

# Mutual recognition of AEO programmes

Supply chain security and trade facilitation  
– progress report fall 2010



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As the expert authority in trade and trade policy, the Board provides the Government with analyses and background material, related to ongoing international trade negotiation as well as more structural or long-term analyses of trade related issues. We also publish material intended to increase awareness of the

role of international trade in a functioning economy and for economic development.

The National Board of Trade also provides service to companies, for instance through our SOLVIT Centre which assists companies as well as people encountering trade barriers on the internal market. The Board also administers the Swedish Council for Trade Facilitation, SWEPRO.

In addition, as an expert authority in trade policy issues, the National Board of Trade provides assistance to developing countries, through trade-related development cooperation. We also host Open Trade Gate Sweden, a one-stop information centre assisting exporters from developing countries with information on rules and requirements in Sweden and the EU.

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# 1. Introduction

In January 2008, the Swedish National Board of Trade published the report *Supply Chain Security Initiatives: A Trade Facilitation Perspective*. The report presented the security initiatives taken by governments, customs authorities and international organisations to protect the supply chain from terrorism. In the report, the Board warns of increased demands on companies in terms of provision of information and participation in various security-related programmes, and points out the importance of balance between security initiatives and trade facilitation measures.

The report from 2008 is particularly detailed in the description of the new programmes for partnership between companies and customs authorities; Trusted Trader, Authorised Economic Operators (AEO), Stairsec – many names for the same concept. In an AEO programme, companies are given advantages in customs procedures in exchange for showing that they work in a standardised fashion with security issues or customs procedures. These partnerships have been developed based on differing rationales. For customs authorities, it has been an advantage to be able to allocate resources to the monitoring of goods coming from companies whose routines they do not know. Prescribing how companies are to work with customs issues has meant that a minimum standard has been set and is followed up. The procedure is transparent and all companies can enjoy the benefit of the reduced number of inspections in a standardised programme. The programmes have affected the work in the logistics chain, which has become yet more professionalised.

The security considerations behind the AEO programmes are based on the fundamental idea that supply chains are vulnerable to attacks. After the attacks in the US on 11 September 2001, the borders were closed and supply chains closed down. This entailed very large costs for the companies affected. In a system with authorised import companies, the supply chains do not need to be stopped. Goods from companies with low risk profiles can, at least in theory, continue to be cleared despite a raised level of risk.

However, for many companies the rules may be difficult to comply with; perhaps this applies particularly to small companies, but large companies also encounter special challenges in the certification process, in particular if they have complex group structures. Simplifications that could possibly have been extended to all companies in the supply chain

are in many cases linked directly to certification. The mere fact that many countries have established programmes can be a problem for companies, who thereby feel forced to become certified in many different programmes. Although practically all AEO programmes are meant to be based on the WCO's framework, there are differences in design and structure that means that the process must be repeated for each certification. In the EU, companies are also complaining that they are forced to certify many different companies in the same group structure. Mutual recognition of programmes and member companies could reduce the requirement to certify companies within many different programmes, and would constitute a key simplification.

Up to the current date, customs authorities claim that eight agreements on mutual recognition of AEO programmes have been signed: New Zealand – Japan, USA – New Zealand, USA – Jordan, USA – Canada, USA – Japan, EU – Switzerland, EU – Norway and most recently EU – Japan. In actual fact, only those agreements involving the EU are binding; in other cases they are so-called “arrangements”, which are not binding and which do not offer transparency. The consequences of this are further discussed in this report. The EU is currently negotiating with a few other important trading partners. This report describes the agreements entered into, as well as the negotiations in progress and the various issues that they give rise to.

From a trade facilitation perspective, it is important that trade is not burdened by complicated customs procedures or non-transparent rules and procedures. The AEO programmes are an important tool for simplifying trade. In fact, those countries with a large number of AEO companies, or whose trade to a large part is operated by AEO companies, have a significant competitive advantage, as their supply chains flow unhindered. In a report from the OECD, the organisation indicates that, despite incomplete information, available data show that a relatively small number of AEO companies already today are responsible for a very large proportion of trade. Currently, around 60% of the value of imports and exports in Sweden come from AEO companies<sup>1</sup>. A study shows that each extra day a good is in transit is equivalent to an additional customs tariff of 0.8%<sup>2</sup>. Predictability and short waiting times are key elements of trade facilitation, and are of great value to competitiveness.

In the Council conclusions regarding priorities for the internal market after the Lisbon agenda, the

EU's Council of Ministers has emphasised the importance of efficient customs procedures and urged the Commission and the member states to work for the Union having the world's most efficient and trade friendly customs procedures<sup>3</sup>. The AEO programme and mutual recognition with other trading partners are important instruments for achieving this vision.

For all the above reasons, it is important for the National Board of Trade to scrutinise the development of the AEO programmes, and in particular the work with the EU's AEO programme. When the previous report was published, the AEO programmes were relatively new, and many countries had not yet introduced programmes, even if some legislation was prepared. Now that the programmes have been introduced in several important trading nations, there is reason to follow up the previous report. In its review, the Board has placed particular emphasis on transparency, simplification and competitiveness. It is important for the legislators to find a sustainable balance between justifiable security rules and inspections on the one hand, and trade facilitation on the other. With this progress report, the Board wishes to contribute to greater understanding of how the AEO programmes and mutual recognition can be designed in

order to get closer to exactly that balance between security rules and trade facilitation.

The report is intended as a follow-up of the report *Supply Chain Security Initiatives: A Trade Facilitation Perspective* from 2008, but the Board has chosen to pay particular attention to an area where development has been rapid, and which the Board considers to be of great importance for continued trade facilitation. In the report, the development of AEO programmes over recent years in a selection of important economies is described. Thereafter follows a review of the mutual recognition agreements that have been signed and the known negotiations that are currently in progress. The concluding discussion also touches on a couple of measures within the security area, which are of crucial importance to future developments; information collection and 100% scanning. The report does not aim to be exhaustive, but wishes to present an overall view of how the AEO programmes have developed over the last two years and to describe the important development that mutual recognition of customs authorities' differing programmes entails. The level of detail varies throughout the report. This is because in some cases it is very difficult to get hold of information, which is in itself a problem from a trade facilitation perspective.

## 2 AEO – a progress report

Authorised Economic Operator – AEO – is a central concept within supply chain security. The basic idea is that those companies that can show that they are systematically complying with the customs authorities' requirements in terms of how they work can be granted easing of inspections. The goods from authorised companies shall also be prioritised in the event of any incident, or when risk levels generally require a greater number of inspections. In this way, total stoppages in the supply chain can be avoided. Mutual recognition of authorised economic operators between two countries creates an integrated supply chain of companies that work according to a specific method, which is an advantage for both companies and customs authorities.

The WCO's SAFE Framework of Standards<sup>4</sup> from 2005 describes in detail a concept for partnership between companies and customs authorities called Authorised Economic Operator. 160 countries have signed a declaration of intent stating that they intend to implement SAFE. AEO programmes are one of several components that can be implemented, but a large number of countries have stated that they are planning to introduce an AEO programme specifically. The USA's Customs-Trade Partnership Against Terrorism, C-TPAT, and the Swedish Stairsec were early examples. C-TPAT, which started in autumn 2001, is now a programme covering more than 9,600 companies. The Swedish Stairsec has now been replaced by the EU's AEO programme, which came into force on 1 January 2008. Australia, Japan, Canada, China, Mexico and New Zealand are examples of other important trading nations that have introduced AEO programmes, but also smaller countries, such as Jordan, have functioning AEO programmes.

Both the member countries of the WCO and the private trade sector recognise the importance of securing the supply chain, at the same time as the flow of goods across borders is facilitated. The cooperation between customs authorities and companies has been designed to achieve this goal, and the SAFE framework among other things places requirements on the partnership between an AEO company and its trading partners being formalised, by business partners of the AEO company showing, via agreements or certificates, that they are intending to comply with the security standards that form the WCO's framework. There are also requirements for an authorised economic operator to fulfil certain criteria in terms of securing build-

ings and fences, identification procedures for staff and visitors, protection of sensitive information, staff security, reporting procedures for transport information and also security training of staff. A detailed description of the various requirements can be found in the National Board of Trade's report *Supply Chain Security Initiatives: A Trade Facilitation Perspective*. See also fact box 1.1.

WCO has detailed requirements for companies wishing to achieve AEO status. An authorised economic operator (AEO) is defined as a participant in the international trade supply chain that fulfils the WCO's or other equivalent standards for security in the supply chain. Authorised operators can be manufacturers, importers, exporters, agents, freight companies, freight consolidators, ports, airports, terminal operators, owners of storage facilities and distributors. In order to avoid small and medium-sized companies in particular suffering from complicated procedures that may be necessary for larger companies, the WCO recommends flexible implementation of AEO. If the requirement elements can be achieved in a more cost-effective way for a small or medium-sized company, this shall be applied. One example of such an area is detailed control of staff, which in a smaller company can be replaced by there being a personal relationship between the owner and all employees.

### Fact box 1.1 Main points of WCO's programme for Authorised Economic Operator (AEO) within WCO's Framework.

- Demonstrated compliance with customs' requirements
- Satisfactory system for management of commercial records
- Financial viability
- Consultation, cooperation and communication
- Education, training and awareness
- Information exchange, access and confidentiality
- Cargo security
- Conveyance security
- Premises security
- Personnel security
- Trading partner security
- Crisis management and incident recovery
- Measurement, analyses and improvement

The following describes the most important developments of some AEO programmes, with emphasis on the EU, USA and some other large trading nations. Basic descriptions of how the AEO programmes in the EU and USA are designed and relate to WCO's framework can be found in the National Board of Trade's report *Supply Chain Security Initiatives: A Trade Facilitation Perspective*.

## 2.1 EU's AEO programme – a basis for continued work with trade facilitation?

### 2.1.1 Progress of implementation of AEO and advance notification

The EU's AEO programme came into force on 1 January 2008. It consists of two different certificates; Customs Procedures or Security and Safety. The two can also be combined. AEO within the EU covers customs procedures, which is also the case for certain other important programmes, but differs from the USA's C-TPAT, which only concerns security. Around 2,600 certificates have been issued within the EU; around 80 per cent of these are the combined certificate and 2 per cent only are Security and Safety. In total, more than 4,600 applications have been received. As relatively few applications are rejected, a relatively large number of companies have applied for or have already received AEO status. The figures can be compared with the USA's C-TPAT, which started in November 2001 and has around 9,600 company members.

