



POLICY COMMISSION

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REPORT OF SECURE WORKING GROUP

(Item VI on the Agenda)

Introduction

1. After many years of IPR enforcement work and experience at the WCO, the SECURE Working Group was established by the Council in June 2007. It was formed as the successor to the existing WCO Working Groups dealing with IPR issues, with the aim of rationalizing the WCO's work in IPR matters, as well as maintaining and further developing the Provisional SECURE Standards approved by the Council in June 2007 (see Council Minutes, Doc. SC0082, paragraph 139). The SECURE Working Group acts under the immediate direction of the Policy Commission, to which it reports on its work after having advised the Permanent Technical Committee and the Enforcement Committee, as appropriate.
2. The First SECURE Working Group Meeting to further develop the Provisional SECURE Standards took place on 18 and 19 October 2007 (see SECURE Working Group Report - Doc. LS0004E). The results of that Meeting were reported to the Policy Commission at its December 2007 session. The Policy Commission took note of the SECURE Working Group Report (see Doc. SP0264, paragraphs 131 to 156).
3. The Second and Third SECURE Working Group Meetings to further develop the Provisional SECURE Standards took place from 11 to 13 February 2008 and on 24 and 25 April 2008. The report of the February meeting and the draft report of the April meeting are appended hereto as Annexes III and IV respectively.

Current position

4. At its First, Second and Third Meetings, the SECURE Working Group further refined the SECURE document on voluntary standards for IPR enforcement by Customs under national legislation. The current draft of the Provisional SECURE Standards is appended hereto at Annex I.
5. This shows that the SECURE Working Group has reached consensus on an updated version of the Provisional SECURE Standards, except for three Standards

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found in Section I of the document, entitled "IPR Legislative and Enforcement Regime Development" :

- A. **Standard 1** - Two alternative texts are proposed. Both texts are bracketed and the SECURE Working Group seeks the endorsement of one of the bracketed proposals by the Policy Commission.

Standard 1

[Customs Administrations should have the authority to enforce IPR according to national legislation against goods which are deemed to be under Customs control whenever such goods are suspected of infringing IPR.]

Wherever national law permits these enforcement activities are to apply to :

- *Import;*
- *Export;*
- *Transit;*
- *Warehouses;*
- *Transshipment;*
- *Free zones;*
- *Duty free shops]*

or

[Customs Administrations should have the authority to enforce IPR according to national law against goods which are imported and deemed to be under Customs control whenever such goods are suspected to be pirated or counterfeited.]

- B. **Standard 3** - After the first sentence on which there is consensus, there is a second proposed sentence - in square brackets - that deals with imports hazardous to public health and safety or imports that incorporate intellectual property rights granted in contradiction of legislation governing access to biodiversity or traditional knowledge. The SECURE Working Group seeks guidance from the Policy Commission concerning possible inclusion of this language.

Standard 3

Customs Administrations should have clear and transparent procedures for all aspects of intellectual property rights enforcement.

[The application of IPR laws with regard to de minimis imports shall not apply to goods which are hazardous to public health and safety such as counterfeit medicines, some motor vehicle parts like brake pads etc., nor to goods that incorporate IPRs granted in contradiction with the legislation governing access to biodiversity or traditional knowledge.]

- C. **Standard 13** - A new Standard on biodiversity or traditional knowledge has been proposed but it has been included in square brackets as there was no consensus within the SECURE Working Group to include such a new Standard.

[Standard 13

Customs Administrations should have the legal authority to act, pursuant to an order by competent authorities, to suspend the release of goods that incorporate IPRs that infringe the legislation governing access to biodiversity or traditional knowledge.]

6. The last “non consensus” item in the SECURE standards is a phrase in the footnote that explains the term “standards” :

** The standards are voluntary and do not prejudice the flexibilities provided for by existing international agreements to which the WCO members are parties, including the WTO TRIPs Agreement [and the WIPO Development Agenda].*

The SECURE Working Group seeks guidance from the Policy Commission on inclusion or exclusion of the bracketed phrase - “and the WIPO Development Agenda”.

Related to this is a text maintained in brackets in paragraph 3 of the Introduction to the Provisional SECURE Standards document :

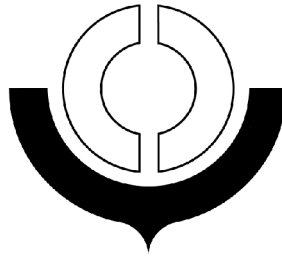
[Customs Administrations’ work in the intellectual property domain should comply with the WIPO Development Agenda.]

7. In view of concerns about WCO activities in the area of IPR enforcement raised by some WCO Members, the Secretariat has sought and received a legal opinion on :
 (i) whether, in drafting the Provisional SECURE Standards, the WCO has complied with its terms of reference; and (ii) whether these standards are compatible with the WTO TRIPS Agreement and with the WTO’s role in this area. This legal opinion is set out at Annex II hereto. The legal opinion concludes that :
- the adoption of standards of this kind falls entirely within the Organization’s terms of reference;
 - the legality of these standards is in no way affected by the existence of the TRIPS Agreement or by the WTO’s competence in this area; but
 - on the contrary, the SECURE standards appear to constitute a useful complement to the 1994 TRIPS Agreement.

Conclusion

8. The Provisional SECURE Standards document is a living document which WCO Members expect will evolve and improve over time as Customs administrations gain more experience and develop better procedures for fighting IPR violations.
9. The Policy Commission is requested to examine the Provisional Standards Employed by Customs for Uniform Rights Enforcement (SECURE) as set out at Annex I hereto, particularly the texts in square brackets, and if appropriate to recommend them to the Council for adoption.

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WORLD CUSTOMS ORGANIZATION

DRAFT

SECURE

**Provisional Standards Employed by Customs for
Uniform Rights Enforcement (SECURE)**

INTRODUCTION

1. Violations of intellectual property rights (IPR) are a serious and growing threat to the health, safety and economic interests of the entire world. Counterfeit and pirated goods that infringe legitimate intellectual property rights are produced, transported, distributed or sold in every country throughout the world. The globalization of counterfeiting and piracy poses a very real and growing threat to both developed and developing countries. Counterfeiting and piracy are serious threats to consumer health and safety, tax revenue, and innovation that is essential to economic development. In terms of products which expose the public to serious health and safety risks, there have been cases of counterfeit products that were manufactured from inferior, inactive or dangerous ingredients or auto and aircraft parts which do not meet safety standards. These examples are unfortunately not exhaustive as many fake products may have dangerous characteristics. The theft of intellectual property rights deprives governments of tax revenues that could be used for programmes to benefit their citizens, but instead fund the illegal activities of organized criminal groups to the detriment of society. Countering IPR infringements is a priority in various international organisations.
2. With their critical role in controlling and administering the cross-border movement of goods in international trade, Customs administrations are perfectly positioned and have an important role in interdicting and disrupting the illicit trade in goods that infringe intellectual property rights.
3. In order to better co-ordinate Customs worldwide efforts to interdict and disrupt the illicit trade in IPR-infringing goods, the World Customs Organization (WCO) has developed provisional standards to be employed by Customs for uniform rights enforcement (SECURE), to promote improved border enforcement of intellectual property rights. The WCO is offering provisional standards, procedures and best practices that will prove effective in a co-ordinated global effort to suppress the illicit trade in goods that violate intellectual property rights. The provisions in the SECURE document are offered as voluntary standards which WCO Members may choose to adopt or adapt, either in whole or in part, in accordance with the legislation, policies, practices and legal systems in force at the national or international level. [Customs Administrations' work in the intellectual property domain should comply with the WIPO Development Agenda]. As counterfeiting and piracy are a growing and ever-evolving problem, SECURE will be a living document that will change and evolve to meet the counterfeiting and piracy challenges of the future. In the fight against counterfeiting and piracy, the WCO and its Member Customs administrations will make use of and improve existing WCO tools that address IPR issues, such as the WCO Model IPR Legislation, WCO Risk Management Guidelines, the IPR Diagnostic Survey and the WCO IPR e-learning module. The border control provisions of the WCO's Revised Kyoto Convention on Customs procedures, the border control standards of the WCO SAFE Framework and the WCO Integrated Border Management Guidelines will be used to strengthen our anti-counterfeiting efforts. The Customs Enforcement Network (CEN) and its communication tools will be used for the timely transmission of information to fight the illicit trade in counterfeit goods.

4. The WCO will co-operate and co-ordinate its IPR enforcement efforts with Interpol, WIPO, OECD, WHO and other regional or international organizations having IPR responsibilities. WCO Member Customs administrations should co-ordinate their IPR enforcement efforts with any national governmental organizations having IPR responsibilities. The WCO and its Member Customs administrations should interface with rights holders and private entities engaged in the fight against counterfeiting.
5. There are four key activities identified in SECURE: (I) IPR Legislative and Enforcement Regime Development; (II) Cooperation with the private sector (II) Risk Analysis and Intelligence Sharing; (IV) Capacity Building for IPR Enforcement and International Co-operation. There are targets and objectives related to each of the three areas contained in the document. These targets and objectives will be pursued in consultation with WCO Members, intellectual property rights owners, and other public and private sector entities engaged in the fight against counterfeiting and piracy. The three pillars on which these provisional IPR enforcement standards rest are :
 - Customs-to-Customs co-operation.
 - Customs/rights holders partnership.
 - Customs interface with other public and private entities engaged in the fight against counterfeiting and piracy.
6. By promoting SECURE, the WCO will be supporting Customs IPR enforcement standards and best practices that have been recognized as effective by WCO Member Customs administrations, rights holders, and anti-counterfeiting entities which are essential to the development of effective worldwide anti-counterfeiting and piracy enforcement programmes. The WCO and its Members recognize that the SECURE document is a living document that will be revised, amended and updated to stay abreast of the ever evolving counterfeiting and piracy problem while, at the same time, providing Customs administrations with new best practices to fight against counterfeiting and piracy.
7. The WCO will promote SECURE to requesting Members by offering capacity building, and by monitoring and quantifying the results associated with implementation of these initiatives.
8. The Secretary General has established a SECURE Working Group to supersede all other IPR-related groups at the WCO, and those affiliated with the WCO. The SECURE Working Group is comprised of all interested WCO Members, members of the trade, trade representative organizations, rights holders and other appropriate observers. It is recognized that Member Customs administrations and the trade participants may need to meet separately, as well as in joint sessions. The SECURE Working Group will work with and through other WCO committees, as appropriate, before presenting its products and recommendations to the Policy Commission.

