



JOINT STATEMENT OF THE 25th MEETING OF THE WORLD SEMICONDUCTOR COUNCIL (WSC)

June 2nd, 2021

Virtual

The world's leading semiconductor industry associations – consisting of the Semiconductor Industry Associations in China, Chinese Taipei, Europe, Japan, Korea, and the United States – held the 25th meeting of the World Semiconductor Council (WSC) today through a video conference.

The meeting was chaired by Mr. Bruggeworth of Qorvo and chair of the host delegation, the Semiconductor Industry Association in the United States. The other delegations attending the 25th WSC meeting – Semiconductor Industry Associations in China, Chinese Taipei, Europe, Japan, and Korea – were chaired, respectively, by Mr. Zhao Haijun of Semiconductor Manufacturing International Corporation (SMIC), Mr. Mark Liu of Taiwan Semiconductor Manufacturing Company (TSMC), Mr. Jean-Marc Chéry of STMicroelectronics, Mr. Masaki Momodomi of KIOXIA Corporation, and Mr. Wan Young Jung of Samsung Electronics.

The WSC meets annually to bring together industry leaders to address issues of global concern to the semiconductor industry. The WSC's mandate is to encourage cooperation to promote fair competition, open trade, protection of intellectual property, technological advancement, investment liberalization, market development, and sound environmental, health and safety practices. The WSC also supports expanding the global market for information technology products and services.

Established under the "Agreement Establishing a New World Semiconductor Council" signed on June 10, 1999, and amended on May 19, 2005, the WSC has the goal of promoting cooperative global semiconductor industry activities in order to facilitate the healthy growth of the industry from a long-term global perspective.

This Agreement states, “the increasing globalisation of the semiconductor industry raises important issues that must be addressed effectively through international cooperation within the world semiconductor industry”, and that “the WSC activities . . . shall be guided by principle of fairness, respect for market principles, and consistency with WTO rules and with the laws of the respective countries or regions of each Member. The WSC recognizes that it is important to ensure that markets will be open without discrimination. The competitiveness of companies and their products should be the principal determinant of industrial success and international trade.”

The WSC seeks policies and regulatory frameworks that fuel innovation, propel business, and drive international competition and avoid any actions that distort markets and disrupt trade. Antitrust counsel was present throughout the meeting. During the meeting, the below reports were given and discussed, and related actions were approved.

I. Semiconductor Market Data

The WSC reviewed the semiconductor market report covering global market size, market growth, and other key industry trends. According to WSTS data, in 2020, the global semiconductor market totaled US\$440.4B in revenue and up year-over-year by 6.8 percent. Logic was the largest semiconductor category by sales with \$118.4 billion. Memory (\$117.5 billion) and micro-ICs (\$69.7 billion) - a category that includes microprocessors - rounded out the top three product categories in terms of total sales. Positive-growing product categories in 2020 included logic (11.1%), sensors (10.7%), memory (10.4%), micro-ICs (4.9%), and analog (3.2%).

Annual country/regional sales increased into the Americas (21.3%), China (4.8%), Japan (1.3%), and Asia Pacific/all other (5.4%), while sales decreased into the EU (-5.8%). Sales by end use were led by computer (32.3%) and communication (31.2%) followed by industrial (12.0%), consumer (12.0%) and automotive (11.4%).

While long-term growth drivers exist (AI, 5G/6G, High Performance Computing, IoT, etc.), uncertainty in the global environment may affect growth in

the semiconductor market. Maintaining free and open markets globally for semiconductor products is therefore more important than ever.

II. Semiconductors are essential in the fight against Covid-19

The WSC recognizes the tremendous efforts from governments, authorities, and other organizations from around the world to fight the COVID-19 pandemic. Great progress has been made to slow the spread of the Coronavirus although some regions are still being hit hard and all regions must remain vigilant against the spread of variants.

The semiconductor industry appreciates GAMS' efforts amid these unprecedented challenges to support essential semiconductor business operations during this pandemic, facilitating the continuity in operations of an industry that powers the global digital infrastructure and underpins vital sectors of the economy. Semiconductors are essential components of the technologies that enable critical infrastructure and life-saving equipment, such as health care and medical devices, water systems and the energy grid, transportation and communication networks, and the financial system. Semiconductors also underpin the computer models that helped scientists speed up vaccine development and the IT systems that enabled remote work and access to services across every domain of society. Semiconductor and the continued operation of related supply chains will be necessary to support the greater range of services that will be digitized in the coming months in order to keep the global economy productive and to accelerate the recovery.

The WSC urges the GAMS to continue supporting the industry's calls by prioritizing semiconductor supply chain operations as "essential business" and allowing the business travel of essential semiconductor workers during the ongoing COVID-19 global pandemic.

III. Cooperative Approaches in Protecting the Global Environment

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

(1) PFC (Perfluorocompound) Emissions

The global semiconductor industry is a very minor contributor to overall emissions of greenhouse gases, and the industry is continuously working to further reduce our contribution to emissions of GHGs. One important part of our GHG emission reduction efforts is our voluntary reduction of PFC gas emissions. In 1999, the WSC (consisting at that time of each of the original regional semiconductor associations in the U.S., the European Union, Japan, Korea, and Chinese Taipei) agreed to reduce PFC emissions by at least 10% below individual baselines for each regional semiconductor association by the end of 2010. The WSC has previously announced that, the industry had far surpassed this goal. Over the 10-year period, the WSC has achieved a 32% reduction. In 2011, the WSC (consisting of the five regional semiconductor associations in the 1999 agreement, with the addition of SIA in China) also announced a new voluntary PFC agreement for the next 10 years. The elements of the 2020 goal include the following:

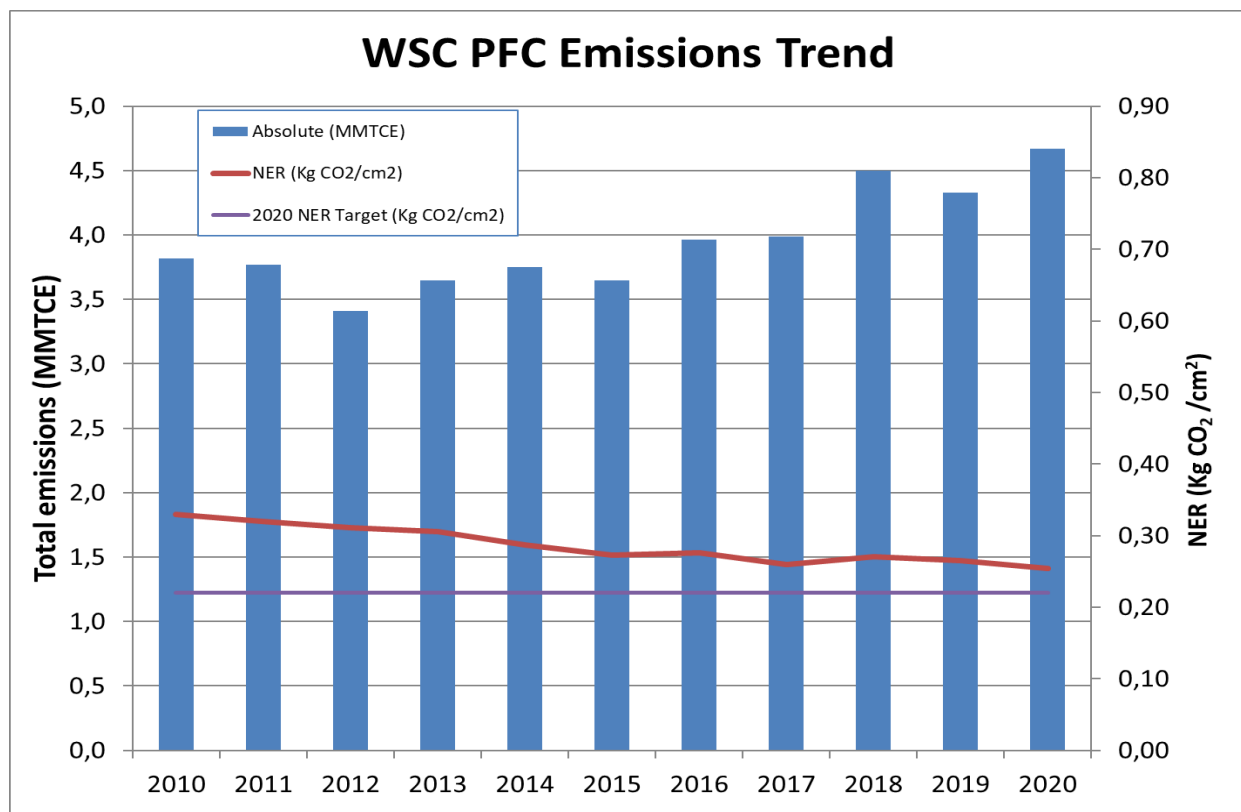
- The implementation of best practices for new semiconductor fabs. The industry expects that the implementation of best practices will result in a Normalized Emission Rate (NER) in 2020 of 0.22 KgCO₂e/cm² equivalent to a 30% NER reduction from 2010 aggregated baseline. Best practices will be continuously reviewed and updated by the WSC.
- The addition of “Rest of World” fabs (fabs located outside the WSC regions that are operated by a company from a WSC association) in reporting of emissions and the implementation of best practices for new fabs.
- A NER based measurement in kilograms of carbon equivalents per area of silicon wafers processed (KgCO₂e/cm²) that will be a single WSC goal at the global level.

The WSC agreed to report its progress on this new voluntary agreement on an annual basis. This external reporting will provide aggregated results of the absolute PFC consumption and emissions alongside each other and NER trends. These figures represent combined emissions for the six WSC regional associations, in their own regions and in the “Rest of World” fabs described above. In addition,

to improve transparency, the WSC has made its Best Practices for PFC Reduction document available previously on the WSC website. In 2017 the WSC has also revised its best practices document and published this update on the WSC website. The 2016 reporting also includes the reporting of newly used gases CH₂F₂, C₄F₆, C₅F₈ and C₄F₈O. In addition, the WSC reports the individual gas breakdowns.

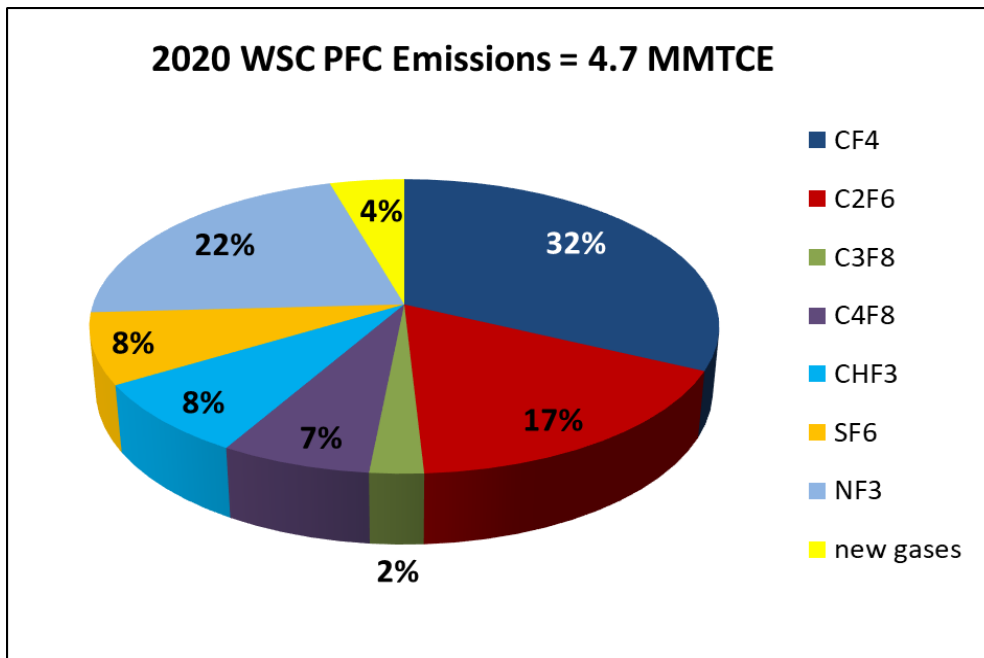
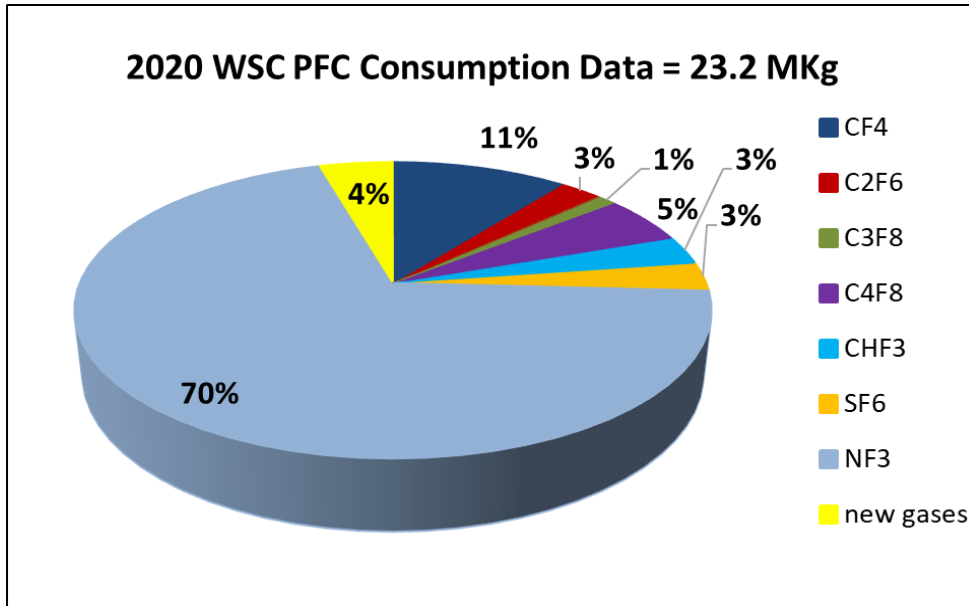
The 2020 results are as follows: The normalized emission rate decreased by 22.9% compared to 2010 and decreased 4.2% below 2019. The combined WSC absolute emissions of PFCs increased by 22.3% above 2010 to 4.7 MMTCE¹ in 2020 which is a 7.8% increase above 2019 levels. Please see the graph below, which compares these results to 0.22KgCO₂/cm² equivalent to a 30% NER reduction expectation by 2020.

