeit semiconductors. GAMS also welcomes additional input from the WSC with regard to best practices in this area.

14. With respect to environment, safety and health issues, GAMS appreciates the ongoing work by the industry to reduce emissions of potent and persistent greenhouse gases. GAMS urges the WSC to use the best quality data and reporting methods available, notably by independent verification, and to make data publically available through the WSC website, in order to provide stakeholders with transparent and objective progress reports. GAMS will continue to work toward balanced regulatory approaches on greenhouse gases as it applies to the semiconductor industry, particularly in light of the ongoing efforts of the industry to manage and reduce these emissions, the small but growing quantities of gases used in the manufacturing process, and the essential nature of these gases in the manufacturing process.

GAMS recognizes the importance of nanotechnology in the continued advancement of the semiconductor industry, and we agree that governments/authorities should support the efforts of the industry on research on the environmental, safety, and health challenges related to this emerging and enabling technology area, in order to ensure that nanotechnology approaches can be used by the semiconductor industry in a manner that protects human health and the environment.

15. With regard to the initiatives of the Organization for Economic Cooperation and Development (OECD) related to transfer pricing guidelines and base erosion and profit shifting (BEPS), GAMS takes note that any changes as part of the OECD BEPS program be enacted based on the existing international principles of the arm's length standard and residence- vs source-based taxation, to not create excessively onerous transfer pricing documentation requirements, and to avoid an increase in disputes.