

STATEMENT OF THE SEMICONDUCTOR INDUSTRY ASSOCIATION

United States Negotiating Objectives for the WTO Qatar Ministerial Meeting Trade Policy Staff Committee May 10, 2001

The Semiconductor Industry Association (SIA) appreciates this opportunity to provide our trade policy recommendations for the upcoming WTO Ministerial Meeting in Qatar this November.

Overview

The U.S. semiconductor industry is now America's largest manufacturing industry, contributing 20 percent more to the U.S. GDP in terms of value-added than the next leading industry. U.S. semiconductor makers employ about 284,000 people nationwide, and the presence of the industry is widespread -- 35 states have direct semiconductor industry employment. And these are high paying jobs. The average wage in the semiconductor industry is approximately \$55,000, nearly twice the average of private industry overall.

Semiconductors are an increasingly pervasive aspect of everyday life, enabling everything from computers to cell phones to modern defense systems to the Internet which is, in fact, a world wide web of silicon chips. They have sparked the growth of the U.S. electronics industry, which provides employment for 4.8 million Americans in all 50 states.

Behind this enormous economic success is the ever shrinking transistor. A transistor is an electronic circuit, which is the basic building block for an electronic system. A decade ago, we were able to integrate thousands of transistors on a single chip. By steadily shrinking the size of the transistor, we now place millions of transistors on a single chip.

The industry has succeeded in quadrupling the number of transistors per chip every three years over the last several decades. The resulting steady decreases in the price of a chip's capability is called "Moore's Law."

The implications of Moore's law are extremely significant. The Commerce Department tracks the revenues our industry collects. However, a future historian looking back at this century might instead focus on the revenues we do not collect - that is the effect of the rapid and constant price decline of the transistor. Economist Kenneth Flamm has concluded that the impact of chip price declines has had from two to five times the impact on the U.S. economy that the railroad had during a comparable period during the last century.

Moore's law has become the axiom of the information age. It will continue to make microchips more affordable, allowing additional millions around the globe to enjoy the benefits that many Americans take for granted -- such as cellular telephones, email and access to the Internet. And in America, microchip advances will transform our economy into one where e-commerce is the norm.

To continue the progress described by Moore's Law requires massive investments in research and development to invent ways to etch ever smaller patterns on chips, and constant investments in new plant and equipment to replace factories which become rapidly obsolete. Last year, the U.S. chip industry invested 14 percent of sales on research and development and 18 percent in new plant and equipment.

Worldwide, the semiconductor industry's revenues grow about 15% per year, but its output in transistors increases from 40 to 80% per year. Today, the world consumes about 50 million transistors per person, a tenfold increase over the amount consumed five years ago.

The WTO negotiations for the new millennium must address the challenges of the digital age so that everyone around the world can benefit from the information economy. This is an economy where a semiconductor can be designed and manufactured in America, packaged and tested in Malaysia, and sold to a computer manufacturer in Japan who exports that computer to Europe. As product cycles become shorter, and ideas and data flow effortlessly across the globe, national trade barriers become particularly pernicious. The WTO negotiations must promote greater trade liberalization because only open markets can best insure that the benefits of information technology are enjoyed by people around the world. To this end, the following summarizes the tariff and non-tariff issues of importance to the U.S. semiconductor industry in the upcoming Qatar Ministerial and in a potential new WTO round.

Information Technology Agreement

The SIA believes that a central element of any new WTO round of negotiations must be continued attention to industrial tariff elimination by WTO members. The U.S. semiconductor industry has been at the forefront of efforts to eliminate tariffs on semiconductors and related products worldwide. At SIA's urging, the United States, Japan and Canada eliminated their semiconductor tariffs in the mid-1980s. In 1994, Mexico eliminated its semiconductor tariffs on a most-favored-nation basis under the North America Free Trade Agreement. In 1997, another 39 countries and customs territories agreed to eliminate their semiconductor tariffs through the Information Technology Agreement (ITA). As part of the ITA, the EU and Korea also agreed to accelerate the phase-out schedule for their semiconductor tariffs, with full elimination in 1999, in order to allow the European and Korean semiconductor industries to join the World Semiconductor Council (WSC) at its inaugural meeting in 1997.

It is worth noting that the Information Technology Agreement is unique in that countries agreed to eliminate their information technology tariffs without tying these concessions to benefits in other areas or sectors. This is due to the recognition of the benefits achieved by tariff elimination, such as lower costs for businesses and consumers and improvements in a country's information technology infrastructure.