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SECTION I. IPR LEGISLATIVE AND ENFORCEMENT REGIME DEVELOPMENT

9. Given the increase in IPR fraud, Customs authorities should extend their control prerogatives beyond goods entering their countries to include goods leaving or transiting their national territory. It is equally important that Customs authorities be empowered to detain, seize, forfeit and dispose of goods that infringe intellectual property rights. These Customs prerogatives should be exercised at exportation, at importation, in transit (when health, safety or other risks are concerned), in free zones, and more generally whenever goods are under Customs supervision.
10. Effective and efficient Customs IPR enforcement action necessarily depends upon a strong foundation of national laws and regulations. The WCO will assist Members seeking to implement and/or improve legal provisions supporting their IPR enforcement efforts.
11. In order to meet these objectives the WCO Secretariat will :
 - Maintain and update the WCO's Model IPR Legislation.
 - Develop new legislative models that address the evolving IPR problem and give Customs the legal authority to act against IPR violations whenever infringing goods are under Customs supervision.

STANDARDS*

Standard 1

[Customs Administrations should have the authority to enforce IPR according to national legislation against goods which are deemed to be under Customs control whenever such goods are suspected of infringing IPR.]

Wherever national law permits these enforcement activities are to apply to :

- Import;
- Export;
- Transit;
- Warehouses;
- Transshipment;
- Free zones;
- Duty free shops.]

[Customs Administrations should have the authority to enforce IPR according to national law against goods which are imported and deemed to be under customs control whenever such goods are suspected of piracy and counterfeiting.]

Standard 2

National legislation may extend the scope of Customs IPR legislation from trademark and copyright to other intellectual property rights.

Standard 3

Customs Administrations should have clear and transparent procedures for all aspects of intellectual property rights enforcement.

[The application of IPR laws with regard to de minimis imports shall not apply to goods which are hazardous to public health and safety such as counterfeit medicines, some motor vehicles parts like brake pads etc., nor to goods that incorporate IPRs granted in contradiction with the legislation governing access to biodiversity or traditional knowledge.]

Standard 4

With respect to requests from rights holders for Customs intervention, Customs Administrations should develop standardized application forms requesting information consisting of basic, standard data at a cost not exceeding the costs of the processing of the application. Customs Administrations should take measures to safeguard sensitive information contained in such applications. Customs Administrations should keep applications open and active for a period of not less than one year. The initial period should be extended by simple notification, including evidence of the continuing right and prima facie evidence of infringement.

* The standards are voluntary and do not prejudice the flexibilities provided for by existing international agreements to which the WCO Members are parties, including the WTO TRIPs Agreement [and the WIPO Development Agenda].

Standard 5

Customs Administrations should designate a central office or contact point to facilitate the lodging and handling of the requests for intervention.

Standard 6

Where national legislation provides for de minimis exemptions from IPR enforcement against infringing goods imported by travelling passengers, quantities of exempted goods should be as low as possible consistent with available resources.

Standard 7

Customs Administrations should have legal authority, in accordance with relevant international agreements, to act, either at the request of the rights holder, or upon their own initiative, to detain or suspend the release of goods in respect of which they have acquired prima facie evidence that an intellectual property right is being infringed while protecting the legal rights of all relevant economic operators.

Standard 8

Customs Administrations should adopt procedures enabling them to provide to rights holders free of charge samples of suspicious goods to determine the counterfeit nature of those samples. The rights holder making that request should bear the responsibility and the related costs for those samples. The liability for those samples then passes to the rights holder.

Standard 9

Customs administrations should have legal authority, where applicable and appropriate, to transmit to the rights holder information regarding the detention or the suspension of release of the goods.

Standard 10

Customs Administrations should establish measures to ensure the detention or seizure of goods infringing intellectual property rights. Customs Administrations should ensure transparency in the procedures for detention and seizure.

When authorized to dispose of goods that infringe intellectual property rights, Customs Administrations should establish measures to ensure their destruction under official supervision. In exceptional circumstances, if disposal other than destruction is being undertaken, Customs Administrations should establish procedures to ensure the detention or seizure of goods infringing intellectual property rights. Customs Administrations should ensure transparency in the procedures for detention and seizure.

When authorized to destroy goods that infringe intellectual property rights, Customs Administrations should establish procedures to ensure that such destruction occurs under official supervision. If national law permits the disposal of infringing goods by means other than destruction, and if such disposal is authorized, Customs Administrations should establish procedures to preclude injury to rights holders or members of the public.

Standard 11

Customs Administrations should have the authority to detain, seize, move or transfer, where appropriate and applicable, IPR infringing goods and should avoid placing unreasonable burdens of storage and destruction fees on rights holders.

Standard 12

Member Customs Administrations which are empowered to make infringement determinations over seized IPR infringing goods should have the legal authority to impose deterrent penalties against entities knowingly involved in the importation/exportation of goods under Customs control which violate IPR laws.

Standard 13

Customs Administrations should have the legal authority to act, pursuant to an order by competent authorities, to suspend the release of goods that incorporate IPRs that infringe the legislation governing access to biodiversity or traditional knowledge.]

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SECTION II. CO-OPERATION WITH THE PRIVATE SECTOR

12. Co-operation between the private sector and Customs is fundamental in order to conduct the fight against counterfeiting and piracy.
13. Access to Customs regulations by the private sector, in particular by small enterprises, as well as their obligation to respect Customs rules are two main goals to be achieved to ensure effective co-operation.
14. In this context, the flow of information between the private sector and Customs should be improved.

Standard 1

The WCO and Customs Administrations should cooperate with the private sector to achieve better IPR enforcement.

Standard 2

Customs Administrations should adopt procedures to enable that rights holders to maintain strict compliance with Customs IPR enforcement procedures.

Standard 3

Customs Administrations should adopt measures to ensure that rights holders transmit timely and accurate information to Customs relating to the intellectual property rights for which they are seeking protection. Customs Administrations should also transmit to rights holders in a timely manner the information necessary to validate their rights.

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SECTION III. RISK ANALYSIS AND INTELLIGENCE SHARING

15. As WCO Member Customs administrations face increasing resource constraints on the one hand and expanding trade and security responsibilities on the other, the development of effective procedures and strategies to combat IPR violations is crucial. Customs administrations should apply enforcement systems based on international best practices that use risk analysis and risk management to identify goods which pose potential risks.
16. The WCO will encourage Member administrations to establish risk-based targeting measures and to promote intelligence-sharing programmes among WCO Members, optimally, using the Customs Enforcement Network (CEN).
17. In order to meet these objectives the WCO will seek to :
 - Develop guidelines and standards regarding IPR targeting criteria for all modes of transport;
 - Develop guidelines and risk analysis techniques for enforcement of hard goods infringing IPR that are sold over the internet and imported;
 - Review and revise the WCO Risk Indicators Handbook on a regular basis to maintain its effectiveness;
 - Develop procedures for computer-based IPR risk assessment;
 - Develop procedures for post-entry audits for IPR violations;
 - Compile and share analytical and statistical data on IPR violations. The WCO considers it vital to rely on the CEN system for data collection and information transmission in pursuing its efforts to fight counterfeiting and piracy.

Standard 1

Customs Administrations should create and implement targeting criteria, in regard to their competences and legislation, that specifically combat counterfeiting and piracy in response to :

- National illicit trafficking patterns;
- Regional illicit trafficking patterns;
- International illicit trafficking patterns.

Standard 2

Customs Administrations should utilize computer-based risk assessment and targeting tools to more effectively detect and control shipments posing a risk, thus facilitating Customs clearance of low-risk shipments.

Standard 3

Customs Administrations should implement techniques for the selection, control and detection of counterfeited goods moving by air, sea or land.

Standard 4

Customs Administrations should target the shipments to control by utilizing summary declarations and transport documents prior to Customs clearance.

Standard 5

Customs Administrations should consider setting up specialized teams for combating counterfeiting and piracy.

Standard 6

Customs Administrations should utilize any possible instruments designed to encourage increased co-operation among WCO Members and the Regional Intelligence Liaison Offices (RILOs) covering the six WCO Regions.

Standard 7

Subject to any limitations and obligations imposed by legislation or policy, Customs Administrations and the WCO, including RILOs, should exchange relevant information about IPR. Some methods of exchanging information will be given in the action plan.

Standard 8

Customs Administrations should use tools such as the WCO IPR e-learning programme and WCO anti-counterfeiting and piracy risk indicator handbooks to focus on risk analysis aimed at combating counterfeiting and piracy.

SUBJECTS TO BE TAKEN INTO ACCOUNT IN THE ACTION PLAN

(Former indications of standard 7)

- Set up information exchange networks among IPR experts from the various RILO units and national governments;
- Utilize national contact points responsible for collating IPR information and directing controls at national level;
- Establish procedures through which to collect information from the private sector as to product identification and information.

INTERNET AND COUNTERFEITING

- The importation of counterfeited goods through the postal systems or express couriers has considerably increased with the development of the Internet. Elaboration of a technical guideline would be useful to help Customs Administration facing this new kind of fraud.

