



POLICY COMMISSION

SP0299E1a

-
61st Session
-

Brussels, 11 June 2009.

COMBATING OF COUNTERFEITING AND PIRACY

(Item VIII on the Agenda)

SUMMARY

Purpose of document

In accordance with the instructions from the Policy Commission at its December 2008 session, the purpose of this document is essentially to present draft Terms of Reference for a new WCO body to deal with Customs IPR issues.

Action required of the Policy Commission

The Policy Commission is invited to examine and, if appropriate, endorse the appended draft Terms of Reference for submission to the Council. It is also invited to take note of the IPR technical assistance and capacity building activities delivered or planned for the near future.

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1. In the Report of the December 2008 Policy Commission (see Doc. SP0292, paragraph 175) it is recorded that, after a lengthy and frank discussion, the Policy Commission “noted that the SECURE Working Group established by the Council in June 2007 to deal with IPR issues had become deeply embroiled in difficulties related to its Terms of Reference, essentially because of a perceived fear that the Group’s work on standard-setting might be used as a means of enlarging the obligations imposed on countries by the WTO TRIPS Agreement. Recognizing both the urgent need for progress and the fact that realistically this could not be achieved under the current arrangements, the Policy Commission agreed that :
 - the SECURE Working Group would not meet again pending a decision by the Council at its June 2009 Sessions on the way forward;
 - the Secretariat would prepare draft Terms of Reference for a new WCO body to deal with Customs IPR issues, which would be finalized by the Policy Commission prior to their submission to the Council;
 - technical assistance and capacity building activities should continue to be provided pending the Council’s consideration of this proposed new approach.”.
2. As to the first instruction from the Policy Commission, the SECURE Working Group did not meet during the first semester of 2009.
3. In connection with the second instruction from the Policy Commission, during the interval between the December 2008 session and the convening of the June 2009 Policy Commission and Council sessions, the last Chairperson of the SECURE Working Group organized three informal meetings of interested Members for the purpose of seeking some consensus on a Terms of Reference (ToR) document for a group that might replace the SECURE Working Group. The most recent of these informal meetings was held on 4 June 2009 and included representatives from 22 Members. Progress was reported and a draft ToR document is appended hereto for use as an aid in the deliberations regarding the future direction of IPR at the WCO.
4. With respect to the third instruction from the Policy Commission regarding the need to continue with the delivery of technical IPR assistance and capacity building pending a final Council determination, the WCO Secretariat has remained active in response to requests from Members for assistance to help them meet the obligations they have been assigned by their national governments in respect of IPR. The following is a list of such missions delivered and those planned for the near future :
 - Dominican Republic - Diagnostic mission and national IPR risk analysis seminar (23 February to 5 March 2009);
 - Kenya - IPR regional operational seminar (20 to 24 April 2009);
 - Dubai (United Arab Emirates) - IPR regional operational seminar (3 to 7 May 2009);
 - Japan - IPR regional seminar (19 to 22 May 2009);
 - Morocco - IPR regional operational seminar (1 to 5 June 2009);
 - Mongolia - Diagnostic mission (29 June to 3 July 2009);
 - Senegal - Diagnostic mission (29 June to 3 July 2009);
 - Benin - IPR regional operational seminar (6 to 10 July 2009);
 - Cambodia - Diagnostic mission (13 to 20 July 2009).

5. In addition to the foregoing, following requests from the WTO, WIPO and other stakeholders, the WCO has provided its Customs expertise as follows :

- One seminar in Guatemala with the WTO;
- One seminar in Moldova with WIPO;
- One operational seminar in Mexico with the US Department of Justice;
- Two presentations at the European Parliament;
- Several presentations for associations of rights holders.

Conclusion

6. The Policy Commission is invited to examine and, if appropriate, endorse the appended draft Terms of Reference for submission to the Council. It is also invited to take note of the technical assistance and capacity building activities delivered or planned for the near future.

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TERMS OF REFERENCE FOR THE WCO COUNTERFEITING AND PIRACY¹
(CAP) GROUP

Established : June 2009

Duration : Until superseded or revoked

Chairperson : Representative of a WCO Member

Elections : Members of the Group shall elect the Chairperson for a one-year term

Mandate

The Group shall constitute a dialogue mechanism on border measures on trademark counterfeiting and copyright piracy. In its discussions, the Group will respect the national legal regimes of Members, as well as their respective levels of commitments in international agreements, such as TRIPS, to which Members are party, and shall not engage in norm setting² nor seek to make recommendations or adopt particular measures.

Membership

Membership will be open to all WCO Members.

Purpose and Scope

Within the framework of its mandate, the purpose and scope of the Group are limited to an exchange and discussion of views, experiences, practices and initiatives of Customs administrations and discussions on WCO Capacity Building activities for Members requesting assistance.

Key Deliverables

The Group will deliver a factual report to the Permanent Technical Committee after each session.

¹ Counterfeit And Piracy (CAP) - Means trademark counterfeiting and copyright piracy.

² The term "norm setting" encompasses any kind of provisions (binding or non-binding), irrespective of the name, such as standards, best practices, recommendations, guidelines or any other denomination.

Means of Operation

- The Group will meet under the leadership of its Chairperson, with membership being determined as specified above.
- Observers may be invited to participate in open meetings; a balanced participation of stakeholders should be sought.
- The Group will hold its sessions as and when required, subject to approval by the Permanent Technical Committee.
- Except when otherwise decided by the Secretary General and/or the Permanent Technical Committee, the Group will normally meet twice a year.
- Normally, each session will last two days, depending on the number and complexity of items on the agenda.

Resources Required

The general administrative arrangements and provision of support services shall be the responsibility of the Secretariat.