Results of WSC PFC Emission Trend



¹ MMTCE – Million Metric Tonnes of Carbon Equivalent

2020 WSC PFC Consumption and Emissions Data



The WSC observes the overall trends in managing and reducing normalized PFC emissions in the semiconductor industry. We note, however, that achieving these reductions is becoming increasingly challenging due to a number of factors. These

factors include increased manufacturing process complexity, which sometimes requires the use of additional and different gases; the addition of new gases (e.g., CH₂F₂, C₄F₆, C₅F₈ and C₄F₈O), which represents in 2020 about 4% of WSC emissions; and different measurement and reporting methods, such as the updated reporting regulations in the U.S.

The WSC is now working on establishing a new PFC reduction goal to be announced by the end of 2021. The new WSC goal will be a 10-year emission reduction goal estimating emissions using the latest 2019 methodologies for our sector from the United Nations Intergovernmental Panel on Climate Change (IPCC).

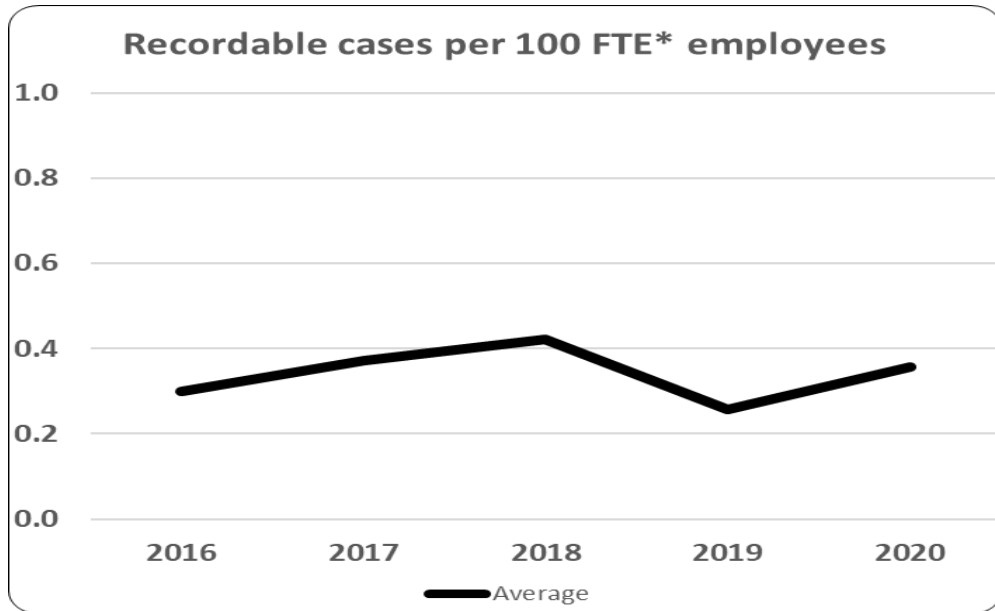
(2) Safety and Health

The WSC is focussed on a sound proactive approach to safety and health (S&H) policies and practices, including the provision of a workplace environment that is safe and healthy for all employees.

Collecting S&H data is a typical tool which semiconductor companies use to review and manage their activities and in order to identify learnings for continuous improvement of safety and health practices. Additionally, the WSC is sharing S&H semiconductor best practices in expert settings, to advance industry practices as a whole.

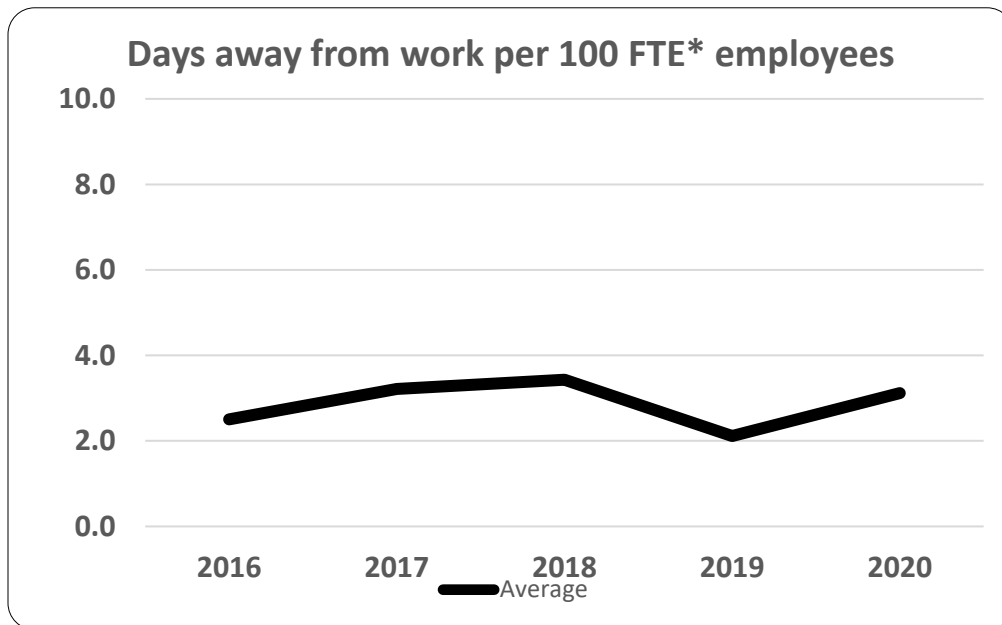
At the WSC level, five associations have contributed to S&H aggregated data. The aggregated work-related injury rate during the last five years 2016-2020 has typically been in the range of less than 0.5 injuries per 100 full time employees (FTE) annually (*figure 1 below*). The days away from work rate has typically been in the range of 2-4 days per 100 full time employees (FTE) annually in this 5-year period (*figure 2 below*). The Semiconductor Industry Association in Japan has not contributed to this data. The data remains stable over the period of collection.

Figure 1. Safety & Health: Recordable Cases



Recordable case rate = total recordable cases / FTE * 100
*Total full-time employee (FTE) = total working hours/2000

Figure 2. Safety & Health: Days Away from Work



Severity Rate = days away from work case / FTE * 100
*Total full-time employee (FTE) = total working hours/2000

(3) Chemical Management

The WSC remains concerned about potential chemical regulatory approaches that may have a disproportionate impact on semiconductor manufacturing. **The WSC recommends that Governments/Authorities proceed carefully in regulating chemicals that are essential to the semiconductor industry. The WSC notes that Governments/Authorities continue to prepare new legislation for per- and polyfluoroalkyl substances (PFAS). The use of PFAS compounds remains critical for semiconductor manufacturing. The WSC recommends that Governments/Authorities take into account the limited potential risk of exposure from uses in the semiconductor industry and the chemical management practices in the semiconductor industry. The WSC recommends that any regulations provide the semiconductor industry with sufficient time to evaluate our uses of chemicals and the uses within our supply chain. If restrictions on chemicals used in our industry are deemed to be necessary and appropriate for the protection of human health and the environment, the WSC recommends that Governments/Authorities provide sufficient time for the industry to identify, qualify, and transition to alternative chemicals that satisfy our functional and performance requirements, and be provided with exemptions to allow continuation of critical uses of these chemicals in processes and articles.**

(4) Resource Conservation

Semiconductor devices contribute to improved resource conservation in our world. Energy efficiency enabling semiconductors play a key role in the more efficient transmission, distribution and consumption of energy which also largely contributes to world's carbon emission reduction, contributing to humankind's achieving the United Nation's carbon reduction goal under the global climate change risk mitigation.

Traditional forms of energy and renewable energy sources will not be sufficient alone to meet the world's future energy needs. Consuming energy more efficiently is therefore of paramount importance, and semiconductor devices help achieve this goal. Semiconductor devices enable a more efficient use of energy in all aspects

of our daily lives: in the home, office or on the road; in industrial manufacturing; in public infrastructure; and in public transport. The semiconductor sector itself is not a large natural resource consumer amongst global industries. However, the WSC's members continue to focus activity on reducing the use of resources involved in the device manufacturing processes to reduce the direct impacts to the local and global environment. The semiconductor sector will continue to pursue environmental conservation programs in its fabs in the areas of energy, water and waste and the industry will continue to share examples of improvement practices.

IV. Effective Protection of Intellectual Property

A. Abusive Patent Litigation (NPEs/PAEs)

The WSC recognizes that abusive patent litigation seriously undermines innovation by redirecting resources to unnecessary litigation expenses and makes it more difficult for companies to bring legitimate products to market. Additionally, the WSC notes that not all regions have fully implemented the WSC Best Practices to Combat Abusive Patent Litigation, as set forth in Annex 2 to the 2017 WSC Joint Statement. The WSC encourages GAMS to support the WSC best practices to combat abusive patent litigation.

B. Trade Secrets

Trade secret theft impedes continued semiconductor research and development where companies must make substantial investments to build ever more advanced generations of semiconductors. Given the rapid speed of innovation in the semiconductor industry, trade secret theft can cause companies to quickly lose their competitive advantages and market shares unfairly. Trade secret theft can be extremely difficult to protect against. The rapid growth of the Internet has resulted in companies facing greater threats of trade secret theft. Such threats are magnified due to the critical role of semiconductors in emerging technologies, such as artificial intelligence and the Internet of Things.

The WSC therefore continues to monitor and study this problem and potential remedies. The WSC strongly supports national legislative initiatives to improve the protection of trade secrets, and urges GAMS to adopt strong trade secret protections in trade agreements and domestic laws. The WSC recently conducted a survey among its members (see Annex 1) to evaluate the implementation of the WSC Core Elements for Trade Secret Protection Legislation. The WSC notes that not all regions have fully implemented these Best Practices and **reiterates its call on GAMS to support the WSC “Core Elements for Trade Secret Protection Legislation.”**

V. Encryption Certification & Licensing Regulations

The use of encryption has become widespread in commercial ICT applications. Most ICT products contain semiconductors with cryptographic capabilities to prevent data loss, ensure security, trust and integrity of data in valuable commercial applications such as mobile payments, e-health, e-passports. As such semiconductors with encryption capabilities have become ubiquitous.

The WSC reiterates the WSC Encryption Principles, endorsed by GAMS. The WSC Encryption Principles state that encryption regulations should not be used for the purposes of limiting market access for foreign products. Commercial encryption products should not be regulated except in narrow and justifiable circumstances. The WSC Encryption Principles make it clear that generally there should be no regulation of cryptographic capabilities in widely available products used in the domestic commercial market because mandating or favoring specific encryption technologies will reduce, not increase, security.

The WSC Encryption Principles emphasize market access, transparency, adoption of international standards, non-discriminatory and open procedures and rules for commercial encryption. In addition, the WSC Encryption Principles encourage the use of global or international standards, including normative algorithms, as essential to avoid fracturing the global digital infrastructure and creating unnecessary obstacles to trade. Compliance with the WSC Encryption Principles will help keep markets open and free from unnecessary regulation and

discrimination, promote innovation, enable the dissemination of leading-edge security solutions, and thus allow the digital economy to flourish.

The WSC congratulates the EU GAMS for the successful 2020 GAMS Encryption workshop. The WSC further supports the GAMS' commitment to enhanced dialogue towards full implementation of the WSC Encryption Principles.