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**SECTION IV. CAPACITY BUILDING FOR IPR ENFORCEMENT AND
INTERNATIONAL CO-OPERATION**

18. Recognizing that capacity building is necessary for most developing countries to effectively carry out enforcement against IPR infringements, Member developing countries may submit a letter of intent requesting assistance with capacity building, the details of which shall be set forth in the accompanying SECURE IPR Action Plan.

Standard 1

Customs Administrations should enhance co-operation with other Customs Administrations, utilizing relevant programmes and tools, particularly those developed by the WCO.

Standard 2

The WCO and Customs Administrations should co-operate with the private sector to improve capacity building activities for better IPR enforcement.

Standard 3

Customs Administrations should collaborate with the WCO in developing training programmes that address the needs of both rights holders and Members.

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FOLLOW-UP FOR IMPLEMENTATION

19. In order to be fully effective, SECURE, which could be applied in modular form over time to take account of each Member's legal and economic circumstances, must be part of a broader Action Plan (reflected in the WCO Strategic Plan for 2007/2008 to 2009/2010 (Doc. SP0248) and the Annex hereto). This Action Plan could include provisions addressing :

- Implementation of new technical measures and promotion of existing WCO Model Legislation and best practices of WCO Members via diagnostic and monitoring missions within the context of a capacity building programme.
- Organization of targeted technical seminars on medicaments, consumer goods, spare parts, etc., as requested by Members.
- Organization of awareness-raising meetings on IPR fraud for decision-makers in co-operation with other inter-governmental organizations (Interpol, WIPO, WHO).
- Fostering closer co-operation with the OECD to improve statistical data in order to better quantify/qualify the scope of the IPR problem.
- Production of Customs statistical reports containing technical analyses of contemporary trends.
- Organization of future Global Congress sessions on the combating of counterfeiting and piracy.
- WCO Secretariat rationalization and management of the various working groups addressing IPR issues.
- Organization of co-ordinated control operations at regional and international levels.

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SUMMARY NOTE BY EXTERNAL LEGAL ADVISER ON THE WCO'S COMPETENCE
TO ADOPT THE PROVISIONAL STANDARDS EMPLOYED BY CUSTOMS
FOR UNIFORM RIGHTS ENFORCEMENT

1. In an e-mail dated 7 May 2008 the Secretariat of the World Customs Organization asked me, firstly, whether in drafting the provisional Standards Employed by Customs for Uniform Rights Enforcement (SECURE), the WCO had complied with its terms of reference, and secondly, whether these standards were compatible with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement, Annex 1C to the Agreement establishing the World Trade Organization), and with the WTO's role in this area.

2. Following a brief examination, it appears to me that :

- the adoption of standards of this kind falls entirely within the Organization's terms of reference;
- the legality of these standards is in no way affected by the existence of the TRIPS Agreement or by the WTO's competence in this area; but
- on the contrary, the SECURE standards appear to constitute a useful complement to the 1994 Agreement.

I shall deal briefly with each of these three points.

1. The adoption of SECURE falls entirely within the WCO's terms of reference

3. The Organization's terms of reference are fixed by the Convention establishing a Customs Co-operation Council of 5 December 1950, the Preamble to which identifies the following general purposes for the Organization :

"... secure [for the Governments signatory to the present Convention] the highest degree of harmony and uniformity in their Customs systems and especially (...) study the problems inherent in the development and improvement of Customs technique and Customs legislation in connection therewith,"

"... promote co-operation between Governments in these matters, bearing in mind the economic and technical factors involved therein".

4. More specifically, Article III indicates that the functions of the Council shall be :

" (a) to study all questions relating to co-operation in Customs matters which the Contracting Parties agree to promote in conformity with the general purposes of the present Convention;

(b) to examine the technical aspects, as well as the economic factors related thereto, of Customs systems with a view to proposing to its Members practical means of attaining the highest possible degree of harmony and uniformity;

....

(f) to ensure the circulation of information regarding Customs regulations and procedures;

(g) on its own initiative or on request, to furnish to interested Governments information or advice on Customs matters within the general purposes of the present Convention and to make recommendations thereon;

(h) to co-operate with other inter-governmental organizations as regards matters within its competence.”.

5. The assertion that the “SECURE” standards fall entirely within these terms of reference would seem difficult to contradict.

6. As is explained in the introduction to the SECURE document :

“In order to better co-ordinate Customs worldwide efforts to interdict and disrupt the illicit trade in IPR-infringing goods, the World Customs Organization (WCO) has developed provisional standards to be employed by Customs for uniform rights enforcement (SECURE), to promote improved border enforcement of intellectual property rights. The WCO is offering provisional standards, procedures and best practices that will prove effective in a co-ordinated global effort to suppress the illicit trade in goods that violate intellectual property rights”.

7. This is clearly a “question relating to co-operation in Customs matters”, on which recommendations can be made as a practical means of securing “the highest degree of harmony and uniformity”, in accordance with the general purposes of the Organization.

8. In any event this is not, by any means, the first initiative taken by the WCO in the field of intellectual property rights (IPR) infringements. As is also pointed out in paragraph 3 of the introduction to the SECURE document, these standards build on “existing WCO tools that address IPR issues, such as the WCO Model IPR Legislation, WCO Risk Management Guidelines, the IPR Diagnostic Survey and the WCO IPR e-learning module” (see also Standard 8 in Section III). And the SECURE Working Group, for its part, will “supersede all other IPR-related groups at the WCO, and those affiliated with the WCO” (paragraph 8).

9. This demonstrates that the WCO’s competence in IPR matters has long been recognized, to the extent that such competence is related to the Organization’s primary areas of competence in Customs matters - which it most definitely is in the case at issue, bearing in mind that :

- the standards in Section I deal essentially with the powers of national Customs administrations, the extension of the scope of Members’ Customs legislation, and Customs procedures;
- the Section II standards relate, in particular, to criteria to be adopted and implemented by Customs administrations to combat IPR infringements; and
- the Section III standards concern co-operation, on the part of the Organization and Customs administrations, with other players in this field.

There is nothing here which falls outside the statutory sphere of competence of the WCO.

2. The legality of the SECURE standards is not affected by the existence of the TRIPS Agreement or by the WTO's competence in this area

10. It is now beyond dispute that every international organization enjoys “a large measure of international personality”, in the words used by the International Court of Justice in its Advisory Opinion of 11 April 1949 on the so-called “Bernadotte Case” (*Reparation for Injuries Suffered in the Service of the United Nations*, I.C.J. Reports, 1949, p. 179). This personality manifests itself in terms of the principle of speciality (under which international organizations are invested only with the powers needed to achieve the purposes assigned to them by the Parties to their constituent instruments – see I.C.J. Advisory Opinion of 8 July 1996, *Legality of the use by a state of nuclear weapons in armed conflict*, I.C.J. Reports, 1996, p. 78) and the doctrine of implied powers, under which they have all the powers necessary for the realization of those purposes, even if those powers have not been assigned to them specifically (see aforementioned Advisory Opinion of 1949, p. 182, and Advisory Opinion of 20 July 1962, *Certain expenses of the United Nations*, I.C.J. Reports, 1962, p. 151).

11. The consequence of this is that each organization must perform, autonomously, the functions assigned to it by its constituent instrument, without the powers of one encroaching upon those of another, except in cases where the constituent instrument of a newly-created organization states specifically that the organization must defer to the powers or outcomes of a pre-existing organization which shares the same spheres of activity either in whole (a situation which could occur in the case of a global and a regional organization), or in part. This is the case with the WTO, as Article 2, paragraph 2 of the TRIPS Agreement is careful to protect the Parties' prior obligations in respect of several conventions administered by WIPO (see also Article 9). However where there are no provisions to the contrary, as is the case here (i.e., “WTO law” makes no reference to the WCO and “WCO law” (which predates it) makes no reference to the WTO¹), the legality of a measure adopted by an organization can be assessed only in relation to its own constituent instrument, without it being necessary for the organization to concern itself with the risk of “competing competences” which may arise where several organizations have spheres of activity which overlap.

12. In fact it is not unusual for two or more organizations to be competent in the same areas. In the area of human rights, for example, this is the case even within the United Nations system, where UNESCO, the ILO and the UN itself are assigned competences (which, in the case of the UN and UNESCO, are general) by their respective constituent instruments. The same applies in the field of intellectual property : although this is the sphere of competence of WIPO “par excellence”, that did not prevent the adoption of the TRIPS Agreement in Marrakesh in 1994.

¹ In this connection I am, nevertheless, surprised that Standard 2 in Section III of the SECURE document makes specific reference to “WIPO, Interpol, OECD, WHO” as being among the organizations with which there must be co-ordination in order “to increase visibility of IPR enforcement and to devise the most effective anti-counterfeiting and piracy solutions”, but does not mention the WTO even though its competence in this area is undisputed.

13. This solution is all the more logical given that the membership of the international organizations concerned may be different (not all of the Members of the WTO are WCO Members, and vice-versa), and that in accordance with the principle of the relative effect of treaties (see Article 34 of the Vienna Convention on the Law of Treaties of 23 May 1969), a treaty cannot have effects for States which are not parties to it (“A treaty does not create either obligations or rights for a third State without its consent”).

14. What this boils down to is that even if the SECURE standards conflicted with the rules laid down by the TRIPS Agreement - and as far as I can see they do not (see section 3 below), this would have no impact on the legality of the WCO’s activity in this field. Just as the WCO is not subordinate to the WTO, by the same token the standards it adopts do not, from the legal standpoint, have to comply with those of the Marrakesh Agreements (whether GATT or TRIPS). In the event of any incompatibility, if the same Member States were bound by standards emanating from both sources, then the appropriate solution would be to apply the general principles of law relating to the application of incompatible international provisions : *lex posterior priori derogat* (the more recent rule prevails over the earlier rule) and *specialia generalibus derogant* (the more specific rule takes precedence over the general rule) (see P. Daillier and A. Pellet, *Droit international public* (Nguyen Quoc Dinh), L.G.D.J., Paris, 7th Ed., 2002, pp. 266-277).

