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JOINT STATEMENT OF THE 11TH MEETING OF THE
WORLD SEMICONDUCTOR COUNCIL (WSC)

MAY 24, 2007

GENEVA, SWITZERLAND

The world's leading semiconductor industry associations – made up of the Semiconductor Industry Associations in China, Chinese Taipei, Europe, Japan, Korea and the US - today held the 11th meeting of the World Semiconductor Council (WSC). The meeting, held in Geneva, Switzerland, was conducted under the “Agreement Establishing a New World Semiconductor Council” approved at the third WSC meeting and signed on June 10, 1999, and amended on May 19, 2005.

The WSC meets annually to bring together industry leaders to address issues of global concern in the semiconductor industry with a goal of expanding the global market for information technology products and services, and promoting fair competition and technological advancement and sound environmental, health and safety practices. The WSC encourages cooperation in such areas as environment, safety and health practices, protection of intellectual property rights, open trade, investment liberalization, and market development. All WSC activities are guided by principles of fairness and respect for market principles consistent with the World Trade Organization (WTO) rules and with the laws governing the respective WSC member associations. The WSC reaffirmed that markets should be open and competitive. Antitrust counsel was present throughout the meeting.

The meeting was chaired by Carlo Bozotti of STMicroelectronics; regional delegations attending the meeting were chaired by Frank Huang of Powerchip Semiconductor, Chang-Gyu Hwang of Samsung Electronics, Masashi Muromachi of Toshiba Corporation, Richard K. Templeton of Texas Instruments and Yu Zhongyu of the Semiconductor Industry Association in China.

During the meeting, the following reports were given and discussed, and actions on these were approved:

Membership

In light of the purposes of the WSC and GAMS, it is hoped that the semiconductor industry associations of countries or regions with major presence and importance in the world semiconductor industry will join the WSC. The WSC today represents the leading countries/regions in the semiconductor industry. The WSC welcomed the full participation of the Semiconductor Industry Association in China in its first WSC meeting following the membership approval in 2006. It furthermore encouraged cooperation with the semiconductor industry association in India, with a view to a possible future membership.

Free and Open Markets

The WSC re-confirms, as a founding principle, the importance of ensuring that markets be open and free from discrimination, and that the competitiveness of companies and their products be the

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principal determinant of industrial success and international trade. Governments and authorities should, therefore, insure

- full intellectual property protection,
- full transparency of government policies and regulations,
- non-discrimination for foreign products in all markets,
- a tariff- and barrier-free global environment for semiconductor products,
- an end to investment or other regulatory restrictions tied to technology transfer requirements, and
- removal of unreasonable burdens on world commerce.

Semiconductors are the key enabling technology of the information technology revolution. They are key component of the growth and spread of the internet society. It is vital that trade in this area remains as open as possible and that international rules and domestic regulations foster an open and competitive market.

Access to advanced and affordable semiconductor products promotes economic development by increasing productivity and providing the infrastructure needed to compete in the digital age. Accordingly, the Doha Round of the World Trade Organization (WTO) should focus on policies that promote complete open-access to semiconductors and other information technology goods and foster investment in these sectors. In addition, in order to spread the benefits of information technology (IT) to consumers around the world, complete tariff elimination on all semiconductors should be achieved through additional countries joining the Information Technology Agreement (ITA).

To further these aims and establish an open dialogue with the WTO, the WSC welcomed the keynote address of WTO Director General Pascal Lamy. Both the WSC and the Director General recognized the mutually reinforcing role of both bodies and called for further cooperation. The WSC noted its increasing involvement in issues such as ITA, Rules of Origin, and anti-dumping, and offered its support to achieve WTO goals. A WSC Statement was issued to the Director General and a speech was delivered by the Director General. Both are attached to this document.

Following the dialogue with the Director General, the WSC discussed and made statements on the following issues:

Multichip ICs:

The ‘Agreement on Duty Free Treatment of Multi-chip Integrated Circuits’ between the then GAMS Members Chinese Taipei, Europe, Japan, Korea and the US entered into force in April 2006, and successfully brought customs and tariff treatment in line with technological progress ensuring multichip ICs can be traded in a duty free environment.

