

The background features a dark blue gradient with a subtle pattern of white dots. Overlaid on this are several white circular and semi-circular elements. A prominent feature is a large circular scale on the left side, with numerical markings from 140 to 260 in increments of 10. Other elements include smaller circles, some with dashed outlines, and curved arrows pointing in various directions, suggesting a sense of motion or a technical diagram.

# CUSTOMS COOPERATION IN THE WTO

HAO WU

WORLD CUSTOMS ORGANIZATION

# WTO LEGAL TEXTS ON CUSTOMS COOPERATION

- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS),
- Decision regarding Cases where Customs Administrations Have Reasons to Doubt the Truth or Accuracy of the Declared Value,
- Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade 1994,
- Agreement on Trade Facilitation (TFA).

# DIMENSIONS OF CUSTOMS COOPERATION IN THE WTO

- TRIPS,
- customs valuation,
- trade facilitation.

# CUSTOMS COOPERATION UNDER TRIPS

## Article 69 of TRIPS:

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.

# CUSTOMS COOPERATION UNDER TRIPS

Purpose and contents of customs cooperation are clear:

- (1) customs authorities shall cooperate with a view to eliminating international trade in goods infringing intellectual property rights, in particular trade in counterfeit trademark goods and pirated copyright goods;
- (2) customs authorities (as well as other government agencies) shall be ready to exchange information on trade in infringing goods.

# CUSTOMS COOPERATION UNDER TRIPS

Customs cooperation under the TRIPS Article 69 is also weak in enforceability:

(1) Members are obliged to notify their contact points, but these contract points do not necessarily encompass customs administrations.

(2) The legalese of this article mitigates the enforceability of this article, because '[Members] shall promote the exchange of information and cooperation between customs authorities', as an obligation, is vaguer than 'customs authorities of Members shall exchange information and cooperate between each other'.

(3) Members are only required by this article to 'be ready to exchange information on trade in infringing goods'. This does not mean that a Member has the responsibility of exchanging information voluntarily; the Member may decide to exchange information upon another Member's request, though the requested Member can ignore the request.

# CUSTOMS COOPERATION UNDER CUSTOMS VALUATION

Paragraph 8.3 of Agreement on the Implementation of Article VII of the GATT 1994:

Underlines the importance of strengthening cooperation between the customs administrations of Members in the prevention of customs fraud. In this regard, it is agreed that, further to the 1994 Ministerial Decision Regarding Cases Where Customs Administrations Have Reasons to Doubt the Truth or Accuracy of the Declared Value, when the customs administration of an importing Member has reasonable grounds to doubt the truth or accuracy of the declared value, it may seek assistance from the customs administration of an exporting Member on the value of the good concerned. In such cases, the exporting Member shall offer cooperation and assistance, consistent with its domestic laws and procedures, including furnishing information on the export value of the good concerned. Any information provided in this context shall be treated in accordance with Article 10 of the Customs Valuation Agreement. Furthermore, recognizing the legitimate concerns expressed by the customs administrations of several importing Members on the accuracy of the declared value, the Committee on Customs Valuation is directed to identify and assess practical means to address such concerns, including the exchange of information on export values and to report to the General Council by the end of 2002 at the latest.

# CUSTOMS COOPERATION UNDER CUSTOMS VALUATION

## Paragraph 12 of the Doha Ministerial Declaration:

We attach the utmost importance to the implementation-related issues and concerns raised by members and are determined to find appropriate solutions to them. In this connection, and having regard to the General Council Decisions of 3 May and 15 December 2000, we further adopt the Decision on Implementation-Related Issues and Concerns in document WT/MIN(01)/17 to address a number of implementation problems faced by members. We agree that negotiations on outstanding implementation issues shall be an integral part of the Work Programme we are establishing, and that agreements reached at an early stage in these negotiations shall be treated in accordance with the provisions of paragraph 47 below. In this regard, we shall proceed as follows: (a) where we provide a specific negotiating mandate in this declaration, the relevant implementation issues shall be addressed under that mandate; (b) the other outstanding implementation issues shall be addressed as a matter of priority by the relevant WTO bodies, which shall report to the Trade Negotiations Committee, established under paragraph 46 below, by the end of 2002 for appropriate action.