3. The SECURE standards appear to constitute a useful complement to the TRIPS Agreement

15. In any event, as I pointed out earlier, the SECURE standards certainly do not seem to be incompatible with the TRIPS Agreement; on the contrary they appear to complement it well, responding to the “appeal for implementation” which is made in the Agreement. I note in particular that under the terms of Article 69 of the Agreement :

“Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact points in their administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.”.

The SECURE standards appear to meet this objective perfectly.

16. What is more, from the legal standpoint I would add that even if the “SECURE” standards were incompatible with the TRIPS Agreement in one respect or another, they do not have the same legal status : they are recommended standards that Members are invited to apply (and they can make a voluntary commitment to do so), but they are not obliged to do so - whereas the TRIPS Agreement is a treaty established in due form, which is legally binding on the States and Customs Unions which are Parties to it.

17. This leads me to respond as follows to the questions posed to me :

- (i) in drafting the provisional Standards Employed by Customs for Uniform Rights Enforcement (SECURE), the WCO has complied with its terms of reference; and
- (ii) these standards are completely compatible with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement, Annex 1C to the Agreement establishing the World Trade Organization) and with the World Trade Organization's role in this area.

Done at Geneva on 1 June 2008,
to serve and avail for all legal intents and purposes,



Professor at the University of Paris West, Nanterre-La
Défense; Member and former Chairman of the United
Nations International Law Commission; Associate
Member of the I.D.I. (Institute of International Law)

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WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES

Established in 1952 as the Customs Co-operation Council
Créée en 1952 sous le nom de Conseil de coopération douanière

SECURE WORKING GROUP

LS0007E1b

-
2nd Meeting
-
11-13 February 2008
-

Brussels, 17 March 2008.

REPORT

SECOND MEETING OF THE SECURE WORKING GROUP

BRUSSELS, 11-13 FEBRUARY 2008

1. The Second Meeting of the SECURE Working Group was held at WCO Headquarters from 11 to 13 February, 2008. The list of participants who registered is set out at Annex I hereto.
2. The plenary session was opened by the Secretary General of the WCO, Mr. Michel Danet, who welcomed all the participants. The Secretary General highlighted the urgency of dealing with counterfeiting and piracy around the world and remarked upon the importance of the work carried out by the SECURE Working Group. He also applauded the successful conclusion of the Fourth Global Congress on Combating Counterfeiting and Piracy, which took place in Dubai (UAE), hosted by Dubai Customs, from 3 to 5 February 2008, as well as the primary role played by the WCO as lead co-organizer of the 2008 event. He stated that the global situation concerning the protection of IPR is clearly worsening. The international legal framework set up to enforce IPR regulations currently in use seems to be obsolete and not responding anymore to the need for effective and up-to-date protection. The Secretary General said this is the reason that the demand for assistance in this area is on the increase. He reminded the delegates of the most important initiatives undertaken by other international organizations also engaged in the fight against the phenomenon (the Interpol database on IPR, the WHO's "Impact" project, the proposed modifications to the Universal Postal Convention by including provisions prohibiting the postal traffic of IPR infringing goods) and reaffirmed that SECURE represents the response that Member Customs administrations are going to put into practice in order to better co-ordinate Customs worldwide efforts to stem the illicit trade in IPR infringing goods (see Annex II).

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3. The Director, Compliance and Facilitation, Mr. Michael Schmitz, informed the meeting that Mr. Armand Nanga, Director General of the Senegalese Customs administration and Chairman of the SECURE Working Group was not able to chair the session so the meeting was to elect a Vice-Chair for the occasion. The WCO Members unanimously elected Mr. Uri Bruck, Minister Counsellor - Customs and Taxation- of the Mission of Israel to the E.U., as Vice-Chair for the second SECURE Working Group meeting. Mr. Bruck thanked the Members for their show of confidence and accepted the Vice-Chairmanship.
4. The Vice-Chairman asked the meeting to adopt the First Secure Working Group Report (item II of the draft agenda).
5. Some representatives from the Private Sector as well as the delegate of the Netherlands expressed their concern about the fact that they did not have much time to examine the document in advance. The Director, Compliance and Facilitation, then explained that the document had been made available on the Members' Website before the meeting took place. In order to give everybody the possibility to examine the document, it was decided to shift the discussion of item II of the draft agenda until after the first break.
6. Mr. Jef Vandekerckhove, Chairman for the Private Sector representatives, took the floor and welcomed the participants. Recalling the opening speech of the Secretary General, he said that the common feeling which followed the conclusion of the Fourth Global Congress shows a strong willingness, from all sides, to make tangible efforts in the fight against counterfeiting and piracy. Is now time for action and the SECURE Working Group has a unique opportunity to move further by producing an effective set of standards for Customs and the Private Sector.
7. The Director, Compliance and Facilitation, delivered an oral report on the 58th Session of the Policy Commission, which was held in Almaty, Kazakhstan, in early December 2007. He said that the decision not to present any definitive version of the Provisional SECURE Standards document to the Policy Commission was taken due to the fact that at that stage the Provisional Standards were still being revised by the SECURE Working Group. He had informed the Policy Commission about the working method adopted by the SECURE Working Group (meetings in plenary sessions - break out sessions for thematic discussions) as well as the role of the Virtual Drafting Group (VDG) set up in order to work out the content of the Provisional SECURE document according to the outcomes of the first meeting of the SECURE Working Group. He also informed the Policy Commission about the fact that during the first meeting there were frank and spirited discussions, especially with regard to legislative issues. In many areas it was not possible to reach an agreement. He reported that the June 2007 version of the Provisional SECURE Standards along with the November 19 VDG draft version of the Provisional SECURE Standards and comments received by November 26, 2007, were at the disposal of the Policy Commission but no request for examination of any of the abovementioned documents was made during the meeting in Almaty.

8. The Brazilian delegate took the floor and made a statement concerning the role played by his country in the fight against counterfeiting and piracy and made additional comments regarding the mandate of the SECURE Working Group. He said that Brazil is effectively enforcing IPR in the framework of the TRIPs agreement. The delegate declared that Brazil is open for discussion and exchange of views in the field of the protection of IPR. He stated that the work of the SECURE Working Group should be fully compatible with the international legal framework that governs IPR enforcement. He raised doubts about the possibility for the SECURE Working Group to establish international norms as well as to amend the international legal framework on IPR enforcement with specific reference to the TRIPs agreement. He also expressed Brazil's concern about the operative implication of the proposed provisional Standards and said that his delegation would present new language for the not yet agreed Standards. All these concerns were not only limited to the Provisional SECURE Standards documents but, also involved other documents such as the Action Plan and the WCO IPR Model Legislation where issues like sanctions set forth in national laws and the need to go beyond the minimum requirements set forth the TRIPs agreement are respectively dealt with.
9. Other interventions made by the Brazilian delegation during the meeting supported this first statement. The delegates heard the Ambassador of Brazil present the official position of Brazil on the work carried out by the SECURE Working Group. The first Brazilian statement and the Ambassador's statement, as provided by the Brazilian Delegation, are set out at Annex III hereto.
10. A representative from the Private Sector remarked that there is still a lot of work to do in order to have full agreement on the Standards by both Customs and the Private Sector.
11. The Secretariat, in response to Brazil's concerns, highlighted the non binding nature of the provisional SECURE Standards which have been specifically devised for Customs in order to obviate the inadequacy and obsolescence of the TRIPs agreement. The provisional Standards are being offered to Members who may decide, on a voluntary basis, whether or not implement the SECURE programme.
12. The representative of UNIFAB expressed concerns about the working method followed by the SECURE Working Group, with specific regard to the lack of major involvement of the Private Sector and the presence of standards which do not reflect the position of the Private Sector.
13. The Director, Compliance and Facilitation, reviewed the mandate of the VDG and clarified that a VDG version of the Provisional SECURE Standards (namely the November 26 version into which comments were merged) might have caused some confusion. In order to avoid any possible confusion before the second SECURE Working Group meeting took place, it was decided to distribute to Members the 19 November VDG version, plus the comments received by November 26 in a separate document.

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14. The representative from AIM declared to be perplexed by seeing AIM in the list of members of the VDG, as indicated in the Report of the First SECURE Meeting. She asked the Secretariat to delete AIM from the list given the fact that the VDG never involved AIM in any of the virtual drafting sessions.
15. The Secretariat presented the outcomes of the Fourth Global Congress on Combating Counterfeiting and Piracy. The event was hosted by Dubai Customs and the World Customs Organization, and brought together over 1,200 delegates from 90 countries. More than 50 speakers from 25 countries delivered proposals for more effectively combating counterfeiting and piracy around seven key general themes (Co-operation and Co-ordination; Legislation and Enforcement; Capacity Building; Raising Awareness; Health and Safety Risks; Free Trade Zones and Transshipment Countries; Sale of counterfeit products over the Internet). The Secretariat summarized the outcomes of the discussions and presentations concerning each of the mentioned general themes: Under Co-operation and Co-ordination was general consensus among Congress participants that the global problems of counterfeiting and piracy are too great to be solved by individual governments' enforcement authorities, business sectors or companies. Therefore, increasing and improving cooperation and coordination among and between government authorities and the Private Sector will be a fundamental issue. Considering Health and Safety Risks; the Congress widely recognized that counterfeiting and piracy harm society in many ways that are not immediately obvious. This is particularly true for counterfeit products that are not tested to the same safety standards as genuine products and can often kill or seriously injure consumers. Concerning Free Trade Zones and Transshipment Countries; the Congress recognized the legitimacy and benefits of Free Trade Zones and the use of countries for transshipment purposes, but noted that there is abuse by criminals facilitating the movement of counterfeit and pirated goods into third countries. In discussion on Legislation and Enforcement; there was broad acknowledgment that even if good laws are in place, they are often poorly enforced. For Capacity Building; the Congress recognized that a country's effectiveness in protecting IP rights is dependent upon its capacity to enforce them. Therefore, in addition to prescriptions for better legislation, stronger enforcement and penalties, speakers also suggested methods for improving knowledge, enhancing training and developing skill capacities. Under Raising Awareness; many speakers and delegates addressed the need to increase public and political awareness and understanding of counterfeiting and piracy activities and the associated economic and social harm. Finally, for Sale of counterfeit products over the Internet; Congress speakers emphasized that the internet is not "the wild west" and should be subject to stricter rules to assist efforts to combat counterfeiting and piracy. The Secretariat remarked upon the great success of the Congress whose recommendations, once finalized, will surely reflect the efforts made by the SECURE Working Group.
16. The representative of La Poste informed the delegates that a proposal aimed at amending the UPU Convention so as to prohibit the postal traffic of counterfeit goods is now under consideration.

