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ESIA position on Non-Preferential Rules of Origin in the framework of the Union Customs Code

Introduction

The European Council Conclusions of the 2nd of March 2012 highlight that micro- and nano-electronics including semiconductors, as a *“Key Enabling Technology, are of a systemic importance for the innovativeness of industry and the whole economy”*. In all aspects of our connected lives, from the digital world to the green economy, semiconductors act as the building blocks of products and services, which enable innovative solutions in the home, the office and in society in general.

On the occasion of the current discussions in the EU regarding the Union Customs Code (UCC) Recast Regulation, the European Semiconductor Industry Association (ESIA) would like to take the opportunity to reiterate its position on non-preferential rules of origin for semiconductors. The ESIA position is in line with the consensus achieved within the World Semiconductor Council (WSC)¹. ESIA and the WSC believe that, due to the specific characteristics of semiconductor products, origin should be defined by manufacturing processes and not based on Value add (VA) or Change of Tariff Heading (CTH) criteria.

IMCO report on the proposal for a Regulation laying down the Union Customs Code (recast)

ESIA perceives a real risk that when establishing the basis for deciding on a particular origin for goods, the UCC recast does not consider adequately the specific characteristics of semiconductor industry manufacturing and products. This opinion is based on the amendments to the Commission’s proposal which were recently approved by the Internal Market and Consumer Protection Committee (IMCO) of the European Parliament².

Semiconductor manufacturing happens in a multitude of process steps that are combined and reiterated in millions of combinations and different orders depending on the specification and desired

¹ WSC = World Semiconductor Council, which represents the world-wide six leading regions of Semiconductor Industry (Europe, USA, China, Chinese Taipei, South-Korea and Japan) and brings together through its member associations more than 95% of the world-wide trade in semiconductors.

² *Draft report on the proposal for a regulation of the European Parliament and of the Council laying down the Union Customs Code (recast)*, Internal Market Committee, of European Parliament, December 2012.

product properties. The problem is magnified by the fact that almost all semiconductor products are multinational composites. A consequence of this complex manufacturing process is that when calculating costs, the individual cost per working station and process step is not available, so that, for example, a value-add base criterion for determining origin is not workable for semiconductors.

Additionally, the proposed provisions could lead to a lack of clarity at European level with regard to the criteria for conferring origin to goods. Such circumstance could, in turn, increase the risk of legal uncertainty, diverging interpretation of the rules by Member States and lack of harmonization of the rules within the EU.

In particular:

- Amendment n. 81 in the IMCO Committee report re-introduces the concept of *“the last, substantial, economically justified processing or working [in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture]”* instead of the simpler solution proposed by the European Commission, based on the *“last substantial transformation”*.

Moreover, the “justification” to amendment n. 81 states: *“The basis for deciding on a particular origin for goods was for decades the ‘last substantial processing or working’ of a product in a particular country. **Criteria for this decision are either a change in the tariff heading or the value added.** This approach has always been successful in customs matters and is easy to apply in practice. It should therefore be maintained.*

- Amendment n. 85 appears to limit the empowerment of the European Commission to produce further detailed provisions, only to the “proof of origin”. If the amendment is approved, implementing provisions on origin conferring criteria based on “last substantial processing or working” would be missing, and this may potentially lead to a fragmented implementation within EU Member States.

Origin of semiconductor products should be defined by manufacturing processes

As already expressed in the statement by the WSC and its Recommendations to GAMS³ in May 2009 as well as in past letters to the European Commission⁴ the position of the European semiconductor industry on how origin should be defined for semiconductor products is as follows:

In view of the characteristics of semiconductor products rules of origin should be defined by manufacturing processes (namely “diffusion” or “assembly”) rather than by a Value Add (VA) or Change of tariff heading (CTH) basis.

Indeed, adoption of non-preferential rules based on VA criteria or CTH would be detrimental for the European semiconductor industry and would have anti-competitive effects.

³ GAMS = Government/Authorities Meeting on Semiconductors; represents Governments and Authorities from the six leading Semiconductor regions.

⁴ E.g. ESIA letters to the European Commission DG TAXUD dated 27th of May, 2010 and 14th of October 2011.

A value-added approach greatly complicates origin determinations because it requires highly difficult tracking of production costs in clusters where different iterative steps are performed for the different layers using materials like photo-resist and gases which will not be part of the end-product. In the semiconductor industry, the problem is magnified by the fact that almost all products are multinational composites and production of different lots is performed in variable sites located overall the globe. Therefore, to comply with possible value-added based rules of origin companies would have to set up a parallel complete restructuring of bookkeeping and calculations system, which would require huge investments with no guarantee that this system would actually serve the purpose, given the complexity of semiconductor manufacturing.

With regard to a CTH-based rule, and specifically in the context of headings 8541 and 8542 in the Harmonised System (HS), we observe that there is no different HS code between “wafer⁵” and finished product since the introduction of the HS 2007. Therefore, CTH cannot be used. There are substantial processing requirements that cannot be met. Even if distinct HS codes would be introduced in the HS with the aim to distinguish between wafer and finished products, the implementation of these additional HS codes would lead to burdensome master-data connection to comply with such a CTH rule in a complex production process with a lot of interim production stages.

Conclusion

The European semiconductor industry strongly encourages the EU (European Commission, European Parliament and the Member States) to adequately consider the specific characteristics of the semiconductor manufacturing process, also in the context of the drafting of the UCC recast. The amendments approved in December 2012 by the Parliament IMCO Committee to the UCC Recast proposal increase the risk of lack of uniform implementation in the EU and could potentially lead to the introduction of VA or CTH based criteria for determining rules of origin for semiconductors, which would be unworkable for the semiconductor industry. In view of the characteristics of semiconductor products rules of origin should be defined by manufacturing processes (diffusion or assembly) and not defined on a value added (VA) or Change of tariff heading (CTH) basis. Such specific list rules based on manufacturing operations are today already partially implemented in existing EU regulations and preferential treaties.

About ESIA

The **European Semiconductor Industry Association (ESIA)** is the voice of the Semiconductor Industry of Europe. Its mission is to represent, promote and defend the common interests of the Europe based semiconductor industry towards the European Institutions and stakeholders in order to ensure a sustainable business environment and foster its global competitiveness. As a provider of key enabling technologies the industry creates innovative solutions for industrial development, contributing to economic growth and responding to major societal challenges. Being ranked as the most R&D intensive sector by the European Commission, the European Semi-conductor ecosystem supports approx. 200.000 jobs directly and up to 800.000 induced jobs in systems, applications and services in Europe. Overall, micro- and nano-electronics enable the generation of at least 10% of GDP in Europe and the world.

⁵ Wafers = thin disks of silicon or other semiconductor material on which electronic circuits are placed during the semiconductor manufacturing process.