

18th Government/Authorities Meeting on Semiconductors

Chairman's Summary

Busan, Korea, November 2, 2017

1. The Government/Authorities Meeting on Semiconductors (GAMS) took place on November 2, 2017, in Busan, Korea, chaired by Korea and attended by all Members.
2. Based on the report of the World Semiconductor Council (WSC) meeting and its recommendations, GAMS discussed a wide range of issues impacting the global semiconductor industry including the importance of free and open markets, worldwide customs, transducers, ITA implementation, policies related to encryption, regional support programmes, effective protection of intellectual property rights, fighting the proliferation of semiconductor counterfeiting, cooperative approaches in protecting the global environment, conflict minerals, growth initiatives and other issues of interest to the worldwide semiconductor industry.
3. GAMS congratulates Korea as Chair for hosting a successful 2017 GAMS Workshop on **Regional Support Programs** held on October 31, 2017, and appreciates the contributions of GAMS representatives, regional support programs specialists, and industry experts to advance the exploration of this important topic. The Workshop is another important step to improve transparency and mutual understanding of the different support programmes of GAMS Members. This is essential to maximize the opportunities for collaboration and to avoid harmful trade distortions. GAMS underscores that these programmes should be guided by the principles of openness, transparency, inclusiveness, non-discrimination, and respect WTO rules. GAMS also recognizes that government action should be guided by market-based principles, and that competitiveness of companies and their products, not the intervention of governments and authorities, should be the principal driver of innovation, industrial success, and international trade. GAMS advocates transparency among governments and authorities and calls on GAMS Members to implement the relevant WTO notification commitments.
4. GAMS welcomes **Regional Support Guidelines and Best Practices** (Annex 1) and supports their full implementation. In this regard, GAMS welcomes the first exchanges of information among GAMS members on support programmes in the different region to enhance mutual understanding and cooperation. GAMS agrees to continue discussing related issues with a bearing on government support (such as investment, anti-monopoly rules, or IP issues) during regular inter-sessional work based on the WSC input, and a follow-up Workshop in 2018. In this context, GAMS invites WSC's further work on self-assessment survey of respective regional support programs in relation with the Regional Support Guidelines and Best Practices (Annex 1). The ongoing process of information exchanged will be further developed on the basis of regular exchanges on concrete number of programs in 2018 among all GAMS Members. Full implementation will be a step-by-step exercise. Until the next GAMS meeting in 2018, to get fully acquainted with the exercise, each GAMS member should be prepared to respond to no more than 5 subsidies at a maximum for its jurisdiction.

5. With rapid technology development, such as IoT, medical devices, cloud computing, big data, connected cars, and connected homes, information technology is present in all areas of our daily life. GAMS emphasizes the need to review the global regulatory environment for products with **encryption**, based on the WSC Encryption Principles which emphasize market access, transparency, adoption of voluntary, consensus-based international standards, and non-discriminatory and open procedures and rules. GAMS furthermore reiterates the importance of the WSC Encryption Principles and encourages other governments to take them into account in order to avoid a negative impact on the industry's competitiveness and prevent unnecessary restrictions to trade, while making use of international consensus-based global security standards which can ensure the worldwide availability of the most robust and trusted security solutions and support the widespread diffusion of emerging technologies containing encryption.

6. GAMS underscores the importance of meaningful stakeholder participation whenever regulations, administrative procedures, or certification requirements on the importation or use of commercial encryption are created or revised. Also, GAMS agrees that consensus-based international standards adopted through open procedures are the optimal way to achieve rigorously scrutinized and broadly studied cryptographic technology and facilitate trade in line with the WSC principles.

7. GAMS welcomes the presentations by its Members on latest developments in their regions, and agrees to continue to review specific concerns related to regulatory practices on the basis of a regular exchange of information to enhance mutual understanding. GAMS embraces the opportunity to continue discussing these issues during regular inter-sessional work. In this context, GAMS invites WSC's further work on self-assessment survey of respective regional practices in relation with the WSC Encryption Principles. GAMS welcomes efforts for enhanced WTO notification and underscores the need to fully respect such WTO obligations.

