

CUSTOMS & BUSINESS PARTNERSHIP

UDC 339.543:323.326

Dr. iur. **GELLERT Lothar**

Governmental Director within the German Ministry of Finance, Custom Department.

Seconded National Expert within the European Commission, Directorate General Taxation and Customs Union, Unit for Customs Policy, General Legislation and Uniform Application of Customs Law

CUSTOMS – BUSINESS PARTNERSHIPS

Abstract

This scientific article discusses the problem regarding to a partnership between customs and trade. Possible ways and different programs and concepts developed for consolidation both of them are shown in this article.

Key words: customs, trade, partnerships, partnership programs.

Introduction

Some years ago, it was difficult to imagine that there CAN be a partnership between customs and business due to the diametric interests of both groups.

And thinking of my tax authority it is hard to get the impression that we are partners. And the customs authorities are tax authorities in deed.

The collection of revenue and customs duties is and has ever been a task of the public administration. How there could be a partnership is difficult to detect from first glance: On the one hand there is the trade, whose intention it is to keep the customs duties as low as possible. On the other hand there are the customs administrations which are obliged to collect and make available the import duties as traditional own

resources to the European Union. So, where are the common interests in this area of governmental activity?

Partnership means in any case to be open for a dialogue on an equal footing. So the question comes up: "What is or has been the driver for such a dialogue and partnership between customs and trade?"

One driver for sure has been the historical events in the past, which led to an immense change of the tasks of the customs administrations: Away from pure tax collection towards securing trade and supply chains.

The attack on the World Trade Centre on 11.09.2001 and other cruel acts of terrorism has massively increased the sensibility of the administrations and the public opinion for the protection against terrorist crimes. Next to that the security of the trade was put into the focus as well. Terrorist attacks on the international logistics of transports can cause immense damage to world trade and are therefore of natural interest to terrorists who want to cause through their attacks as heavy disturbances of the public and governmental structure as possible. The explosion of a so-called "dirty bomb", which would lead to a contamination of the environment with nuclear material by conventional explosives, would have major consequences for the operation of a world-port like Rotterdam, and by that also for the supply of entire countries. Calculations on this point have shown that damages for the economy of several billions of Euro each day would be probable. The transport industry is aware of this threat too.

Based on these considerations, it was to examine how trade and customs administrations can work together to counter such a threat. The common goal of trade and administrations involved into the international movement of goods is to achieve the highest possible level of security on the entire supply chain of the products.

But HOW can this goal be achieved?

The solution has the following different layers:

- Partnership in form of a permanent dialogue between customs administrations and trade

- Partnership concepts like the AEO-concept, the C-TPAT program in the United States and similar partnership programs in other part of the world.

Problem statement

The purpose of this article is to show the possibility of the relationship between Customs and Trade, and if it is possible to show the probable ways and concepts of developing cooperation between them.

Research results

I. Dialogue between customs administrations and trade

Learning from the experience how important a permanent dialogue between customs administrations and trade really is, the "fathers" of the Modernized Customs Code, which entered into force in 2008, but which will not be applicable before 2013 together with the implementing provisions, have foreseen the obligation for such a permanent dialogue.

Art. 7 (1) MCC states:

"Customs authorities and economic operators may exchange any information not specifically required under the customs legislation, in particular for the purpose of mutual cooperation in the identification and counteraction of risk. That exchange may take place under a written agreement and may include access to the computer systems of economic operators by the customs authorities."

Art. 8 (2) 1st sentence reads:

"Customs authorities shall maintain a regular dialogue with economic operators and other authorities involved in international trade in goods."

The only question remains, how these provisions can be filled with life in order to avoid that they are only mere paper tiger?

Concerning the exchange of information a feasible possibility could be to install a database maintaining data concerning suspicious traders and movements that may be

subject to transactions in breach of customs or agricultural law and means of transports used for this purpose.

In terms of a dialogue on a permanent base there are already some positive experienced gained on different levels:

At the level of the national administrations there are meetings in place on a regular base between the customs administrations and trade representatives to discuss hot topics and to inform the trade on latest developments in customs law. These regular meetings are good; they are useful and beneficial for the development of customs law.

However dialogues take place not only at the level of the national administrations but as the European Unions is concerned at a very much higher level too, the level of the European Commission. By establishing the Trade-Contact-Group, in which 34 leading trade associations and organisations are represented, the European Commission has created a platform to have its ear rather close by the trade.

What was the reason to have such a platform?