The WSC commends the decision by GAMS to organise an Encryption workshop in 2021. As requested by GAMS in its Chair's Summary 2020, the WSC performed a 2021 Self-Assessment Survey of existing and draft regulatory practices in relation to the WSC Encryption Principles.

The WSC encourages GAMS to continue the dialogue, making use of the results of the 2021 WSC Self-Assessment Survey to complete the review, analysis and assessment of existing and draft policies and measures by the 2021 GAMS Encryption workshop and GAMS meeting with a view to the full implementation of the WSC Encryption Principles– as per GAMS Chair's summary 2020. To support this process the WSC presents a proposal for draft agenda of the 2021 workshop. (See Annex 3)

The WSC welcomes the agreement by GAMS in its Chair's Summary 2020 that non-discriminatory access to relevant standardization bodies, also in practice, is of utmost importance. We support the decision by GAMS to continue discussing such related issues with a bearing on encryption.

VI. Customs and Tariffs

Information Technology Agreement (ITA)

The ITA and its expansion in 2016 have greatly accelerated trade in semiconductors and semiconductor-enabled technologies. The ITA has generated a very significant increase in the value of global semiconductor-related trade, making semiconductors one of the most globally traded products today.

The increased deployment of semiconductor-enabled technologies has had a profound impact on society and the economy. It has spurred productivity and

made significant contributions toward solving global societal challenges like climate change, health care, food supply, connectivity, education, and more.

According to the World Economic Forum, semiconductor-enabled technologies can reduce greenhouse gas emissions by 15%. Semiconductor technologies have also been fundamental to pandemic response as indispensable components to life-saving medical devices, and systems for public tracing and testing. They will continue to play a crucial role in post-pandemic recovery as IT infrastructure for remote healthcare, remote working and interacting will become ever more important in our societies.

The ITA is one of the most successful trade agreements in the World Trade Organisation. However, its benefits cannot be taken for granted. Fast technological innovation has continued in the semiconductor industry after the signature of the 2015 ITA-Expansion Agreement. As a result, there currently are semiconductor products, manufacturing equipment, and materials which fall outside the scope of the ITA and its expansion. Some of these products were not on the market and were not identified in international customs classifications at the time ITA Expansion Agreement was signed. These include indispensable components of myriads devices which are critical, for example, to our telecommunication, connectivity and transport infrastructure.

The WSC applauds the decision by the WTO Information Technology Agreement (ITA) Committee to organise a workshop on 16 September 2021 to discuss developments in information and communications technology (ICT) as the ITA marks its 25th anniversary. Further, the WSC strongly supports the intention to discuss during the workshop the prospects and challenges for further expansion of trade in ICT products and participation in the Agreement.

Given the unique role semiconductors and semiconductor-enabled technologies play in advancing solutions to global challenges, the WSC calls on GAMS to consider whether it is timely to support launch a new round of negotiations to further expand the ITA to include semiconductor-related products not previously covered. The WSC is working on providing a list of proposed products for future expansion of ITA product coverage. The WSC also encourages GAMS to continue to promote expansion of geographic membership in the existing ITA and ITA Expansion Agreements.

Trusted Traders

The rapid and efficient international movement of goods is vital for the global semiconductor manufacturing system and for the semiconductor industry as a whole. A typical semiconductor industry product crosses international borders many times during production: without smooth, fast and efficient import and export processes globally, manufacturing would become significantly burdensome, and in many cases, extremely difficult to realise. As such, semiconductor industry has been investing substantially to comply with trusted trader policies such as the Authorised Economic Operators (AEO) programs. AEO programs aim to facilitate swift import export operations while enhancing compliance and supply chain security. Most semiconductor companies have achieved AEO status, many of them in multiple jurisdictions worldwide.

The WSC is grateful to GAMS for its support for enhanced cooperation with customs authorities to strengthen trusted traders' programmes and enhance tangible trade facilitation for trusted traders. The WSC further welcomes the GAMS acknowledgment of the importance of global alignment and further mutual recognition of trusted trader programmes.

In response to the GAMS request, in 2018 the WSC articulated best practices on AEO/Trusted Traders programs. In addition, per GAMS' recommendation, the WSC intends to organise a separate meeting in spring 2022 in Brussels, with all Customs agencies from the GAMS regions. The meeting aims to initiate a dialogue on AEO/Trusted Traders between the WSC and Customs administrations on how to work toward the goal of furthering the WSC Best Practices and fostering trade facilitation for AEOs while ensuring an international level playing field. **The WSC calls on GAMS to work with their Customs agencies to ensure Customs officials from all GAMS regions actively and constructively participate in the meeting.**

Semiconductor-based transducers

Following the approval by the World Customs Organisation of the amendments to the Harmonised System covering semiconductor-based transducers, the WSC applauds the ongoing work by World Customs Organisation (WCO) to ensure that the corresponding HS Explanatory Notes are approved. **The**

WSC calls on GAMS to work with their respective Customs agencies to ensure the 2022 version of the Harmonised System is rapidly and smoothly implemented.

HS Classification for semiconductors

The WSC recalls that the HS plays a fundamental role in ensuring a globally harmonised and consistent customs classification for all traded goods including semiconductors. It also creates the basis for a level playing field in international business. In case of diverging classifications in different jurisdictions, the WSC recommends that Customs agencies pursue clarifications at international level.

Further, a consistent classification of all semiconductor products and technologies within defined headings / subheadings will facilitate the definition of a clear and unambiguous scope in trade agreements, such as the ITA.

The WSC is currently reviewing cases of diverging custom classifications for identical semiconductor products in different countries, as well as the classification of new semiconductor products and technologies, and discussing ways to address these. The WSC endeavors to provide more information to GAMS when available.

VII. Regional Support Programs

Given the vital role of the semiconductor industry to all regions' economic growth and innovation, combined with the immense technological challenges and rising costs facing our industry, the WSC encourages market-based government support which fosters semiconductor industry progress and is fully consistent with the GAMS Regional Support Guidelines and Best Practices and WTO rules.

The WSC welcomes GAMS' support for full implementation of the Regional Support Guidelines and Best Practices, developed by the WSC and adopted by the GAMS in 2017. These Guidelines reflect the shared view that government support in the semiconductor sector should be transparent, non-discriminatory, and non-trade distorting; that government actions should be guided by market-based principles; and that the 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.

With the shared objective to maximize opportunities for collaboration, and minimize the risks of creating harmful trade distortions, the WSC welcomes the GAMS' ongoing commitment to increasing transparency through the regular sharing of information and analysis and assessment of subsidies and other forms of government support. Such transparency and assessment are vital to promoting consistency with the principles of the Guidelines and WTO rules, and avoiding non-market-based support that can lead to excess capacity that is not commercially justified, create unfair competitive conditions, hinder innovation, and undermine the efficiency of global value chains. The WSC notes the responses to date on the analysis and assessment of the 30 programs originally identified in the Phase 1 Information Exchange and recognizes the important progress to date in improving transparency and mutual understanding, as well as on the initial responses by all regions to the Phase 2 Information Exchange covering an additional 2 programs per region. **The WSC welcomes the initial responses to Phase 2 and requests the JSTC to continue the process of information exchange to ensure comprehensive responses on both the Phase 1 and 2 programs in order to fully achieve the goals set out in the Regional Support Guidelines and Best Practices.** And, the WSC notes the willingness of the associations to continue the exercise of the information exchange, upon the completion of the current phase 1 and 2, with a third-phase information exchange.

Upon GAMS invitation, the WSC initiated the exercise of collecting information on best practices for equity funds. As the Task Force Chair, SIA in US proposed a discussion paper on "Best Practice for Equity Funds" to encourage sharing of best practices on the subject of equity fund.

The WSC requests GAMS to complete the analysis and assessment of these regional support programs with respect to consistency with the Regional Support Guidelines and Best Practices at a 6th Workshop on Regional Support at the 2021 GAMS Meeting. The WSC presents to GAMS a proposal for the workshop agenda, including the study and discussion of different forms of assistance, in order to promote common understanding among associations, and requests that GAMS members work to finalize an agenda and invite appropriate officials in their regions to participate in this workshop (See Annex 2). The WSC also requests GAMS to continue and review the process of regular exchanges in support of full implementation of the Regional Support Guidelines and Best Practices.

The WSC welcomes the October 2020 GAMS agreement to work together to maintain the effectiveness of existing WTO disciplines, as well as to reform the WTO to help it meet new challenges.

VIII. Fighting the Proliferation of Semiconductor Counterfeiting

Counterfeit semiconductor products create serious risks to the safety and health of the public and to critical national infrastructure and can have a significant economic impact for semiconductor rights holders. The WSC has an anti-counterfeiting task force working to promote anti-counterfeiting activities, including training and relevant information sharing with enforcement authorities, raising awareness, and encouraging purchases from authorized sources. As part of further awareness raising activities the WSC has produced a paper in 2021 on *Counterfeit Semiconductors and the Online Environment* (See Annex 4 to Joint Statement)

Counterfeiting threatens the innovation-driven economy which underpin prosperous societies and industry sectors like semiconductor manufacturing. The combination of the online economy and globalization has allowed criminal networks to expand the scope of their operations, free-riding on intellectual property and allowing them to sell counterfeit goods directly worldwide with virtually no barriers to entry, low cost of set up and fewer risks of being caught. The WSC supports pro-active industry and enforcement activities to prevent trademark infringing and counterfeit semiconductors from being offered for sale on online platforms.

WSC members remain committed to increasing awareness of the infrastructure, public health and safety risks caused by counterfeits. As part of WSC awareness-raising, the WSC will support the Global Anti-Counterfeiting Group's (GACG) World Anti-Counterfeiting Day on June 8, 2021 which highlights the problems and risks caused by counterfeits. (See Annex 5 to Joint Statement)

Semiconductors are the "brains" inside critically-important electronic systems, including healthcare and medical equipment, electric power grids, communications systems, automotive braking and airbag systems, and aviation

systems. The WSC has shared examples of anti-counterfeiting capacity building measures and practices that could be employed across the semiconductor industry and has circulated widely the WSC’s updated White Paper “Winning the Battle against Counterfeit Semiconductor Products”, available under “public documents” on the WSC website: <https://www.semiconductorcouncil.org/public-documents/public-documents-and-white-papers/>.

The WSC appreciates the GAMS’ commitment to fighting semiconductor counterfeiting. The WSC looks forward to continued coordination in stopping counterfeits and will continue to cooperate with GAMS customs and enforcement authorities across all regions of the WSC in these efforts.

The WSC recommends that GAMS members continue to implement appropriate domestic, bilateral, and multilateral IP enforcement countermeasures to deal with counterfeit semiconductors. The WSC supports GAMS coordination with their customs and law enforcement authorities to facilitate a further strengthening of IP enforcement activities at regional and national levels in cooperation with the industry.

IX. Responsible Minerals Sourcing

The global semiconductor industry through the WSC is committed to using ‘responsibly sourced’ minerals in their semiconductor products. In 2018, the WSC broadened its original Conflict-Free Supply Chain Policy of 2013 to a responsible sourcing of minerals policy and referenced the deep concerns about the sources of minerals from ‘conflict-affected and high-risk areas’ (CAHRA). This update emphasized the importance of supply chains acting responsibly to source minerals and agreed that the WSC will promote the ‘OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas’² among its members. The OECD guidance serves as a common reference for all stakeholders in the mineral supply chain in order to clarify expectations concerning the nature of responsible supply chain management of minerals from conflict-

² Conflict-Affected and High-Risk Areas’ as outlined in the OECD (2016), OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition.

affected and high-risk areas.

The WSC has undertaken another industry survey for year 2020 with its members to ascertain the state of progress of implementation of this responsible minerals sourcing policy across the industry. The 2020 survey indicates that the industry's activities have now clearly broadened with significant due diligence efforts beyond the original 3TG and the DRC. The survey also identifies that many customers are now asking questions regarding non-3TG minerals (eg; cobalt). The survey confirms that the industry continues to see that reaching out to smelters/refiners to become compliant (certified) and phasing out non-compliant smelters/refiners in the supply chain as amongst the biggest current challenges.

The global semiconductor industry is a recognized leader in addressing the issues related to the sourcing of minerals. The semiconductor industry has been involved in the development of compliance tools such as the OECD due diligence guidance framework that have been readily adopted by other key industry sectors and has implemented state of the art programs to track progress.

The WSC recommends that if GAMS members are considering new responsible minerals sourcing type of legislation, that the legislation should be globally aligned to ensure that such legislations promote the harmonization of global efforts for creating responsible supply chain management of minerals from conflict-affected and high-risk areas and should utilize existing compliance tools such as the OECD due diligence guidance framework and initiatives such as the Responsible Minerals Initiative and be based on voluntary principles.