The United States should encourage all WTO member countries to join the ITA as soon as possible and thereby permanently eliminate tariffs on semiconductors, semiconductor manufacturing equipment and related information technology products. While the United States has been successful in encouraging many countries to join the ITA and eliminate their tariffs,

increased participation in the ITA remains a priority. ITA participation remains very limited in certain regions of the world. In Latin America, for example, only three countries – Costa Rica, El Salvador and Panama – are currently signatories to the ITA. Persuading additional WTO members to join the Agreement should continue to be a U.S. trade policy priority. In addition, the United States should require countries negotiating for accession to the WTO to follow the lead of Taiwan and to join the ITA as an interim measure as their accession negotiations continue.

Expansion of the ITA to include additional products and signatories should be maintained as a separate process during the course of broader WTO multilateral negotiations. A clear goal for the end of any new multilateral negotiations, however, should be to make ITA participation mandatory for all WTO member countries.

Continued attention should also be placed on the current ongoing review of the ITA to expand the product coverage of the agreement (ITA II). Every effort should be made to reach agreement among the existing ITA signatories to expand the product coverage of the agreement as soon as possible. For those countries that have yet to join the original ITA, it should also be pointed out that joining the original ITA would permit them to play an active role in determining the future direction of international efforts to expand the product coverage of the ITA.

Finally, the WTO Secretariat should be charged with fully monitoring participants' compliance with their ITA obligations, including the depth and timing of tariff cuts and coverage of already agreed-to products. Expedited elimination of semiconductor tariffs will not only spur development of a competitive microelectronics industry in foreign markets, it will allow U.S. producers to sell advanced semiconductors to their foreign customers at the lowest possible price, thereby both increasing U.S. exports and strengthening developing electronics industries.

Electronic Commerce

Another tariff-related issue of importance to SIA is the tariff treatment of electronic commerce. Given the increasing importance of electronic commerce over the Internet, SIA believes that the United States should continue its leadership in this area, and – in addition to encouraging permanent implementation of duty-free treatment of electronic commerce – should urge WTO members to commit to tax-free treatment of electronic transmissions.

SIA is also concerned about potential non-tariff barriers that could restrict cross-border electronic commerce. For example, SIA believes that electronically delivered goods and services should receive no less favorable treatment under trade rules and commitments than like products delivered in physical form and that their classification should ensure the most liberal treatment possible. Also, when domestic regulations are required, the SIA urges governments to ensure that such regulations are transparent, non-discriminatory and employ the least trade-restrictive means available.

Antidumping and Competition Policy

SIA supports the maintenance of a strong and effective antidumping remedy as a critical component of the international trading system. The antidumping remedy is especially important with respect to the semiconductor industry given the history of injurious dumping in our sector.

The WTO Antidumping Agreement, recently renegotiated in the Uruguay Round, permits WTO members to take remedial action against dumped imports and prescribes international rules for the conduct of antidumping actions. Given the recent substantial changes to antidumping rules in the Uruguay Round, SIA believes it would be inappropriate at this time to launch a new international negotiation of an antidumping agreement and SIA would strongly oppose new negotiations in this area as part of the WTO agenda.

The continued monitoring of how the Uruguay Round antidumping rules are being implemented is appropriate, but that is very different from supporting or permitting the re-negotiation of these rules. The United States should be very clear about the distinction, and should be careful not to agree to anything under the "implementation" rubric that will in practice lead to reopening of this important agreement.

Additionally, there are a number of WTO member countries seeking to use the current discussions in the WTO over trade and competition policy to pursue their agenda of curbing antidumping trade remedies. Most of the competition policy discussion so far has been grounded in theory rather than in a factual examination of the specific barriers to international trade and investments that need to be remedied. Before attempting new international disciplines, it is necessary to understand the dimensions of the problems posed for trade by the absence of competition rules and/or their enforcement in so many markets around the world. SIA believes that the issue of competition policy is not sufficiently developed to be included in the new WTO round and that it should not be used as a mechanism to weaken existing WTO-endorsed antidumping trade remedies.

Intellectual Property

As an R&D intensive industry, the U.S. semiconductor industry is also very concerned about the full and effective protection of intellectual property rights. The Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) represents a major advance in the protection of intellectual property (IP). The agreement began the process of improving worldwide IP protection and allowed for staged implementation over the course of a decade. Developed countries were required to implement TRIPS almost immediately; less developed countries (LDCs), as a general rule, were given until January 1, 2000 and least developed countries have until January 1, 2005 to implement TRIPS.

In the case of developed countries, some dispute settlement cases were and continue to be necessary to strengthen national protection. Nevertheless, for the most part, TRIPS has been implemented in developed countries. However, there is real concern about the January 1, 2000 deadline not having been met by some LDCs. Some developing countries view their obligations under the Uruguay Round TRIPS Agreement as nonbinding and have been trying to push back

implementation of their TRIPS obligations. Failure to meet this deadline makes it less likely that the expected commercial gains for those WTO members that have met their commitments will be realized. Further, it is possible that this failure to meet the deadline could result in a deluge of cases submitted to the WTO dispute settlement process that would present a significant challenge to the institution. In the context of the upcoming Qatar WTO Ministerial Meeting, the United States should have as a priority the full implementation of TRIPS as soon as possible by less developed countries.