However, the applications are not evenly distributed across the member countries of the EU. Germany alone has around 25 per cent, and together with the Netherlands (15%), Sweden (10%), France (9%), Italy (8%) and United Kingdom (7%), they represent almost three quarters of all applications. In other words, it is clear that countries that have previously had partnership programmes between customs and companies, i.e. Sweden and the Netherlands, and countries that are dependent on trade and have many companies, such as Germany and the United Kingdom, have found it easiest to start the AEO programme. The structure of business in the different countries probably also plays a key role. It would be interesting to show how large a part of a country's trade the AEO companies represent, but as yet there are no such statistics available. The Commission and the member countries are working on producing information by autumn 2010 at the latest.

In order to fulfil the requirements for AEO certification, the companies must have implemented measures within a large number of areas. These can be found in Regulation 1875/2006. There are relatively detailed rules for the quality of buildings, rules for access, protection of goods, both from anything being added to transports and against loss/exchange of goods. AEO companies must also be able to identify their business partners. The Regulation also includes rules about security checks on personnel that may be sensitive from a security point of view and personnel training in order to raise their security awareness.

When the rules about AEO were introduced in the Community Customs Code, rules for so-called advance notification were also introduced, i.e. entry and exit summary declarations. According to the rules introduced with the security amendment<sup>5</sup> in 2006, entry and exit summary declarations shall be made electronically to the customs authorities as of 1 July 2009. Because of difficulties with getting all the IT systems into place – some member countries have, for instance, not been able to keep to the timetable because of the Community's procurement regulations – the Commission and the member countries have decided to allow longer deadlines for the companies. In the agreement (Regulation 273/2009<sup>6</sup>), the difficulties for the economic operators to adjust their systems to electronic transfer of information are given as the reason for the amendment. In reality, however, several member states have been late with the introduction of the import and export control systems, which in turn affects the companies in those countries, as they must have technical specifications to enable them to adapt their systems. One explanation for the problems is that the final design of the systems was determined late within the Community. The transitional period for the economic operations runs until 31 December 2010. However, some member countries will have difficulty getting their systems ready before the second half of 2010, which means that there is a risk there will not be enough time for the companies to adapt their systems.

### 2.1.2 New rules in AEO – simplifications?

The AEO certification is intended to give the companies certain clear advantages. It is stated in the Regulation that the certification shall entail considerable easing of the inspection frequency, both in terms of documents and physical inspection of goods. The AEO companies may use simplified formats for entry and exit summary declarations in conjunction with import and export, a right that also covers AEO certified carriers, shipping agents

and customs agents when they are working on behalf of an AEO certified company<sup>7</sup>. Opportunities also open up for customs authorities to contact an AEO certified company that has submitted an entry summary declaration in order to inform the company that the goods have been selected for extra security inspections. However, the provisions do not mean that an AEO certified company is exempt from physical inspections; the customs always have the right to make such inspections, even without notifying the company, if notification would make the inspection more difficult to implement. An AEO certified company which is informed that a physical inspection of the goods will be made is, however, given the possibility to present a request in respect of the location of the physical inspection. Furthermore, the customs authorities can decide to increase the frequency of inspections with reference to a specific threat or any obligation to make inspections that derives from other EU legislation. Where the companies are concerned, misgivings have been expressed that facilitations in, for example, the submission of information in the entry and exit summary declarations are not sufficient to motivate the additional work that arises from AEO status. It is exactly the interaction between AEO status and advance notification that is regarded as crucial.

### **Fact box 2.1: Benefits for AEO certified companies**

#### **Current simplifications for EU's AEO companies**

- Lower inspection frequency
- Reduced number of data elements in the advance notification
- Choice of inspection location
- Notification in advance when a shipment has been selected for inspection (unless this endangers the purpose of the inspection)
- General conditions for certain further simplifications are automatically fulfilled
- Simplified declaration process and local clearing process
- Mutual recognition for Norway and Switzerland

#### **Simplifications to come**

- Reduction of the level of the comprehensive guarantee and guarantee waiver (2013)
- Self assessment when the administrations of several member states are affected (2013)
- Centralised clearing (2013)
- Exemption from data information for security and protection for exporter
- Notification about inspection to be sent to the carrier as well
- When interrupted trade is resumed, AEO goods are to be dealt with first
- Mutual recognition

The European Commission and Community customs authorities are now working on Implementation Provisions for the Modernised Customs Code (MCCIP). The work is expected to be completed so that it can come into force at the end of June 2013. One of the areas covered is AEO and the conditions to be linked to AEO certification. Many of the changes that will occur once the Implementation Provisions for the Modernised Customs Code comes into force will give more benefits for AEO certified companies. This is the case, for instance, reduction of the level of the comprehensive guarantee and guarantee waiver, self assessment and centralised clearing. During the first quarter of 2010, the Commission and member states consulted businesses in the Trade Contact Group convened by the Commission, in which 30 business organisations were represented. No general circulation for consideration is planned. The work is carried out under great time pressure, and the business organisations have been dissatisfied with both the format and the time plan.<sup>8</sup>

Self assessment is a licence for simplifications of customs formalities and customs inspections that entails an economic operator getting permission to carry out certain customs formalities itself that would otherwise in principle be carried out by the customs authorities. If the permit is to cover more than one member state, it is a requirement that the applicant holds an AEO certificate. One of the basic principles for self assessment is that the licence holder's business systems and internal inspection opportunities form the basis for the permit. Goods that are under customs control can then be checked against the operator's business system instead of the inspection being carried out per transaction (or per customs declaration), which facilitates a transfer from transaction based to systems based solutions and inspections.<sup>9</sup>

The simplification centralised clearing makes it possible for an import or export company to submit customs declarations in electronic format to the customs office where it is established. This is independent of where the goods are entering, or leaving, the Community's tariff area. Customs duties are charged, repaid and remitted by the customs office where the economic operator is established.

An advantage proposed in the draft Implementation Provisions for the Modernised Customs Code is that exporters that hold an AEO certificate covering Security and Safety may also be exempted from having to provide data about security and Safety for exit declarations.

It is also clearly stated in the draft of MCCIP that goods from AEO certified companies should be dealt with first in a situation where raised risk levels prevail.

Whilst a discussion is in progress regarding whether to create new benefits for companies that are AEO certified, new requirements on companies that are about to become certified have been added. Foremost of these is the new requirement that companies shall have what is known as “practical standards of competence and professional qualifications”, i.e. a requirement that companies and their employees shall live up to a certain professional standard and have the necessary training. This will not apply to existing AEO companies, however, as the current certification is deemed to fulfil this requirement. There will probably also be new requirements for compliance with tax legislation for those companies who want a certificate for customs compliance, which also exists today in relation to all simplifications on the transit side.<sup>10</sup>

There is a risk that the work with the IT systems is delayed, or that important parts of the work cannot be implemented. A target has been to carry out modelling of processes for IT solutions before the legislation is written, but this work takes time. The member states have made a prioritisation of the new procedures that are the most important to implement on schedule.<sup>11</sup>

## 2.2 USA

USA has a large number of security programmes that have been gradually added since the terrorist attacks on 11 September 2001. USA's programme for economic operators on the import side, Customs-Trade Partnership Against Terrorism, C-TPAT, has been in existence since late autumn 2001. Various programmes have been developed using differing legislative instruments and differing financing. Together they constitute a relatively comprehensive system. It should be noted that there are still no programmes for exports from the USA, with the exception of the FAST programme relating to road transports between USA, Mexico and Canada.

### 2.2.1 C-TPAT – USA's partnership programme in its mature phase

According to the American customs, the Customs-Trade Partnership Against Terrorism (C-TPAT) is an initiative that has the aim that companies and authorities shall work together to strengthen and improve the entire international supply chain. C-TPAT only applies to imports to the USA. When the initiative was started in November 2001, with seven participating companies, its focus was on attempting to create a system that would enhance the resistance of the supply chain against terrorist attacks. The idea was that, if a terrorist attack took place, the largest operators in terms of volume and

value would be able to rapidly get their supply chains working again and thereby reduce any harmful effects on industry. Initially few benefits with the system were promised; the American customs could only guarantee that certified companies would not be subjected to a higher frequency of inspections than before September 11. However, in the American customs' strategic plan for C-TPAT<sup>12</sup> from 2004, more ambitious goals are expressed: to enhance security for a significant proportion of the consignments arriving in the USA, to give both benefits and incentives to those companies that fulfil or exceed the requirements laid down in C-TPAT, and to concentrate the CPB's resources on the consignments assessed to have the highest risk.

The development since then has been relatively rapid. At the end of 2009, more than 9,600 companies had joined the programme. The programme is divided up into different tiers. Tier 1 comprises companies that have applied for membership and have documented their processes in an approved way. Within one year, they must be checked at a physical validation visit from American customs<sup>13</sup>. They can then be moved up to Tier 2. Tier 3 comprises companies that have clearly implemented best practice and surpass the requirements for high security with a broad margin. Around 280 companies are in Tier 3 and around 8,500 in Tier 2.

Validation is a large-scale undertaking for American customs, and during 2009 3,420 validation visits in 75 countries were carried out. Around 2,200 of them were re-validations of existing members. These re-validations are to be carried out at least every four years in accordance with legislation in the SAFE Port Act, which regulates the C-TPAT programme. The number of member companies grew by around 1,200 companies in 2009. American customs are monitoring developments carefully, and some 600 companies had lost their C-TPAT membership by autumn 2008. Most of these, however, are road transport companies with traffic from Mexico<sup>14</sup>. During 2009, almost 300 companies lost their status due to failing the validation or a security incident. Drugs smuggling or human trafficking count as security incidents, but lack of willingness to remedy faults in the programme or incorrect information can also lead to the C-TPAT status being recalled. However, a case-to-case assessment is always made, and the rules are often implemented so that some benefits are removed in stages.<sup>15</sup>

Information dissemination is an important concept within the programmes, and a special report concerning best practice was developed in 2009 in order to spread ideas and solutions for increasing security at companies.

According to the American customs, benefits for the companies in the form of simplified trading procedures include cost and time savings, thanks to a reduced number of checks at customs, better control over assets, benefits in conjunction with interruptions in trade, and competitive benefits when importers require trading partners to have a programme of measures to ensure a secure supply chain. CBP points out that it is six times less likely that C-TPAT importers are selected for a security inspection and four times less likely that they are selected for a check of compliance with regulations<sup>16</sup>. One example of this is that labelling for quicker handling of C-TPAT goods has been introduced in the port of Newark<sup>17</sup>.