X. Approval of Joint Statement and Approval of Recommendations to GAMS

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 Meeting on Semiconductors (GAMS) to be held in November 2021 in Busan, South Korea.

XI. Next Meeting

The next meeting of the WSC will be hosted by the Semiconductor Industry Association in Chinese Taipei and will take place in Taipei City on May 19, 2022.

XII. Key Documents and WSC Website:

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 websites:

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 Europe:

<http://www.eusemiconductors.eu>

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.semiconductors.org>

Annexes:

- 1. Results of Survey on Implementation of WSC Core Elements for Trade Secret Protection Legislation February 2021**
- 2. Proposed Agenda for 6th GAMS Workshop on Regional Support**

- 3. Proposed Agenda for 6th Workshop on Encryption**
- 4. WSC Paper on Counterfeit Semiconductors and the Online Environment**
- 5. WSC Press Release WACD**

Annex 1

**Results of Survey on Implementation of
WSC Core Elements for Trade Secret Protection Legislation
February 2021**

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SIA in China

1. Are trade secrets recognized as a form of intellectual property? (Core Element #1)
[Yes.](#)

2. What is the legal definition of “trade secrets”? (Core Element #2)
Trade secrets shall mean information such as technical information and business information, which is not known to the public and has commercial value and for which the rights holder has adopted the corresponding confidentiality measures.
3. What is the legal definition of “misappropriation of a trade secret”? If the definition includes the term “improper means”, what is the definition of that term? **(Core Element #2)**
Misappropriation of trade secrets contain the following means:
(1) obtain the trade secrets of a right holder through theft, bribery, fraud, coercion, hacking or other improper means;
(2) disclose, use or allow others to use the trade secrets of a right holder obtained through the aforesaid means;
(3) violate confidentiality obligation or violate a right holder’s requirements on keeping confidentiality of trade secrets, and disclose, use or allow others to use such trade secrets they obtained; and
(4) instigate, induce or assist others to violate confidentiality obligation or to violate a right holder’s requirements on keeping confidentiality of trade secrets, so as to disclose, use or allow others to use the trade secrets of the right holder.
Where a third party is knowingly aware or should be aware that an employee, ex-employee of a right holder of trade secrets, or any other organization or individual, has committed any of the illegal acts stipulated above but still obtains, discloses, uses or allows others to use such trade secrets, this shall be deemed to have infringed upon trade secrets.
4. Is the knowing misappropriation of a trade secret a criminal offense? **(Core Element #3)**
Yes.
5. What are possible criminal penalties for the misappropriation of a trade secret? **(Core Element #3)**
The criminal legal liabilities for infringing on trade secrets include fixed-term imprisonment or criminal detention, additional punishment that can only be imposed or also imposed with a fine. There are mainly two ranges of punishment:(1) If the amount of loss caused to the holder of right of trade secrets is more than RMB500,000, he shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; (2) If the amount of loss caused to the holder of right of trade secrets is more than RMB2.5 million, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.
6. If a trade secret is misappropriated, can the owner of the trade secret bring forth a civil action? **(Core Element #4)**
Yes.
Where the legitimate rights and interests of a business operator are harmed by unfair competition, the business operator may file a lawsuit with a People’s Court.

7. Are courts authorized to award damages in civil trade secret misappropriation cases? **(Core Element #4)**

Yes.

The compensation for a business operator who suffer damages due to unfair competition shall be determined in accordance with the actual losses suffered as a result of the infringement; where it is hard to ascertain the actual losses, the compensation shall be determined in accordance with the gains made by the infringer from the infringement. For business operators who infringe upon trade secrets maliciously and if the case is serious, the compensation amount may be determined in accordance with one to five times the amount determined using the aforesaid method. The compensation amount shall also include reasonable expenses paid by the business operator to stop the infringement.

Where it is hard to ascertain the actual losses suffered by the right holder due to the infringement or to ascertain the gains made by the infringer from the infringement, the People's Court shall, in accordance with the extent of the infringement, award compensation of less than RMB5 million to the rights holder.

8. Are courts authorized to award injunctive relief in civil trade secret misappropriation cases? **(Core Element #4)**

Yes. Both permanent and preliminary types.

9. Do courts have the authority to issue orders to preserve relevant evidence and to compel parties to produce relevant evidence in trade secret misappropriation cases? **(Core Element #5)**

Yes.

- 1) In the civil proceedings involving infringement of trade secrets, where the rights holder of trade secrets provides preliminary evidence to prove that it has adopted confidentiality measures for the asserted commercial secrets, and reasonably demonstrate that the trade secrets are infringed upon, the alleged infringer shall prove that the trade secrets asserted by the rights holder do not fall under trade secrets stipulated in Law.
- 2) Where the rights holder of trade secrets provides preliminary evidence to demonstrate reasonably that the trade secrets are infringed upon and provides any of the following evidence, the alleged infringer shall prove that there is no infringement of trade secrets:
 - a) there is evidence to prove that the alleged infringer has the means or opportunities to obtain the commercial secrets, and the information used by the alleged infringer is substantively identical to the trade secrets;
 - b) there is evidence to prove that the trade secrets are disclosed or used by the alleged infringer, or there is a risk of disclosure or use of the trade secrets; or
 - c) there is other evidence to prove that the trade secrets are infringed by the alleged infringer.
- 3) Where the right holder of trade secrets has provided preliminary evidence of the benefits obtained by the infringer as a result of the infringement, but the account books and materials related to the act of infringing the trade secret are in the possession of the infringer, the people's court may, upon the application of the right holder of trade secrets, order the infringer to provide such account books and materials. If the infringer refuses to provide the information without justified reasons or fails to provide the information truthfully, the people's court may, on the basis of the claims of the rights holder of trade

secrets and the evidence provided, determine the benefits obtained by the infringer as a result of the infringement.

10. In trade secret misappropriation cases, is confidential, private, proprietary, or privileged information appropriately protected when it is a part of evidence? **(Core Element #5)**

Yes.

11. Have courts been willing to apply the doctrine of inevitable disclosure in applicable industries? Are there any recent cases on inevitable disclosure? (Core Element #5)

N/A

12. Is there a procedure for “burden shifting” in the context of inevitable disclosure, if the trade secret owner has made a proper showing? In what circumstances may the court compel a disclosure of information by the party accused of misappropriation? (Core Element #5)

N/A

13. Are there steps in place to ensure that procedures in misappropriation cases shall not be unnecessarily complicated or costly? Are remedies expeditious? **(Core Element #6)**

N/A

14. In trade secret misappropriation cases, are parties entitled to substantiate their claims and to present evidence? **(Core Element #6)**

Yes.

15. In trade secret misappropriation cases, are decisions made in writing and without undue delay? **(Core Element #6)**

Yes.

16. If a trade secret is allegedly misappropriated in another country and the misappropriation adversely affects commerce or harms people in your region, is there standing to bring a trade secret misappropriation case? **(Core Element #7)**

N/A

SIA in Chinese Taipei

1. Are trade secrets recognized as a form of intellectual property? **(Core Element #1)**

Yes

2. What is the legal definition of “trade secrets”? **(Core Element #2)**

The term " trade secret " as used in Taiwan Trade Secret Act shall mean any method, technique, process, formula, program, design, or other information that may be used in the course of production, sales, or operations, and also meet the following requirements:

- 1.It is not known to persons generally involved in the information of this type;
- 2.It has economic value, actual or potential, due to its secretive nature; and
- 3.Its owner has taken reasonable measures to maintain its secrecy.

Source: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=J0080028>

3. What is the legal definition of “misappropriation of a trade secret”? If the definition includes the term “improper means”, what is the definition of that term? **(Core Element #2)**

Any of the following acts shall be deemed as a misappropriation of a trade secret:

1. To acquire a trade secret by improper means;
2. To acquire, use, or disclose a trade secret as defined in the preceding item knowingly or unknowingly due to gross negligence;
3. To use or disclose an acquired trade secret knowing, or not knowing due to gross negligence, that it is a trade secret as defined in item one;
4. To use or disclose by improper means a legally acquired trade secret; or
5. To use or to disclose without due cause a trade secret to which the law imposes a duty to maintain secrecy

The term "improper means " as referred to in the preceding paragraph shall mean theft, fraud, coercion, bribery, unauthorized reproduction, breach of an obligation to maintain secrecy, inducement of others to breach an obligation to maintain secrecy, or any other similar means.

Source: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=J0080028>

4. Is the knowing misappropriation of a trade secret a criminal offense? **(Core Element #3)**

It can be. According to Taiwan IP Court’s 2019 study of trade secret cases, the Taiwan courts have adjudicated 88 criminal cases involving trade secrets between 2008 and 2019.

5. What are possible criminal penalties for the misappropriation of a trade secret? **(Core Element #3)**
Imprisonment up to 10 years in addition to a fine up to NT\$50M fine (~US\$1.6M), or if the gain obtained by the offender exceeds the maximum fine, such fine may be increased up to 10 times of the gain.
6. If a trade secret is misappropriated, can the owner of the trade secret bring forth a civil action? **(Core Element #4)**
Yes
7. Are courts authorized to award damages in civil trade secret misappropriation cases? **(Core Element #4)**
Yes. A 2019 study by the Taiwan IP court included 29 cases (handled by the court from 2008-2019) for damages calculation, and found that the average demand was NT\$68M (US\$2.3M), and the average award was NT\$54M (US\$1.8M). Out of the 29 cases, 3 cases were found for the trade secret owners on all grounds, 6 on partial grounds, and 20 found for the defendants.
8. Are courts authorized to award injunctive relief in civil trade secret misappropriation cases? **(Core Element #4)**
Yes, both permanent and preliminary types
9. Do courts have the authority to issue orders to preserve relevant evidence and to compel parties to produce relevant evidence in trade secret misappropriation cases? **(Core Element #5)**
Authority to preserve evidence, but no specific authority to compel parties to produce relevant evidence. Generally speaking, courts may make presumptions if a party refuses or is unable to produce evidence.
10. In trade secret misappropriation cases, is confidential, private, proprietary, or privileged information appropriately protected when it is a part of evidence? **(Core Element #5)**
Yes, a confidentiality order mechanism was recently introduced to protect confidential information for cases conducted in the IP Court.
11. Have courts been willing to apply the doctrine of inevitable disclosure in applicable industries? Are there any recent cases on inevitable disclosure? **(Core Element #5)**
Taiwan courts have not adopted the full legal doctrine of inevitable disclosure, often citing the concern for freedom of employment. But Courts have been open to grant preliminary injunctions, and bar an ex-employee from going to a competitor, where there is a valid non-compete agreement in place.
12. Is there a procedure for “burden shifting” in the context of inevitable disclosure, if the trade secret owner has made a proper showing? In what circumstances may the court compel a disclosure of information by the party accused of misappropriation? **(Core Element #5)**
No procedure for formal burden shifting in Taiwan. Courts also cannot compel party to disclose information from procedural perspective.
13. Are there steps in place to ensure that procedures in misappropriation cases shall not be unnecessarily complicated or costly? Are remedies expeditious? **(Core Element #6)**

A 2019 study by the Taiwan IP court showed that it has adjudicated 65 trade secret cases at the first instance level between 2008 and 2019, and the average length of the case was 304 days and 5.1 hearings required.

14. In trade secret misappropriation cases, are parties entitled to substantiate their claims and to present evidence? **(Core Element #6)**

Yes

15. In trade secret misappropriation cases, are decisions made in writing and without undue delay? **(Core Element #6)**

Yes. See statistics in answer to Q.13

16. If a trade secret is allegedly misappropriated in another country and the misappropriation adversely affects commerce or harms people in your region, is there standing to bring a trade secret misappropriation case? **(Core Element #7)**

Maybe. It is not clear how such scenario would play out, but if there is harm in Taiwan and the defendant has a presence in Taiwan, it may be possible to bring litigation. The trade secret laws in Taiwan do specifically address cross-border impact if misappropriation occurred in Taiwan, and the harm occurs externally.

SIA in Europe

Note by SIA in Europe: answers are based on the “DIRECTIVE (EU) 2016/943 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure” hereinafter “the Directive” to be implemented into national legislation.

1. Are trade secrets recognized as a form of intellectual property? **(Core Element #1)**
The Core Element #1 refers to the WTO TRIPS agreement from which the Directive derives its definition of Trade secrets. Please see answer to question n 2 for the definition.
2. What is the legal definition of “trade secrets”? **(Core Element #2)**

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

(1) ‘trade secret’ means information which meets all of the following requirements:

- (a) it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- (b) it has commercial value because it is secret;
- (c) it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;

3. What is the legal definition of “misappropriation of a trade secret”? If the definition includes the term “improper means”, what is the definition of that term? **(Core Element #2)**
Article 4 of the Directive describes “unlawful acquisition, use of disclosure of a trade secret”:

Article 4

[...]