8. GAMS welcomes the continued implementation of the **Information Technology Agreement (ITA) Expansion** by all its Members. The GAMS call on all ITA-1 members to follow their example and adopt the ITA-expansion without delay. The GAMS also call on all Members to implement the ITA-expansion, in accordance with their WTO obligations. GAMS highlighted tariffs on products should not increase irrespective of changes to Harmonized System nomenclature. Any members where there have been changes in the Harmonized System nomenclature will provide detailed information in an excel spread sheet by the end of the GAMS session on November 2, 2017, and official confirmation explaining the resulting changes within a week of the sending of an official request.

9. GAMS agreed to continue to collaborate in the ITA processes on non-tariff barriers and product coverage. GAMS also invites industry at future meetings to provide regular updates on advances in semiconductor technology with a view to maintaining duty-free treatment on future generations of semiconductors as technology evolves.

10. GAMS welcomes the significant progress made in the WCO for the incorporation of **semiconductor-based transducers** in HS 2022, and urges GAMS Members to support the WSC definition of semiconductor-based transducers and the clarification of the definition of MCP products as defined by the WSC in the HS 2022 review.

11. GAMS welcomes the WSC recommendations encouraging enhanced cooperation with customs authorities in order to strengthen the **Authorised Economic Operator (AEO)** programmes and enhance tangible trade facilitation and benefits. GAMS acknowledges the importance of the global harmonisation of the different supply chain security programmes, and welcomes the acceleration of future work for their further alignment and mutual recognition. GAMS calls on the WSC to further articulate best practices with respect to AEO/Trusted Traders programs from GAMS regions and encourages the WSC to hold a separate discussion with customs authorities from GAMS regions on this matter.

12. GAMS agrees that the misappropriation of **trade secrets** is an important problem. GAMS notes that the WSC's "Core Elements for Trade Secret Protection Legislation" includes a number of useful recommendations for national trade secret protection legislation and any related pending legislation or legislative reforms or amendments. GAMS encourages the WSC to collect incidents of trade secret misappropriation and report to GAMS. GAMS will also exchange published legal texts in order to enhance transparency, and hold regular exchanges of information to enhance mutual understanding.

13. GAMS emphasises the importance of exploiting all avenues to improve **patent quality**. In this respect, GAMS welcomes the continuation and deepening of cooperation amongst Patent Offices through IP5 (US, EU, Japan, Korea and China) and other channels, and supports the cooperation between the WSC and WIPO on patent quality.

14. GAMS acknowledges the impact and complexity of **abusive patent litigation**, notes a number of recommended best practices put forward by the WSC, engages to closely monitor developments among GAMS members including continued exchanges with and input from the WSC, and stresses that it is of the utmost importance to maintain/develop high quality patents, not least as this is the most efficient way to limit a proliferation of downstream litigations.

15. GAMS reconfirms its commitment to **fighting semiconductor counterfeiting**, a global issue of increasing sophistication that impacts consumer health and safety. GAMS welcomes the WSC's continued commitment to work with GAMS Members on anti-counterfeiting work activities, as well as additional initiatives such as those undertaken within the WSC's Anti-Counterfeiting Task Force. GAMS reaffirms its commitment to work with their customs and law enforcement authorities agencies to intensify the implementation of semiconductor anti-counterfeiting enforcement measures, including information-sharing activities. GAMS also noted the WSC's recommendation to continue to implement appropriate measures (including at domestic, bilateral and multilateral levels) in coordination with industry to stop counterfeits at the borders and appropriately prosecute those who make and distribute counterfeits, and invites reports at the next GAMS meeting. GAMS encourages

the WSC to develop additional ideas for collaboration with customs administrations, making full use of the possibilities for follow up actions in cases of possible infringement irrespective of the value of transactions.