C-TPAT has links to other programmes. One such is FAST. The Free and Secure Trade (FAST) programme is a so-called border accord initiative between the USA, Canada and Mexico. The participating countries have agreed to coordinate, to the maximum possible, their processes for the clearance of shipments at the border. The companies that can participate in FAST are carriers, drivers, importers and manufacturers (the last mentioned only at the southern border of the USA). In order to be able to use FAST passages, Road transports must be linked to carriers certified in C-TPAT, transport goods from a C-TPAT certified importer and have a driver with a FAST card. At the southern border, the manufacturer must also be C-TPAT certified, and containers must be equipped with a seal corresponding to CBP's requirements for high security seals. This means that there are measures that are actually linked to exports, and that the agreements between the USA and Canada regarding mutual recognition can be regarded as actually mutual. See more about this in section 3.2 concerning agreements between the USA and Canada.

## 2.3 Other developments

### 2.3.1 China - AEO since 2008

China signed a declaration of intent for WCO's *Framework of Standards to Secure and Facilitate Global Trade* as early as 2005<sup>18</sup>. This includes the AEO programme, among other features. In order to implement the AEO programme, China has chosen to focus on five items. These are to create a concrete legislation adapted to the new system, to implement AEO verification and implementation, to organise collaboration between customs and industry organisations, to place greater weight on communications with international customs authorities and to develop a computer system for evaluating the participating companies' ability to comply with the legislation. The AEO programme is

thus planned to be a direct implementation of the WCO's AEO in the SAFE framework. The Chinese customs authorities started to implement the AEO programme during 2008. The ten most important benefits for companies within the AEO programme are summarised below:

- Trust is created between companies and customs authorities.
- Specially trained officials help the companies to coordinate and solve customs problems.
- The lower inspection tariffs are always used in import and export controls.
- The declaration can be submitted where the registration is done.
- Inspection and customs clearing procedures can be carried out directly in the port.
- Inspection and customs formalities are carried out on location at the company.
- A specially selected group carries out inspections on location.
- Priority handling of urgent customs clearance formalities at inconvenient hours.
- Priority handling of trade formalities, such as filling in forms and adapting and reporting them for verification purposes.
- Priority handling of declaration registration formalities.

As from 1 April 2008, it became easier to import and export goods to China for companies that could prove that they implement strict security criteria in their import/export operations and within the company management<sup>19</sup>. The classification system described below is a basis for selecting the companies that can apply for AEO status. In order to increase security and to facilitate matters for companies, the Chinese customs authority is working on implementing a paperless customs procedure. When information is received about the import and export goods, the goods are classified in relation to risk. Depending on how the security in the supply chain is assessed, the companies will then be classified into five categories: AA, A, B, C and D. Companies in the categories AA and A will be checked very sparingly, companies in category B regularly and companies in categories C and D very frequently. According to WCO, in March 2009 there were 1,140 companies classified as AA, 15,849 classified as A, 557,007 classified as B, 884 classified as C and 363 classified as D. A very clear majority of companies are therefore classified in the middle category B.

In order for a company with import and export to be classified in category AA, it will have to be classified as A for at least one year, its import and

export volume must have been at least USD 30 million the previous year (however only USD 10 million for trade with central and western China), and audited annual accounts must be submitted every year, among other requirements. According to the Swedish Customs, these values will be reduced substantially as from 2010. Only companies classified as AA can participate in the AEO programme. For classification as A, the company will have to have been classified under category B for at least one year, the company must not have been involved in any smuggling operations during the last year, the company's import and export must exceed USD 500,000 per year, the error percentage in import and export declarations must not exceed three per cent, and the company must collaborate well with authorities relevant to trade.

A company is classified as category C if the company has been guilty of any of the following: involvement in smuggling activities, breach of the customs authority's regulations more than three times during one year, conviction to pay damages of more than RMB 500,000 in total for the year by the customs authority, conviction by customs for breaches of intellectual property rights more than twice during one year, and finally company debts relating to tax or fines totalling less than RMB 500,000. Companies are classified in category D if the company has committed a smuggling offence, has been involved in smuggling activities more than twice in one year, if the customs has convicted the company for breaches against intellectual property rights more than three times in one year, or if the company's debts for tax and fines exceed RMB 500,000. If the company does not breach any of the points under category C or D, but does not fulfil all the requirements for classification under A, the company will be classified under B. Companies registering for the first time are also classified as B.

If a company fulfils the requirements for AA classification, an application may be made by the company to be moved up to this category. The same applies if a company qualifies for A classification. If a company is not guilty of any of the points under category C during a year, the company can apply to be moved up to category B, whereafter the customs authority will change the category for the company. The same procedure applies when a company applies to be moved up to category C from category D. If a company is moved down a category, there is a three year bar before any upwards reclassification can come into question<sup>20</sup>. In the discussions about mutual recognition, the EU has stated that it regards three years as too long a period if China's system is to be mutually recog-

nised by the EU's AEO, and China is now reviewing the rules in the light of this.

Besides the AEO, a project is being carried out called *Smart and Secure Trade Lanes*, which is a pilot project between the EU and China since 2006. The aim of the project is to test the security of the entire supply chain. From the European side, the customs authorities in the United Kingdom and the Netherlands are participating. A further four EU countries have expressed a wish to take part in a possible second phase. China would like more ports and trading routes to be included in the project. In order to achieve this, there has been an exchange of security data and minimised customs inspections. Discussions have started between the EU and China regarding mutual recognition.<sup>21</sup>

### 2.3.2 Singapore - Secure Trade Partnership

The customs authority in Singapore started its programme *Secure Trade Partnership* (STP) on 25 May 2007<sup>22</sup>. STP is a voluntary certification programme encouraging companies to use robust security measures in their trading procedures. The programme has been developed in line with WCO's *Framework of Standards to Secure and Facilitate Global Trade*. Companies are also permitted to design their individual security plans in relation to current business models and risks. Through the programme, Singapore aims to:

- Create awareness of the importance of having an overall view of the supply chain in terms of container security.
- Encourage companies to secure their part of the supply chain.
- Strengthen global supply chains and prevent disruption in the flow of goods, so that trade operates smoothly.
- Profile Singapore as a secure trading hub.

The STP programme is open to companies involved in activities in the supply chain. The aim is to make all companies secure their part of the supply chain, whilst also creating partnership. The customs authority in Singapore manages validation and certification processes for companies wishing to join STP. Membership entails being a trusted partner of the customs authorities and thereby getting access to simplifications in trade. There is also a *TradeNet* system which means that an early risk assessment can be done by sending electronic information about the size and contents of all containers included in the shipment already before they arrive in Singapore<sup>23</sup>. *TradeNet* also makes it possible for companies to get responses to their applications in minutes instead of hours or days as before.

Singapore proposes the establishment of a programme for recovery of the Asia-Pacific region in the event of a terrorist attack. Following an attack, a risk handling programme is recommended in response to the attack. This programme would simultaneously balance the security requirement and the need for trade to flow. The Singapore customs consider that it is counterproductive just to focus on one or two parts of the security chain; creating an overall approach is of the utmost importance. In order to secure the supply chain, close cooperation between countries is required, and Singapore is therefore investigating the opportunities of taking part in programmes for mutual recognition together with other authorities. This will further facilitate trade in goods across borders. Only through mutual recognition and programmes for recovery can the probability of interruptions in trade be minimised.

### **2.3.3 Canada's Partnership in Protection**

On 30 June 2008, a modernised Partnership in Protection-program, PIP, was launched<sup>24</sup>. PIP, which has been in existence since 1995, is a voluntary programme for securing trade. Initially, PIP focused primarily on preventing contraband smuggling and enhancing compliance with regulations among participating companies. Canadian legislation states that vehicles used for smuggling could be seized by the authorities. This had the effect that companies jointly contacted the Canadian authorities to find a way of proving that they had done everything they could to prevent smuggling. After the events of 11 September 2001, PIP was updated to also cover measures against terrorism. Focus was placed on security measures relating to physical environment, infrastructure and handling. At that stage, PIP was based on certification company by company, carried out by the customs authorities in the Canadian states. This left quite a lot of freedom for assessing the companies' measures.

In an evaluation of PIP from October 2006, it was found that the resources to hand in the form of input from customs officials for validation of applying companies was very limited compared to the USA. At that time, the three main parts of the programme in the contact between customs authorities and companies consisted of contact and awareness-creating visits, security inspections (and visits) and security recommendations.

In 2007, Canada invested CAD 11.6 million in making the programme more like the USA's C-TPAT and in giving benefits to companies in order to facilitate trade. The Canadian customs authority, CBSA, also stated that it wished to upgrade the programme to make it fully compatible with the WCO's Framework of Standards to Secure and Facilitate Global

Trade, SAFE. The goal was to achieve mutual recognition with the USA, which was also achieved in June 2008. See the section about USA – Canada, 3.2.3. As importers and exporters, as well as transporters, carriers and customs agents can become participants in the programme, the agreement with the USA is the only one that actually entails mutual recognition of the trade in both directions. Membership of PIP is necessary in order for Canadian companies to participate in the Free And Secure Trade programme, FAST, (see section 2.1.1, last paragraph). This means that the vast majority of member companies in some way are working with trade via land with the USA.

The changes to the programme have meant that the security criteria used are largely the same as in C-TPAT. Validation visits are mandatory and the regulations that apply to companies that do not live up to their obligations under the programme are similar. It is also easier to become a member of both programmes, even if a separate application is needed for both. The benefits the CBSA indicate in their communication with companies are primarily greater security, better relations with and position vis-à-vis the customs authorities, increased knowledge about customs regulations and better status in international trade. It should be noted that the customs authority does not indicate fewer inspections as a benefit, and that the benefits of the programme are not identical to those of the USA's C-TPAT.

### **2.3.4 New Zealand – Secure Export Scheme**

New Zealand's version of the AEO programme is called the Secure Export Scheme. It is a voluntary programme open to all exporters. The companies undertake to take security measures together with the New Zealand customs. Based on a company's security plan, which must comply with the customs authority's security principles and include existing security measures, participation in the Secure Exports Scheme is formalised.

By signing a partnership agreement with the customs, companies undertake to ensure that goods exported from New Zealand under this initiative are packed securely. The companies must have satisfactory routines for safeguarding the security of the goods, and the goods must be transported securely without disruptions at the place of shipment. Containers or other packages transported by sea must be secured with a seal or other type of mark approved by the customs, signifying that they are under customs control and can be regarded as secure by customs administrations in other countries. The companies undertake to guarantee that container contents are reported carefully and that nothing has been added to the cargo. The companies are expected to provide precise export infor-

mation in advance, maintain a high level of security and cooperate with the customs authority.