17. The Private Sector Chairperson asked the meeting to adopt the Report of the first meeting of the SECURE Working Group. In this regard, ICC wanted to make some clarifications about the meaning of the comments provided to the Secretariat prior to the meeting. The delegate of UNIFAB insisted on the major involvement of the Private Sector in the working process being followed by the SECURE Working Group. The meeting adopted the Report.
18. The Secretariat made an oral report on Capacity building aspects of IPR (item VIII of the Draft Agenda). After a brief review concerning the status of the "World Map Project" and the current situation in the Countries that have already signed the letters of intent, the Secretariat highlighted the added value brought by Capacity Building in the field of IPR for most developing Countries. The Secretariat made specific reference to the standards contained in the Provisional SECURE Standards document and to the content of a working paper on Capacity Building presented by Japan during the first meeting of the SECURE Working Group. This paper, which considered three phases for a targeted IPR Capacity Building Programme, could serve as a working basis for future "Pilot Projects" on Capacity Building.
19. Both the representatives of TIACA and the South African delegate asked for some clarifications on the role played by both the Compliance/Facilitation and Capacity Building Directorates with regard to the diagnostic missions to be conducted in the framework of Capacity Building assistance to Members, and whether the submission of the letter of intent would be a necessary requirement for receiving this kind of assistance. The Secretariat responded that the future IPR diagnostic missions would be conducted taking into account the provisions set out in the SECURE document in the four key areas around which the standards have been built. Therefore, this kind of assessment would differ from the diagnostics currently carried out by the Capacity Building Directorate. The Secretariat also clarified that the Compliance/Facilitation and the Capacity Building Directorates will co-ordinate on the Capacity Building issue. In this regard, technical advice and guidance would be provided by the Compliance/Facilitation Directorate in light of its expertise in the matter.
20. The Japanese delegation thanked the Secretariat for the overview on Capacity Building issues and for mentioning the Capacity Building paper that had been presented by Japan during the first SECURE Working Group meeting. Japan reaffirmed its readiness to support Capacity Building interventions not only in the Asia Pacific Region, but also in other WCO Regions.
21. The Delegate of Brazil asked for some clarification about the nature of such diagnostic missions. The Secretariat confirmed that any future country assessment conducted in the framework of the IPR Capacity Building Programme would be based on the four areas of interest of the SECURE Provisional Standards document.
22. In line with the adopted Agenda, different thematic discussion groups were established (item IX of the draft Agenda). The Secretariat explained the working method for the sub working groups and the goal of these break out sessions. Two sub working groups (Legislation and Capacity Building/International Co-operation) were open to both Customs and the Private Sector, while a third one (Risk Analysis) was limited to WCO Members.

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23. After the three sub working groups had completed their deliberations, the Vice-Chairperson of the second meeting of the SECURE Customs Group asked the different sub groups to join the plenary session and invited their respective rapporteurs to describe the outcomes of their work. The rapporteur for the Capacity Building sub working group summarized the work done on the basis of a working paper provided as guidance by the Secretariat. The sub working group agreed to adopt the "Draft Capacity Building Strategy" that was submitted to the previous SECURE Working Group meeting by Japan as an integral attachment/annex of section IV of the Provisional SECURE Standards document. It was also stated that due to the fact that there were not any delegates from any of the countries who signed the letter of intent within the sub group, it was not possible to engage in an effective discussion on a future "pilot project". The sub working group confirmed that Japan was prepared to support and sponsor a pilot project in Vietnam. As regards the role of the Secretariat, the sub working group had agreed that additional assistance on IPR should be handled by the Compliance/Facilitation Directorate rather than by the Capacity Building Directorate in view of the resource constraints of the latter, and in light of the technical expertise of the former. As regards the Standards, it was proposed to move Standard 2 "Co-operation with right holders" to Section II which deals with that issue in general.
24. The Chairperson invited the rapporteur for the Risk Analysis sub working group to present its conclusions. This group decided to reverse the order of Standards 1 and 2 in Section three. As regards the other standards, the rapporteur remarked upon the fact that in many poor countries computer-based risk assessment and selection techniques are limited by the lack of adequate equipment. In addition to that, he reminded delegates that information and expertise concerning Customs and transport documentation is not always homogeneous and this might create a limitation to the provision set out in standard four. Standard 7 was completely redrafted; the group also proposed to move the bullet points contained in the original text out of SECURE and into the Action Plan.
25. The rapporteur for the sub group on Legislation presented the outcomes of its work. The rapporteur related the difficulty in reaching an agreement on several points in the text. In particular, the group engaged in spirited discussions about proposed modifications of some of the paragraphs of the Introduction, and of Standard 11. Such discussion was held as well as on the proposal made by Brazil to introduce a "Standard 0" and to put into brackets the verb "should" in the standards. The rapporteur commented upon the different views expressed by the Private Sector and some of the Members about which parties should bear the burden of storage and destruction fees. This led to proposed language changes in standard eleven. The Brazilian suggestion to include a "Standard 0" which remarks upon the voluntary basis of the standards and links their application to relevant international agreements was also widely discussed. The rapporteur also pointed out amendments made to Section II, which was renamed "Co-operation with the Private Sector", as well as to amendments made to the Conclusions Section, whose name was changed to "Follow Up".
26. After the presentations made by the rapporteurs, the Vice-Chairman opened the floor for discussion concerning the schedule and the work for the next SECURE Working Group meeting.

27. The meeting debated about the substance and form of the document (SECURE Draft dated 13 February 2008) which should represent a fair reflection of the state of the SECURE Standards at the close of the second SECURE Working Group meeting. It was agreed that the Secretariat would produce a working draft of the SECURE document taking into account the outcomes of the meeting and would distribute it to the Members and the Private Sector, for review and comment, by February 25, 2008. Comments would be returned to the Secretariat by March 10, 2008. This working draft would contain, in bold print and enclosed within brackets, the language introduced during the second SECURE Working Group which had not yet been adopted by the Group, plus other bracketed language which would offer an explanation of possible compromise proposals. The Secretariat would then circulate the comments before the 24-25 April 2008 SECURE Working Group meeting.
28. There being no further comment, the second meeting of the SECURE Working Group was adjourned.

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SECURE Working Group 2nd Meeting/Groupe de travail SECURE 2^{ème} réunion
11 February/février 2008

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SECURE WORKING GROUP

2nd Meeting

11 - 13 February 2008

Opening speech by Mr. Michel DANET, Secretary General of the WCO

[...]

The time has now come to take stock of this issue once again, and attempt to understand the mechanisms behind piracy and counterfeiting.

The second reason that brings me here today is the fact that everyone around this table, with the exception of my Korean colleague, was in Dubai for the Fourth Global Congress organized jointly by Interpol, WIPO, the WCO, the INTA and BASCAP. The participants in that Congress, some 1,300 delegates, 90 countries and sixty or so speakers from all sectors, were able to enter into discussions with the ASA regarding the issue of piracy. In a fortnight's time we will have a series of recommendations derived from the Congress which I would like to see taken up within the SECURE Working Group. A link between the Dubai recommendations and the SECURE work would be a step in the right direction.

Even though there were no new developments in Dubai, a number of key issues were reiterated at the end of the Congress, including an emphatic request regarding the legislative aspect. Following all the participants' wishes for international agreements going beyond the scope of the TRIPS text, several avenues for exploration were put forward. These are complex, politically tricky and take time to come to fruition, yet they show willingness by all the parties to create a more favourable international legal environment.

Various issues have been or will be addressed. Everyone has high expectations of a Japanese diplomatic initiative in favour of a new international ACTA treaty on this subject. However this process has only just gotten off the ground, and it is a political and diplomatic process requiring negotiations and discussions between rich and developing countries. In other words, it is going to be a lengthy process. We will support all the initiatives taken to bring the ACTA treaty into being, and to provide an appropriate response to the piracy and counterfeiting problem.

The second avenue for exploration raises the issue of whether we consider piracy and counterfeiting as currently being under the control of organized crime, in the form of mafias and cartels. Hence the idea of extending the scope of the Palermo Convention to combating piracy and counterfeiting. To that end, the said Convention on organized crime would have to be renegotiated, and a Protocol added thereto dedicated to combating piracy perpetrated by organized crime.

