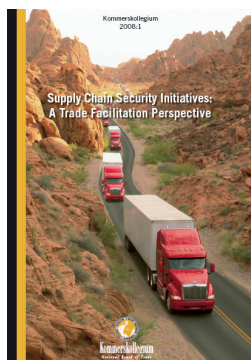


Developments in the field of security in 2008



An update on the latest developments in initiatives on security in the supply chain

In January 2008 the National Board of Trade published a report entitled “Supply Chain Security Initiatives: A Trade Facilitation Perspective”. The report has attracted a great deal of attention and it is clear that there is an interest among decision-makers, administrators, and trade and industry in the organisation of security systems and their linkages to efficient trade.

The National Board of Trade has compiled a brief summary of developments in this field since the report was published. This paper does not have the ambition to provide an exhaustive update but rather concentrates on developments in the WCO, EU and USA. Changes are taking place rapidly, with the effect that the update must be regarded as somewhat of a situation report. The update only provides a limited amount of background information and explanations. For those who need more background information or wish to read more, the report can be downloaded from the National Board of Trade’s website www.kommers.se or ordered from the National Board of Trade by telephone (+46 8 690 48 22).

Even if this update only covers a few of the programmes described in the report of January 2008, it should be pointed out that rapid developments are taking place in the field of security and that customs authorities and legislators still have an increasing interest in obtaining information from trade and industry. Insufficient attention has been drawn to the fact that, where industry is concerned, collecting information costs money in terms of systems development and time. This is true both in respect of the documentation required for decisions on security initiatives or for empirical research. Therefore, among other things, it is unclear whether the balance between security measures and facilitations for industry is being maintained in line with the intentions expressed when the WCO Framework and the EU’s AEO concept were being produced. The National Board of Trade will continue to follow developments in this field.

The National Board of Trade hopes that this brief update will be of use for those who follow developments in the field of customs and security.



1. WCO

The WCO's Framework of Standards to Secure and Facilitate Global Trade (SAFE) was adopted in June 2005. It provides guidelines for ways in which customs administrations should cooperate with each other and with trade and industry. Furthermore, the framework specifies the information and activities that shall be described and made the subject of controls in an AEO programme, and the maximum amount of data that customs administrations can require in advance notification rules for exports and imports. The framework has been considerably successful and a large majority of the WCO's member states intend to introduce it. According to information from the WCO on September 7, 2008, 154 states have signed a "letter of intent" to implement the WCO's SAFE Framework.

1.1. WCO's SAFE Framework

At the WCO's 111th/112th session in the Customs Co-operation Council, which was held in Brussels on June 26-28, 2008, a revision of the WCO's Framework of Standards to Secure and Facilitate Global Trade (SAFE) was approved. The most important changes made by the Council were to approve the adoption of guidelines for the appeal process in respect of AEO status that has been withdrawn or not approved, and to place the specification of data elements in an appendix to the Framework.

1.2. 10 + 2

The meeting of the WCO Council decided to add four data elements from the 10 + 2 rules proposed by the USA to the WCO's Framework of Standards to Secure and Facilitate Global Trade (SAFE). It was considered that the other proposed data elements were already largely included in SAFE. The data elements that have been added are: "buyer", "seller", "identifying code for buyers" and "identifying code for sellers". It was also decided that the other data elements would be processed first by the SAFE working group in mid-October 2008 and then by the WCO Policy Commission in December 2008.

In the EU consideration is being given to the effects adoption of 10 + 2 would have for European industry. See below in the section on the USA for other aspects of the introduction of 10 + 2.

1.3. AEO - Capacity Building

110 customs administrations have requested assistance for capacity building within the Columbus programme with the aim of implementing the SAFE Framework. 100 customs administrations have undergone a needs assessment and have been given recommendations on the measures



that they should implement. By May 1, 2008 the customs administration of more than 60 countries had started implementing these measures. The training programmes provided via the Columbus programme have been updated and a new Regional Training Centre (RTC) has been established in the Dominican Republic, with America and the Caribbean as its catchment area.

The WCO has divided its members into four groups on the basis of the diagnoses made in the Columbus programme. The groups are:

Members that do not need capacity support, or have small needs	25%
Members in need of technical assistance and training	10%
Members that need to introduce new decision-making structures and support functions	20%
Members that need fundamental reforms and modernisation	45%

This classification is intended to form the basis of what types of support will be given via the Columbus programmes and also to assist the countries themselves to work with their activities.

2. USA

The USA was giving security issues serious attention even prior to September 11, 2001. With the introduction of the Customs -Trade Partnership Against Terrorism, C-TPAT, in 2001, the USA had the most comprehensive AEO programme in the world. It has subsequently been supplemented with a large number of programmes and initiatives. Below a description is provided of topical changes and of some initiatives that have been highly controversial at companies and the USA's trade partners.

