



Brussels, 22 February 2019.

**DISCUSSION ON THE REVISION OF THE TERMS OF REFERENCE FOR THE
COUNTERFEITING AND PIRACY (CAP) GROUP**

(Item X. (j) on the Agenda)

Background

1. The 113th/114th Council Sessions in June 2009 adopted the Terms of Reference (ToR) for the WCO Counterfeiting and Piracy (CAP) Group, and the CAP Group was inaugurated that same year. The ToR were limited to only allow for an exchange of practices, experiences and views on the subject of counterfeiting and piracy. This mandate was deemed appropriate at that time as this was considered to be an enforcement area still under development. The CAP Group was assigned to report to the PTC.
2. Since then, almost 10 years have passed and the magnitude of counterfeit crimes has grown exponentially. A 2016 OECD¹ report estimates that trade in counterfeits represents more than 2.5 % of world trade. In the past decade, counterfeit trade has become a well-established branch of organized crime and one of the most lucrative forms of illicit trade. Moreover, according to some stakeholder projections, the number of counterfeit crimes has the potential to double by 2020. Being at the borders, Customs' role to combat counterfeiting and piracy is getting more crucial and WCO Members' capacity building needs are growing as well.
3. As has been discussed in several WCO working bodies and at the most recent CAP Group meeting, the rapid development of logistics technologies and the increase in the number of small consignments deriving from e-commerce have put a strain on Customs work and risk analysis capabilities.
4. In order to support our Members' efforts to combat counterfeiting and piracy, and to respond to emerging trends in a more appropriate and timely manner, there is a growing need to review the ToR for the CAP Group. This is also in line with the conclusion reached by the Chairperson of the 61st Session of the PC: "In conclusion, the Chairperson

¹ OECD/EUIPO report "Trade in Counterfeit and Pirated Goods : Mapping the Economic Impact" (2016) (based on, *inter alia*, WCO-CEN figures from 2011-2013).

stated that IPR enforcement activity was a matter lying within the sovereignty of individual Members. He added that doing nothing was not an option. Although the draft Terms of Reference were restrictive, the Policy Commission accepted them but recognized that further work might need to be done at a later stage [...]” (Doc. SP0312E1b).

5. In the light of the current situation, the proposed amendments to the ToR (set out in the Annex to this document) seek to enable the CAP Group to provide more effective assistance and support to the work of the Secretariat in developing recommendations, and to develop appropriate tools and training materials for Members, all in an open and transparent way and within the scope of the TRIPS Agreement.
6. The proposal for a revision of the ToR was circulated as a non-paper at the 15th CAP Group Meeting. The CAP Group concluded, however, that more time was needed to allow for a more comprehensive discussion, and it was decided that the Secretariat should distribute an official letter explaining the background to this issue and enclosing a revised version of the ToR. The letter was circulated to Members in December 2018. Following the letter, a few Members responded expressing their support for proposed changes. One Member indicated that the process of examining the proposed changes was still ongoing.

Action required

7. Delegates are invited to examine and consider for approval the proposed text of the revised Terms of Reference for the CAP Group with a view to their subsequent submission to the Council.

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