2. The acquisition of a trade secret without the consent of the trade secret holder shall be considered unlawful, whenever carried out by:

(a) unauthorised access to, appropriation of, or copying of any documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced;

(b) any other conduct which, under the circumstances, is considered contrary to honest commercial practices.

3. The use or disclosure of a trade secret shall be considered unlawful whenever carried out, without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:

(a) having acquired the trade secret unlawfully;

(b) being in breach of a confidentiality agreement or any other duty not to disclose the trade secret;

(c) being in breach of a contractual or any other duty to limit the use of the trade secret.

4. The acquisition, use or disclosure of a trade secret shall also be considered unlawful whenever a person, at the time of the acquisition, use or disclosure, knew or ought, under the circumstances, to have known that the trade secret had been obtained directly or indirectly from another person who was using or disclosing the trade secret unlawfully within the meaning of paragraph 3.

5. The production, offering or placing on the market of infringing goods, or the importation, export or storage of infringing goods for those purposes, shall also be considered an unlawful use of a trade secret where the person carrying out such activities knew, or ought, under the circumstances, to have known that the trade secret was used unlawfully within the meaning of paragraph 3.

4. Is the knowing misappropriation of a trade secret a criminal offense? **(Core Element #3)**

N.A. as criminal offenses are outside the scope of the Directive, but can be implemented in national law as in Germany.

5. What are possible criminal penalties for the misappropriation of a trade secret? **(Core Element #3)**

N.A. (please refer to the answer to question n. 4)

6. If a trade secret is misappropriated, can the owner of the trade secret bring forth a civil action? **(Core Element #4)**

Yes.

Chapter III
Measures, procedures and remedies
Section 1
General provisions
Article 6
General obligation

1. Member States shall provide for the **measures, procedures and remedies necessary to ensure the availability of civil redress against the unlawful acquisition, use and disclosure of trade secrets.**

[...]

7. Are courts authorized to award damages in civil trade secret misappropriation cases? **(Core Element #4)**

Yes.

Section 3

Measures resulting from a decision on the merits of the case

Article 12

Injunctions and corrective measures

1. Member States shall ensure that, where a judicial decision taken on the merits of the case finds that there has been unlawful acquisition, use or disclosure of a trade secret, the competent judicial authorities may, at the request of the applicant, order one or more of the following measures against the infringer:

- a) **the cessation of or, as the case may be, the prohibition of the use or disclosure of the trade secret;**
- b) **the prohibition of the production, offering, placing on the market or use of infringing goods, or the importation, export or storage of infringing goods for those purposes;**
- c) **the adoption of the appropriate corrective measures with regard to the infringing goods;**
- d) **the destruction of all or part of any document, object, material, substance or electronic file containing or embodying the trade secret or, where appropriate, the delivery up to the applicant of all or part of those documents, objects, materials, substances or electronic files.**

2. The corrective measures referred to in point (c) of paragraph 1 shall include:

- a) recall of the infringing goods from the market;
- b) depriving the infringing goods of their infringing quality;
- c) (destruction of the infringing goods or, where appropriate, their withdrawal from the market, provided that the withdrawal does not undermine the protection of the trade secret in question.

3. Member States may provide that, when ordering the withdrawal of the infringing goods from the market, their competent judicial authorities may order, at the request of the trade secret holder, that the goods be delivered up to the holder or to charitable organisations.

4. The competent judicial authorities shall order that the measures referred to in points (c) and (d) of paragraph 1 be carried out at the expense of the infringer, unless there are particular reasons for not doing so. Those measures shall be without prejudice to any damages that may be due to the trade secret holder by reason of the unlawful acquisition, use or disclosure of the trade secret.

8. Are courts authorized to award injunctive relief in civil trade secret misappropriation cases? **(Core Element #4)**

Yes.

Please see answer to question n.3.

9. Do courts have the authority to issue orders to preserve relevant evidence and to compel parties to produce relevant evidence in trade secret misappropriation cases? **(Core Element #5)**

Yes.

Article 11

Conditions of application and safeguards

1. Member States shall ensure that the competent judicial authorities have, in respect of the measures referred to in Article 10, the authority to require the applicant to provide evidence that may reasonably be considered available in order to satisfy themselves with a sufficient degree of certainty that:

(a) a trade secret exists;

(b) the applicant is the trade secret holder; and

(c) the trade secret has been acquired unlawfully, is being unlawfully used or disclosed, or unlawful acquisition, use or disclosure of the trade secret is imminent.

In addition, also the defendant might need to provide evidence, and this is usually covered in national procedural law.

10. In trade secret misappropriation cases, is confidential, private, proprietary, or privileged information appropriately protected when it is a part of evidence? **(Core Element #5)**

Yes.

Article 9

Preservation of **confidentiality** of trade secrets in the course of legal proceedings

1. Member States shall ensure that the parties, their lawyers or other representatives, court officials, witnesses, experts and any other person participating in legal proceedings relating to the unlawful acquisition, use or disclosure of a trade secret, or who has access to documents which form part of those legal proceedings, are not permitted to use or disclose any trade secret or alleged trade secret which the competent judicial authorities have, in response to a duly reasoned application by an interested party, identified as confidential and of which they have become aware as a result of such participation or access. In that regard, Member States may also allow competent judicial authorities to act on their own initiative.

The obligation referred to in the first subparagraph shall remain in force after the legal proceedings have ended. However, such obligation shall cease to exist in any of the following circumstances:

- (a) where the alleged trade secret is found, by a final decision, not to meet the requirements set out in point (1) of Article 2; or
- (b) where over time, the information in question becomes generally known among or readily accessible to persons within the circles that normally deal with that kind of information.

2. Member States shall also ensure that the competent judicial authorities may, on a duly reasoned application by a party, take specific measures necessary to preserve the confidentiality of any trade secret or alleged trade secret used or referred to in the course of legal proceedings relating to the unlawful acquisition, use or disclosure of a trade secret. Member States may also allow competent judicial authorities to take such measures on their own initiative.

The measures referred to in the first subparagraph shall at least include the possibility:

- (a) of restricting access to any document containing trade secrets or alleged trade secrets submitted by the parties or third parties, in whole or in part, to a limited number of persons;
- (b) of restricting access to hearings, when trade secrets or alleged trade secrets may be disclosed, and the corresponding record or transcript of those hearings to a limited number of persons;
- (c) of making available to any person other than those comprised in the limited number of persons referred to in points (a) and (b) a non-confidential version of any judicial decision, in which the passages containing trade secrets have been removed or redacted.

The number of persons referred to in points (a) and (b) of the second subparagraph shall be no greater than necessary in order to ensure compliance with the right of the parties to the legal proceedings to an effective remedy and to a fair trial, and shall include, at least, one natural person from each party and the respective lawyers or other representatives of those parties to the legal proceedings.

3. When deciding on the measures referred to in paragraph 2 and assessing their proportionality, the competent judicial authorities shall take into account the need to ensure the right to an effective remedy and to a fair trial, the legitimate interests of the parties and, where appropriate, of third parties, and any potential harm for either of the parties, and, where appropriate, for third parties, resulting from the granting or rejection of such measures.

4. Any processing of personal data pursuant to paragraphs 1, 2 or 3 shall be carried out in accordance with Directive 95/46/EC.

11. Have courts been willing to apply the doctrine of inevitable disclosure in applicable industries?

Are there any recent cases on inevitable disclosure? **(Core Element #5)**

Information not available.

12. Is there a procedure for “burden shifting” in the context of inevitable disclosure, if the trade secret owner has made a proper showing? In what circumstances may the court compel a disclosure of information by the party accused of misappropriation? **(Core Element #5)**

The burden-of-proof shifting is outside the scope of the Directive, it is part of national procedural law.

With regard to the compelling to disclose of information, we would like to refer to the possibility for courts to grant seizure measures.

13. Are there steps in place to ensure that procedures in misappropriation cases shall not be unnecessarily complicated or costly? Are remedies expeditious? **(Core Element #6)**

Yes

Chapter III
Measures, procedures and remedies
Section 1
General provisions
Article 6
General obligation

1. Member States shall provide for the measures, procedures and remedies necessary to ensure the availability of civil redress against the unlawful acquisition, use and disclosure of trade secrets.

2. **The measures, procedures and remedies referred to in paragraph 1 shall:**

(a) be fair and equitable;

(b) **not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays;**

And

(c) be effective and dissuasive.

14. In trade secret misappropriation cases, are parties entitled to substantiate their claims and to present evidence? **(Core Element #6)**

Yes.

Article 4

Unlawful acquisition, use and disclosure of trade secrets

1. Member States shall ensure **that trade secret holders are entitled to apply for the measures, procedures and remedies provided for in this Directive in order to prevent, or obtain redress for, the unlawful acquisition, use or disclosure of their trade secret.**

Article 7

Proportionality and abuse of process

[...]

2. Member States shall ensure that competent judicial authorities may, **upon the request of the respondent**, apply appropriate measures as provided for in national law, where an application concerning the unlawful acquisition, use or disclosure of a trade secret is manifestly unfounded and the applicant is found to have initiated the legal proceedings abusively or in bad faith. Such measures may, as appropriate, include awarding damages to the respondent, imposing sanctions on the applicant or ordering the dissemination of information concerning a decision as referred to in Article 15.

15. In trade secret misappropriation cases, are decisions made in writing and without undue delay?

(Core Element #6)

Yes. See answer to question n 13.

16. If a trade secret is allegedly misappropriated in another country and the misappropriation adversely affects commerce or harms people in your region, is there standing to bring a trade secret misappropriation case? **(Core Element #7)**

Bilateral Free Trade Agreements between the EU and non-EU countries cover trade secrets. E.g. the EU-Japan Economic Partnership Agreement builds on and reinforces the commitments that both sides have taken in the World Trade Organization (WTO), and in line with the EU's own rules. The agreement sets out provisions on protection of a.o. trade secrets. See page 391 in the text of the Agreement, at the following weblink http://trade.ec.europa.eu/doclib/docs/2018/august/tradoc_157228.pdf#page=361.

Also the EU-Canada Free Trade Agreements (CETA) recognizes trade secret protection, without providing a standing. Please refer to the following weblink:

https://www.tradecommissioner.gc.ca/guides/eu_services_ue.aspx?lang=eng#a7_6

SIA in Japan

1. Are trade secrets recognized as a form of intellectual property? **(Core Element #1)**

Yes.

Intellectual Property Basic Act

(Definition)

Article 2 (1) The term "intellectual property" as used in this Act shall mean inventions, devices, new varieties of plants, designs, works and other property that is produced through creative activities by human beings (including discovered or solved laws of nature or natural phenomena that are industrially applicable), trademarks, trade names and other marks that are used to indicate goods or services in business activities, and trade secrets and other technical or business information that is useful for business activities.

<http://www.japaneselawtranslation.go.jp/law/detail/?printID=&ft=1&dn=1&co=01&ia=03&ja=04&x=11&y=19&ky=%E7%9F%A5%E7%9A%84%E8%B2%A1%E7%94%A3%E5%9F%BA%E6%9C%A C%E6%B3%95&page=15&vm=02>

2. What is the legal definition of "trade secrets"? **(Core Element #2)**

Unfair Competition Prevention Act

(Definitions)

Article 2 (6) The term "Trade Secret" as used in this Act means technical or business information useful for business activities, such as manufacturing or marketing methods, that are kept secret and that are not publicly known.

<http://www.japaneselawtranslation.go.jp/law/detail/?id=2803&vm=02&re=02>

3. What is the legal definition of "misappropriation of a trade secret"? If the definition includes the term "improper means", what is the definition of that term? **(Core Element #2)**

Unfair Competition Prevention Act

(Definitions)

Article 2 (1) The term "Unfair Competition" as used in this Act means any of the following:

(iv) the act of acquiring by theft, fraud, duress, or other wrongful means (hereinafter referred to as an "Act of Wrongful Acquisition"), or the act of using or disclosing (including disclosing in confidence to a specific person or persons; the same applies hereinafter) Trade Secrets through an Act of Wrongful Acquisition;

(v) the act of acquiring Trade Secrets with the knowledge, or through gross negligence in not knowing, that there has been an intervening Act of Wrongful Acquisition, or the act of using or disclosing Trade Secrets acquired in such a way;

(vi) the act of using or disclosing an acquired Trade Secret after having learned, or through gross negligence in not having learned subsequent to their acquisition, that there had been an intervening Act of Wrongful Acquisition;

(vii) the act of using or disclosing Trade Secrets disclosed by the company that owns them (hereinafter referred to as the "Owner") for the purpose of wrongful gain, or causing damage to the Owner;

(viii) the act of acquiring Trade Secrets with the knowledge, or with gross negligence in not knowing, that the Trade Secret's disclosure is an Act of Improper Disclosure (meaning, in the case prescribed in the preceding item, the act of disclosing Trade Secrets for the purpose prescribed in the same item, or the act of disclosing Trade Secrets in breach of a legal duty to maintain secrecy; the same applies hereinafter) or that there has been an intervening Act of Improper Disclosure with regard to the relevant Trade Secret, or the act of using or disclosing Trade Secrets acquired in such a way;

(ix) the act of using or disclosing acquired Trade Secrets after having learned, or through gross negligence in not having learned, subsequent to their acquisition, that disclosing them was an Act of Improper Disclosure or that there had been an intervening Act of Improper Disclosure with regard to the relevant Trade Secrets;

(x) the act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through a telecommunications line Things created by the acts listed in item (iv) to the preceding item (limited to acts of using a Technical Secret (meaning Trade Secrets which constitute technical information; the same applies hereinafter); hereinafter referred to as an "act of unauthorized use" in this item) (excluding an act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through a telecommunications line the Things by a person who has received the Things by transfer (limited to persons who, at the time of receiving the Things by transfer, had no knowledge that they were created by an act of unauthorized use, and such lack of knowledge was not due to gross negligence));

The definition does not include the term "improper means" but the law gives example of "wrongful means" by theft, fraud, duress.