The WSC recommends that the GAMS work to expand the current geographic and product scope of the MCP Agreement.

The WSC looks forward to China joining the MCP agreement by 2007 GAMS meeting.

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More specifically, WSC calls upon GAMS:

- to include the MCP agreement into multilateral agreements such as the ITA or DOHA and NAMA, or other multilateral Free Trade Agreements.
- to continue to facilitate the growth of the semiconductor market by ensuring free and open markets by eliminating tariffs and non-tariff barriers for all semiconductor industry products by
 - Working with industry, amongst others in the HS framework, to include appropriate definitions for all existing and new types of semiconductor products in international customs legislation.
 - Eliminating tariffs and non-tariff barriers for these products through international agreements, including an eventual "MCP2"-Agreement.

Information Technology Products and the WTO:

Access to advanced and affordable semiconductor technology promotes economic development by increasing productivity and providing the infrastructure needed to compete in the digital age. Accordingly, the Doha Round of the World Trade Organization (WTO) should focus on policies that promote complete open-access to semiconductors and other information technology goods and foster investment in these sectors, such as elimination of tariff and non tariff barriers.

The WSC welcomed the comments of WTO Director General Lamy, who has noted that today, “70 WTO Members, representing 97 percent of world trade in IT products are participants to the ITA. World exports of ITA products over the past 10 years have more than doubled in dollar terms, reaching US\$ 1450 billion in 2005 with annual average growth of 8.5 per cent. In 2005, trade on ITA products accounted for 14 per cent of the world merchandise exports, exceeding that of agricultural products, and textiles and clothing together.”

In his address, WTO Director General Lamy noted that the success of the ITA is all the more impressive since the opening of this product sector was achieved without the usual negotiating process of give-and-take across all product sectors. The liberalization was a self-contained sectoral initiative that grew out of the potential benefits recognized by the participants to their national development policies.

Members of the WSC support the Director General’s efforts to ensure that the ITA continues to support growth of trade in IT products, and that the WTO continues to build on this success by negotiating for zero tariffs and the elimination of non-tariff barriers on all semiconductor products, equipment and materials through any available vehicle, including NAMA or an Electronics Sectoral Agreement, and if necessary with a possibility of a carve-out for other sensitive electronic, non-semiconductor products.

Rules of Origin:

In its endeavour to reach an agreement on harmonized rules of origin for semiconductors, the WSC

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- is of the opinion that the rules to apply for every product must be transparent, simple, minimize administrative burden and be effective.
- reconfirms its position stated in the WSC White Paper on Antidumping of May 2003 that:
 - The origin criteria for antidumping procedures should be wafer fabrication (diffusion) for monolithic ICs
- intends to work towards a common industry position
- supports the principle of decoupling and the adoption of harmonized rules (one rule to be applied for trade remedies and another rule to be applied for other purposes).

On the basis of the aforementioned principles, significant consensus has been reached. All associations agree that one single rule of origin for each product and purpose should be achieved. WSC agrees that the associations must use their best efforts to reach an unanimously supported solution for the remaining product category. Furthermore, the WSC resolved that

- A submission to the WTO on harmonized rules of origin for semiconductors will be made prior to June 16, 2007. Should, despite the efforts by the associations, WSC not be able to agree on a single rule for each product and purpose with regard to all product categories, then the submission shall include, at the minimum, the following elements:
 - ❖ Diffusion rule for trade remedies purposes with supplementary declarations if required
 - ❖ Final assembly rule for trade remedies for discretives & Microassemblies
 - ❖ Final assembly rule for other purposes for all products except monolithic ICs
 - ❖ Opposition to a co-equal rule between Value Added & Change of Tariff Classification.
 - ❖ Opposition to value-added related to semiconductor products

Solutions for marking, labelling, importing documentation and certification must be found before two rules for general trade purpose for the same product type are considered by the CRO.

Because the CRO will seek to make a decision in June, the WSC urgently calls upon the GAMS to support its submission within the framework of the CRO and WTO, to ensure the adoption of rules suitable for the semiconductor industry.

