

# **Antidumping White Paper - May 2003**

"FAIR AND EFFECTIVE ANTIDUMPING MEASURES IN THE SEMICONDUCTOR INDUSTRY" Principles and Recommendations to Governments/Authorities submitted by the World Semiconductor Council (WSC)

Nice, May 15th 2003

## **1. PREAMBLE**

WSC Members have significant experience with antidumping issues in various fora and contexts, including in national legal proceedings, in government and industry agreements, and in the WTO. Antidumping issues have been discussed under the auspices of the WSC as well, including in the WSC Charter itself. Recognizing the continued and evolving importance of antidumping issues for semiconductors, the WSC, at its meeting in Carlsbad on April 17, 1998, agreed to establish a JSTC Antidumping Task Force and charged the JSTC with the following mandate:

- To assess the causes of dumping, and
- To develop possible recommendations to governments for fair and effective antidumping measures worldwide in the semiconductor industry.

Based upon the JSTC recommendations, the WSC agrees on the following basic principles:

- Injurious dumping, as addressed in national and regional laws that implement GATT Article VI and the WTO AD Agreement, is a harmful and unfair trade practice which should be condemned, and no company should benefit from injurious dumping to improve its competitive position.
- As evidenced by the data collection agreements concluded by and between JEITA, ESIA, KSIA and SIA (or their predecessor associations), the industry recognizes the importance of avoiding injurious dumping and the expeditious and effective enforcement of national antidumping laws.
- As evidenced by the 1996 U.S.-Japan "Joint Statement" concerning Semiconductors, our respective governments also recognize the importance of avoiding injurious dumping and the expeditious and effective enforcement of national antidumping laws consistent with GATT Article VI and the WTO AD Agreement.
- Looking forward, it is important that antidumping laws not be misused by any government / authority, particularly those of developing countries.

Semiconductor products and production have unique characteristics. These include:

- Semiconductors are manufactured and traded globally;
- Semiconductors have short product life cycles;
- Semiconductors require significant R&D and capital investment; and
- Semiconductors are easily shipped at relatively low cost.

The WSC's attention is focused uniquely on semiconductors, without prejudice to whether its recommendations to governments/authorities should be related to semiconductors only or of general applicability.

The WSC has recognized that the Doha Ministerial Declaration charged WTO Members with negotiating antidumping issues "aimed at clarifying and improving disciplines" under GATT Article VI and the WTO AD Agreement "while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives." The Doha Ministerial Declaration included in this mandate negotiations concerning "disciplines on trade distorting practices." The WSC views the WTO Ministerial Declaration and the WSC's mandate to the JSTC as establishing compatible objectives.

On the basis of the foregoing, the experience of all WSC Members, the concurrent activities by WTO Members, and the WSC mandate issued at Carlsbad, the Task Force, composed of JSTC member company representatives, assisted by counsel, has achieved a consensus position on the following principles and recommendations relating to fair and effective antidumping measures affecting the semiconductor industry which the WSC now recommends to the respective governments / authorities.

## **2. PRINCIPLES AND RECOMMENDATIONS TO GOVERNMENTS / AUTHORITIES**

- 2.1 Market-based competition. As stated in the WSC Charter, the competitiveness of semiconductor producers, and not trade-distorting practices, should be the principal determinant of success in the marketplace.
- 2.2 Unique characteristics of the semiconductor industry. Antidumping investigations by antidumping authorities should take into account the unique characteristics of semiconductor products and production, as referred to in the preamble.
- 2.3 Conformity with WTO rights and obligations. Antidumping authorities of WTO Members, as signatories to the Marrakesh Agreement Establishing the World Trade Organization, should ensure the conformity of their own domestic laws, regulations and administrative procedures with their rights and obligations under the WTO, as provided for in the Antidumping Agreement.
- 2.4 No impairment of sovereignty. A fundamental principle of the WTO/GATT system is that national/regional authorities retain the ability to determine the form and content of their own legislation, so long as that legislation is consistent with WTO rules. This principle should be maintained.
- 2.5 Fairness and Effectiveness.
  - 2.5.1 Antidumping rules should be improved and clarified so as to enhance the principle of fairness, taking into account the specifics of the semiconductor industry as provided for in this paper.