According to the New Zealand customs, partnership will lead to a number of benefits for the companies. Supply chains are secured from packing to loading for export, and charges for storage of export goods will be lower, thanks to the companies receiving so-called “green lane” status, which means that cargo can be moved from port or airport with little likelihood of customs inspections. Companies will also experience improvements in contacts with foreign customers and customs authorities. By entering into partnership, companies are showing foreign importers that they fulfil certain standards, at the same time as customs clearance in the USA is facilitated through the agreement of mutual recognition that exists with the USA through C-TPAT, see section 3.2.1. Companies will probably also experience fewer problems with disruptions in exports as a result of raised levels of security preparedness, as their security status can be certified. The New Zealand customs can offer companies advisory services if the companies encounter unexpected problems with their export goods at the borders of other countries.

### 2.3.5 Japan – transparent AEO model

Japan has had a programme for authorised exporters since March 2006 and for authorised importers since April 2007. It has also been implementing regulations about electronic advance notification since April 2004<sup>25</sup>. Today, the AEO programme consists of five modules: importers, exporters, warehouse keepers, customs agents and logistics operators. The Japanese customs consider the programme to be fully compatible with the WCO’s SAFE framework.

Authorised importers and exporters enjoy a reduced number of controls of documentation and inspections of their goods. For authorised importers, there are also three simplifications. They are permitted to submit an import declaration and permits before the goods arrive, they can collect the goods before a tax/customs declaration has been submitted or the charges even been paid, and they have the possibility of submitting periodical tax/customs declarations. Authorised exporters do not need to deposit the goods in the customs area before submitting the customs declaration. Approved warehouse keepers avoid having to apply for a permit to open additional bonded warehouses, but can instead make a simple notification. They also receive fewer inspections and avoid having to pay the monthly fee to the customs authority. Authorised logistics operators have access to a simplified transit procedure and do not have to apply for permission for each individual transit. Customs

agents, finally, can offer companies that are not authorised to get the goods cleared before the tax/customs declaration has been submitted or the fees paid, and for exporters, they can give non-authorised customers access to the simplification of not having to deposit the goods in the customs area before the export declaration has been submitted.

In order to become AEO certified in Japan, companies must fulfil four main categories of requirements. They must have a good track record in terms of complying with formalities and customs procedures, for instance no customs breaches over a certain period. They must also be able to use the electronic customs solution NACCS (Nippon Automated Customs Clearance System). The companies must also fulfil a requirement phrased as “ability to satisfactorily operate related processes”, i.e. the ability to control goods in a secure manner and carry out all customs processes in a correct way, which also includes the companies having good financial order and position. Finally, the companies must draw up a “Compliance Program” showing how they are to fulfil the requirements in the AEO regulations. This includes standards for security measures as an important constituent.

#### Fact box 2.2. Requirements for Japanese AEO companies.

- Historically good compliance with customs legislation
- Use of the customs’ e-system NACCS
- Ability to implement customs procedures (and good financial order)
- Compliance Program (including security measures)

The items to be included in the “Compliance Program” include requirements on business partners – that they will live up to what the program prescribes, including on security issues, and how the AEO company shall create a structure for ensuring the various partner companies live up to the requirements. The security requirements cover the different areas included in the SAFE programme and are similar to the requirements for physical security in C-TPAT and the EU’s AEO for security and protection. The requirement for correct customs procedures covers drawing up a list of the goods including description, marking, tariff classification, tariffs and applicable laws and ordinances governing trade in the goods, and keeping this list up to date. The list also includes requirements for good communications with the customs authorities, crisis handling training and internal audit.

### **Fact box 2.3. Contents of a Compliance program for Japanese AEO companies.**

- Organisation
- Business partner security
- Goods, transport and premises security
- Correct customs procedures
- Consultations/cooperation/communications with customs authorities
- Crisis management
- Education/in-service training
- Internal audits

The process of authorising a company for AEO in Japan has five stages: Consultation with customs before application, application, review of application, inspections on location and finally authorisation.

There is reason to believe that considerable weight is placed on the process that occurs before the formal application. This saves time and effort during certification and provides opportunities for avoiding having to turn down an application.

It is mandatory for AEO companies to carry out an internal audit once a year. In a process thereafter, the customs authorities make a review of the result and carry out interviews and inspections on location to determine whether the applied customs procedures correspond to the AEO requirements and the Compliance Program. If any irregularities should be discovered, the customs will issue an “administrative order to improve”. If improvements have not been implemented within a certain time, the customs can recall the AEO status. Nine regional customs authorities are responsible for this post-audit and for the entire application procedure.

The Japanese programme offers many concrete benefits for AEO companies, and the regulations are transparent and easy to find. The development of simplifications is a portfolio that bears witness to pragmatic solutions and the companies having been involved in the design of the programme.

### **2.3.6 East African Community EAC – customs union striving for mutual AEO**

The WCO’s SAFE Framework has also had great impact in Africa, and a number of countries have reached relatively far in developing solutions for AEO. Relatively many countries have also successfully introduced Single Window. In some cases it appears to have been possible to skip several stages of technology and therefore build modern solutions without consideration for older system solutions. At the same time, the process of building trust between trade operators and the authorities appears to be a thorny path. There are obstructing factors, such as a large number of authorities at the borders, great dependence on income from

customs duties and lack of well-established routines for consultation between operators and authorities.

The pressure from the USA’s programme and the knowledge of how hard terrorist attacks can impact on the trade of developing countries, as well as the dependence on customs duties have led to some countries investing in expensive scanning equipment. Scanning in combination with risk management does, of course, have a place in customs processes. The problem that has previously arisen and still does today is that scanner controls are implemented without the customs administrations first checking the existing inspection strategy at strategic, tactical and operational level, and establishing a suitable infrastructure for handling the same, which leads to further burdens on trade. Provided the selection is based on risk analysis, scanning is a suitable method for facilitating quicker release of shipments at the border.

Already in 2008, 37 countries had been through diagnostic missions from the WCO, and some more had signed letters of intent to introduce the SAFE Framework, in which AEO is a part. Several of the economic cooperation organisations in Africa have the ambition to create customs unions. This applies, for instance, to the South African Development Community, SADC, which had the ambition to become a customs union during 2010, but which has had to delay its plans; to ECOWAS, which is looking at the possibilities of expanding the West African Economic and Monetary Union; and also to the East African Community, EAC, which has now created a customs union. This of course leads to an increased need to facilitate smooth trade flows, both between the countries internally and with the outside world.

Within the East African Community, EAC, which consists of five countries in eastern Africa – Kenya, Tanzania, Uganda, Burundi and Rwanda – there has been a customs union since 2005 between Kenya, Tanzania and Uganda. Burundi and Rwanda joined the customs union in July 2007. Simplified procedures have to some extent already been introduced in the EAC, and the use of ASYCUDA++ makes it possible to classify goods and automatically clear goods from approved operators<sup>26</sup>. During 2010, the already adopted regional policy for Risk Management, AEO and Post Clearance Audits will be realised through regional pilot operations, including a regional standardised way of accrediting, controlling and mutually recognising both the accreditation and the simplification between the parties<sup>27</sup>. At the third meeting with the steering group for the East African Community Customs Modernisation Project in June 2009, it was decided that a common AEO model should be developed for the five countries with mutual recognition built in. The project is supported financially by the Swedish International Development Cooperation Agency, Sida, and by the WCO.

### 3 Mutual recognition

Mutual recognition of AEO programmes between countries is described in the 2007 version of WCO's SAFE Framework<sup>28</sup>. As the AEO programmes are growing in number, the pressure is growing on them to be implemented in similar ways and for it not to be necessary for companies to apply for certification in a large number of programmes. In the end, mutual recognition is always about the customs authority of one country being prepared to trust the work and the risk assessments made by the customs authority in the country with which the collaboration is to take place. Both political will and cooperation in the field are necessary.

In the National Board of Trade's report *Supply Chain Security Initiatives: A Trade Facilitation Perspective*, the USA's partnership programme Custom-Trade Partnership Against Terrorism, C-TPAT, the WCO's AEO concept as described in the SAFE Framework and the EU's rules for AEO programmes were compared. It emerged that there are great similarities between the three programmes in terms of the area of security measures regulated. The contents of the programmes also appear to converge over time. At the same time, WCO's SAFE is a great success. 160 countries have signed a declaration of intent stating that they are proposing to implement SAFE.

When SAFE was developed, it was established that many developing countries would need support, in terms of competence and technology, in order to implement the framework. To meet this need, the WCO established the support programme Columbus, through which the organisation is providing technical support to those member countries who request it. The Columbus programme has been in operation since 2006, and 111 countries have received support through it<sup>29</sup>. Of these, many developing countries have chosen to introduce AEO programmes for their companies.

In other words, there is great potential for a large number of countries introducing AEO programmes between customs authorities and companies. WCO is working actively to make these as similar as possible and for them to follow the recommendations in SAFE. In the latest version of SAFE from June 2007 there are also clear instructions relating to mutual recognition, where it is prescribed that countries intending to implement SAFE should work out mechanisms for mutual recognition of AEO, of validation visits and inspection results. In SAFE, the standardised procedure in accordance with SAFE when granting AEO status is stated to be the key for being able to construct international systems for mutual recognition between nations, regions and globally. Four conditions are considered to be necessary to fulfil in order for a system of mutual recognition to work:

- An agreed set of common standards covering sufficiently robust measures for both customs authorities and AEO companies.
- Implementation of the standards in a uniform manner, so that the customs authorities concerned can trust each others' authorisations.
- If the certification is transferred to another authority, there must be an agreement about standards and functions between that authority and the responsible customs authority.
- Legislation that permits implementation of mutual recognition must be in force.

In SAFE, three concrete areas for mutual recognition are stated:

- Authorisation of companies, AEO.
- Advance information submitted electronically. Companies must be able to benefit from digital certificates being recognised by different customs authorities, and be able to submit the same electronic notifications to the various customs authorities that are part of the recognition.
- Selection and communication. Customs authorities should develop common, standardised criteria for selection and compatible systems for communicating information to each other, as these are two fundamental elements of a future system for mutual recognition of inspections.

WCO points out that mutual recognition may be a very important instrument for facilitating trade, as it contributes to reducing the number of double inspections. In the section about mutual recognition, it also refers to parts of SAFE which describe AEO certification and validation, and which the organisation considers form the primary basis for mutual recognition.