Cooperative Approaches in Protecting the Global Environment

The WSC is firmly committed to sound, scientifically based, positive environmental policies and practices. The members of the WSC are proactively working together to make further progress in this area.

(1) PFOS (Perfluorooctane Sulfonate)

As part of the WSC's proactive approach to sound Environment, Safety and Health practices, members of the WSC and SEMI have endorsed a plan which applies to both critical and non-critical photolithography applications of perfluorooctane sulfonate (PFOS)-based chemicals in semiconductor

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manufacturing. Very small amounts of PFOS-based compounds are critical ingredients in leading edge photoresists, materials used in the photolithographic process for imprinting circuitry on silicon wafers. Under the agreement, members of the WSC are committed to ending non-critical uses of PFOS and will work to identify substitutes for PFOS in essential uses for which no other materials are presently available. At this time the WSC can report that the Semiconductor Industry Associations in Japan, Korea, the United States and Europe have eliminated non-critical uses by May, 2007 as required by commitments in the voluntary agreement. The Semiconductor Industry Association in Chinese Taipei will eliminate non-critical uses of PFOS by 2009. Additionally, all five of these WSC associations are incinerating PFOS-containing solvent wastes. Global legislation on PFOS is currently being discussed at UN level under the so-called Stockholm Convention. Additional details on this global voluntary agreement can be found at www.semiconductorcouncil.org.

(2) PFC Emission Reduction

The global semiconductor industry is a very minor contributor to overall emissions of greenhouse gases. The industry is voluntarily reducing its PFC gas emissions. Each of the then members of the WSC committed to reduce absolute PFC gas emissions by at least 10% from a baseline year¹ by the year 2010. Industry output has increased substantially while emissions have been voluntarily reduced. The WSC members also actively share non-competitive information on abatement technologies and alternative chemistries that can aid in reducing PFC emissions. Since the start of the programme, WSC members have devoted considerable resources to meet their PFC reduction goals and these investments are bearing fruit. As a new Member, the Semiconductor Industry Association in China is currently determining the baseline and when it will be feasible to join the emission reduction programme.

(3) Energy Savings in semiconductor manufacturing

The WSC recognises that reducing energy consumption continues to be a central activity in the industry's environmental and sustainability practices worldwide. Reducing energy consumption reduces the need for energy production, resulting in corresponding environmental benefits.

The WSC has established a energy conservation partnership with suppliers to the semiconductor industry (represented by the trade association SEMI) in a joint effort to achieve further energy-savings in semiconductor equipment. The WSC has agreed a energy savings policy statement (see Annex). That statement reflects the current activities in the industry aimed at reducing energy use and outlines the clear positive impact which semiconductor products continue to deliver in terms of enabling energy efficiency by society.

(4) Contribution of semiconductors to end-product energy savings

¹ The base year for Semiconductor Industry Association in Europe, Japan and in the US is 1995, for Semiconductor Industry Association in Korea it is 1997 and for Semiconductor Industry Association in Chinese Taipei it is 1998* (1998* represents the average of 1997 and 1999 emissions)

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The semiconductor industry enables energy savings by society through energy efficient end products and energy saving technologies. The WSC encourages further progress at all levels to promote the key contribution which semiconductor products make to energy efficiency in society.

(5) Quantitative Targets

The WSC is currently evaluating environmental performance indicators that reflect the levels of energy and water consumption by the semiconductor industry as well as the waste that it generates; and to establish quantitative targets that WSC members can jointly work towards. The WSC recognizes the achievements already made on common metrics under the pilot project and common data programme and the WSC encourages further progress towards common targets in 2007.

(6) Other Environment, Safety and Health Issues

The WSC has a great interest in addressing the global impact of ESH regulations on our industry and in ensuring that regulatory programs are technologically feasible, coordinated and effective in achieving environmental protection. The WSC believes that when ESH laws and regulations are necessary, they should be technologically feasible, coordinated and effective in achieving environmental protection. Examples of matters of interest include the above mentioned Stockholm Convention PFOS discussions, the EU's REACH programme concerning chemical usage, the US PFAS legislation and California Global Warming law, as well as several regions' RoHS (Restrictions on Hazardous Substances) regulations. The semiconductor industry has long recognized the importance of proactively protecting the global environment – as is demonstrated by our numerous efforts in this area.