4. Is the knowing misappropriation of a trade secret a criminal offense? **(Core Element #3)**

Yes.

5. What are possible criminal penalties for the misappropriation of a trade secret? **(Core Element #3)**

For a person, imprisonment with required labor for not more than ten years, a fine of not more than twenty million yen (thirty million yen in case of outside Japan), or both. For a company, a fine of not more than five hundred million yen (one billion yen in case of infringement outside Japan).

6. If a trade secret is misappropriated, can the owner of the trade secret bring forth a civil action? **(Core Element #4)**

Yes.

7. Are courts authorized to award damages in civil trade secret misappropriation cases? **(Core Element #4)**

Yes.

8. Are courts authorized to award injunctive relief in civil trade secret misappropriation cases? **(Core Element #4)**

Yes.

9. Do courts have the authority to issue orders to preserve relevant evidence and to compel parties to produce relevant evidence in trade secret misappropriation cases? **(Core Element #5)**

Yes.

10. In trade secret misappropriation cases, is confidential, private, proprietary, or privileged information appropriately protected when it is a part of evidence? **(Core Element #5)**

Yes.

11. Have courts been willing to apply the doctrine of inevitable disclosure in applicable industries? Are there any recent cases on inevitable disclosure? (Core Element #5)

Not applicable.

12. Is there a procedure for “burden shifting” in the context of inevitable disclosure, if the trade secret owner has made a proper showing? In what circumstances may the court compel a disclosure of information by the party accused of misappropriation? (Core Element #5)

Not applicable.

13. Are there steps in place to ensure that procedures in misappropriation cases shall not be unnecessarily complicated or costly? Are remedies expeditious? **(Core Element #6)**

No to the first question. Misappropriation cases are treated as ordinary civil cases and no specific data showing that they are relatively unnecessarily complicated or costly is found. Yes to the second question.

14. In trade secret misappropriation cases, are parties entitled to substantiate their claims and to present evidence? **(Core Element #6)**

Yes.

15. In trade secret misappropriation cases, are decisions made in writing and without undue delay? **(Core Element #6)**

Yes.

16. If a trade secret is allegedly misappropriated in another country and the misappropriation adversely affects commerce or harms people in your region, is there standing to bring a trade secret misappropriation case? **(Core Element #7)**

Yes.

1. Are trade secrets recognized as a form of intellectual property? (Core Element #1)

Yes.

2. What is the legal definition of “trade secrets”? (Core Element #2)

According to Article 2(2) of the Unfair Competition Prevention and Trade Secret Protection Act (“UCPA”), the term “trade secrets” means information, including a production method, sale method, useful technical or business information for business activities, that is not known publicly, is managed as secret, and has independent economic value.

Before the amended UCPA was enforced as of July 9, 2019, the secrecy element required an owner of information “to make reasonable efforts to maintain the secrecy” of the information. However, the amended UCPA set the bar lower for secrecy by requiring an owner of information to simply “manage the information as secret.” Due to this recent amendment, the standard for determining the secrecy element under the amended UCPA is unclear and needs to be established through interpretation of the amended UCPA by the courts in future cases.

3. What is the legal definition of “misappropriation of a trade secret”? If the definition includes the term “improper means”, what is the definition of that term? (Core Element #2)

According to Article 2(2) of the UCPA, the term "misappropriation of trade secrets" means any of the following acts:

- a. An act of acquiring trade secrets by theft, deception, coercion, or other improper means (hereinafter referred to as "act of **improper acquisition**"), or subsequently using or disclosing the trade secrets improperly acquired (including informing any specific person of the trade secret while under a duty to maintain secrecy; hereinafter the same shall apply);
- b. An act of acquiring trade secrets or using or disclosing the trade secrets improperly acquired, with knowledge of the fact that an act of improper acquisition of the trade secrets has occurred or without such knowledge due to gross negligence;
- c. An act of using or disclosing trade secrets after acquiring them, with knowledge of the fact that an act of improper acquisition of the trade secrets has occurred or without such knowledge due to gross negligence;

- d. An act of using or disclosing trade secrets to obtain improper benefits or to injure the owner of the trade secrets while under a contractual or other duty to maintain secrecy of the trade secrets;
- e. An act of acquiring trade secrets, or using or disclosing them with the knowledge of the fact that they have been disclosed in the manner provided in item (d) or that such disclosure has been involved, or without such knowledge due to gross negligence;
- f. An act of using or disclosing trade secrets after acquiring them, with the knowledge of the fact that they have been disclosed in a manner provided in item (d) or that such disclosure has been involved, or without such knowledge due to gross negligence;

While Article 2(2)(a) includes the term “improper means,” it does not expressly define the term. Instead, it enumerates examples of improper means such as by theft, deception and coercion.

4. Is the knowing misappropriation of a trade secret a criminal offense? (Core Element #3)

Yes, the intentional/knowing misappropriation of a trade secret constitutes a criminal offense under Article 18 of the UCPA.

In addition, if trade secrets at issue can also be considered as “industrial technology” or “national core technology” (i.e., technologies that are closely related to the national security or development of the national economy) under the Act on Prevention of Divulgence and Protection of Industrial Technology (“**Industrial Technology Act**”), the knowing misappropriation of such trade secrets can be criminally punished pursuant to Articles 36 and 36-2 of the Industrial Technology Act.

5. What are possible criminal penalties for the misappropriation of a trade secret? (Core Element #3)

Article 18(1) of the UCPA provides possible criminal penalties for the misappropriation of a trade secret taking place *outside of Korea* (i.e., (i) using trade secrets abroad or (ii) acquiring, using or leaking trade secrets with knowledge that such trade secrets will be used overseas) as follows: imprisonment with labor for not more than 15 years and/or³ by a fine not exceeding KRW 1.5 billion (approx. USD 1.3 million).

³ UCPA, art. 18(5) (“Imprisonment with labor and a fine referred to in paragraphs (1) and (2) may be concurrently imposed.”)

Article 18(2) of the UCPA provides possible criminal penalties for the misappropriation of a trade secret taking place *within Korea* as follows: imprisonment with labor for not more than 10 years and/or⁴ by a fine not exceeding KRW 500 million (approx. USD 430,000).

A corporation or employer can be held vicariously liable for the foregoing criminal offense committed by its employees or agents, unless such corporation or employer can prove that it has fulfilled its duty to monitor and manage its employees or agents. (UCPA, art. 19).

Criminal penalties for the misappropriation of a trade secret under the Industrial Technology Act can be more severe than that of criminal penalties under the UCPA.

6. If a trade secret is misappropriated, can the owner of the trade secret bring forth a civil action? (Core Element #4)

Yes.

7. Are courts authorized to award damages in civil trade secret misappropriation cases? (Core Element #4)

Yes. Article 11 of the UCPA provides that a person, who injures the business interest of an owner of trade secrets through an intentional or negligent misappropriation of trade secrets, shall be liable for compensation for such damage.

8. Are courts authorized to award injunctive relief in civil trade secret misappropriation cases? (Core Element #4)

Yes. Article 10 of the UCPA provides that an owner of trade secrets may request the court to award injunctive relief (e.g., prohibition or prevention of misappropriation) against any person who misappropriates or is likely to misappropriate trade secrets, if business interest of such owner is injured or is likely to be injured by such misappropriation.

9. Do courts have the authority to issue orders to preserve relevant evidence and to compel parties to produce relevant evidence in trade secret misappropriation cases? (Core Element #5)

⁴ *Id.*

Yes, however, the authority is limited in scope.

Article 14-3 of the UCPA provides that, if an owner of trade secrets (i) seeks monetary damages and (ii) files a motion requesting document production in trade secret misappropriation cases, courts may issue orders compelling the other party to produce evidence relevant to calculation of the amount of damages sustained by misappropriation of trade secrets.

However, the accused may refuse to produce evidence upon showing justifiable grounds, such as by showing that the evidence constitute a trade secret. Once the accused refuses to produce evidence upon showing justifiable grounds, courts have no other measures to compel parties to produce such evidence. In order to supplement courts' limited authority, owners of trade secrets, in practice, file a criminal complaint before filing a civil complaint so that relevant evidence can be collected from the accused through search and seizure.

10. In trade secret misappropriation cases, is confidential, private, proprietary, or privileged information appropriately protected when it is a part of evidence? (Core Element #5)

Yes.

For example, under Article 14-3 of the UCPA, while courts may issue an order compelling parties to submit evidence relevant to calculation of the amount of damages sustained by misappropriation of trade secrets, the compelled party may refuse to produce evidence upon showing that the evidence subject to court orders constitutes confidential, private or proprietary information.

Also, courts may issue a confidentiality order pursuant to Article 14-4 of the UCPA. If one of the parties to trade secret misappropriation lawsuits involving monetary damage claims proves that certain evidence must be protected as trade secrets, courts may issue a confidentiality order against anyone who had access to such trade secrets in the course of the lawsuit. A person subject to a confidentiality order must not use the trade secrets other than for the lawsuit and must not disclose such trade secrets to any third party. Any person who violates the court's confidentiality order can be criminally punished (i.e., imprisonment with labor for not more than 5 years and/or by a fine not exceeding KRW 50 million (approx. USD 43,000)).

In addition to the UCPA, the Korean Civil Procedure Act provide the following to protect confidential or private information when such information is a part of evidence:

- (i) Any defamatory or self-incriminatory information (Civil Procedure Act, art. 314);
- (ii) Any information subject to confidentiality obligation imposed on certain professions (e.g., an attorney may refuse to produce information, if such information is subject to his or her confidentiality obligation owed to clients) (Civil Procedure Act, arts. 315 and 344(1)(1)); or
- (iii) Private information that are prepared exclusively for a person who prepared and owns such information (e.g., a private research note or diary) (Civil Procedure Act, art. 344(2)).

If information ordered to be produced by courts is partly subject to justifiable grounds warranting the owner to refuse its production as identified above, courts may issue an order directing parties to submit only the part of information that are not subject to justifiable grounds.

11. Have courts been willing to apply the doctrine of inevitable disclosure in applicable industries? Are there any recent cases on inevitable disclosure? (Core Element #5)

Korean law does not have a recognized legal doctrine called "inevitable disclosure." However, Article 10-1 of the Korea Unfair Competition Prevention Act ("UCPA") provides that a person who possesses trade secrets, may file a request, with the court, for prohibition or prevention of infringement against any person who infringes or is likely to infringe trade secrets, if the business interests of the person who possesses the trade secrets is damaged or is likely to be damaged by such infringement. In 2003, the Korean Supreme Court held that, where it would be impossible to protect the trade secret of the plaintiff unless a former employee was prohibited from engaging in trade secret-related work in his new firm, Article 10-1 of the UCPA provides a legal basis for an injunction to prohibit that former employee from engaging in that work at his new firm.

12. Is there a procedure for "burden shifting" in the context of inevitable disclosure, if the trade secret owner has made a proper showing? In what circumstances may the court compel a disclosure of information by the party accused of misappropriation? (Core Element #5)

As noted above, Korean trade secrets law does not have a recognized legal doctrine called "inevitable disclosure." Generally, under Korean patent law (Article 126-2), an accused infringer who denies infringement, despite a prima facie showing by the plaintiff that the accused infringer is using a claimed product/process, must provide details regarding the product or process the accused infringer is actually using. If the accused infringer refuses to provide such details without adequate justification, the court may presume that the accused infringer actually committed the infringing activity as claimed by the plaintiff.

13. Are there steps in place to ensure that procedures in misappropriation cases shall not be unnecessarily complicated or costly? Are remedies expeditious? (Core Element #6)

Regarding procedures, similar to other civil or criminal cases, there are no special procedure in place in order to ensure expeditiousness and cost efficiency in cases involving misappropriation of trade secret claims.