Despite WCO's efforts to promote mutual recognition and standardised implementation of SAFE, there is reason to believe that the large number of programmes in itself can become a problem for companies working in many markets. They must follow the rules of different programmes, and these rules will vary between different countries to some degree. This may lead to competitive distortion and less efficient trade. This may become a particular problem for small and medium-sized companies if the programmes impose big formal requirements, and if they are active in several markets. Swedish customs have on several occasions pointed out that many small companies have become AEOs, but Clécat<sup>30</sup>, for instance, sees AEO as a concept for large companies. There are differences in approach between different programmes.

For these reasons, many companies have demanded that an agreement is signed regarding mutual recognition<sup>31</sup>. The larger trading nations have also started negotiations about mutual recognition and a limited number of agreements have already been entered into.

### 3.1 Mutual recognition – starting points for the analysis

The most important agreements that have already been entered into are described and analysed in the following section. What is known about certain negotiations is also described.

A number of questions become interesting to answer in an analysis of agreements on mutual recognition of AEO agreements. The questions go further in some respects than the description in the WCO's SAFE Framework and are intended as an aid when reading the description of the various agreements about mutual recognition. In the final section, an attempt is made to answer the questions on the basis of the study of the agreement contents.

- Do the agreements relate to entire programmes, or is the recognition at company level? There is great difference to the rule of law if companies that are members of a programme CAN get recognition by the other country, or if the companies that are AEOs under one programme are AUTOMATICALLY RECOGNISED by the other country's programme.
- What rights and simplifications (if any) do the agreements give to companies? If the agreements mean that a company does not have to apply for AEO status under several different programmes, it is a considerable advantage for the companies. At the same time there may be important benefits under the other country's AEO that make it worth while for a company to become member of that particular AEO-programme. Will these advantages be included in the mutually recognised advantages?
- Is the recognition in agreements with the USA limited to the companies becoming authorised suppliers to an American C-TPAT company's supply chain, or does the recognition mean anything for the company's own supply chain if it operates as an exporter to the USA?
- Does the recognition entail any simplifications at all at company level, or is it primarily the customs authority's work that will be facilitated through the agreements? Currently, inspections of companies supply chains in other countries are in existence. If those parts of the supply chain that are located in another country can be inspected by that country's authorities in a

credible way, this facilitates matters for the customs authority in the country that approves the supply chain and the importing company.

- What information will be exchanged between the customs authorities, and how?
- Are the agreements entered into legally binding, or are they just agreements about procedures? It is an issue of predictability and rule of law that the agreements must be transparent and that it must be clear what information the customs authorities exchange with each other.

If approval is to be at company level, considerable information submission will be necessary, either between companies and customs authorities in the other country, or between the customs authorities party to the agreements. In a report about AEO and mutual recognition, Japan points to the importance of functioning IT systems in order to handle mutual recognition operationally, and to the importance of flexible and well-functioning channels for information exchange between the authorities.<sup>32</sup>

From a security perspective, there are benefits with mutual recognition of the programmes. It makes it possible for customs authorities to exchange information, and in this way identify goods that do not constitute a threat, enabling them to focus their resources on controlling actual threats. One goal of the AEO programmes is for the great majority of shipments to be resumed rapidly following a terrorist attack. A network of programmes does, of course, increase the chances that large parts of the entire chain can continue to function even in the event of an incident.

One problem in the work of analysing the various agreements is that the information is scanty and that it is not officially available. It is therefore not a matter of course to be able to answer the questions asked for every agreement, or even those asked for every customs authority that is party to an agreement.

The US customs work with a process for mutual recognition consisting of four phases<sup>33</sup>. The EU also works in accordance with a similar model, and it appears to be the pattern for most customs authorities concerned with mutual recognition. In phase one, the programmes are compared side by side in terms of demands on the companies. This is done to see whether the programme compared is based on fundamental security criteria. In phase two, joint validation visits are carried out to see whether the programmes correspond in practical implementation. In the third phase, the formal agreement is written, and in phase four, procedures are developed for implementing the agreement, primarily concerning how information is to be shared between the parties.

## 3.2 USA's agreements with other countries

USA has to date preferred to sign agreements called Mutual Recognition Arrangements when it wishes to enter into an agreement on mutual recognition. The word "arrangement" does not cover the concept of contract, but is a weaker description of an administrative procedure, almost an understanding, and the agreements have not been published on the website of either party or in official sources, such as the Federal Register.

On the website of the US Customs and Border Protection, CBP, the organisation considers that this type of agreement is intended to "...create a network of the partnership programs that exist and in this way create a uniform and sustainable security standard that can support secure and simplified trade in goods." The CBP emphasises, however, that the mutual recognition is not automatic. Instead, each company must have a good relation to both the customs authorities in question. It should be specially noted that in no case is it a question about benefits for US exports to other countries, as the USA does not have any such programme. Apart from the four agreements described below, the USA is preparing agreements with Singapore, Australia, Mexico and the EU.<sup>34</sup>

### 3.2.1 USA–New Zealand

The first agreement about mutual recognition of security programmes entered into was the agreement between New Zealand and the USA, signed on 29 June 2007. The information about the agreements on the websites of both customs administrations is sparse, and is limited to press releases with very brief information. The agreements express an ambition to implement what the SAFE framework prescribes about mutual recognition. In the agreement, it is stated that members of the New Zealand AEO programme Secure Export Scheme will receive relief for exports to the USA. In the press release on its website, the New Zealand customs states that the agreement will give companies lower transactions costs, reduced wastage, quicker clearing times, a reduced number of checks and improved control over time-sensitive supply chains. It also indicates fewer delays for goods to be imported into the USA, in particular during raised terrorist alerts. The US customs' information is more carefully worded and states that when it has been clarified how compatible the various levels in both programmes are, each country will handle the other country's member companies in the same way as its own.

### 3.2.2 USA–Jordan

On 28 June 2008, the USA and Jordan signed a similar agreement to the one the USA had already signed with New Zealand. Jordan's AEO programme

Golden List had previously been supported by the USA, which has had a customs collaboration agreement since 2004 focusing partly on security issues. In the mutual recognition agreement, Jordan and USA promise to implement the same high standard in their security programmes and to carry out validation visits in the same way. The clear emphasis on validation visits indicates that this is one of the most important parts of the agreement. In a statement, CBP's Commissioner W. Ralph Basham commented that coordinated security programmes are good both for trade and for security.

### 3.2.3 USA–Canada

On 28 June 2008, Canada's customs authority CBSA signed an agreement with the US CPB about mutual recognition between Canada's Partnership in Protection, PIP, and C-TPAT. This had been preceded by work to strengthen the various parts of PIP in order to achieve a more compatible programme. Canada has allocated relatively large resources on reshaping PIP, which was a programme with individual solutions between companies and customs and had a large proportion of carriers as members, to become a counterpart to C-TPAT. In 2007, the Canadian government invested CAD 11 million in the programme. Among other items, the CBSA has worked on minimum security criteria, mandatory validation visits and policies for recalling and renewing permits. In its press release, the CBSA pointed out most of the benefits already described above. The CBSA considers that it will be easier for companies, who will only need to have validation visits from one authority, but at the same time it emphasises that each programme reserves the right to carry out validations. What is special for North America is that there is a programme for goods transport by road, called FAST, and CBSP points out that it is mandatory for companies wishing to be FAST certified to be members of PIP or C-TPAT. For more information about FAST, please see section 2.1.1, final paragraph.

### 3.2.4 USA–Japan

In June 2009, representatives of Japan and USA signed an agreement about mutual recognition of the other country's programmes for customs-company collaboration, Japan's AEO and the USA's C-TPAT<sup>35</sup>. The agreement places the security standards included in the AEO and C-TPAT programmes on an equal footing. The agreement means that customs authorities in the USA and Japan shall accept the member companies in the other country's programme as AEO companies. In other words, this does not entail immediate recognition of all the companies that are members of the programmes, but instead a proceeding company by

company. Both customs administrations claim that this will lead to reduced costs, as the number of necessary validations of companies will be reduced.

### 3.3 Other agreements about mutual recognition

#### 3.3.1 Japan-New Zealand

The second agreement regarding mutual recognition to be entered into was that signed by Japan and New Zealand on 14 May 2008. This agreement is also a so-called Mutual Recognition Arrangement and not an agreement in the traditional sense. Japan and New Zealand decided at a joint customs working meeting in June 2007 to start preparing the collaboration. The preparatory work included comparisons of requirements on AEO companies, certification and permit processes and the details in the implementation of each AEO programme. The agreement means that each company included in the two different programmes is recognised as AEO companies in the other programme. As the USA does not have an AEO programme for exporters, this was the first agreement to cover both exports and imports in both directions. The simplifications the companies will enjoy are those relating to security aspects. In the press release from Japan's Ministry of Finance, it is stated that the customs authorities reserve the right to recall the status for individual companies. In other words, this probably means that all AEO companies in each programme automatically get access to the mutual recognition. The information exchange surrounding the mutual recognition is also regulated, and will be governed by the collaboration agreement that was signed by both customs authorities in April 2004.

Japan is also in negotiations with the EU, Canada and Singapore.

New Zealand also referred to its agreement with the USA at the signing, and it emphasised the importance of secure trade corridors for its trade. The agreement came into force on 1 October 2008.

#### 3.3.2 Japan-Canada

There is as yet no agreement between Japan and Canada concerning mutual recognition of the security programmes, but in June 2008 the two countries signed a cooperation agreement relating to container security (Memorandum of Cooperation on Container Security). The agreement means that the two countries have customs officers stationed in each other's ports, in a way similar to that prescribed in the USA's Container Security Initiative. In the agreement, the parties state that they also want to work towards closer cooperation to identify high-

risk containers, and that they will consult as much as possible in accordance with the agreement relating to mutual support on customs issues (Arrangement between the Customs Administrations of Japan and the Canada Border Services Agency regarding Mutual Assistance in Customs matters) previously entered into. It is probable that this agreement and the agreement that exists between the USA and Japan can constitute the foundation for an agreement about mutual recognition.

#### 3.3.3 EU's agreement regarding mutual recognition with Switzerland and Norway

For geographical, historical, practical and financial reasons, the EU has wanted Norway and Switzerland to end up inside what could be called the "security zone", and goods moved between these countries and the EU are therefore not covered by the rules for advance notification of goods. In order to achieve this, a demand has been made in negotiations for Norway and Switzerland to have their own AEO programmes, and to implement the rules about advance notification vis-à-vis third countries.

In the summer of 2009, the EU and Switzerland entered into an agreement decided on by the EU's Council of Ministers on 12 June 2009, in which provisions about advance notification and AEO are the most prominent parts. The agreement entails a review of the 1990 agreement concerning facilitation of controls and formalities for goods transports<sup>36</sup>. The rules for certification and relief for companies are described in an appendix to the agreement. They are very similar to the EU's own rules, but only cover the security sections of the EU's AEO regulations.