Annex II to Doc. LS0007E1b

The Council of Europe has taken a number of initiatives which are also political, and it is a question of seeing how, given that organization's fifty or so European member countries, these initiatives could lead to a text that would also tackle these questions. We have also received confirmation that the Universal Postal Union is going to amend its Universal Postal Convention and incorporate, in August this year, a provision prohibiting piracy in transport and prohibiting counterfeiting in postal traffic. We are therefore seeing progress and an admission that we must actually develop a new political framework and obtain stronger political support. Nothing can be done unless each state's highest political authorities feel affected by the crime of piracy and counterfeiting. One must therefore find a way of raising the awareness of heads of state and government and of getting them to discuss these topics. It is true that there are currently no immediately obvious political arenas for these discussions. This issue has been on the G8 agenda for the past four years, and it will be on the table again at this year's G8 Summit to be held in Japan under the Japanese Presidency. Our Japanese colleagues are trying to determine what proposals should actually be presented to the heads of state of the world's richest countries, so that they can once again show the way. Yet the G8 only represents the richest countries. What about the others? How can one talk to emerging and developing countries? In which arenas can discussions be held? Apart from technical bodies such as the WCO and Interpol, where can North and South, and the public and private sectors meet? The G20, the G77, the OECD? For the time being there are no such arenas, and we have no idea where governments could negotiate or discuss these issues.

The third issue raised in Dubai is a widespread request to bring this issue into the field, rather than restrict it to conceptual discussions on piracy and counterfeiting. The phenomenon is understood and has been analysed, and it is now a question of deciding what tangible action to take. In this connection, Interpol has announced a number of initiatives, including the establishment of a database and training for individuals working for the private sector. The WHO has announced the development of its extremely important IMPACT Programme regarding fake pharmaceuticals. For its part, the WCO has put forward the SECURE Programme as the appropriate response for Customs administrations and has confirmed that its operational phase would be fairly rapid, taking the form of a compendium of minimum best practices to be implemented by Customs administrations, backed up by a capacity building programme for administrations currently requesting it. Some 33 Members have officially expressed an interest in implementing the SECURE mechanism. During discussions and in the course of my travels, I am inundated with requests from Members and Directors General asking us to conduct field work (Tunisia, Algeria and other countries) in order to implement the SECURE Programme.

During the June Council Sessions, a text containing a set of standards and minimum best practices will have to be approved by Directors General of Customs. I simply need a content acceptable to both North and South, and which enables everyone to conform to these measures and implement them with the Secretariat's support, as is already the case with the SAFE Framework and COLUMBUS Programme, so as to provide effective support for these mechanisms within Customs administrations' operations, based on the reality of their situation and their capacities. I also need you to help us, and for you to have very clear ideas on capacity building. We have the example of SAFE and COLUMBUS. What modus operandi should be adopted for capacity building in the piracy and counterfeiting domain? One diagnostic, two diagnostics; one seminar, two seminars; one assessment; one follow-up? I would like you to tell me exactly how you see capacity building. We currently have, and will have, the experts, we have and will have the funding. So what I really need

today is a very clear *modus operandi* stating how to support Customs administrations in the field, to ensure that they actually respond to society's concerns and fears. All this has to be done by June. I am anxious for these operations to be approved at the June Council sessions. I am keen for us to get down to work. I do not like rushing things; I like things to be done in the proper order and at the right pace. Based on the SECURE content, if you feel it is possible to get a pilot project off the ground before the Council then why not? Let's do it, and look at the best way to proceed.

However, what I unequivocally want is for this meeting room to bring together the private and public sectors, as well as rich and developing countries. I want everyone to move forward in step. I do not want countries to feel that they are lagging behind or being excluded. One must not forget that this endeavour will be more difficult for the countries of the South than for those of the North. For the former, it is a new commitment to combating piracy in a completely different socio-economic environment from that in the rich and Northern countries. Yet I want us to go forward together with SECURE and for everyone to feel at ease : the least developed countries, the poorest countries, the richest countries, the largest companies, small and medium-sized enterprises, the private and public sector. My wish is for all of you to play a part in this endeavour. As Pravin Gordhan used to say, I want everyone to feel "comfortable" with the proposals and recommendations you suggest to the Secretariat, and for everyone to be able to accept and support whatever you decide.

I wish you the best of luck !

You have the entire Secretariat at your service, especially Mike, Christophe and Massimiliano.

Let us endeavour to build something together. From a personal perspective, SECURE is the achievement I would like to see accepted by the Council before I leave.

If this were to come about in that fashion, I would be extremely proud of the content that you, indeed we, will have developed together.

Thank you !

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WCO - Second meeting of the SECURE Working Group

Initial statement by Brazil

In this initial statement, Brazil would like to take the floor to present its views with respect to the work of the SECURE Working Group. As a country that has fully incorporated its international intellectual property (IP) obligations, we have credentials that allow us to consider that, in the area of intellectual property enforcement, the standards set out by the WTO TRIPS Agreement strike an appropriate balance between private and public interests that needs to be preserved. Based on this balanced legal framework, Brazil has been able to put in place an effective intellectual property enforcement system, in particular in the area of combat of piracy and counterfeiting. Accordingly, since 2004, a National Council on Combating Piracy puts together agents from the public and private sectors to discuss and implement enforcement policies. The results achieved are very positive.

Where the international dimension of discussions on IP enforcement is concerned, we are open to exchange views and to engage on technical assistance and capacity building activities. In fact, this is exactly what we do at the World Intellectual Property Organization's Advisory Committee on Enforcement (ACE), where a rich exchange of national experiences takes place since 2001. Brazil also plays an active part in the events promoted with a view to share experiences on intellectual property enforcement, as was the case with the Fourth Global Congress on Combating Counterfeiting and Piracy, which recently took place in Dubai.

From the point of view of the Brazilian government, the work of this Working Group cannot contradict the international legal framework that governs intellectual property enforcement, in particular the WTO TRIPS Agreement. In this context, the following parameters set out by the TRIPS Agreement must be particularly taken into account by the SECURE Working Group: a) Article 1.1, according to which "Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice". The provision in question makes it clear that there are no "best practices" in what concerns the application of international IP norms; b) Article 41.5, according to which there is "no obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general"; and c) the preamble to the Agreement, which underscores the fact that intellectual property rights are private rights.

In view of the need to be consistent with the legal framework in place, it is relevant to highlight that the SECURE Working Group has no mandate to negotiate international norms, let alone to amend the international legal framework of IP enforcement. In addition, the work of the Group is to be limited to the field of technical cooperation on the enforcement of international obligations concerning exclusively customs issues that relate to intellectual property. Finally, the activities of the SECURE Working Group shall not extend beyond the limits of the mandate of the WCO.

Despite the preceding remarks, and while we recognize the importance of technical cooperation on customs issues relating to the enforcement of intellectual property norms, the Brazilian government has identified some proposals that are being discussed in this Working Group that raise concern, in particular because some of them run contrary to the existing international rules on IP while others extend beyond the mandate of the WCO itself.

These concerns are illustrated by the following examples : (a) Document “SECURE Standards”: the document does not reflect in its operative part the need for respect of the relevant international agreements and language to this effect should be inserted therein. We are prepared to present proposals for language to the SECURE Provisional Standards with a view to address this concern; (b) Action Plan of the SECURE Working Group: in this document, item 8 of activity 1 (“Improving legislative provisions”) proposes to “Study whether applicable sanctions set forth in national law are sufficient and appropriate”. This proposal is cause of great concern for the Brazilian government, because it (i) extends well beyond the mandate of the WCO as there are already multilateral remedies to address this issue at the WTO; and (ii) contravenes the provision of TRIPS Agreement, Article 1.1, in the sense that it is premised on the wrong idea that national legislations on enforcement can be assessed against a purported “appropriate and sufficient” standard; (c) in the document with “Model provisions”, Brazil has identified several issues that raise concern. To start with, we do not share the premise stated in the introduction to the document, according to which there would be a “need to go beyond the minimum requirement set forth in the TRIPS Agreement”. In addition, some of the provisions seek to introduce in national legislations substantive obligations that are not foreseen in the TRIPS Agreement, in what amounts to an undue overstepping of the competencies of this Organization: this is exactly the case with the provision that proposes the inclusion of “rights management information” and “technological measures” within the subject matter protected by the “Model provisions”. As we know, the TRIPS Agreement does not require national legislations to incorporate the protection of “rights management information” and “technological measures”. The WCO document justifies the provision on the fact that two WIPO Treaties - the WCT and the WPPT - contain provisions to this effect. From the perspective of the Brazilian government, the WIPO Treaties referred to do not provide an adequate basis to motivate the provisions proposed by the WCO as these international instruments do not override the TRIPS obligations for those countries that are not parties to the WCT and the WPPT, what happens to be the case with the majority of the international community. Aside from this fact, the WIPO Treaties are not meant to regulate customs issues and therefore also from this angle they do not constitute a basis to justify the provisions proposed by the WCO.

The Brazilian delegation looks forward to participating constructively in the work of the SECURE WG with a view to ensure that its results respect the international legal framework already in place and the competencies of this Organization. Our delegation is prepared to submit drafting proposals to address the concerns we have identified.

Statement by H.E. Ambassador Maria Celina de Azevedo Rodrigues

Mr Chairman, I was not originally planning to participate in this meeting but, in view of the difficulties Brazil has faced so far to see its concerns duly considered, I felt the need to convey how seriously the issue in question here is to my government and how concerned Brazil is with the fact that the work proposed by the WCO on piracy and counterfeiting might derail from the competencies of this Organization.

I would like to reiterate some of the points that have been raised in our initial statement. Firstly, the work of this Working Group cannot contradict the international legal framework that governs intellectual property enforcement, in particular the WTO TRIPS Agreement. In this context, the SECURE Working Group should take into account, *inter alia*, the provision of Article 1.1, according to which “Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice”. The provision in question makes it clear that there are no “best practices” for the application of international IP norms.

Secondly, the SECURE Working Group has no mandate to negotiate international norms, let alone to amend the international legal framework of IP enforcement. In addition, the work of the Group is to be limited to the field of technical cooperation on the enforcement of international obligations concerning exclusively customs issues that relate to intellectual property. Also, the activities of the SECURE Working Group shall not extend beyond the limits of the mandate of the WCO.