Regarding remedies, cases involving misappropriation of trade secret claims do not grant remedies in a particularly more expeditious manner than other civil or criminal cases. However, owners of trade secrets may file a preliminary injunction proceeding, where a remedy (i.e., a preliminary injunction) is granted in a more expeditious manner (approx. 4-8 months) than a main trade secret lawsuits (i.e., where a permanent injunction and/or monetary damages is sought).

14. In trade secret misappropriation cases, are parties entitled to substantiate their claims and to present evidence? (Core Element #6)

Yes.

15. In trade secret misappropriation cases, are decisions made in writing and without undue delay? (Core Element #6)

Yes, similar to other civil or criminal cases, decisions in trade secret misappropriation cases are made in writing but not all decision may be publicly available.

Also, similar to other civil or criminal cases, courts usually grant a decision without undue delay and particularly expeditiously if it is evident from the record and evidence that an accused misappropriated trade secrets.

16. If a trade secret is allegedly misappropriated in another country and the misappropriation adversely affects commerce or harms people in your region, is there standing to bring a trade secret misappropriation civil case? (Core Element #7)

Yes, owners of trade secrets have standing to bring a civil lawsuit with respect to trade secrets misappropriated outside of Korea.

Also, owners of trade secrets have standing to file a criminal complaint due to extraterritorial application of the Korean Criminal Code and misappropriation of trade secrets that occurred outside of Korea can be more severely punished than the domestic misappropriation cases.

SIA in US

1. Are trade secrets recognized as a form of intellectual property? (**Core Element #1**)

Yes, trade secrets are recognized as a form of intellectual property under both federal and state law. The Defend Trade Secrets Act of 2016 provides a federal cause of action for trade secret misappropriation, and federal law has long recognized trade secret misappropriation under criminal law

Additionally, 48 states have adopted their own statutes to allow owners of misappropriated trade secrets to seek relief (Finnegan). While these are primarily modeled off the Uniform Trade Secrets Act of 1979, there are some variations between the state laws (WIPO).

The information below generally addresses trade secrets under U.S. federal law, both civil and criminal.

2. What is the legal definition of “trade secrets”? (**Core Element #2**)

Trade secrets are defined federally as:

18 U.S.C. 1839(3)

“all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if—

(A) the owner thereof has taken reasonable measures to keep such information secret; and

(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information;”

3. What is the legal definition of “misappropriation of a trade secret”? If the definition includes the term “improper means”, what is the definition of that term? (**Core Element #2**)

“Misappropriation” is defined federally as:

18 U.S.C. 1839(5)

“(A) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(B) disclosure or use of a trade secret of another without express or implied consent by a person who-

(i) used improper means to acquire knowledge of the trade secret;

(ii) at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was-

(I) derived from or through a person who had used improper means to acquire the trade secret;

(II) acquired under circumstances giving rise to a duty to maintain the secrecy of the trade secret or limit the use of the trade secret; or

- (III) derived from or through a person who owed a duty to the person seeking relief to maintain the secrecy of the trade secret or limit the use of the trade secret; or
- (iii) before a material change of the position of the person, knew or had reason to know that-
 - (I) the trade secret was a trade secret; and
 - (II) knowledge of the trade secret had been acquired by accident or mistake;”

“Improper means” is defined federally as:

18 U.S.C. 1839(6)

“(A) includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means; and

(B) does not include reverse engineering, independent derivation, or any other lawful means of acquisition;”

4. Is the knowing misappropriation of a trade secret a criminal offense? (**Core Element #3**)

Yes. Under federal law, a defendant can face criminal charges of a fine or imprisonment if the defendant “knowingly... conspires with one or more other persons to commit any offense described in paragraphs (1) through (3), and one or more of such persons do any act to effect the object of the conspiracy” (18 U.S.C. 1832(a)(5)).

5. What are possible criminal penalties for the misappropriation of a trade secret? (**Core Element #3**)

Under federal law, any person who steals trade secrets may be “fined under this title or imprisoned not more than 10 years, or both” (18 U.S.C. 1832(a)).

Federal criminal penalties to organizations, however, are limited to fines of “not more than the greater of \$5,000,000 or 3 times the value of the stolen trade secret to the organization, including expenses for research and design and other costs of reproducing the trade secret that the organization has thereby avoided” (18 U.S.C. 1832(b)).

6. If a trade secret is misappropriated, can the owner of the trade secret bring forth a civil action? (**Core Element #4**)

Yes, the Defend Trade Secrets Act of 2016 provided a federal cause of action for trade secret misappropriation. As stated in the law: “An owner of a trade secret that is misappropriated may bring a civil action under this subsection if the trade secret is related to a product or service used in, or intended for use in, interstate or foreign commerce” (18 U.S.C. 1836). A trade secret owner can also bring a civil action in state court.

7. Are courts authorized to award damages in civil trade secret misappropriation cases? (**Core Element #4**)

Yes, federal courts may award pursuant to 18 U.S.C. 1836(b)(3)(B):

“(i)

(I) damages for actual loss caused by the misappropriation of the trade secret; and

(II) damages for any unjust enrichment caused by the misappropriation of the trade secret that is not addressed in computing damages for actual loss; or

(ii) in lieu of damages measured by any other methods, the damages caused by the misappropriation measured by imposition of liability for a reasonable royalty for the misappropriator's unauthorized disclosure or use of the trade secret;”

Additionally, “if the trade secret is willfully and maliciously misappropriated, award exemplary damages in an amount not more than 2 times the amount of the damages awarded under subparagraph (B)” (18 U.S.C. 1836(b)(3)(C)). And, “if a claim of the misappropriation is made in bad faith, which may be established by circumstantial evidence, a motion to terminate an injunction is made or opposed in bad faith, or the trade secret was willfully and maliciously misappropriated, award reasonable attorney's fees to the prevailing party” (18 U.S.C. 1836(b)(3)(D)).

8. Are courts authorized to award injunctive relief in civil trade secret misappropriation cases? (**Core Element #4**)

Yes, federal courts may issue an injunction in order

18 U.S.C. 1836(b)(3)(A)

“to prevent any actual or threatened misappropriation described in paragraph (1) on such terms as the court deems reasonable, provided the order does not-

(I) prevent a person from entering into an employment relationship, and that conditions placed on such employment shall be based on evidence of threatened misappropriation and not merely on the information the person knows; or

(II) otherwise conflict with an applicable State law prohibiting restraints on the practice of a lawful profession, trade, or business;”

9. Do courts have the authority to issue orders to preserve relevant evidence and to compel parties to produce relevant evidence in trade secret misappropriation cases? (**Core Element #5**)

Yes, but courts in different jurisdictions vary significantly in their willingness to require that plaintiffs disclose the trade secret in question before compelling evidence by the defendant. For example, California and Massachusetts have enacted statutes requiring early disclosure of the trade secrets in question in order to compel discovery in civil disputes (Cal. Code Civ. Proc. § 2019.210; Mass. Gen. Laws Ann. 93 § 42D). Federal courts generally follow the civil procedural rules of the states in which they are based; however, even the U.S. District Courts for the Northern and Southern District of California have split over whether to apply CCP § 2019.210 in federal civil disputes (Kirkland).

10. In trade secret misappropriation cases, is confidential, private, proprietary, or privileged information appropriately protected when it is a part of evidence? (**Core Element #5**)

Yes, in both civil and criminal cases, federal courts may not “authorize or direct the disclosure of any information the owner asserts to be a trade secret unless the court allows the owner the opportunity to file a

submission under seal that describes the interest of the owner in keeping the information confidential” (18 U.S.C. 1835(b)).

11. Have courts been willing to apply the doctrine of inevitable disclosure in applicable industries? Are there any recent cases on inevitable disclosure? (**Core Element #5**)

Yes. Federal courts justify the inevitable disclosure doctrine under the Uniform Trade Secrets Act, which says that in civil disputes courts may grant an injunction to “prevent any actual or *threatened* misappropriation [emphasis added]” (18 U.S.C. 1835(b)(3)(A)(i)). However, the law also stresses that merely possessing information, absent threat of misappropriation, is not grounds for conditioning employment (18 U.S.C. 1836(b)(3)(A)(i)(I)).

In a 2010 case, a federal appeals court stated that “a person may be enjoined from engaging in employment or certain aspects of his employment where that employment is likely to result in the disclosure of information, held secret by a former employer, of which the employee gained knowledge as a result of his former employment situation” (Bimbo Bakeries USA, Inc. v. Botticella, 613 F.3d 102 (3d Cir. 2010)). More recently, this doctrine was applied in a 2018 lawsuit in a Pennsylvania federal district court (Jazz Pharmaceuticals, Inc. v. Synchrony Group, LLC, 343 F. Supp. 3d 434, 446 (E.D. Pa. 2018)).

12. Is there a procedure for “burden shifting” in the context of inevitable disclosure, if the trade secret owner has made a proper showing? In what circumstances may the court compel a disclosure of information by the party accused of misappropriation? (**Core Element #5**)

See response to question (10) regarding the circumstances under which federal courts may compel evidence from defendants in both civil and criminal cases.

Federal courts have not mapped out a procedure for burden shifting in the specific context of inevitable disclosure by employees; however, decades of case law provide such a process for trade secrets generally. In a 2016 case, a district court in Colorado stated that if the defendant is “able to prove harm associated with disclosure, then the burden shifts back to Plaintiffs to establish that the [trade secrets in question] are not only relevant, but necessary, to prove their case” (Pertile v. Gen. Motors, LLC, Civil Action No. 1:15-cv-00518-WJM-NYW *6 (D. Colo. Mar. 17, 2016)). (also see, Centurion Industries, Inc. v. Warren Steurer & Associates, 665 F.2d 323, 325 (10th Cir. 1981))

13. Are there steps in place to ensure that procedures in misappropriation cases shall not be unnecessarily complicated or costly? Are remedies expeditious? (**Core Element #6**)

Civil cases in federal court are governed by the U.S. Federal Rules of Civil Procedure, which provide that all rules “should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding” (Fed. R. Civ. P. 1). (Separate rules apply to federal criminal cases.) As a practical matter, litigation can be costly and complicated depending on the circumstances of the case.

With regard to trade secrets, the rules provide that federal courts may require “that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way” in order to protect parties from “undue burden or expense” (Fed. R. Civ. P. 26(c)(1)(G)). As

described in question (12), however, if the defendant establishes that disclosure unduly harmful, the court must weigh this against the plaintiff's claim that the disclosure is necessary.

The civil remedies federal judges may award are limited to the damages and unjust enrichment caused by the misappropriations. Details about this and certain circumstances where these limits may be raised are noted in question (7). Limitations to injunctive remedies are laid out in question (11).

14. In trade secret misappropriation cases, are parties entitled to substantiate their claims and to present evidence? (**Core Element #6**)

Under certain circumstances, courts may grant summary judgment on claims of trade secret misappropriation in civil cases and thereby deny trials to present evidence. For example, in 2017 a district judge in Massachusetts allowed a defendant's motion for summary judgment because the plaintiff could not prove any actual damages caused by the trade secret misappropriation (Repat, Inc. v. Indiwhip, LLC et al., No. 16-12146-RGS *22 (D. Mass. Dec. 14, 2017)). In another instance, a district court in Texas granted a defendant's motion for summary judgment because the plaintiff failed to clearly mark that the information in question was secret (Hoover Panel Systems, Inc. v. Hat Contract, Inc., Civil Action No. 3:17-CV-3283-C, (D. Tex. 2019)); however, this finding was reversed on appeal (Hoover Panel Systems, Inc. v. HAT Contract, Incorp, No. 19-10650 (5th Cir. 2020)).

15. In trade secret misappropriation cases, are decisions made in writing and without undue delay? (**Core Element #6**)

Yes, under the Federal Rules of Civil Procedure, a judge's "findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court," but a "[j]udgment must be entered under Rule 58" (Fed. R. Civ. P. 52(a)(1)). In practice, of course, federal civil litigation can result in time consuming delays.

16. If a trade secret is allegedly misappropriated in another country and the misappropriation adversely affects commerce or harms people in your region, is there standing to bring a trade secret misappropriation case? (**Core Element #7**)

Yes, economic espionage is a federal criminal offense punishable by up to a \$5,000,000, up to 15 years imprisonment, or both. Espionage here includes actual trade secret misappropriation, attempted misappropriation, and conspiracy to misappropriate (18 U.S.C. 1831). Economic espionage must benefit "any foreign government, foreign instrumentality, or foreign agent."

Furthermore, trade secret owners have standing to sue in federal court over misappropriation "related to a product or service used in or intended for use in interstate or *foreign* commerce (emphasis added)" (18 U.S.C. 1832(a)).