16. 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 and urges the WSC to provide transparent and objective reporting to stakeholders in particular by making independently verified data publicly available on the WSC website.

17. Recognizing the importance of addressing the issue of **conflict minerals** (tin, tantalum, tungsten, and gold) and acknowledging the substantial effort already made by industry, GAMS commends the work of governments and authorities who have established mandatory due diligence schemes for key operators in the minerals supply chain, based on OECD guidance, and encourages the establishment of additional measures promoting transparency and reporting throughout the supply chain.

18. GAMS also discussed **additional topics of the WSC interest**, including regulatory restrictions on certain chemicals and the WSC growth initiatives.

Annex 1: Regional Support Guidelines and Best Practices

Annex 1

REGIONAL SUPPORT GUIDELINES AND BEST PRACTICES

November 2, 2017

I. Objectives and Scope

These guidelines are in furtherance of the purposes and objectives of the Joint Statement establishing the GAMS. It is in the common interest of all GAMS and WSC members to improve transparency and mutual understanding of different support programs of GAMS members for semiconductors to:

- **maximize opportunities for collaboration, and**
- **minimize the risks of creating harmful trade distortions.**

These Guidelines seek to establish enhanced cooperation. They are not intended to create binding substantive obligations for GAMS members.

These Guidelines do not alter the rights and obligations that any GAMS member has under the rules of the World Trade Organization (WTO), including the Subsidies and Countervailing Measures Agreement (SCM), or any other agreement to which it is a party.

II. Basic Principles

A. Governments' and authorities' programs --

- 1. should be consistent with WTO rules,**
- 2. should be transparent and non-discriminatory, and**
- 3. should not distort trade and investment.**

B. Markets should be open and free from discrimination.

C. The competitiveness of companies and their products, not the interventions of governments and authorities should be the principal driver of industrial success and international trade.

III. Specific Guidelines for Regional Support Measures

Preamble: Scope of Guidelines

These guidelines for regional support measures:

- (1) apply equally to goods and semiconductor services¹ in the semiconductor sector²; and*
- (2) cover subsidies as defined in the WTO SCM, including any provision of equity whether from a central or local government or authority, or entity over which the government or authority exercises control, direction or substantial influence; and*
- (3) cover any other measures that apply directly or indirectly to the semiconductor sector.*

A. Competitive outcomes should be determined by the market.

- 1. Purchases and sales of semiconductor products and semiconductor services, and equipment and materials used for semiconductor products should be made in accordance with commercial considerations.**
- 2. GAMS members should not favor the sale or consumption of domestic commercial semiconductor products or semiconductor services.**
- 3. Consistent with the national treatment requirement of the WTO, GAMS members should not discriminate in favor of all or part of their domestic semiconductor sector with regard to regulatory or administrative actions including, but not limited to:**
 - (a) competition policy measures (e.g. relating to antimonopoly and/or, antitrust);**
 - (b) product standards, certification and accreditation, inspection and testing requirements; and**
 - (c) measures for the protection of intellectual property.**

Section A does not apply to government procurement.

- B. GAMS members reconfirm their commitment to full implementation of the WTO Subsidies and Countervailing Measures Agreement (SCM) and agree that all relevant disciplines contained in that Agreement apply to services for the purposes of these Guidelines.**

¹ Semiconductor services refers specifically to design, contract manufacturing and test and assembly.

²The “semiconductor sector” includes semiconductor design, manufacturing, packaging, test and assembly, distribution, sales and marketing, semiconductor production and processing equipment, materials and semiconductor services.

A GAMS member should not provide subsidies in its own territory either directly or indirectly, with respect to part or all of the semiconductor sector, if it is prohibited by the WTO/SCM Agreement or causes or threatens with respect to the industry of another GAMS member “adverse effects” in accordance with the WTO/SCM including if there is a substantial risk that it could create capacity that is not commercially justified.