Thirdly, while we recognize the importance of technical cooperation on customs issues relating to the enforcement of intellectual property norms, the Brazilian government has identified some proposals that are being discussed in this Working Group that raise concern, in particular because some of them run contrary to the existing international rules on IP while others extend beyond the mandate of the WCO itself.

With these parameters in mind, Brazil is working constructively in this meeting and is open to continue discussing intellectual property enforcement. We have shown a great deal of flexibility by putting forward reasonable proposals that safeguard our legitimate concerns, while at the same time accommodate the interests of those delegations that do not share our views. One example in this sense is the proposal Brazil presented to introduce a new standard, in the operative part of the SECURE document, whereby “The standards below are voluntary and are to be interpreted and applied in accordance with the relevant international agreements”. Brazil understands that, as a Member State of this Organization, our concerns should be duly reflected in the document we are working on. Specifically with respect to the proposal of a new standard that I have just mentioned, we expect to see it incorporated in the operative part of the document, as a new standard, and not in its introductory part. We understand that some delegations might not share our same concerns and we are willing to accept that our proposal be placed between square brackets, as long as it is retained in the text. Finally, we are of the view that nothing is agreed until everything is agreed. As an international organization that works based on consensus, the concerns of all Member States should be fully addressed and if there are issues left unresolved the document as a whole remains open. Thank you.

Annex III to Doc. SP0269E1a

Annex III to Doc. LS0007E1b

Proposal of inclusion of a new standard

Brazil would like to propose the inclusion of a new standard in the operative part of the document SECURE Standards with the following language :

“The standards below are voluntary and are to be interpreted and applied in accordance with the relevant international agreements”.

First of all, the language proposed captures the idea that the standards are voluntary in nature, an idea that is shared by all members of this Working Group. With a view to clarify that the standards are not meant to amend the international rules pertaining to intellectual property enforcement - a task to which the WCO is not mandated - Brazil understands that language to this effect should be inserted in the operative part of the document, in addition to the reference already contained in the introductory portion of the document.

Secondly, the Brazilian government also understands it is necessary to include wording to stress the fact that the standards are to be interpreted and applied in accordance with the relevant international agreements. In fact, this is language already agreed in standard number 7. We are of the view that this language should cover all the standards. From our perspective, this kind of phrasing accommodates our concern not to move in a TRIPS-plus direction, while at the same time leaves room for those countries that seek to incorporate in their national legislations provisions that go beyond the level of obligations required by the TRIPS Agreement.

The language proposed by Brazil was the result of a careful drafting aimed at safeguarding our concerns without diminishing the interests of other Members. We think the resulting proposal is reasonable and we are open to further discuss the issue with the membership of the WCO.

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WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES

Established in 1952 as the Customs Co-operation Council
Créée en 1952 sous le nom de Conseil de coopération douanière

SECURE WORKING GROUP

LS0008E1a

-
3rd Meeting
-
24 - 25 April 2008
-

Brussels, 28 May 2008.

DRAFT REPORT

THIRD MEETING OF THE SECURE WORKING GROUP

BRUSSELS, 24-25 APRIL 2008

1. The third meeting of the SECURE Working Group was held at WCO Headquarters from 24 to 25 April, 2008. The list of participants who registered is set out at Annex I hereto.
2. The Chairman, Mr. Armand Nanga, declared the meeting open. He first of all thanked participants and presented compliments to the Secretariat. He apologized for not being in a position to take part in Second SECURE meeting. The Chairman invited the participants to elect a permanent Vice-Chairperson (item I of the draft agenda). Mr. Uri Bruck, Minister Counsellor - Customs and Taxation- of the Mission of Israel to the E.U., who had chaired the second meeting of the SECURE Working Group due to the absence of the Chairperson, was unanimously elected as permanent Vice-Chairperson of the Working Group.
3. The Chairman invited the meeting to adopt the draft agenda. The meeting adopted the agenda as proposed by the Secretariat (item III of the draft agenda).
4. The Chairman asked the delegates to adopt the Second Secure Working Group Report (item II of the agenda).
5. The United States delegate asked why the U.S. did not appear in the list of participants for the Second SECURE Working Meeting. It was explained that only delegations that filled in the green registration form were indicated in the list of participants). The U.S. delegate requested that the statement made by the Secretary General, Mr. Michel Danet, during the second meeting be added to the Report.

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6. The Chairman moved to the next point on the agenda (item IV) and summarized the outcomes of the second meeting of the SECURE Working Group. He remarked upon the fact that consensus was not reached in some parts of the document, which areas were enclosed in brackets. As regards risk analysis issues, and capacity building and cooperation issues, there was agreement by and large. Regarding the legal framework, in a number of standards there was agreement but for some other standards there were different opinions on technical issues. In particular, bracketed text in paragraphs 2, 3, 8 of the Introduction as well as in Standards 0, 11 plus the verb "should" in all the standards of Section 1 reflect the abovementioned lack of consensus.
7. The Brazilian Ambassador requested the floor and made a statement concerning the position and concerns of the Brazilian Government about the scope of the SECURE Working Group. She stated that she is a head of delegation which is composed of Customs officers and diplomats. The Brazil delegation believes the work of SECURE Working Group is in a political realm. When the U.S. delegation mentioned inclusion of the Secretary General's remarks at the last meeting, her delegation was very happy to see their omission rectified because Mr. Danet did, at the time, criticize the TRIPS Agreement and made mention that he would like to see it changed. He did not feel he should be limited in his wish to change TRIPS. Brazil identified in the SECURE document an attempt to amend the TRIPS Agreement. This Agreement is being discussed in the competent for which are the WTO and WIPO. The Ambassador stated that Brazil recognizes the importance of work by the WCO and the WCO does have technical expertise, but doesn't have the proper mandate and expertise to propose amendments to the TRIPS. According to the Brazilian position, the WCO is going beyond its mandate by creating a sort of "TRIPS plus". The fact that the standards are being offered as voluntary measures doesn't exclude the fact that the standards could become legally binding eventually. The Brazil delegation does not see standards that Brazil can fully agree with. All developing countries have trouble enough implementing TRIPS, let alone TRIPS plus agreements which become financial burdens to many countries. Therefore Brazil would stand firm as regards the mandate and competence of the WCO and the Working Group to go anywhere toward something which might be understood as a TRIPS plus.
8. The Chairman took note of the Brazilian Ambassador's statement and reminded delegates that the SECURE Working Group is expected to present a draft document to the next Policy Commission and Council. He emphasized that it is up to Brazil to make its own decision. He stated that he did not think the Brazil stance should stop the Working Group from continuing. The Chairman of the Private Sector, Mr. Jef Vandekerckhove, stated the position of the Private Sector and he also remarked that several Countries are ready to go further than the requirements of the TRIPS Agreement.
9. The Brazilian delegate stated that the Terms of Reference of the working group should be discussed as soon as possible. He also emphasized that the principle "nothing is agreed until everything is agreed" should be extended to the entirety of the SECURE document, thus any point of the document could be reopened for negotiation.

10. The delegate from Ecuador supported the Brazilian position; he declared that discussion should take into consideration the role played by WIPO in the matter.
11. The representative of Southcentre shared the Brazilian concerns by stating that the proper forum for such kinds of discussion is the WTO or WIPO rather than the WCO.
12. The Chairman took note of these statements of principle but at the same time reaffirmed that the SECURE Working Group has a mandate from the Policy Commission, and a draft document will be presented at the June 2008 Policy Commission and Council. He also reminded delegates of the fact that the TRIPS Agreement doesn't take into consideration major Customs concerns and needs, nor does it cover the SECURE document. The WCO has to do something against IPR counterfeiting.
13. The Director, Compliance and Facilitation, recalled the steps that led to the current version of the SECURE document since the 2007 Council decision which established the SECURE Working Group. He assured delegates that the scope of the working group is not a redrafting of the TRIPS, but just goes to providing Members with an effective set of best practices which would help them and which would be adopted on a voluntary basis in combating counterfeiting and piracy. He also stated that the Working Group may not come to agreement but the document language which was enclosed in brackets will go to Policy Commission and Council to be resolved.
14. The Secretary General of the WCO, Mr. Michel Danet, joined the meeting and made a statement. He said that when the 2007 Council decided upon the establishment of the SECURE Working Group nobody objected or expressed any concern. Therefore, there shouldn't be any misunderstanding about the nature of the SECURE programme, which is meant to be offered as a non binding set of best practices. The TRIPS is out of the WCO's competence since it refers to the production and commercialization of goods. But whenever we talk about exportation, importation or transshipment of counterfeit goods the matter falls under Customs competence and in this regard the TRIPS doesn't help. Its provisions seem to be extremely weak in the Customs area in fighting against counterfeiting and piracy. Negotiation can be carried out in Geneva. We need capacity building to fight this scourge. There are four basic principles in the SECURE document. Firstly, the SECURE document is not binding. Secondly, the document aims at increasing Customs activities that some countries know how to improve upon. Thirdly, the document can be applicable within the scope of compatible existing national legislation. Finally, the document is a provisional programme. The contents are not fixed and are changeable. The Secretary General reminded delegates that what is being currently discussed at the WCO is not TRIPS, but voluntary measures contained in a living document. The added value of SECURE has been recognized by the Countries belonging to the G8 which hope for new international agreements to implement the SECURE. In addition to this, the number of Members who are requesting assistance from the WCO in the IPR field is on the increase. He concluded by making clear that, given the non binding nature of the standards, if any delegation could not agree with the discussion it would always be possible to withdraw from the working group.