# CUSTOMS COOPERATION UNDER TRADE FACILITATION

Annex D (Modalities for Negotiations on Trade Facilitation) of the famous 'July package'46 in 2004:

The negotiations shall further aim at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues.

# CUSTOMS COOPERATION UNDER TRADE FACILITATION

NGTF reported to the Trade Negotiations Committee (TNC) at the 2005 Hong Kong Ministerial Conference:

- Advances have also been made on the objective of arriving at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues, where two written proposals have been discussed.
- Without prejudice to individual Member's positions on individual proposals, a list of [...] proposed provisions for effective cooperation between customs and other authorities on trade facilitation and customs compliance [...] is provided below to facilitate further negotiations.

# CUSTOMS COOPERATION UNDER TRADE FACILITATION

The background features a dark blue gradient with faint, light blue circular patterns and a scale on the right side. The scale is a semi-circular arc with numerical markings from 0 to 210 in increments of 10. There are also several concentric circles and dashed lines scattered across the background, some with arrows indicating direction.

Article 12 of the Agreement on Trade Facilitation (TFA)

## EXCHANGE OF INFORMATION: THE CORE OF CUSTOMS COOPERATION IN THE WTO

- (1) Would it possibly provide more information than it requests from others?
- (2) Would the exchange of information cause excessive administrative burdens?
- (3) Would confidentiality be well protected?
- (4) Would there be any conflicts with domestic legislation?
- (5) Would the exchanged information be possibly misused?

# BASIC PRINCIPLES FOR THE WTO RULES ON EXCHANGE OF INFORMATION BETWEEN CUSTOMS ADMINISTRATIONS

(1) Reciprocity. It is fundamental that the exchange of information is conducted between the customs administrations of two Members on a mutual and reciprocal basis: the right of the requesting Member means the obligation of the requested Member, vice versa; the requested Member agrees to provide information to the requesting Member just because the requesting Member has offered or would offer quid pro quo at other times. Reciprocity also signifies that each Member is on an equal footing in terms of workload, time limit, and any conditions that are related to the request or provision of information.

(2) Due diligence. Any Member under no circumstances shall abuse the mechanism for exchange of information, or immoderately rely on other Members, or cause any unnecessary burdens to other Members; viz. a Member shall fulfil due diligence before it requests information from others. It follows that requesting the information shall be predicated on the fact that the requesting Member has exhausted its efforts in processing the case in hand and it cannot go further without essential assistance provided by the requested Member.