2.1. 10 + 2

On January 2, 2008, the USA published a bill: "Importer Security Filing and Additional Carrier Requirements". The bill has become known as "10 + 2" since it contains a proposal that importers to the USA shall submit 10 items of information related to the shipper and consignee of imported goods and two sets of data that shall be submitted by the carrier in respect of the vessel's stow plan and container status messages. This information shall be submitted 24 hours prior to the cargo is loaded on to vessels sailing to the USA. Since the proposed rules are at the "proposed rulemaking" stage, CBP's officials cannot express an opinion on the proposal but must remain neutral. The proposal was produced in the middle of August by the Department of Homeland Security's General Counsel and then submitted to the Office of Management and Budget for approval. The administration intends to meet



the final date set by Congress with the ambition that legislation shall be passed during the autumn.

The USA maintains that the data will make it easier to identify potentially dangerous shipments. This has been questioned from several quarters, for example by American companies and shipping companies. The USA has been asked by the WCO's Secretariat to follow the WCO's procedure for reviews of the SAFE Framework and not to proceed on its own. After the decision made at the meeting of the WCO's Council to adopt only four of the proposed data elements, it is probable that the USA will proceed in any case and hope that the remaining elements can be introduced at the meeting of the WCO's Policy Commission in December 2008.

In the middle of July the American customs authority, Customs and Border Protection (CBP), published a second preliminary version of technical specifications for reporting 10 + 2 through two electronic systems: Automated Broker Interface (ABI) and Automated Manifest System (AMS). The system is being tested in the Advance Trade Data Initiative and the authorities have received some 50 000 security filings on a trial basis as well as some 500-600 stow plans and some 75 million container status messages. According to CBP officials, this shows that the CBP can handle the large amounts of data without any problems.

2.2. 100 % scanning

The American customs authority, CBP, is continuing to implement trials of 100 per cent scanning in certain selected ports. A report produced by the US Government Accountability Office (GAO) states that it may be possible to implement 100 per cent scanning but there are a number of challenges to be faced. The GAO points out problems relating to

- work force manning,
- host nation examination practices,
- measuring performance,
- responsibility for costs,
- logistics,
- technology and infrastructure,
- use and ownership of data,
- consistency with risk management,
- reciprocity, and
- trade concerns.

The GAO's report draws specific attention to the fact that the USA's trade partners have pointed out that the method does not correspond to the risk-based methods that are generally applied, and that there is a danger that it



will draw resources from other risks. The report also emphasises that the CBP cannot demonstrate that the method leads to enhanced security.

In the negotiations on 10 + 2 in the WCO, the USA has maintained that acceptance of the proposal would make actual implementation of 100 per cent scanning less probable. However in the wording of the bill only technical reasons are given that would be barriers to the introduction of scanning. The CBP has forwarded GAO's report to the American Congress.

2.2.1. The EU's position

The EU regards 100 per cent scanning as a possible new trade barrier and does not believe that the measure will enhance security in the supply chain. In a common position drawn up prior to the meeting of the WCO Council in June 2008, the EU expressed concern that the measures would take resources away from more effective measures. The EU Commission also informed the American customs authority, CBP, of its position in a communication dated April 4, 2008, in which it also describes the conclusions it has been possible to draw from the experiment with 100 per cent scanning made in the port of Southampton. The average cost of that scanning was more than USD 500 per container.

At a meeting of the Transatlantic Economic Committee, TEC, on May 13, 2008, the EU Commission once again presented the EU's views on 100 per cent scanning and pointed out that the EU and USA had agreed on reciprocal recognition of each other's AEO programmes in 2009.

Two European ports, Rotterdam and Bremerhafen, have officially declared that they are against 100 per cent scanning.

2.3. ISO seal

From October 15, 2008, all containers en route to the USA must have an ISO approved seal in accordance with ISO's standard ISO/PAS 17712. This can be seen from a communication issued by the American customs authority, CBP, in the Federal Register on August 7, 2008. The background to this are the provisions contained in the legislation: "Implementing Recommendations of the 9/11 Commission Act". Certain non-standard containers can be exempted.

2.4. New legal proposal on port security

In the American Congress a bill on port security has been presented entitled: "Port Authority of New York and New Jersey Port Security Task Force Implementation Act of 2008", which has been given the number S 3174. The bill contains, among other things, enhanced security for parties involved in the chain of logistics to the USA, for example requirements that it shall be possible to follow containers electronically during the entire transport process. This will probably result in considerable costs and it is not clear what will apply to those parties who do not have the requisite technical capacity.



3. EU

3.1. Development of the customs union and e-customs

The European Union has a long-term plan for the development of the customs administrations. The so-called security changes to the customs code that were adopted in Regulation 648/2005 and which introduce AEO and advance notification in European customs work were the first step. The modernised customs code was adopted in the Regulation of the European Parliament and of the Council (EC) No 450/2008 of April 23, 2008, which laid down a customs code for the community (modernised customs code). This will enter into force when the implementing provisions have been adopted. At the moment the EU is working on these implementing provisions and the Commission estimates that a consolidated proposal will be ready for submission to the Customs Code Committee for comment no later than at the end of 2008.