For Norway's part, the agreement has been entered into in the joint EEA committee, and the agreement opens the door for the other EEA countries (Liechtenstein and Iceland) to participate. The agreement states that both parties shall have an AEO programme. Both parties shall, on their own, determine a framework for risk handling, risk criteria and priority control areas, which they undertake to approve mutually. The rules for certification and reliefs for the companies are described in an appendix to the agreement. They are very similar to the EU's own rules, but it is left up to the Norwegian authorities if they want to design the rules themselves to the extent the Norwegian AEO programme shall include administrative relief. The agreement was adopted by the EU's Council of Ministers on 23 June 2009.

A common feature of both agreements is that they foresee future changes, and that Swiss and Norwegian representatives get access to the applicable customs code committees in the EU.

### 3.3.4 EU-Japan

The customs cooperation committee between Japan and the EU (EC-Japan Joint Customs Cooperation Committee, JCCC) had its first meeting on 11 February 2008, and then appointed an expert panel for AEO and mutual recognition. The panel was responsible for an in-depth comparison of the programmes, in terms of both implementation and legal grounds. At the summit meeting between the EU and Japan in May 2009, mutual recognition of the two parties' AEO programmes was specially mentioned<sup>37</sup>. Here, the work has clearly worked more smoothly and quicker than with the USA. In September, the comparison work was complete, and a couple of study visits on both sides had been included in the work. The conclusion was that at a technical level, the programmes are comparable. The final agreement was signed on 24 June 2010.

The EU is keen for the legal grounds for mutual recognition to be a decision in the JCCC, and that besides this there should be an administrative agreement about the practical implementation. The advantage would be that in this way, a legal basis would exist and an opportunity for flexible implementation.

In the press release from the second JCCC meeting in Tokyo on 17 September 2009, there is an express ambition to sign an agreement at the beginning of 2010. In this, it is also established that the AEO programmes are compatible and equivalent. The work on solving IT issues and the benefits the AEO companies are to enjoy is continuing. In the short term, it concerns reduced risk levels and associated reduced number of checks. A text proposal was to be circulated within the EU at the beginning of December 2009. It is probable that the solution chosen means that AEO companies in principle are given benefits automatically in the other country's programme, with the proviso that if problems arise, the status can be removed from the individual company, and the event leading to it reported to the other customs authority.

## 3.4 EU's negotiations about agreements on mutual recognition

The European Commission and the member states in the EU have an ambitious agenda for agreements about mutual recognition. The EU wants to sign legally binding public agreements that are not "arrangements" and has clear demands on what it thinks should be included in the agreement in order to ensure quality and the secure rule of law. The EU also has security rules for both exports and imports, which means that there are more details to be gone through than those included in the USA's agree-

ments. Compared to the American rules, the European AEO concept is also more comprehensive, as it not only has a part that relates to customs compliance, but also a more comprehensive security part relating to both security and protection. This explains both why it has been easier for the USA to enter agreements than for the EU, and why negotiations between the EU and the USA are difficult. Apart from the twin-track negotiation that is briefly touched upon below, there are also plans for negotiations with Canada, South Korea, New Zealand and South Africa, to mention a few countries.

### 3.4.1 EU-USA

Since 2004, the EU and the USA have collaborated intensively on the issue of security on several levels<sup>38</sup>. The joint customs collaboration committee was created in 1997, when the EU's and USA's customs authorities signed an agreement about mutual support. This agreement was widened and deepened in 2004, which meant among other things that two committees started their work; one developing security standards and the other comparing the different partnership programmes between customs authorities and companies. In 2006, the groups were merged into a steering group with the mandate of developing measures that would support the implementation of standards and procedures. This was partly in response to the descriptions of mutual recognition adopted by the WCO's SAFE Framework. At the eighth meeting of the joint customs collaboration committee in January 2007, it was decided to focus on joint risk profiles and partnership programmes between customs and companies, among other items.

In March 2008, a joint plan, a so-called "roadmap" was adopted, which would lead to mutual recognition between the AEO and C-TPAT. On the Commission's website, it is stated that the companies participating in one programme will receive the same beneficial treatment as those who are members of the other programme. In January 2009, a shortened version of the plan was adopted. The aim was to give external parties information about the details of the plan and an insight into the various tasks that remain before mutual recognition can be achieved.

In the public, abbreviated plan for mutual recognition, a number of working areas are mentioned, as are the extents to which results have been achieved. Areas such as transfer of data about companies in the different programmes, the establishment of an export module in C-TPAT and the legal framework an agreement shall have are mentioned, and it emerges from the description of the results that it is difficult to find solutions that can be accepted by both sides. Transfer of data has both a technical

side, where it must be agreed what data is required and how it is to be transferred, and a legal side, relating to how to overcome the problem that participation in C-TPAT in principle is confidential, and that an undertaking has been made not to disclose information about the companies. There may also be a problem for the companies in the AEO programme who have stated that they do not want to show that they are AEO, but it is probable that many of these companies have been bound by the rules in C-TPAT. It would thus not be a problem in this conjunction. The plan also describes a long list of various exchanges, where customs officials are to be able to participate in the other programme's training efforts, or where joint validation visits shall be made in order to see how that work is carried out. In this part, the development between the USA and EU is similar to that which the USA has chosen to work with in its other agreements. Information to business and trying to include views from business are also elements to this undertaking. An evaluation of the benefits companies get through the various programmes is emphasised as an important task.

Although it clearly emerges from information on the website for the USA's Envoy to the European Union among others that the goal was mutual recognition by January 2009, no such goal has been achieved as we write<sup>39</sup>. Nor is there any information on the CBP's website about the export sections of C-TPAT.

One of the areas that are problematic for the USA in the negotiations with the EU is the issue of whether the 27 member states implement the AEO legislation in a uniform manner. During autumn 2009, three regional meetings in workshop format have taken place between the US customs CPB, the European Commission and one third of the member states in each location, in order to try to demonstrate how the member states work. These workshops replaced the originally planned thirty joint validation visits. The aim from the EU's side has been to avoid further joint validation visits, to give the USA a good picture of how the AEO programme works in practice and what Best Practice looks like in the member states, and also to show that both the security certificate and the full certificate are implemented in a systematic and uniform way in the member states. Meetings were held in October/November 2009, and CBP will be presenting its report to the Commission in early 2010.

### 3.4.2 EU-China

China is now the EU's second largest trading partner after the USA, and the largest import country. The EU is China's largest trading partner. China's proportion of world trade in goods is around 9 per cent.

Bilateral trade between the EU and China in 2008 was worth around EUR 326 billion<sup>40</sup>. Many European companies are keen to emphasise that they find it difficult to penetrate the Chinese market, and that customs issues are highly prioritised problems.

In April 2005, the agreement between the EU and China regarding customs collaboration and mutual administrative support on customs issues came into force. Using this as a basis, a pilot project was established in 2006 regarding Smart and Secure Trade Lanes. The programme focuses on container transport by sea, and aims to find ways of mutually recognising security measures. The programme, which is ambitious in scope in terms of contents, primarily affects the ports Felixstowe, Rotterdam and Shenzhen.

In the agreement, both parties are keen to emphasise that the pilot programme will make it possible to better understand how to implement the WCO's SAFE framework. The programme has also been supplemented with testing data exchanges, and the trial will continue until the end of 2009.

The pilot project covers tests of security measures throughout the supply chain, and includes, among other items, exchange of advance information about import-export between the customs authorities, e-sealing, minimised inspections at import using information and approval of export inspections, implementation of common inspection standards, sharing of inspection results, development and testing of common risk criteria and the participation of the AEO companies.

The project also covers trials of criteria for AEO companies, and the goal of agreeing to joint criteria for granting AEO status. A comparison will also be carried out of legislation relating to AEO, which will form the basis for mutual recognition of AEO status. The EU is keen to be able to concentrate resources on illegal or defective shipments.

China's AEO programme started in April 2008 and the Chinese authorities make clear reference to WCO's SAFE framework to show what standards the companies must fulfil. At the same time, it appears as if companies to a large extent are selected for participation in the pilot study and that it is not an open procedure. The Chinese authorities, like the European, emphasise the importance of complying with both administrative and security requirements<sup>41</sup>. According to Chinese customs authorities, negotiations about mutual recognition of AEO programmes shall start in 2010<sup>42</sup>. The assessment from the European side, in conjunction with the discussions about possible mutual recognition, is that the Chinese legislation is satisfactory, but that there are question marks surrounding some parts of the implementation.<sup>43</sup>

## 4 Security measures in the supply chain – Overview, conclusions and discussion

### 4.1 Mutual recognition – how far does it really go?

Mutual recognition is as yet not as far-reaching as many company organisations would like. Three signed agreements exist, as well as five “arrangements”. It is clear that negotiations on the matter are difficult, and that if problems such as transparency, rule of law and protection of transferred information are to be solved, it will be hard to conclude at least some negotiations. What is positive is that the large trading blocks are active in the area, and that a large proportion of trade may be covered, in particular by those agreements that automatically give all AEO companies in the counterpart’s programme access to the benefits of the own programme.

The fact that the EU is lagging in the progress of its agreements may be due to several factors. The AEO programme in the EU has been in existence for a shorter time than the corresponding programme in the USA. The EU has clear goals in its negotiations, which include real mutuality (both export and import) and a clear legal basis, with accompanying rule of law. At the same time, the AEO programme in the EU is more comprehensive than in many other countries. On the other hand, the rapid pace of negotiations with Japan shows that this is not necessarily an obstacle.

In comparison with the WCO’s criteria for how a system for mutual recognition shall work, there may be reason not to be entirely content with the agreements entered into, to judge from the sparse information that is available. The first two phases of the working method used by most trading blocks safeguard the first conditions formulated by the WCO: that there is an agreed set of common standards that cover sufficiently robust measures for both customs authorities and AEO companies, and that the standards are implemented in a uniform way, so that the customs authorities in question can trust each other’s authorisations. At the same time, there is a reference in the WCO Framework that says that both import and export flows should be included, which is not the case in the USA’s agreements, for instance.

In terms of what happens when the certification is transferred to another authority, there is no information about how this is handled in the information that is available about the existing agreements.