Services

Semiconductor companies also face trade barriers in the area of services. The ability of U.S. firms to import, export and distribute goods within foreign markets is essential for ensuring true market access. Therefore, as part of any new negotiations relating to services, the United States should seek commitments from all WTO members to permit foreign companies to engage in trading and distribution services without restriction.

Numerous restrictions on the ability of U.S. semiconductor firms exist, especially in countries in the process of transitioning from centrally-planned to market-oriented economies.

Restrictions in some countries on "trading rights" (e.g., the ability to import and export) are significant impediments to U.S. semiconductor firms' ability to access foreign markets. If not eliminated, these restrictions may undermine the benefit of other trade liberalization measures. U.S. firms doing business abroad should not be limited to importing or exporting through certain designated enterprises. Rather, U.S. companies must be able directly to sell and service end products, spare parts and components. The United States should urge countries to provide such trading rights to all firms, without discrimination on the basis of nationality.

Equally important as the right to import and export is the right to distribute goods within foreign markets. Forcing U.S. producers to sell through foreign distributors can add significant cost and adversely affect service, inventory, and delivery. The inability to deal directly with end-users is a particular problem in the semiconductor industry, where the design and development of application-specific chips requires extensive contact between semiconductor producers and the ultimate end-users of the chips.

Similar commitments should be insisted upon with respect to all newly-acceding WTO members. In fact, such commitments should be considered to be a fundamental obligation of WTO membership.

Investment

Other non-tariff barriers exist in the area of investment. The freedom to engage in direct investment is critical to market access in many sectors and particularly for the semiconductor industry. Unfortunately, existing rules on Trade-Related Investment Measures (TRIMs) do not adequately discipline many of the restrictions placed on investment in various countries. U.S. semiconductor companies often face complex rules and requirements when engaging in foreign

direct investment, including ownership restrictions, export targets, local content requirements and pressure to transfer technology.

U.S. semiconductor manufacturers frequently must grapple with policies, in the form of both official and unpublished "administrative guidance", restricting foreign ownership, including pressure to enter into joint venture agreements with local firms. Many U.S. companies have also been pressed to agree to export targets for their overseas plants, including, for example, requirements that a certain percentage (or all) of their facility's output be exported, or requirements that the U.S. firm agree to reinvest all profits earned from domestic sales. U.S. firms also face a range of localization requirements for parts and materials for products made abroad. Firms must sometimes file localization plans with foreign investment applications and can be subject to audits to determine local content.

These ownership restrictions, export targets and local content requirements may be imposed not only as strict legal obligations, but also as quid-pro-quos for decisions by government officials at both the national and sub-national level. Regardless of their form, these measures are often used as levers to obtain transfer of technology from foreign firms.

These measures can have a real and significant competitive impact on U.S. electronics firms, as advanced technology is often the key to competitive success. To the extent that our trading partners can maintain such measures, U.S. exports in the electronics sector, such as semiconductors, may be restricted. Moreover, such investment restrictions have a negative effect on the country imposing them, as they discourage the investment necessary to develop a local electronics industry on a commercially sound basis.

Improving and expanding WTO rules on TRIMs therefore should be a part of any ongoing WTO negotiations, and should include strengthened provisions prohibiting WTO members from taking any of the above measures – especially those which require a foreign enterprise to invest, enter into any form of joint venture arrangement with a domestic entity or to transfer any technology or intellectual property to a domestic entity. These strengthened provisions should also encompass measures that are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain any approval or advantage.

Access to State-Invested Enterprises

Traditional market access commitments can be undermined if foreign enterprises are denied the ability to sell to state-invested enterprises – enterprises wholly or partially owned by central, provincial or local governments. Unfortunately, current WTO rules in this area are inadequate. The WTO's principal tool for addressing distortions in trade that arise from state-invested enterprises – Article XVII of the General Agreement on Tariffs and Trade – does not effectively cover the purchasing decisions of state-invested commercial enterprises. In addition, such enterprises are not covered by the WTO Government Procurement Code because their purchases are for the purpose of manufacturing commercial goods rather than for government use.

State-owned and state-invested enterprises are particularly active in the electronics sector in many countries, and frequently control a significant share of the imports and exports of electronics goods. As a result, there is a significant risk that other state-owned or state-invested enterprises may be encouraged by government officials to purchase semiconductors from other state-invested or domestic suppliers. Such discrimination could obviously have a very negative effect on U.S. semiconductor sales.

