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POLICY COMMISSION

SP0311E1a

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61st Session
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Brussels, 20 May 2009.

ENFORCEMENT COMMITTEE TERMS OF REFERENCE

(Item XVIII on the Agenda)

SUMMARY

Purpose of document

At the Enforcement Committee's 28th Session in February 2009, there was discussion of the Committee's Terms of Reference and several texts were suggested for inclusion in the "Purpose and Scope" section among the examples of areas of work covered by the Committee. The proposals are set out in paragraph 7 below. The Enforcement Committee was unable to reach agreement on an appropriate text to include, and agreed that the matter should be submitted to the Policy Commission and Council for decision.

Action required of the Policy Commission

The Policy Commission is invited to examine the four alternative texts proposed for inclusion in the Enforcement Committee's Terms of Reference and, if appropriate, to recommend one of these texts to the Council for approval.

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1. The 28th Session of the Enforcement Committee took place from 23 to 27 February 2009 at WCO Headquarters.
2. Under Item 9 on its Agenda, the Committee discussed, inter alia, whether its Terms of Reference actually reflected the tasks before it for 2008/2009, with a view to achieving the most productive outcomes.
3. Regarding additions to be made to the text of the Terms of Reference (ToR) of the Enforcement Committee under "Purpose and Scope", a delegate proposed that a reference to "public health and safety", as well as "firearms" should be added. Another delegate referred to differences in Members' views as to whether public safety and health should be included or not. Yet another delegate stressed that issues such as safety, health and firearms were already covered in the existing ToR of the Enforcement Committee through the terms "fraud" and "smuggling".
4. By way of information, the relevant part of the "Purpose and Scope" section in the current ToR of the Enforcement Committee reads as follows :

"The purpose of the Enforcement Committee is to :

- Contribute to the strategic direction of work done by the WCO in compliance, control and intelligence within the framework of the WCO Strategic Plan in areas such as security, the intelligence function, commercial fraud, mutual administrative assistance, illicit drug trafficking, money laundering, electronic crime, smuggling, environmental crime, transnational organized crime;

...".

5. The summary of the discussion was presented at the end of the Committee's session and the outcomes sent out to Members in letter No. 09.EL-0050, dated 17 March 2009.
6. There was unanimous support to add "firearms" to the ToR. However, four alternative suggestions were put forward regarding other additions to the areas already listed under the Purpose and Scope of the ToR, with the request that the Policy Commission and Council rule in this respect.
7. The four proposals for additional text put forward by Members are as follows :
 - (1) "... firearms and consumers' health and safety."
 - (2) "... firearms and the transborder movement of goods affecting health and safety."
 - (3) "... firearms and the transborder movement of goods affecting consumers' health and safety."
 - (4) "... firearms and the transborder movement of people and goods affecting health and safety."

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8. The views expressed with regard to the four possibilities were as follows :

(A) No need to add “health and safety” to the ToR of the Enforcement Committee

- The addition of “consumers’ health and safety” to the ToR of the Enforcement Committee would go beyond Customs’ competencies. In many countries, health issues and consumer protection fall under the competency of other agencies and/or ministries. The detection of smuggling assists in the combating of substandard medicines. Since “smuggling” is already contained in the ToR of the Enforcement Committee, there is no need to explicitly add a reference to public health to the ToR.
- The fact that the problem of “health and safety” exists does not mean that only Customs can solve it. Since the issue affects competencies of other agencies, those agencies have to be consulted before a decision can be made.
- The inclusion of “health and safety” in the ToR could lead to wrong interpretations, giving room for other initiatives that serve as justification for indiscriminate and inappropriate action against the legal trade in generic medicines.
- Drug trafficking and environmental crime are terms which are already mentioned in the ToR of the Enforcement Committee. Since those terms can also be subsumed under “public health and safety”, it might be difficult to add “public health and safety” to the ToR of the Enforcement Committee.

(B) There is a need to add “health and safety” to the ToR of the Enforcement Committee

- It is important to send a message by having either “health and safety”, or “consumers’ health and safety” in the ToR. Reference was made to the content of the Customs in the 21st Century document, the Secretary General’s opening speech, contributions made by Members and observers, and presentations made by international organizations. If the WCO wants to send a message, even though “smuggling” is already mentioned in the ToR, it is important to add a reference to the issue of health and safety.
- It was suggested to broaden the ToR by simply referring to “health and safety”. This enables Customs to have other issues included, such as plants, food and animal vectors, as well as threats posed by Severe Acute Respiratory Syndrome (SARS) and bird flu.
- The inclusion of “health and safety” shows that Customs is concerned with problems that raise health and safety issues.
- Other authorities, including health authorities, have given the power to Customs to act at the borders, or anywhere else where Customs has competence. Customs has the power to stop and clear goods in order to protect health and safety.
- Adding “people and goods” to the ToR relates to the issue of integrated border management.

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9. As the members of the Enforcement Committee were unable to reach consensus on the matter, the Policy Commission is requested to advise which, if any, of the four options set forth in paragraph 7 above should be recommended for inclusion in the Committee's Terms of Reference.
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