Federal courts have generally considered domestic trade secret law to be applicable for misappropriations committed abroad. In 1982, a federal appellate court determined that misappropriations of both trade secrets and patents have "fictional situs" at the owner's residence (Horne v. Adolph Coors Co., 684 F.2d 255, 259 U.S.P.Q. 15 (3d Cir. 1982)).

Further Questions on Evidence Collection Process

Questions	TSIA	JSIA	CSIA	KSIA	SIA	ESIA
Use civil cases to seek evidence of misappropriation (e.g., evidence preservation orders, authorization for magistrates to conduct on-premise searches, judicial orders to provide information) – Y/N	Y	Y	Y	Y	Y	ESIA is not able to reply to the proposed questions with yes/no. With regard to the first 4 questions, as outlined in the survey replies, most of the evidence gathering is left to national (i.e. Member States’ law). ESIA does not have information or overview, to what extent the procedures outlined in questions are implemented in individual member states. This is outside ESIA’s scope.
Use civil cases – use of unfavorable presumption against un-cooperative defendants – Y/N	Y	Y	Y	Y	N	
Use of criminal enforcement to gather evidence of misappropriation – Y/N	Y	Y	Y	Y	Y	

Annex 2

6th GAMS Workshop- Agenda for Proposal (In-person)

Time	Meeting
From 09h00	Welcome and Introduction by GAMS Chair
to 09h30	WSC Guidelines & Best Practices (Regional Support TF Chair)
Analysis and Assessment of Regional Support Programs against WSC/GAMS Regional Support Guidelines & Best Practices	
From 09h30 to 11h45	Regional Support Session: Presentations on answers to questions from GAMS, WSC, and JSTC (Phase 1+2):
	<ul style="list-style-type: none"> • European Union (Presentation, Q&A) • Japan (Presentation, Q&A) • Chinese Taipei (Presentation, Q&A) • China (Presentation, Q&A) • United States (Presentation, Q&A) • Korea (Presentation, Q&A)
From 12h00 to 13h30	Presentation on different forms of assistance by experts (e.g. new OECD report and experts identified by other regions)
1 hour	Lunch
From 14h00 to 15h30	Equity Funds Best Practice Discussion
30 Minutes	Summary & Conclusions

6th GAMS Workshop- Agenda for Proposal (Virtual)

DAY 1: GAMS Workshop on Regional Support Programs		
7-9:00 am US EST 1-3:00 pm EU 7-9:00 pm CN/CT 8-10:00 pm JP/KR		
20 mins	<ul style="list-style-type: none"> • Welcome and Introduction by GAMS Chair • WSC Guidelines & Best Practices (Regional Support TF Chair) 	KR GAMS Chair
1h	<p style="text-align: center;">Regional Support Session:</p> <p>Presentations on answers to questions from GAMS, WSC, and JSTC (Phase 1+2):</p> <ul style="list-style-type: none"> • European Union (Presentation, Q&A) • Japan (Presentation, Q&A) • Chinese Taipei (Presentation, Q&A) • China (Presentation, Q&A) • United States (Presentation, Q&A) • Korea (Presentation, Q&A) 	GAMS Delegates
30 mins	Q&A	GAMS Delegates
10 mins	Conclusions	KR GAMS Chair
DAY 2: GAMS Workshop on Regional Support Programs		
7-9:00 am US EST 1-3:00 pm EU 7-9:00 pm CN/CT 8-10:00 pm JP/KR		
10 mins	<ul style="list-style-type: none"> • Welcome 	KR GAMS Chair

50 mins	Presentation on different forms of assistance by experts (e.g. new OECD report and experts identified by other regions)	Experts
50 mins	Equity Funds Best Practice Discussion	Experts
10 mins	Conclusions	KR GAMS Chair

Annex 3

Agenda Proposal for 2021 Encryption Workshop

9:00-9:05	Welcome and Introduction	GAMS Chair (Korea)
9:05-9:15	Report from WSC: Encryption Principles and Activities	Chair of WSC Encryption Task Force
9:15-12:15	<p><i>Continuation of the ongoing GAMS review of draft and existing policies and measures, with a view to the full implementation of the WSC Principles</i></p> <ul style="list-style-type: none">- Presentation by each GAMS delegation (5 min.) followed by- Analysis and assessment by GAMS against the WSC Encryption Principles <ul style="list-style-type: none">• European Union• United States• China• Chinese Taipei• Japan• Korea	GAMS delegates WSC Representatives
12:15-12:30	<i>Break</i>	
12:30-13:00	Conclusion	GAMS Chair

Annex 4



Counterfeit Semiconductors and the Online Environment

World Semiconductor Council

June 2, 2021

Introduction

The online environment as a commercial marketplace has revolutionized consumption and provided huge opportunities for businesses to grow their reach to consumers internationally. In parallel, however, the online environment also has significantly increased the counterfeiter's ability to expand their illegal activities and reach greater numbers of potential unsuspecting customers. Counterfeits covering all legitimate products including semiconductors are available through many online intermediaries such as legitimate websites, e-commerce market platforms and via social media networks and apps. The dynamic internet space has become particularly vulnerable to counterfeiters. The era of COVID-19 has also accelerated counterfeiting. The combination of the online economy and globalization has created a perfect environment for counterfeiters to function, allowing them to sell all goods directly worldwide with virtually no barriers to entry, low cost of set up, easier distribution and much fewer risks of being caught.

As is well documented in the World Semiconductor Council (WSC) White Paper, "Winning the Battle Against Counterfeit Semiconductor Products," counterfeit semiconductors pose major threats to the health, safety, and security of everyone that relies on electronics.^{5, 6} Due to the dangers posed by counterfeits, the WSC has an anti-counterfeiting task force working to promote anti-counterfeiting activities, including training and sharing relevant information with enforcement authorities, raising awareness, and encouraging purchases from authorized sources. This paper builds on these awareness raising activities.

Current Status of Counterfeit Semiconductors & Online

The semiconductor industry is impacted by the availability and offering for purchase of counterfeit or trademark infringing semiconductors online. Most counterfeit semiconductors are increasingly offered via various internet platforms and online sources. Counterfeiters can now advertise products with relative ease and anonymity. Value chain actors looking for genuine products can become victim to counterfeit websites or counterfeit advertisements that use partly

⁵ <http://www.semiconductorcouncil.org/wp-content/uploads/2018/06/WSC-Anti-Counterfeiting-White-Paper-May-2018-Update.pdf>

⁶ White Paper cites counterfeit case examples destined for, automated external defibrillators, IV drip machines, automotive and high-speed train braking systems, airbag deployment systems and airport runway landing lights.

legitimate information like accurate product pictures to mislead potential customers. The typical online channels for offering semiconductor counterfeits for purchase are:

- E-Commerce platforms
- Online marketplaces
- Online advertisements linking to specific illegitimate sources
- Rogue web shops

The online counterfeiting industry business model, which largely relies on online platforms and tens of thousands of stand-alone websites, continues to be a dynamic environment. The model has also in some areas partly shifted to facilitating sales links through social media platforms, instant messaging tools and apps. There are also indications that trademark infringing offerings on the big online platforms may be decreasing in recent times and have shifted from the large well known B2B & B2C platforms to less well-known platforms.

Regulatory Developments

The nature of the internet trade in counterfeit products has made combating counterfeiting and enforcing IPR online effectively a very challenging global issue for all stakeholders. The combination of consumer reach and anonymity of selling online also creates a challenging environment for enforcement authorities. Regulatory authorities have published various watch lists outlining physical and online markets that have been identified as facilitating counterfeiting and piracy.⁷ Authorities now are trying to increase the responsibilities of those intermediaries and e-commerce platforms active online. In 2019, China implemented legislation (*E-Commerce Law*) that holds e-commerce platforms jointly accountable for the sale of counterfeit products with the parties marketing such counterfeits on their sites. This new legislation requires online retailers to act quickly once a breach has been reported. In 2020, the European Union proposed draft legislation (*Digital Services Act*) which includes provisions detailing the ‘Know Your Business Customer principle’ (KYBC), whereby online marketplaces will be required to verify the identity of sellers. The proposal includes new obligations for very large platforms to take risk-based measures to prevent misuse of their systems and rules for removing illegal services and counterfeit goods and rules to ensure that sellers of counterfeits can be detected more quickly.

Mitigation Practices

The implementation of strict procurement practices for customers remains the best way to protect against counterfeit semiconductors that are offered online finding their way into the overall electronics chain. Original Component Manufacturers (OCM) sell their semiconductor

⁷ https://trade.ec.europa.eu/doclib/docs/2020/december/tradoc_159183.pdf

[https://ustr.gov/sites/default/files/files/Press/Releases/2020%20Review%20of%20Notorious%20Markets%20for%20Counterfeiting%20and%20Piracy%20\(final\).pdf](https://ustr.gov/sites/default/files/files/Press/Releases/2020%20Review%20of%20Notorious%20Markets%20for%20Counterfeiting%20and%20Piracy%20(final).pdf)

products in two ways: directly from the original manufacturer and through their authorized distributors. Original Equipment Manufacturers (OEMs) and their Contract Manufacturers (CMs) that procure components exclusively through authorized sources, including authorized aftermarket distributors/manufacturers, will also eliminate the need to conduct costly, time-consuming, and error-prone authenticity testing. The authorized distributors for a given OCM can be easily found on the OCM's website.

OCMs should also perform structured internet searches for evidence of IPR infringing sale offers. Additionally, OCMs should make regular use of the procedures now offered by e-commerce platforms and online marketplaces to de-list or take down IP infringing listings and sales offers.

3rd party service providers are active in offering support to semiconductor companies for monitoring and enforcement of rights of semiconductor trademark owners related to counterfeit semiconductor offerings via online platforms.

Conclusion

The online economy has created a perfect environment for the anonymous sale of counterfeit semiconductors directly worldwide. These online counterfeits pose major threats to the health, safety, and security of everyone that relies on electronics. Governments are trying to respond by publishing watch lists of markets that facilitate counterfeits, requiring online retailers to act quickly to reports of counterfeits, and considering a 'Know Your Business Customer principle' (KYBC) for online marketplaces to verify the identity of sellers. OCMs should consider having their own company program in place to address the potential sale of counterfeit semiconductors online and should use the appropriate mitigation tools to assist authorities and platforms to detect IPR infringing offers. OEM manufacturers can do their part to avoid counterfeits by purchasing directly from the original semiconductor manufacturer and through their authorized sources.

Annex 5

8 June 2021

FOR IMMEDIATE RELEASE

WSC supports World Anti-Counterfeiting Day

On 8 June 2021, the Global Anti-Counterfeiting Group (GACG) Network is celebrating the 23rd edition of the World Anti-Counterfeiting Day (WACD). The World Semiconductor Council (WSC) strongly supports the WACD and believes it is a great initiative to highlight the anti-counterfeit measures being taken across industries. The World Anti-Counterfeiting Day enables the organisation of various events focusing on particular problems of counterfeiting & piracy under the umbrella of an international outreach campaign.

In 2012, the WSC has established an Anti-Counterfeiting Task Force amongst the semiconductor industry associations of China, Chinese Taipei, Europe, Japan, Korea, and the United States, with the aim of promoting activities to fight counterfeiting, incl. training, awareness raising, and encouraging purchases from authorised sources. The WSC works closely with governments and authorities on policies and regulations, and encourages domestic, bilateral and multilateral counter-measures and enforcement activities. Such enhanced anti-counterfeiting cooperation activities at the industry level alongside government agencies, customs and law enforcement agencies is instrumental to identify and stop parties involved in manufacturing or trafficking in counterfeit goods.

According to the Organisation for Economic Co-operation and Development (OECD), international trade in counterfeit goods represented up to 3.3% of world trade, or up to USD 509 billion⁸. In view of these staggering numbers, the WSC is convinced by the importance of an initiative such as the World Anti-Counterfeiting Day, especially as counterfeit products are expected to circulate rapidly to meet current high demand, and believes it to be a great way of highlighting the common cause of fighting counterfeiting – industry sectors alongside well-informed customers, and national enforcement authorities.

⁸ Source: Organisation for Economic Co-operation and Development (OECD)–European Union Intellectual Property Office (EU IPO) (2019), *Trends in Trade in Counterfeit and Pirated Goods*.

<https://euipo.europa.eu/ohimportal/en/web/observatory/trends-in-trade-in-counterfeit-and-pirated-goods>

About WSC

The World Semiconductor Council is a cooperative body of the world's leading semiconductor industry associations – consisting of the Semiconductor Industry Associations in China, Chinese Taipei, Europe, Japan, Korea and the United States – that meets annually to address issues of global concern to the semiconductor industry. The WSC also meets annually with the governments and authorities of the six regions to convey industry recommendations. The WSC is dedicated to the principle that markets should be open and competitive and works to encourage policies and regulations that fuel innovation, propel business and drive international competition in order to maintain a thriving global semiconductor industry.

More information on the WSC is available at <http://www.semiconductorcouncil.org>

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