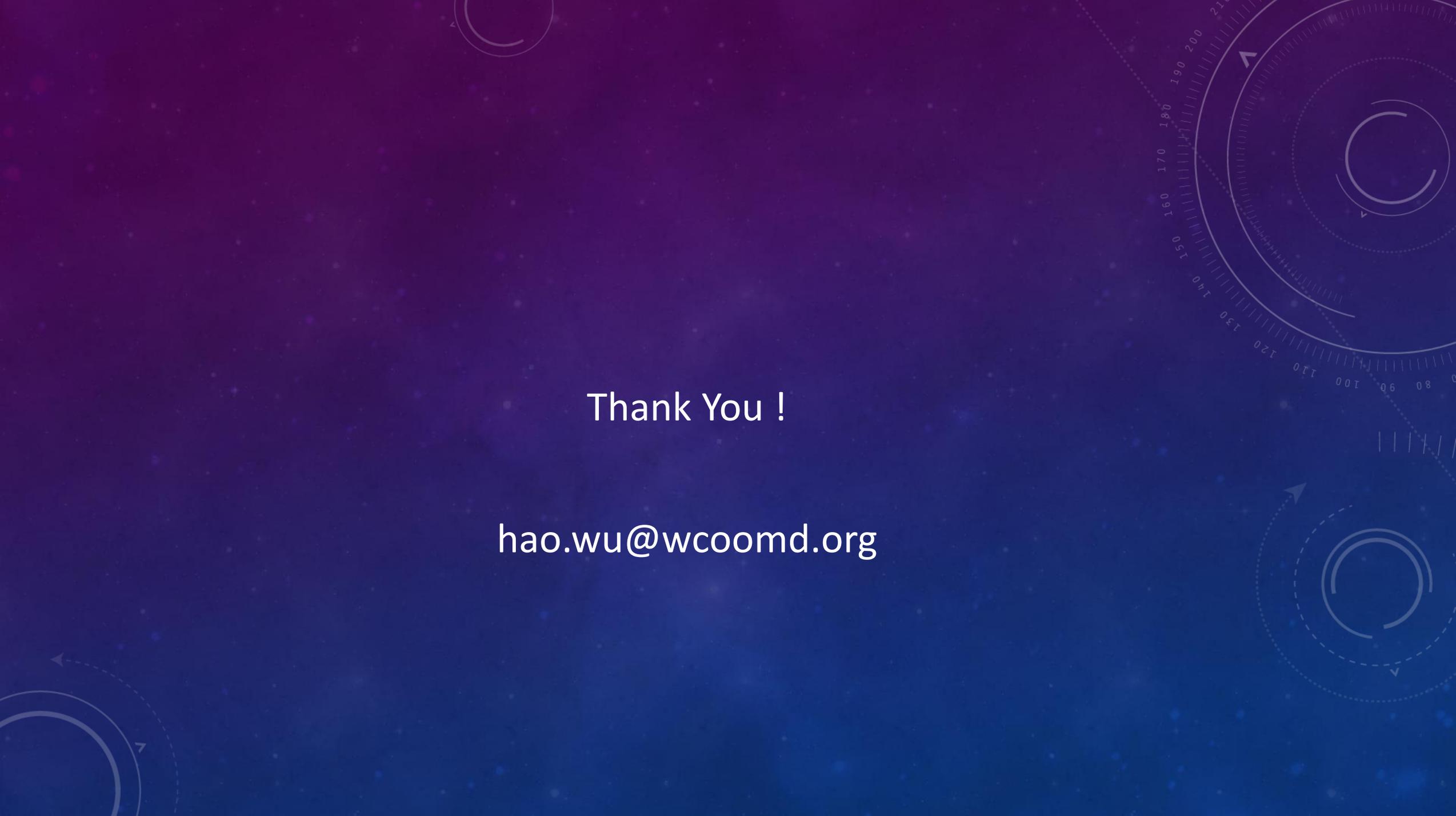
# BASIC PRINCIPLES FOR THE WTO RULES ON EXCHANGE OF INFORMATION BETWEEN CUSTOMS ADMINISTRATIONS

(3) Good faith. The request for and use of information provided by the requested Member shall be on the basis of good faith; otherwise the long-term cooperation and mutual sense of trust would be damaged. Therefore, the requesting Member shall submit the request in accordance with its real needs, and shall use the information as provided in accordance with the purpose and conditions it has described or the requested Member has required.

(4) Protection and Confidentiality. Both of the Members (in particular the requesting one) shall protect the information and confine the information to the knowledge of a limited scope of officials. Protection of the information shall cover the entire process of requesting, providing and using the information. The requester shall conduct protection of the information at least at the same level with the provider.



Wu, Hao. 'Customs Cooperation in the WTO: From Uruguay to Doha'.  
*Journal of World Trade* 51, no. 5 (2017): 1–15.

The background is a dark blue gradient with a field of small white stars. Overlaid on this are several technical diagrams in a lighter blue color. These include circular gauges with numerical scales (e.g., 100, 110, 120, 130, 140, 150, 160, 170, 180, 190, 200, 210) and arrows indicating direction. There are also dashed lines and concentric circles, suggesting a complex technical or scientific theme.

Thank You !

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