Effective Protection of Intellectual Property

Semiconductor producers invest a very high percentage of their revenues in R&D and the intellectual property (IP) that results is the lifeblood of these companies. Failure to adequately protect IP is damaging to the semiconductor industry and ultimately impedes the technological progress that has benefited consumers around the world. The WSC discussed the activities of the IP Task Force, which the WSC had created in 2004 to review IP issues relevant to semiconductors around the world.

The WSC reiterates its call for all governments/authorities to implement effective enforcement measures for protection of IP rights within their jurisdictions. WTO members are obligated under Article 41 of the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights) to ensure that enforcement procedures of IP rights “are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement.”

The WSC appreciates the continued efforts in countries where enforcement is a substantial concern, including increased constructive dialogue on the need for increased transparency on enforcement and private sector initiatives to inform companies about IP rights. To achieve further deterrence of IP violations, the WSC encourages stepped up efforts by the governments of these countries to review and enhance their IP enforcement measures including remedial measures under civil

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law and, where appropriate, criminal proceedings as well as further improvements in transparency regarding their enforcement efforts. In those jurisdictions where criminal enforcement actions are only taken when the amount of counterfeit goods are above a certain threshold amount, governments should substantially lower the criminal threshold for semiconductors and other intermediate goods where the damage to downstream industries is high.

As semiconductor devices become more highly integrated and operate at significantly faster speeds, more and more of the complex functionality of such devices is implemented in software. It thus becomes imperative for all countries to provide meaningful patent protection for software inventions so that they receive the same level of patent protection as inventions implemented in hardware. The WSC asks its members to discuss with their governments and authorities, if said meaningful patent protection for software is not available, the possibility of expanding the scope of protection to allow the software invention patent owner to enforce its patent against all types of infringers, including software manufacturers and distributors.

The WSC clarified and reconfirmed the position papers “WSC Policy Regarding Layout Design Intellectual Property,” and “WSC Statement on the Application of Layout Design Laws to Copying of Protected Layout Designs Using Improved Automated Design Tools” which had been approved by the WSC in 2004 and 2006 respectively.

The WSC received a report from the IP Task Force that presented concerns about the growing problem of counterfeiting and pirated goods. These goods were described as a consumer protection risk which dilute the value of rights holder’s brands and are often a source of funds for organized crime. WSC intends to discuss this topic after further study.

Levies

WSC reiterates that semiconductors are the building blocks of the modern information technology economy. The semiconductor industry is characterized by rapid innovation that allows us to offer our customers ever higher functionality at ever reduced costs. Many of our products contribute directly to enhanced economic productivity. Copyright levies on digital media have the opposite effect by increasing the taxation burden as the functionality of a device increases, thereby erasing the cost savings that can be passed on to the consumer.

WIPO Broadcast Treaty

The WSC received a report from its IP Task Force regarding the WIPO negotiations on a new broadcast rights treaty. The WSC urged the GAMS to work to ensure that such a treaty does not negatively impact the expansion of markets for information products.

Legislative & Regulatory Issues

High technology goods including semiconductors and products in which semiconductors are the

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principle components are increasingly affected by a wide array of regulatory measures in markets around the world. In situations where product regulations are deemed necessary, they must be non-discriminatory and based on sound and widely accepted scientific principles and available technical information and should not impede the effective functioning of the market.

Consistent with existing WTO rules, regulations should be the least trade-restrictive as possible.

Technical Regulations and Standards

The WSC recommends that when standards and regulations are employed, they be industry led, open and voluntary whenever possible, and fully comply with existing WTO rules—including the Technical Barriers to Trade (TBT) agreement. In accordance with existing WTO TBT rules, the WSC believes that it is important that international standards should be used whenever possible as a basis for national technical regulation and standards and that any WTO member should notify the other WTO members of any technical regulation or standard that may have a significant effect on trade. The WSC requests the governments and authorities participating in GAMS to continue their efforts to ensure that all WTO members observe the principles set forth above.