At the ECOFIN meeting in May 2008, the Commission's strategy for the development of the customs union was approved, and the Commission was urged to return with a plan for implementation of the strategy no later than the end of 2009 and a report to the Council no later than 2011. The Council emphasised in particular the importance of customs activities for the economic interests of the union and the importance of maintaining a balance between security ambitions and efficient trade.

3.2. AEO

The AEO legislation entered into force in the EU at the beginning of 2008. By the middle of September some 270 companies had been certified. At the end of the spring the Commission opened a website where it is possible to search for AEO-certified companies or for type of certificate, i.e. if the companies have a certificate for customs simplifications, a certificate for security and protection, or the combined certificate. However, companies can state in their applications that they do not wish their certification to be made public. By the middle of September some 1 300 companies had applied for certification, including the 270 companies that have already been certified. The tendency persists that countries in northern Europe that have previously had programmes for cooperation between customs authorities and companies, or countries that have a large volume of trade, have most certified companies. A sample shows that the Netherlands have 294 applications, Germany 295, Sweden 170, Great Britain 119, France 74, Italy 74, Belgium 33, and Italy 8. The overwhelming majority of the certified companies have combined certificates.

3.3. Advance notification - general

Advance notification, or more correctly summary entry and exit declarations, is to be introduced in the EU on July 1, 2009. It will only be possible to



submit entry and exit declarations electronically in order to permit electronic processing for risk management purposes. The work of being able to receive entry and exit declarations is taking place in the member states. At the moment the date on which the system shall be introduced is the subject of discussion due to delays in the issue of the national technical specifications.

There are some 25 data elements that shall be notified to the customs administrations in the summary entry and exit declarations. Some of these refer to the goods, some to the shipment, and some the entire advance notification. For AEO the number of data elements is lowered to about 20. Some representatives of industry state that it is not clear who shall submit what information and that it is not self-evident that all companies have access to all the information. This will probably mean that a substantial responsibility will rest with the transporter.

3.4. Advance notification Norway and Switzerland

Switzerland and the EU are holding regular negotiations on ways in which the rules for advance notification should be handled. The negotiation groups met on July 16. They were able to establish that the border controls used by Switzerland are fully compatible with the EU's. It is assessed that a full exemption from advance notification is suitable but that the time factor is of decisive importance since the EU requires that Switzerland shall apply the same rules on AEO, advance notification in respect of third countries, and risk management. The systems issue is one of several problems. Switzerland will probably be able to use compatible systems since it is estimated that the common EU system will not be in place on time, i.e. on July 1, 2009. For indirect exports via Switzerland to the EU, it will not be necessary to implement advance notification and risk analysis in the EU. On the other hand a normal customs declaration will be necessary. A provisional solution of one form or another will be needed since the parties cannot count on having completed the procedure by July 1, 2009.

Negotiations were started with Norway in June 2008 and they will be intensified during the autumn. Norway has been offered full exemption from the rules on advance notification. However, no agreement has yet been concluded.

3.5. Centralised clearing

Centralised clearing is not a security matter but is included in the package on e-customs that has been adopted by the EU. It is an important step for the facilitation of trade procedures and the goal is that it shall be implemented in the EU no later than 2013. For central clearing to be implemented it must be applied throughout the entire union in order to avoid inequities arising for companies based in different countries. At present negotiations are taking



place in the EU Council's working groups on the distribution of revenue from customs duty. It has been agreed that the part of the duty that accrues to the member states shall be divided equally between the member state where the goods are presented and the member state where the duty is paid.

The procedure is described in the modernised customs code regulation 450/2008, article 106. According to the regulation, an actor's AEO status shall be taken into consideration when a decision is made that central clearance shall be granted.

3.6. Aviation security rules

On August 8, 2008, the Commission published a new regulation (EC) No 820/2008 on measures for the implementation of common basic standards on aviation security. It replaces regulation 622/2003. Discussions are taking place at present on the extent to which the implementing provisions can be made public.

3.7. CEN

At the end of 2007 the European Commission gave CEN the mandate to start a study on whether a European standard for security in the supply chain can be adopted. According to the mandate this work was to be done by analysing existing labels and standards, needs of the users, the attitude of small companies, and so on. In June 2008 CEN's technical board decided to accept that part of the mandate that refers to an analysis of whether it is possible to introduce a standard and, if so, what it should include. When this analysis is complete CEN intends to decide whether the work shall be started. The Project Committee - Supply Chain Security had its first meeting in December 2007 when it decided that some research work must be implemented before standardisation can be introduced. This work is now at a standstill pending an agreement with the EU Commission on financing.

ISO PAS 28000 is an existing ISO standard for security in the supply chain and it has previously been the case that ISO standards have been adopted as CEN standards and vice versa.