Given the inadequacy of Article XVII, the SIA urges stronger WTO rules in two areas that include **affirmative obligations** on the part of all WTO members. The first obligation would be to ensure that state-owned and state-invested enterprises, including partially state-invested and recently privatized enterprises that were formerly state-invested, **make purchases and sales on the basis of commercial considerations**. The second obligation would be to afford the enterprises of other WTO members **adequate opportunity to compete for sales to state-invested enterprises**.

The SIA also believes that WTO members should be required to refrain from taking any measure, including administrative guidance, to influence or direct state-owned and state-invested enterprises as to the quantity, value, or country of origin of goods purchased or sold, or otherwise impair the purchase or sale of goods. In addition, the WTO should review on a regular basis whether state-owned or state-invested enterprises are in fact making purchases on the basis of commercial considerations.

Rules of Origin

In the Uruguay Round, WTO members agreed to pursue international harmonization of rules of origin based on the substantial transformation standard. The WTO Agreement on Rules of Origin (ARO) applies to all origin rules used in non-preferential trade applications, from collection of trade statistics to product marking to antidumping and countervailing duty measures. SIA believes this work program should be reviewed to ensure that it does not undermine the effectiveness of the U.S. antidumping law.

Under existing U.S. practice for determining origin, semiconductors that are fabricated in one country but assembled in another country are treated differently for general trade purposes (such as for customs purposes) than they are for purposes of administering antidumping measures. The treatment of semiconductors in a general trade context is determined by rules of origin, which base a semiconductor's origin on the country where final assembly takes place. Antidumping investigations, on the other hand, employ fact-specific criteria to determine that a semiconductor is "from" the country of wafer fabrication (also known as diffusion). This is because a final assembly standard would allow foreign exporters subject to antidumping orders to evade those orders by simply changing the country of final assembly – a relatively simple and inexpensive change in the semiconductor industry.

Ongoing WTO efforts to harmonize rules of origin, however, may require the U.S. Government to change its current practice, so that it would no longer be able to employ these differing approaches. This requires the establishment of new rules of origin for semiconductors that will ensure that antidumping orders on semiconductors can continue to be effectively enforced.

SIA believes that fact-based scope determinations for antidumping purposes should be decoupled from general purpose rules of origin. While the WTO origin harmonization exercise must result in origin rules that facilitate international trade through easy-to-administer and consistently-applied criteria – it is equally important that the origin harmonization exercise not disrupt the existing ability of governments to administer antidumping and countervailing duty orders.

This is in fact consistent with the ARO. The ARO sets out several objectives to be achieved as a result of the harmonization exercise. The preamble to the ARO notes that, in agreeing to the harmonization effort, WTO members recognized that clear and predictable rules of origin would "facilitate the flow of international trade" and sought "to ensure that rules of origin themselves do not create unnecessary obstacles to trade" while at the same time seeking "to ensure that rules of origin do not nullify or impair the rights of Members under GATT 1994." Indeed, one of the rights of WTO members under GATT 1994 is the right to impose antidumping or countervailing duty measures to remedy injurious dumping or subsidization. Accordingly, some countries have proposed content-based origin rules for electronics products to ensure that their ability to impose antidumping or countervailing duty measures is not restricted. The European Union, for example, has proposed a 45 percent value-add origin rule for all electronics products, even though such a rule could pose an obstacle to the free flow of trade in electronics goods.

To prevent WTO adoption of onerous origin rules while at the same time ensuring the effective administration of antidumping and countervailing duty measures, SIA believes that WTO negotiators must pursue a "decoupling" approach that would allow administering authorities in antidumping and countervailing duty cases to use fact-based criteria other than rules of origin in determining the scope of antidumping and countervailing duty measures. In turn, this would permit the WTO to adopt internationally harmonized rules for general trade that are different from, and not based upon, the standards used to administer antidumping and countervailing duty measures. This would also allow the harmonization of general purpose rules of origin in a manner that will facilitate, rather than encumber, trade, while also preserving an effective antidumping and countervailing duty remedy for all products.

Trade Promotion Authority

In addition, the SIA would like to emphasize in the context of the Qatar WTO Ministerial that our industry strongly believes that trade promotion authority is crucial to reducing trade barriers that impede the development and growth of high-value-added U.S. industries such as the semiconductor industry. In addition to reducing tariffs around the world, U.S. trade policy must continue to be focused on eliminating non-tariff barriers. Trade promotion authority legislation is essential to U.S. efforts to reduce complex non-tariff barriers that remain as significant obstacles to our exports in many countries around the world. We therefore support Congressional enactment of trade promotion authority legislation at the earliest possible opportunity.

Conclusion

In conclusion, SIA strongly supports the efforts of the United States in pursuing stronger international disciplines on measures that restrict or distort trade and investment around the world. On behalf of SIA and our member companies, thank you for this opportunity to share our views.