This Section B does not apply to subsidies that are generally available.

IV. Notification and Consultation to Increase Transparency

- A. In accordance with existing WTO disciplines, GAMS members should promptly notify GAMS and other WTO members of all subsidies that are subject to the full WTO notification requirements as contemplated by Article 25 of the WTO/SCM Agreement.**

Whether or not subject to the foregoing, all provision of equity covered by these Guidelines should be notified to the GAMS.

- B. The following is in furtherance of Article II.7 of the Joint Statement establishing the GAMS, which provides “in order to increase transparency among GAMS members and in line with the GAMS principles, GAMS members are encouraged to supply appropriate information to GAMS on relevant support programs in the semiconductor sector:”**

Upon written request of another GAMS member, a GAMS member is expected to provide in writing, to GAMS information requested regarding a particular support measure, financial assistance program or provision of equity, involving part or all of the semiconductor sector. It is the common understanding shared by all GAMS members that the request shall only be on subsidies and/or particular support measures, the details of which are not made publicly available by that GAMS member. Where public information is available, it is understood that the GAMS member publishing the information will identify the location of the information.

Such information should be sufficiently specific to enable the requesting GAMS member to understand the operation of a policy, program or measure and evaluate its effects or potential effects on its trade or investment.

It is expected that the information provided pursuant to a request would include the following: the form of the assistance or equity capital provided under the policy or program, grant or loan; names of the

agencies or entities providing the assistance or equity capital; details on current recipients and eligibility criteria; the legal basis and policy objective of the policy or program providing the assistance or equity capital; the current and planned size of the program and its duration; the amount of loans, if any, indicating costs to the borrower; prices for goods supplied, if any; the amount of equity capital invested, if any and a description of the nature, circumstances and justification for the investment; and any exemptions from law provided for recipients.

- C. GAMS members should publish all laws, regulations and other measures that apply to the semiconductor sector and make this information easily accessible to the public.**
- D. Each GAMS member shall consult on any government support measure at the request of any other GAMS member.**

V. Best Practices for Promoting Innovation

Consistent with the principles and guidelines outlined above and the shared view of the GAMS members that government action should be guided by market-based principles and that competitiveness of companies and their products and not the interventions of government and authorities should be the principal driver of industrial success and international trade, there are government actions that can promote innovation and an efficient global value chain.

Examples include:

- 1. Grants for basic research and R&D that support expansion of demand for semiconductors.³**
- 2. Financial support for pre-competitive research consortia.⁴**

³ In general, basic (also known as fundamental or pure) research is driven by a scientist's curiosity or interest in a scientific question. The main motivation is to expand human knowledge, not to create or invent something. It is systematic study directed toward greater knowledge or understanding of the fundamental aspects of phenomena and of observable facts without specific applications towards processes or products in mind. There is no obvious commercial value to the discoveries that result from basic research.

⁴ In general, the term "pre-competitive research" includes work that is aimed not at producing products but rather at providing the information and data that enable others to develop future products. Examples include: work to develop industry standards and test procedures; work to understand the characteristics of new technologies or materials; and work that overcomes basic obstacles that prevent a technology from being used in commercial applications. Pre-competitive is not work that is designed to provide a differential advantage for one competitor over another or work that a company insists must be held as proprietary. It also does not include routine or periodic alterations to existing products, production lines, manufacturing processes, services, and other on-going operations even though those alterations may represent improvements.

- 3. Training and education programs, including university-based programs to develop the talent pool.**
- 4. Support for road-mapping (industry/government/university identification of long-run technological hurdles).**
- 5. Supporting expansion of demand for semiconductors (in a manner that does not discriminate against foreign goods or services) such as measures taken to support the digital economy, AI, autonomous vehicles, robotics, medical and health applications, environmental goods and green/sustainable energy.**