The WCO’s fourth criterion, that legislation permitting implementation of mutual recognition shall be in force, is circumvented by five cases of currently

signed “agreements” that are arrangements and not legally binding contracts. This means that the rule of law for companies suffers. It is not possible to obtain redress by judicial means for a wrongly revoked AEO status in another country’s programme. Nor is it certain, given the information that is available, that the AEO status is automatic under the mutual recognition. Several wordings in the USA’s agreements indicate that a further process is required, and it is up to the American customs authority, CBP, to determine whether the AEO company shall be given the same status as a C-TPAT company. One can therefore wonder whether the prime driver for USA’s authorities to sign agreements actually is to avoid having to make validation visits themselves in those countries where it is felt the customs authorities have a satisfactory process. With more than 9,000 companies and an ambition to cover the entirety of their supply chain with associated trading partners, the C-TPAT programme has become very resource-intensive.

#### **Fact box 4.1. Summary picture of the best known agreements and negotiations about mutual recognition.**

Existing Mutual Recognition Arrangements:

USA-New Zealand  
USA-Jordan  
USA-Canada  
USA-Japan  
Japan-New Zealand

Existing agreements on mutual recognition:

EU-Norway  
EU-Switzerland  
EU-Japan

Negotiations about agreements:

Japan-Singapore  
Japan-Canada  
EU-USA  
EU-China  
EU-Canada  
USA-Mexico

Preparation for agreement negotiations:

USA-Singapore  
USA-Australia  
EU-South Korea  
EU-India  
EU-New Zealand  
EU-South Africa

In the introduction to the section about mutual recognition, a number of questions were asked. The question of whether mutual recognition relates to the entire programme or to recognition at company level has partially been covered above. When it comes to the information relating to agreements signed between other countries than the USA, the picture is another. The agreement between Japan and New Zealand clearly covers the entire programme, and has rules for how companies can have the AEO status removed if they do not follow the rules of the programmes. The same is the case in the agreement between the EU and Japan, and probably in the agreements under negotiation between the EU and some other trading partners, but the latter is speculation, as the agreements are not complete. The EU has a clear ambition on this issue. In actual fact, it is obvious that the key issue is to what extent one country's customs authority is prepared to trust the work carried out by another country's customs authority. This is dependent both on political will and real cooperation in the field.

The question of what rights for companies follow with the mutual recognition is more complex. The programmes relate to easing of security inspections, and these exist to varying extents. Most agreements refer to lower risk evaluation and associated fewer checks of companies' goods shipments. However, in the EU's AEO programme there are a number of other benefits, such as choice of inspection location, etc. The USA often talks about what the situation would be in the event of an incident, and that it would then be the AEO companies' goods that would be given precedence. How foreign companies are to be treated in comparison with domestic C-TPAT companies is of course an open question, as is how mutual recognition relates to the three different levels of C-TPAT certification that exist. The question of what reliefs are to be linked to the various AEO programmes is, of course, important for flexible trade; and the more administrative or security exemptions the companies can get, the more attractive the programmes will be.

The extent to which companies feel that the mutual recognitions lead to reduced administrative burdens is something that must be investigated further when more agreements are in place. In those agreements that automatically give access to the same status in the other country's programme, this should entail considerable relief. We have no information about whether the differences in security controls are noticeable. Perhaps this would become clear if a situation arose that justified more security inspections. If so, this could be an important *raison d'être* for the agreements.

Finally, there is very little known about the information on companies which is to be exchanged between the customs authorities, and how this is to be carried out. The most detailed information comes from the EU's pilot project with China, where information exchange is one of the areas worked on. The fact that information about which companies are C-TPAT certified is secret is hardly a facilitator of the work. This is an area involving both technical and legal problems, and which also has a clear link to how the agreements are worded and what legal status they have.

In the WCO's SAFE framework, mutual recognition is the tool that will ensure that companies, if they work in many markets, will not end up in an everlasting certification process with a large number of customs administrations. The problems that exist with the already signed agreements have been described earlier in the report. These are the absence of any programme for exports from the USA, lack of rule of law for companies, lack of transparency (the agreements are not published), non-binding agreements and a relatively low level of ambition about the benefits that follow from the mutual recognition. At the same time, there are a lot of problems negotiating agreements of this type. They concern areas where there has previously been no tradition of sharing information, and no processes for doing so, they are new types of agreements, the subject matter is complex and becoming yet more so, as technical solutions for how to identify and integrate AEO companies are lacking or difficult to work out. Does mutual recognition of AEO have the potential to be the tool intended in SAFE? The answer to this question will largely depend on the attitude of the dominant members of the WCO to other AEO programmes, and their willingness to let go of the idea of the own programme being the one and only perfect system.

From the trade facilitation perspective, mixed conclusions can be drawn. It is not commensurate with simplified procedures that agreements remain secret and that the implementation is uncertain and non-binding. The EU has here followed a line that is correct and open, and has wanted binding agreements, which the USA has opposed or not wanted to undertake at this stage of the negotiations. Hopefully, the EU's more open and legislation-based line will gain support. At the same time, important advances have been made, as agreements actually have been entered into. The agreement between the EU and Japan is an important next milestone, now that it has been signed. In the end, what is important is that nations should be able to accept each other's exercise of authority. It is probable that in

the wake of globalisation, this will become necessary within ever more areas. The fact that authorities have a need to follow up companies' operations in other countries is a natural result of the development, but it causes legal problems if authorities want to work within the territory of others. In the case of the USA's C-TPAT, many inspections of companies in the supply chain have been carried out, a task which may become less demanding if the USA can accept companies from other AEO programmes as secure operators. In other words, there is a savings potential, and also a potential to avoid the question of the status of inspections carried out by American officials within the territory of other countries. But these gains must not be decisive when the agreements are drawn up. The agreements should be designed with the aim of making trade as easy and unrestricted as possible, and of removing obstacles such as double certification or high costs for easy access by small operators to the supply chain.

There is every reason to respect the fact that the negotiations carried on are complicated and very wide-reaching in character. In order for trade to flow smoothly, it is important that no further entry barriers are imposed, that the administrative burden does not become too large and that the measures taken do not skew competition. The agreements that have been signed are not as comprehensive and detailed as could be hoped, but they are a first step. It is crucial to build up trust between the customs administrations concerned, which of course takes time. It is encouraging that the WCO is working to ensure AEO programmes are as alike as possible, and to provide guidelines for how mutual recognition should be designed. It is also important that the principles expressed by the EU for its agreements can get a concrete form in the final agreements. Once more agreements have been in force, a more in-depth, company-based report would be interesting, and the area should be followed up in its entirety.

It is probable that the negotiations in progress will lead to agreements about mutual recognition in many cases. Some agreements will probably just be a framework for customs authorities themselves to hand-pick the foreign companies they want to trust. Even if this minimum solution is unsatisfactory, it can be a first step towards more transparent and better agreements. There may be reason to scrutinise critically how the agreements relate to the WCO's SAFE Framework, and whether there is reason to adjust SAFE to fit reality. For the purposes of facilitating trade, an agreement about mutual recognition entered into is better than no agreement.

## 4.2 Increased information intake continues

In the report, the National Board of Trade describes briefly the new requirements for advance information about export and import introduced by the EU since 1 July 2009. The implementation has not been as technically easy as hoped on the part of the Commission and the member states. At the same time, business has had views about the process not being transparent, and that technical specifications have not been available. The implementation has also occurred at different speeds in different member countries, even if the end goal has been the same. Representatives from customs administrations consider that the information in the advance notification of export is a service to the companies, and a prerequisite for mutual recognition in accordance with the SAFE framework. This allows the customs authorities in member states to make a security assessment of outgoing goods, which may be a service to the receiving country, and thus facilitate matters for the exporting companies. According to Swedish customs, it is a relatively small administrative change for the majority of companies that can add some further security data to its export declaration, and thereby let the export declaration also serve as an advance notification for security purposes. For sea transport in particular, however, this means a longer period during which the information must be available, and this can lead to increased capital tied up. It would be interesting to investigate how the export companies feel about these rules once they have been introduced for a longer time.

The advance notification of imports, on the other hand, has a more direct purpose for security in the EU. The EU countries have jointly developed security criteria to be used in the assessment of advance notification information. However, there is no common database for processing information and searching for patterns and divergences. Here, the centralised American system appears to be stronger and able to provide more benefit.

The USA's new rules about further advance notification of goods entering the country, Importer Security Filing, ISF, which came into force in January 2010, imposes new and partly contradictory requirements on the provision of information from importers<sup>44</sup>. However, the information is rarely fully available from the importers' systems; instead, they become dependent on both agents and carriers in order to be able to consolidate the information. The rules give rise to a large number of questions about liability for the information, costs for finding out

the information, capital tied up (companies have mentioned a further 24 hours), technical conditions, etc. It could be asked what the reason is for developing the new rules. The original 24 hour rule for advance notification of goods does not appear to have provided the American authorities with sufficient information. In the WCO's SAFE framework, advance notification is described as a way for customs administrations to produce risk assessments and to enable them to share the information with other customs authorities. It should however be noted that several of the pieces of information included in ISF were not originally part of the SAFE data set, and it is only following pressure from the USA that four new data elements have been included. Others are still being discussed. The theory that the exporting country can make the best risk assessment appears reasonable, but the implementation of ISF shifts this responsibility to the importer, and there is none of SAFE's ways of thinking about exchange of information between customs administrations. The information in ISF are partially known, particularly in the USA, but are neither in use nor known in other countries, and it is therefore reasonable to assume that the legislation will lead to systematic, legal and administrative difficulties, which will have a negative effect on trade. Nor is there any sign that an operator who makes an advance notification of exports in the EU will be able to benefit from this information and avoid parts or the whole of the US information gathering.

The influence of the EU and the USA on these issues cannot be emphasised enough. Already, the WCO's SAFE framework has been changed to accommodate some of the data elements of ISF. There is a great risk that other customs administrations will also introduce similar or even more complicated systems. However, Japan's customs authority is supposed to have stated that it will look critically at all implementations of advance notification before reaching any decision about whether to introduce a similar system<sup>45</sup>. Not least developing countries may be at risk of introducing systems that would entail further burdens on their trade, resulting in longer waiting times, totally at odds with the efforts in progress to make crossing borders more efficient in accordance with the principles for trade facilitation.

It would be interesting to try to include information provision as a future next step in mutual recognition. It is also described as a possibility in the SAFE framework in a short section about Advance Electronic Information<sup>46</sup>. From a trade perspective, it would be convenient if advance information pro-

vided about export and the export declaration automatically could become advance notification of import and the import declaration. However, many uncertainties and problems surround this issue. The technical issue with communicating customs systems is one problem, but much more crucial is the responsibility for the information provided. If incorrect information is given, it is doubtful whether the importer will take responsibility for errors in the exporter's information. Technical errors leading to incorrect or incomplete information could also lead to problems. The information provision is also afflicted with limitations in order to protect personal integrity, where for instance the EU has rules that stop information being passed to third countries with a lower level of protection of information and personal integrity than the EU. Even if mutually recognised information provision would be desirable from a trade facilitation perspective, it is not included in the current arrangements and agreements.

