

**Document on the “Report of the SECURE Working Group” (SP0269E1) submitted by
Argentina, Brazil, Cuba, Ecuador, People’s Republic of China and Uruguay**

1. The « Report of the SECURE Working Group » (document SP0269E1) departs from the member-driven nature that should guide the process of the SECURE Working Group. The document is not the result of discussions within the SECURE Working Group neither reflects any agreed decision of its Members. In this sense, it should not constitute the basis for the discussion of agenda item VI.

Preparation of the document

2. The document was produced without previous consultation to the Members of the Organization and therefore, at best, it reflects the positions and intentions of the Secretariat regarding the actions to be taken with respect to the document « SECURE Standards ». This very fact is by itself a cause of concern since the Secretariat should remain neutral, in particular when addressing politically sensitive issues such as the one in the agenda of the SECURE Working Group. Such precedents undermine the reputation of the Organization as an entity of a technical nature.

« Current position » of the SECURE Working Group (paragraph 5)

3. The current state of play within the SECURE Working Group is misconstrued by the « Report of the SECURE Working Group ». It is noteworthy that the « Report of the SECURE Working Group » does not have a single reference to the fact that the Group has not yet agreed on its Terms of Reference.

4. On the « SECURE Standards », despite the fact that Members have not had sufficient time to discuss the outstanding proposals, while other Members have signalled their intention to present further proposals in the coming meetings, the « Report » argues that « the SECURE Working Group has reached consensus on an updated version of the Provisional SECURE Standards, except for three Standards found in Section I of the document (...) ».

5. The « Report » assumes that Members of the SECURE Working Group have decided to submit the outstanding issues for political decision, instead of pursuing its attempt to reach negotiated outcomes. The Secretariat provides no basis for such an assumption, which, as a matter of fact, runs counter to the positions expressed by many countries during the SECURE Working Group meetings.

6. According to a considerable number of interventions made during the meetings of the SECURE Working Group, Members have expressed the view that the document is not ripe for approval until such time as the concerns of all participants are accommodated into the « SECURE Standards », a situation that is far from representing the current position.

7. In light of the above, the contention that there would be « consensus » on a part of the document, whereas a « lack of consensus » would persist with respect to other parts, is not supported by the current state of the discussions within the SECURE Working Group, let alone by any decision to this effect by the Group Members.

Proposals for decision by the Policy Commission not requested by the SECURE Working Group (paragraphs 5 and 6)

8. The « Report of the SECURE Working Group » submits to the Policy Commission requests for action that have not been decided by the SECURE Working Group. In fact, the Group has not had enough time to discuss its future work and this situation should not be construed as meaning that the Working Group has decided to « seek guidance/endorsement » by the Policy Commission as to the proposals that should remain on the table. The Working Group needs to further discuss these proposals on the technical level, as well as other proposals that might be submitted in the next meetings.

Meaning of the footnote to the SECURE Standards (paragraph 6)

9. The « Report » states that the footnote (previously « Standard 0 ») to the SECURE Standards « explains the term 'standard' », which amounts to a misinterpretation of what was agreed by the Members in the SECURE Working Group. More than an explanation for the term « standard », the footnote is an interpretative note to the implementation of the entire instrument.

Legal opinion (paragraph 7)

10. The « Report » presents an attachment with a note by an « external legal adviser ». Leaving aside the discussion about the legal quality and appropriateness of the reasoning in the opinion, the note raises concerns on the procedural as well as on the substantive levels.

11. The « Report » reveals that the request of the opinion was made by « an e-mail » sent by the Secretariat and with the clear objective of seeking to refute the arguments that support the position of some member States. Nevertheless, there is no decision by any WCO body to the effect that a legal opinion should be sought on the issue of the SECURE Working Group. Nor have the Members been notified at any moment that the Secretariat was asking for said opinion.

12. The measure taken by the Secretariat raises serious concerns because it implies that the issues at stake in the framework of the SECURE Working Group are limited to and can be settled by legal debates, which is not the case in view of the high political sensitiveness of the issue.