Technology update

WSC has reviewed the general technology trends for semiconductor industry products, as outlined by the ITRS (International Technology Roadmap for Semiconductors) process, which confirms both the continuation of the traditional Moore's Law, and delineates future technology challenges.

Analysis of Semiconductor Market Data

The WSC has reviewed semiconductor market reports covering such trends as market size and growth. The long-term outlook for the industry remains robust as advances in technology continue to bring benefits to consumers and businesses worldwide. The WSC also took note of a report on the development of the Indian semiconductor market.

Report to Governments/Authorities

The results of today's meeting will be submitted by representatives of WSC members to their respective governments/authorities for consideration at the annual meeting of WSC representatives with the governments/authorities (GAMS) to be held in September 2007 in Dallas, USA.

The WSC's report will include the following:

- (1) An updated report on semiconductor market data prepared by industry experts;
- (2) Recommendations on trade-related issues, including Multichip ICs, ITA, Doha free trade negotiations, NAMA and rules of origin, levies, intellectual property protection, technological standards; and
- (3) Reports on cooperative ESH activities, and recommendations regarding the development of

regulations.

Next Meeting

The next meeting of the WSC will be hosted by the Semiconductor Industry Association in Chinese Taipei in May 2008.

Key Documents and the WSC Homepage

Annexes:[

1. WSC Statement to the WTO
2. WTO Director General speech to the WSC
3. Statement on Energy Savings in semiconductor manufacturing
4. 2004 IP Position Paper with 2007 Addendum
5. 2006 IP Position Paper

All key documents related to the WSC can be found on the WSC website, located at:
<http://www.semiconductorcouncil.org>

Information on WSC member associations can be found on the following website:

[Semiconductor Industry Association in Europe:	http://www.eeca.org
Semiconductor Industry Association in China:	http://www.csia.net.cn
Semiconductor Industry Association in Chinese Taipei:	http://www.tsia.org.tw
Semiconductor Industry Association in Japan:	http://semicon.jeita.or.jp/en/
Semiconductor Industry Association in Korea:	http://www.ksia.or.kr
Semiconductor Industry Association in the US	http://www.sia-online.org

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ANNEX 1: WSC PRESS RELEASE

PRESS RELEASE

JOINT STATEMENT OF SUPPORT FOR THE WORLD TRADE ORGANIZATION

WORLD SEMICONDUCTOR COUNCIL

Geneva, Switzerland

May 24, 2007

The World Semiconductor Council (WSC) consists of the Semiconductor Industry Associations of China, Chinese Taipei, the European Union, Japan, Korea and the United States -- the leading semiconductor industries of the world. Semiconductors are a core technology for the 21st century, enabling enhanced productivity and economic development and growth around the world. The world semiconductor industry is of vital importance in both technological and economic terms in advancing the information age – semiconductors are the foundation upon which the information and communication technology industry is built. Sustainable growth in this industry is one of the keys to future progress in social and economic spheres around the world.

The members of the WSC take the opportunity of this meeting to celebrate the 10th anniversary of the Information Technology Agreement (ITA). As Director General Lamy has noted, world exports of ITA products over the past 10 years have more than doubled in dollar terms, reaching US\$ 1450 billion in 2005 with annual average growth of 8.5 per cent. In 2005, trade on ITA products accounted for 14 per cent of the world merchandise exports, exceeding that of agricultural products, and textiles and clothing together. WTO Director General Lamy has said that this success is all the more impressive since the opening of this product sector was achieved without the usual negotiating process of give-and-take across all product sectors. The liberalization was a self-contained sectoral initiative that grew out of the potential benefits recognized by the participants to their national development policies. We join the Director General in his belief that it is therefore fair to say that the ITA has been a major success since the establishment of the WTO.