### 4.3 Showstoppers not eliminated – 100% scanning

On 3 August 2007, the President of the United States signed a law called "Implementing Recommendations of the 9/11 Commission Act of 2007". The law covers a long list of measures for improved security both within and outside the USA, among them rules about 100% scanning of containers, carried either by air or by sea.

Section 1701 of the law prescribes that the Department of Homeland Security shall develop a plan for how 100% of all goods containers going to the USA can be scanned in foreign ports. The scanning shall include both radioactivity and scanning with gamma rays in order to discover unknown objects. The plan shall be implemented by 1 July 2012 at the latest, and shall include yearly measures of progress towards the goal. The USA's Minister for Homeland Security can, however, report to Congress why it is not practical or technically possible to achieve the goal, if this turns out to be the case.

The European Commission has produced a report on the effects of 100% scanning<sup>47</sup>. The Commission indicates that the effects on security will be poor or negative and achieved at great cost. The report shows that more than EUR 280 million would be needed in infrastructure investments up to 2012, which would rise to EUR 430 by 2020. The annual cost of operating the system would amount to EUR 200 million, and require 2,200 extra persons' annual work. The global welfare loss is calcu-

lated in the report at as much as EUR 150 billion per year, on condition that the system is introduced all over the world in order to scan all containers in the search for terrorist weapons. For an introduction limited to scanning goods from the EU to the USA, the cost would be EUR 10 billion on an annual basis.

An important argument raised against the legislation is that it removes resources from risk-based security work and thus reduces security. The legislation is also probably in breach of the the revised Kyoto Convention. 100% scanning is a divergence from the principles of risk-based customs inspections as prescribed in the Protocol, Standard 6.3 in the General Annex. Standard 6.4 also prescribes that customs authorities shall use risk analysis to determine the persons and the goods, including means of transport, to be checked, and how comprehensive this check shall be.

In negotiations with the USA, trading partners have raised cost arguments against 100% scanning at an early stage. In the USA, however, the issue has been regarded by at least parts of the administration as a genuine security issue, and the cost has been secondary when it comes to the security of citizens. Instead, the important argument about diverging from risk-based handling of customs risks has gained sympathy, and signals from the new administration now indicate that it is planning to delay the introduction of 100% scanning by two years. The actual implementation will however take place close to the original time of introduction of 2012, which leaves uncertainty of whether the legislation actually will be delayed.

#### 4.4 Trends in the work with security of the supply chain – towards a slow sobering-up?

In the report *Supply Chain Security initiatives: A Trade Facilitation Perspective* of January 2008, the National Board of Trade established that a number of trends can be observed in terms of security initiatives. The number of security initiatives is increasing rapidly, authorities are placing increased demands on information gathering, and the 100% scanning initiative threatens to be costly and breaches the principles for risk-based handling. The Board also found that it is difficult to see how the certification programmes are affecting trade. More efficient processes and faster customs handling are on one side of the scales, while differing implementations of AEO programmes and administration costs for

complying with authorities' requirements are on the other. In May 2010, there are still no macroeconomic studies that measure the real costs and gains. Finally, the Board found that risk assessment at the introduction of various security programmes for trade is not accounted for publicly, and that it is desirable to achieve a good balance between costs and gains in such programmes.

Approximately two years after the publication of the first report, the picture has changed, but only gradually and in the details. The big programmes, such as C-TPAT and the EU's AEO and others have grown closer, both in terms of implementation and mutual recognition. The membership number of C-TPAT is getting flatter, and this also applies to certain other programmes, while the EU's AEO, which was launched at year-end 2008 is continuing to grow in number of members, even if it has not reached the level certain member states assumed during the planning of the programme. The number of programmes continues to grow. However, it is mainly AEO programmes that follow the WCO model. Entirely new models for programmes are conspicuous in their absence, but there is reason to monitor the development on the air and sea shipping side, where work is in progress. 100% scanning for air freight on passenger planes is also being introduced in its last stage in August 2010.

In this report, the National Board of Trade has mainly illuminated the development within the AEO area and mutual recognition. The fact that a large number of AEO programmes is being developed can have both positive and negative effects on trade, depending on how similar they are and how they are designed in terms of benefits and requirements. The authorities' willingness to demand further information from companies does not appear to have abated. This is unfortunate, as it is often associated with great technical costs and often raises question marks concerning legal responsibility and the correctness of information, without the authorities being able convincingly to demonstrate the benefit of the information gathered.

The vision that information in advance notifications and other customs declarations can also be mutually exchanged in order to reduce the administrative burden on companies should also be included in the negotiations. Perhaps there is reason to think in new ways about how to handle information. The information exists in the supply chain, but is structured in another way than that in which customs authorities want to collect it. Current systems, electronic declarations and Single Window solutions are based on a push procedure, where companies are responsible for "pushing" the

information to customs and other authorities. Perhaps there are possibilities in this process to design systems where customs authorities at some points can “pull” the information from the supply chain – in a way that is less of a burden to trade.

The threat of 100% scanning remains, despite considerable efforts from the USA’s trading partners to show both the misuse of resources that this would give rise to, and the associated increase in risk, and also the great costs this would entail to trade. However, there are signals from the USA showing that the administration is preparing to use the leeway in the legislation to delay the introduction by two years.

When it comes to the balance between costs and risks, the financial crisis during 2009 appears to have forced a certain cost awareness and associated sobering up. Cost has become a valid argument, and risk appears to be assessed according to probability to a greater degree than before the crisis. The focus of inputs into the debate at the UNECE conference on Inland transport in January 2010 was on risks such as theft, kidnapping and other more everyday security risks, rather than on terrorism. Measures to prevent theft and hijacking of goods shipments are of great relevance for combating terrorism – but the risk focus appears to have shifted in the discussion, both among international organisations and the customs administrations of certain

countries. Discussions within the EU, particularly in the work with Implementation Provisions for the Modernised Customs Code, have also had greater focus on simplifications for AEO companies than on combating terrorism. Furthermore, the new administration in the USA has shown greater openness towards working with risk-based criteria, even if it has simultaneously introduced legislation, such as ISF, that entails considerable changes for trade without in fact being able to prove their benefit.

The balance between security initiatives and simplifying trade is difficult to achieve, and measures such as information gathering or 100% scanning do not lead to trade facilitation. Few security initiatives lead to trade facilitation, but the discussion above shows that the picture is complex – there are also developments that lead in a positive direction for trade. AEO programmes mean simplifications to trade, but also that the companies must live up to partially new requirements. The work with mutual recognition has not gone far, and there is quite a lot to wish for in terms of level of ambition and speed of implementation. The EU’s agreements are more comprehensive and concrete than those of the USA. In conclusion, much remains to be done before the hopes of simplifications linked to mutual recognition of different countries’ AEO programmes can be realised.

# Appendix 1. New legislation concerning advance information, “10 + 2” Importer Security Filing

On 26 January 2009, new legislation came into force with increased requirements on information to the American customs for goods freighted to American ports. The law was published on 25 November 2008 in the Federal Register by the Department of Homeland Security. A transitional period of one year gave the companies a deadline for adapting their systems.

In practice, the law means that importers are to provide advance information to the US Customs and Border Protection (CBP) with 10 data elements relating to the freight and carrier, and 2 data elements relating to the ship's stow plan and Container Status Message (CSM). This shall be done in accordance with the existing 24 hour rule, Advance Manifest Regulation, which means that goods imported to the USA shall be reported 24 hours in advance before leaving the export shipping port. In the Safe Port Act from 2006, the US CBP was instructed to develop proposals for legislation to enable more information to be demanded about goods transports to the USA, and in this way facilitate better risk assessment. The proposal has received criticism from both companies and the governments of trading partners, and is not fully compatible with the SAFE framework for security and facilitation of global trade produced by the World Customs Organisation, WCO. According to the American authorities, the measure is being introduced to prevent terrorist weapons being brought into the USA, to increase the CBP's opportunities of making better risk assessments, to counteract smuggling and to guarantee cargo protection and security.

The law has become known as “10 + 2” and places requirements on the importer to provide the US customs with the ten data elements below about the goods:

1. Seller's name and address
2. Buyer's name and address
3. Importer of Record number (if registered with CBP)
4. Consignee number
5. Manufacturer's name and address
6. Ship to party
7. Country of origin of the goods
8. Commodity classification code, HTS
9. Container stuffing location
10. Consolidator's name and address

The law also prescribes two areas where the carrier must provide the CBP with advance information: the ship's stow plan and Container Status Message (CSM).

The rules about the stow plan means that carriers must provide the CBP with a stow plan no later than 48 hours before the goods has left its last foreign port. For goods with transport distances requiring less than 48 hours, the stow plan must be sent before the goods arrive in the USA. The stow plan must be sent via one of the customs' approved electronic data systems, i.e. “Automated Manifest System” (AMS), “Secure File Transfer Protocol” (SFTP) or email.

Transport companies are obliged to send Container Status Messages (CSM) to the US customs on a daily basis. These are used to report the movement of containers (for instance when loading and unloading from a ship) and the container status (such as loaded or empty). CSM must be sent within 24 hours of the information being entered into the tracking system.

How companies will react to redirecting the information flows will probably be determined by how anxious they are to have control over the correctness of the information and the degree of secrecy they apply to information of this type. On the whole, there are two alternatives: The importer gathers the information from carriers and other service providers in the supply chain, and puts the information together into ISF messages and then links the feedback from the CBP to the operator in the supply chain responsible for the declarations at shipment in good time. Alternatively, the importer in good time provides the carrier, customs agent or other operators in the supply chain with the information necessary for that operator to complete an ISF declaration. In the end, it is the importer who is responsible for providing the information, and it cannot transfer the responsibility or any fines to a third party. An agent will surely charge for carrying out these tasks, and have strict time limits for when information must be provided to enable it to send the ISF declarations and carry out the export. In the legislation, it is stated that if the ISF importer cannot ensure that the information is correct, it shall provide the information it has reason to assume is correct. This is in breach of other American legal practice, where an importer is always liable for ensuring the information provided is correct. How the rules will be implemented in practice is as yet unclear, as is what the outcome of a trial in court would be.<sup>48</sup>

Implementing the proposal will result in costs for IT investments and increased costs for agents, but also risks resulting in increased capital tied up and longer delivery times.

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