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15. The delegate of TIACA suggested the need to specify in the introduction of the SECURE document that Members are free to apply the best practices offered, in accordance with the provisions set forth in their national legislation.
16. The Secretariat presented the comments on the 13 February 2008 draft version of the SECURE document received from 9 Members (Australia, Brazil, Bulgaria, EC, Greece, Japan, Norway, Turkey and U.S.) and 5 Private Sector representatives (AIM, FIATA, GEA, SANOFI and TIACA). In doing so, the Secretariat highlighted the points in the document that still require general consensus. The Chairman thanked the delegates for their valuable contributions.
17. The Chairman proposed to examine paragraphs 2, 3 and 8 of the introduction first. The Brazilian delegate objected regarding the fact that their comments were not included in the second SECURE Working Group Report. It was then explained by the Chairman and by the Secretariat that according to the working procedure agreed upon during the second meeting, all the comments received by the 10 March 2008 deadline would have been examined separately and thus not included in the SECURE document or the Report.
18. A very spirited debate took place with regard to the working method, the way of examining the standards, and the nature of the standards. Brazil, supported by Ecuador, requested to examine new proposals for the text. The Chairman invited Brazil as well as other delegations to give new additional comments, if any, to the Secretariat. In this regard, comments were submitted by the RILO for Western Europe (Annex II to this Report). The Brazil delegate emphasized again that nothing is agreed until everything is agreed. The Chairman responded to Brazil's statement by saying that the stated WTO principle is not the WCO principle.
19. The delegate of TIACA, supported by Mexico, suggested to change the word "Standards" into "Principles and Practices" in order to meet Brazil's concerns on the nature of the document, while the Japanese delegation remarked that the same language used for the SAFE Framework should be used for SECURE.
20. The delegate from the Democratic Republic of Congo remarked upon the fact that SECURE is a non binding instrument. Therefore, delegations not willing or not in the position to continue the debate should leave and let the meeting proceed. The delegate from Argentina stated that leaving the meeting would not be the best solution. It would be better to present bracketed language reflecting the different positions to the Policy Commission.
21. The Delegate of China made two observations on the point. He declared that no delegation should be precluded from presenting additional comments and, concerning the nature of the document, he believed that the WCO has no mandate to go beyond the TRIPS Agreement.

22. In order to meet some delegations' concerns and offer alternative language for standard "zero" as proposed by Brazil, the Vice-Chairperson suggested introducing a footnote in the standards section which would make a reference to the TRIPS Agreement (Ecuador insisted on having the "WIPO Development Agenda" mentioned as well).
23. Brazil reaffirmed once again that in the field of IPR it shouldn't be possible to talk about best practices; the so called standard "zero" was proposed in order to safeguard the position of all Countries that do not want to go beyond the provisions of the TRIPS Agreement. Brazil firmly questioned the working method followed by the Group and even asked for the suspension of the meeting, citing the limited possibility for interventions from the delegations.
24. The delegates from Ecuador, Mexico, China, Argentina and Southcentre supported the Brazilian position and asked for further clarifications concerning the working procedure and whether all of the standards contained in the document were open for negotiation. The Chairman stated that all the different positions expressed during the meeting would be taken into account by bracketing the different language. The document reflecting the different views would be presented to the next Policy Commission and Council Session. The Chairman of the Private Sector clarified that all additional comments received during the first day would be examined the day after. The Director of Compliance and Facilitation invited the delegate of Southcentre to read point number. 27 of the Report of the Second SECURE Working Group meeting in order to gain a clear picture of the working method agreed by the participants.
25. The Secretariat continued the presentation of the comments received by examining the ones concerning standard number eleven. The Members and the Private Sector agreed to delete the original text and replace it with the language proposed by Norway in its comment. Regarding standard 11, Southcentre raised 3 points. Firstly, it is important to distinguish between goods of high quality and infringed goods which can be of either high quality or low quality. Secondly to prove IPR infringement is not only highly complex but also a technical process. This is a legal process and thus normally taken by the court. Thirdly, regarding bearing the costs of enforcement, IPR is by nature a private right and it should be understood that costs should naturally be undertaken by right holders. It is not reasonable to shift their burden to any other parties or to public agencies like Customs.
26. As regards paragraph number one of the Introduction, some amendments were requested to the text by deleting any reference to the G8 agenda as well as to "pharmaceutical" and "prescription medicines". The April 25 2008 version of the SECURE document reflects those amendments. The meeting also agreed to delete the bracketed text of paragraph number two of the Introduction.
27. For paragraph number three, the meeting agreed to replace the bracketed text contained in the 13 February 2008 version with new language proposed by Senegal which refers to the nature of the standards offered. This proposal merges the original paragraph 8 into paragraph number three. In the same paragraph is now included, in brackets, a proposal from Ecuador related to the "WIPO Development Agenda".

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28. Regarding standard 1, Australia suggested that 'transit' and 'transshipment' be deleted from this standard because it is impractical. Brazil proposed a new paragraph for standard number one to include a reference to the costs borne for processing the application forms indicated in standard 4, and a new standard (now standard 13) dealing with the "de minimis imports" and the biodiversity issue. Senegal, Ecuador and Mexico supported Brazil's suggestion relating to biodiversity, while the U.S. and Japan did not support it because there is no consensus in the WTO discussion on the topic.
29. For standard 4, Australia did not agree to the inclusion of the last sentence in the standard because proof of an ongoing right should be provided each time a request is made. Any renewal of the request should always include evidence of the right and prima facie evidence of infringement. The meeting agreed to add some appropriate wording to the last sentence.
30. Concerning standard 10, no consensus was reached on part of the standard thus, following a suggestion from the Chinese delegation, it was decided to set up a Virtual Drafting Group (VDG) charged with coming up with common language on standard ten. This VDG, which comprises six Members (India, Canada, U.S., Brazil, EC and China) and one Private Sector representative (AIM) would present its outcomes to the Secretariat.
31. The Chairman stated that Terms of Reference (TOR) will be dealt and amended in the next meeting, including a suggestion submitted by Brazilian delegate. Also, item VII regarding a legal feasibility study on the possibility of addressing infringements relating to technical standards and item VIII regarding other business will be discussed in the next meeting. The Ecuador delegate suggested that the next meeting deal with draft TOR at the beginning stage, and the suggestion was accepted.
32. The Director, Compliance and Facilitation assured delegates that the document language which was enclosed in brackets would go to the Policy Commission which cannot delete, but only give recommendations. The 2008 Council will control this issue.
33. The Chairperson said that progress had been made at the third SECURE meeting and declared the meeting closed.

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SECURE Working Group 3rd Meeting/Groupe de travail SECURE 3^{ème} réunion
24 - 25 April/avril 2008

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Annex IV to Doc. SP0269E1a

Annex I to Doc. LS0008E1a

Annexe I au doc. LS0008F1a

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SECURE WORKING GROUP 24-25 APRIL 2008

PROPOSALS FROM RILO WE following Agenda Item Number V - Subject: SECURE document: Review and finalization of the working draft of the SECURE (*omissis*) and the Agenda Item Number VI - Subject: Other documents to be discussed and adapted in connection with SECURE: Action Plan and Terms of Reference (Doc. LS0006E1a).

DOCUMENT 01

“Working group version 13 February 2008”
SECURE

INTRODUCTION

Point 9.

*“The SECURE Working Group will be comprised of all interested WCO Members, **RILOS**, members of the trade ...”*

SECTION III. RISK ANALYSIS AND INTELLIGENCE SHARING

Point 17.

*“As WCO will encourage Member administrations ... using the Customs Enforcement Network (CEN) **and the RILO network**.*

Point 18.

In order to meet these objectives the WCO will seek to:

- *Develop guidelines and standards regarding IPR targeting criteria for all modes of transport **in close cooperation with RILO network**;*
- *Omissis*
- *Omissis*
- *Develop procedures for computer-based IPR risk assessment **in close cooperation with RILO network**;*
- *Omissis;*
- *“Compile and share analytical and statistical data on IPR violations. The WCO **and the RILOs** consider it vital ...”*

Standard 6

*Customs Administrations should utilize any possible instruments designed to **enhance** cooperation*

Annex IV to Doc. SP0269E1a

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Standard 7

*“Subject to any limitations ..., Customs Administrations and the WCO, **delete INCLUDING and put through** RILOs, should ... **(move to the action plan: “Some methods of exchanging information ...)**”*

FOLLOW-UP FOR IMPLEMENTATION

Point 19.

In order to be fully effective ...

- *Omissis*
- *Omissis*
- *Omissis,*
- *Omissis,*
- *Productions of customs statistical reports containing **(delete TECHNICAL)** analyses of contemporary trends **in close cooperation with RILO network;***
- *Omissis,*
- *Omissis,*
- *Organization of co-ordinated control operations at regional and international levels **in close cooperation with RILO network.***

DOCUMENT 02

DRAFT TERMS OF REFERENCES (doc LS0003E1a)

Point 2. Membership

“Membership will be open to experts from all interested WCO Member administrations, RILOs, rights holders

Document 03

WCO Action Plan to Fight Counterfeiting and Piracy 2007-2008

Activity 2. Perfecting risk analysis techniques useful for combating counterfeiting and piracy.

The CEN (Custom Enforcement Network).

Omissis

- page 02/03 -

Initiative nr 05.

WCO Secretariat, in close cooperation with the RILOs, prepares periodic reports

Initiative nr 06.

Clarification about the following point: "*Set up information exchange networks among IPR experts from the various RILO units and national governments*" like:

1. role of the secretariat?;
2. role of the RILOs NCP?;
3. what should be this new network?
4. it could be considered as a duplication of the existing network WCO-RILO-NCP national administrations?

Suggestion: increase use of the existing network with permanent impulses of the WCO to all RILOs.

Remarks: *changing are highlighted in italic and in bold.*
Brussels, 24th April 2008.

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