Within the so-called GAMS (Governments/Authorities meeting on Semiconductors), the Governments and Authorities of our industries have recognized and determined that:

1. Semiconductors are the building blocks of the information age. They are making possible continuing revolutionary progress in all facets of life, including communications, transportation, health care, scientific research, education and commerce, and are critical to raising global standards of living and contributing to sustainable economic growth.
2. Governments and Authorities of the GAMS ...have achieved virtually barrier-free trade in semiconductors among themselves, including the elimination of tariffs. They jointly seek a world environment devoid of barriers to trade and investment, and they support initiatives in the World

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Trade Organization (WTO) – including the Information Technology Agreement (ITA) – to achieve this objective. They endorse policies – including the protection of intellectual property, positive approach to basic scientific research, positive approaches to global environmental protection, and promotion of the information society through appropriate regulatory and other policies – that will foster sound and increased economic growth, and continued expansion of the benefits of the information age. These policies are intended to allow lower cost access to semiconductors and information technology products around the world and thus foster global demand.

There is a shared view among the Members of the WSC, which is supported by the Members of the GAMS that cooperation concerning semiconductors should be based on principles including the following:

- The Parties should seek barrier-free trade in semiconductors in markets worldwide.
- The competitiveness of companies and their products, not the intervention of governments and authorities, should be the principal determinant of industrial success and international trade.
- Government and Authorities' measures should be fully consistent with the letter and spirit of the WTO Agreements. Government and Authorities should avoid any form of discrimination.
- The Parties recognize ... the need to avoid the problem of injurious dumping through fair and effective anti-dumping measures consistent with GATT 1994 and the WTO Agreement on Implementation of Article VI of GATT 1994 (Anti-dumping Agreement).
- The Parties will promote an open, equitable, rules-based, predictable and non-discriminatory trading system that benefits all Parties in the pursuit of sustainable development.
- The promotion, implementation and adequate enforcement of effective standards for intellectual property rights protection.

In light of the foregoing, the WSC today urges the members of the WTO to accelerate the work on the Doha Development Agenda Round of Multilateral Negotiations and bring it to a strong, positive conclusion. This is important to ensure continued world economic advancement and increase the standard of living of all peoples. By creating new market opportunities for industry, services and agriculture, the prospects for economic growth will increase, with positive effects on new jobs in developed and developing economies alike. In principle, WSC favours an effective multilateral trade agreement as superior to a proliferation of bilateral agreements as the key trading mechanism for the semiconductor industry.”

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In furtherance of the core principles of our industry and those enunciated by our respective Governments and Authorities, we seek in the Doha Round and as appropriate in the continuing work of the WTO:

- 1) the elimination of tariffs and all non-tariff barriers on all semiconductor industry products and *semiconductor equipment and materials*
- (2) the need for fair and effective antidumping or countervailing measures (see the 2003 WSC Position Paper).
- (3) the adoption of harmonized rules of origin, which recognize the specific requirements of the semiconductor industry. These rules of origin should be based on manufacturing operations (such as diffusion or assembly), with one rule to be applied for trade remedies and another rule to be applied for other purposes, consistent with the principle of decoupling. They should not be based on a value add solution
- (4) continued and improved protection of intellectual property rights, including efforts to discourage counterfeiting of semiconductors;
- (5) the avoidance of product standards becoming barriers to trade; and
- (6) improved disciplines on subsidies that distort trade and cause harm to industries.

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Annex 3: Statement on Energy Savings in Semiconductor Manufacturing.

The WSC recognises that energy saving continues to be a central activity in the semiconductor industry's environmental and sustainability practices worldwide. Reducing energy consumption reduces the need for energy production, resulting in corresponding environmental benefits.

The WSC is proud that as an industry our semiconductor products are the key enabler for improved energy efficiency and performance across a wide range, of end products and everyday technology applications. These applications in the fields of industrial operations, consumer electronics, office products and household appliances have contributed to improved energy efficiency for positive societal change. The industry is focussed on constantly delivering products that provide increased functionality alongside improved energy performance. The WSC recognises that improved energy efficiency is one essential answer in the fight against global warming and is committed to playing our part through energy efficiency in our products and operations.

Overall, the semiconductor industry is not a significant contributor to emissions of global warming gases. This fact has not prevented the global industry from establishing proactive voluntary emissions reduction goals. Our globally recognized PFC emissions reduction program is a primary example of this policy. However, along with PFC emissions, our focus on reducing energy consumption in our manufacturing facilities is our primary contribution to reducing impacts on global warming.

The WSC recognises that the semiconductor industry has a small proportionate share of energy consumption in comparison to other global industries. The industry is nevertheless very focussed on continually innovating to achieve further energy reductions where possible. Through the WSC and our member associations, partnerships with our suppliers, international research consortia, and the International Semiconductor Environmental Safety and Health conference, the global industry develops, shares, and implements best practice energy performances in our facilities. In accordance with the WSC's guiding principles for Environment, Safety and Health we are focussed on energy reduction through; efficient use, efficient cooling systems, process and facility optimization, seeking high-efficiency energy sources such as cogeneration, and utilizing cost effective renewable and alternative energy sources where possible and appropriate.

Annex 4: 2004 IP Position Paper with 2007 Addendum

May 13, 2004

WSC Policy Proposal Regarding Layout Design Intellectual Property

Semiconductor makers must invest a very high percentage of sales in R&D, and the intellectual property (IP) that results is the lifeblood of the company. Failure to adequately protect IP is very damaging to the semiconductor industry. There are many different kinds of IP violations – including violations of patent, layout design, copyright of embedded code, trademark, and industrial design rights. This paper is focused on counterfeiting that arises from copying of semiconductor layout designs. The WSC has formed an IP task force to discuss additional actions that can protect other forms of IP.

Background on counterfeiting

There are an increasing number of instances of counterfeiting of ICs and other semiconductors. One form of such counterfeiting is the unauthorized direct optical copying of a chip protected by valid intellectual property, and the reproduction of a layout design (also called “maskwork” under U.S. law or “layout (topography)” as defined in Article 2 of the 1989 WIPO Treaty on Intellectual Property in Respect of Integrated Circuits) based on the optical copying and then fabricating of a semiconductor based on this layout design. The copy is sold under the original company’s name or under a different company’s name.

This type of counterfeiting must be quickly addressed and stopped especially since technology now exists to optically copy semiconductors and create a layout design from such copying at a lower cost than in the past.

Anticounterfeiting Policy

The WSC believes that a multipronged approach should be taken with regard to antipiracy efforts.

1. The industry associations confirm their commitment to respect intellectual property rights. We request that our respective governments/authorities reconfirm this commitment as well. This is not a new commitment and was affirmed by the WSC in Brussels, in Newport Beach, and elsewhere. All future members of the WSC and GAMS will be requested to specifically endorse this concept before joining the organization.
2. The WSC recognizes that unauthorized optical copying and counterfeiting is an increasing problem, due to the availability of less expensive technology to make the layout design copies, and the existence of manufacturing facilities to make semiconductors from the layout designs in question.

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3. Recognizing that infringement and counterfeiting claims should be judged in a court of law, governments/authorities nevertheless can play an important role. To this end, governments/authorities should be encouraged to adopt a policy to deal with counterfeiting, including a fast track procedure allowing for a quick review of counterfeit activity and appropriate and effective action to stop it. All governments/authorities representing future WSC members should be required to adopt this policy.
4. All governments/authorities will be asked to commit to enforce this policy.
5. The WSC will develop guidelines as soon as feasible to encourage all semiconductor related companies to establish procedures facilitating the tracing of the source of manufacture of semiconductor products.
6. The WSC will encourage all segments of the semiconductor production industry to adopt the following principles as appropriate and make them available on request:
 - i. respect for intellectual property rights;
 - ii. establish IP layout protection guidelines so that semiconductor designers or suppliers of designs provide written assurances regarding their rightful ownership of the semiconductor layout design. This could include a declaration or representation that the layout design supplier is a legitimate owner or licensee of the layout design or any other intellectual property that it provides.
 - iii. where a company is presented with convincing evidence that a design is counterfeit, the company will investigate the matter and take steps to prevent counterfeiting.

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Addendum to the 2004 WSC Policy Proposal Regarding
Layout Design Intellectual Property

At the 2007 WSC Meeting, the WSC clarified the word “policy” in Paragraphs 3 and 4. With respect to Paragraph 3, the WSC confirmed that governments/authorities should be encouraged to adopt *their own* anti-counterfeiting policies, and that all governments/authorities representing future WSC members should be required to adopt the WSC Policy Proposal *set out in this Paragraph*. With respect to Paragraph 4, all governments/authorities will be asked to commit to enforce *their own anti-counterfeiting* policies.

Annex 5: 2006 IP Position Paper

May 11, 2006

WSC Statement on the Application of Layout Design Laws to Copying of Protected Layout Designs Using Improved Automated Design Tools

The WSC has long recognized that intellectual property (IP) is the lifeblood of its member companies. Semiconductor makers invest a very high percentage of sales for the R&D necessary to develop IP. Inadequate protection of IP is damaging to the world semiconductor industry and is a serious impediment to the technological progress that has benefited consumers around the world. Over twenty years have passed since legislation was first enacted to protect the layout design of semiconductor chips. Since that time, many nations have passed such laws and layout design protection was included in the TRIPs agreement. During this period, technological progress has dramatically changed the design and manufacturing of integrated circuits. The importance of IP protection in the semiconductor industry has not lessened, but rather has become more crucial.

In 2004, the WSC mandated that its IP Task Force further review IP protection around the world and report back to the WSC on additional actions that industries and governments/authorities can take to protect IP. Soon thereafter, the WSC adopted its policy statement regarding the protection of layout design intellectual property, in which we called for stopping the unauthorized direct optical copying of a chip layout design protected by valid intellectual property rights.

The IP Task Force reported to WSC that: (1) recent improvements in automated design tools allow semiconductor layout designs to be made by copying a protected layout design with virtually no intellectual effort; (2) the copy may not appear to be facially identical to the original; and (3) these copies may cause damage to companies that own the protected layout designs and need to recoup their R&D costs. These factors may deter the significant R&D investments that lead to innovation and ultimately would prevent consumers from benefiting from new chip innovations.

However, since there have been relatively few court cases construing the layout design protection law, the interpretation of the laws in different jurisdictions is unpredictable. Therefore, the WSC believes this statement clarifying layout protection for original designs would be of value to industries and governments/authorities around the world.

The drafters of the layout design laws carefully balanced the need to allow innovators to earn a return on their R&D investments with the need to encourage others to invest in new and better designs. They thus included a specific exception for copies made in the course of reverse engineering so that others could understand the concept behind the original layout design and create new and better chips

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based on this understanding. Implicit in the reverse engineering exception was the assumption that there would be some intellectual effort to create the new layout design. It is worth noting that simple or commonplace designs are not eligible for protection, so the innovator is also required to exert intellectual effort.

The WSC, through its IP Task Force, conducted surveys and research on reported cases and the scope of the legislative acts and the TRIPs agreement. Under these provisions, the copied layout design does not have to be identical to the original to be a violation of the law; it only need be substantially similar. In cases that have been litigated, courts have largely relied on the fact finder – e.g., juries – to determine whether a layout design is protected and an unauthorized copy is substantially similar to the original layout design. When determining if a layout is substantially similar to the original protected layout design, the fact finder must assess the degree of difference between the two layout designs. On the basis of the surveys and research, the IP Task Force concluded that layout designs made through improved automated technology may potentially give rise to policy concerns where they are not the result of their creators' own intellectual efforts.

Recognizing that infringement claims should be judged in a court of law, the WSC

- recommends that the existence of intellectual effort shall be carefully reviewed when courts consider whether an allegedly copied layout design, created through the use of improved automated design tools, is substantially similar to the original protected layout design;
- encourages semiconductor industries to continue to create new and innovative products for the world's consumers, and requests that the GAMS support and communicate this WSC position to the appropriate IP policy makers; and
- states that these recommendations are for purposes of clarification and not to expand the scope of what may be deemed to be infringing or illegal.