This group initially was found in 2002 in the area of electronic customs and exportation. Its first major task was the consultation within the process for the security amendments to the Customs Code in 2005, so called the "small Customs-Code-Reformation". In 2008 it was decided, due to the positive results which were achieved in the consultation process and the request from the trade, to install the group as a permanent institution to discuss ALL customs related issues. According to the terms of reference¹ this group shall carry out a structured dialogue on a permanent basis. The Trade-Contact-Group fulfils exactly the requirements made by the Modernized Customs Code concerning the dialogue between customs and trade. By this dialogue it is ensured that the trade is involved in the strategic and operational part of the customs initiatives in a coordinated and well structured manner. Wishes and needs of the trade can be presented to the European Commission which then can use the experiences of the trade made in the field and can profit from the contacts and

¹ Commissions Working Document TAXUD/1426/2007 Revision

the knowledge on the operational logistic processes. At present one main topic are the consultations of the Implementing provisions for the Modernized Customs Code. Especially in this area the involvement of the trade is important to avoid that new provisions by-pass completely the needs of the trade. The European Commission decided therefore as well to have in different subgroups where the first drafts of the provisions were created not only representatives of the Member States but as well from the trade. And many a provisions have been inserted or have been deleted to and from the draft upon proposals made by the trade representatives. This is a good example of acting as partners, carrying out an open dialogue. This partnership approach is seen as not only beneficial, but absolutely necessary. The kind of consultation and exchange of views is a key to respecting commitments where both government and business have a role in the successful and efficient application of customs policies².

II. The AEO-Concept

The AEO-concept is based on the WCO SAFE-Framework of Standards to Secure and Facilitate Global Trade which was built by the WCO to increase the security standards of the supply chain and to come to trade facilitations in the world trade.

Details of the AEO-concept were developed by a project group of EU- Member States together with the European Commission. Between January and July 2006 this concept was tested in a pilot phase with Member States and economic operators. The legal base was put into the Community Customs Code by amendment through the Regulation Nr. 648/2005 from 13.4.2005 and by amending the Implementing Provisions through the Regulation Nr. 1875/2006 from 18.12.2006. Since 1st of January 2008 operators can apply for the status of an AEO. The aim of the concept is to secure the supply chain, from the producer of the products up to the end-user. Therefore all partners in the supply chain can apply to become an AEO, for example the producer, the importer, the forwarder, the operator of a storage facility, customs

² Deffaa, TAXUD talks business

agents, exporters, ports and suppliers. The status of an AEO is valid throughout the whole territory of the European Union. There are three different models which can be applied for:

- AEO C (for customs simplifications)
- AEO S (for a security certificate)
- AEO F ("F" for full; that includes C and S).

For each of these types the conditions are different and therefore the facilitations differ as well.

As it is a concept on a voluntary basis there is no obligation to apply for the status. However there are a lot of simplifications related to the status of an AEO: An AEO is entitled to present simplified customs declarations which means that not the whole set of data is required. This leads certainly to a reduction of the bureaucratically burden and may reduce costs for the operator. Next to that the number and intensity of customs controls are less. And the operator may be treated with priority when he presents his customs declarations. This can lead to faster flow of goods which results as well in a reduction of costs.

If there are some customs inspections and controls the AEO ask that these inspections shall be carried out at a spot where he wants to have them done, if this does not contravene the purpose of the controls.

The applicant has to guarantee a satisfying system of keeping his records and transport documentation to allow customs checks. In terms of physical security there have to security standards in place which are checked by the customs administrations. These aspects cover trading partners, access controls, and security measures concerning the staff, physical security measures to protect from the access by non-authorized persons, logistic processes, and measures to minimize the risks during transport, storage, production and loading of the goods³.

³ Reinhard/Fischer, Ein Ziel – zwei Wege?

Having been granted the status of an AEO means that the economic operator is regarded as a trustworthy economic partner by the customs administration so that the description as partnership program is justified.

The question is however: Is this concept successful and is it used by the economic operators, giving the fact that the operator has to undertake a lot of security measures and has to fulfil quite a lot of obligations.

This question can be affirmed. Already after 70 days after the implementation of this concept the first AEO-certificates were issued. Already one year after the implementation 499 AEO were included in the AEO-database of which 386 had applied for the AEO F, 103 for the AEO C and 10 for the AEO S.

In 2009 1442 certificates for the AEO F, 335 certificates for AEO C and 56 certificates for AEO S were issued. That means that in particular for the AEO F the number increased for 300 %. The majority of certificates were issued in Germany (27%), followed by the Netherlands (13%), France (10%), Sweden (9%), Italy (8%), UK (7%) and Austria (5%)⁴. In the meantime certificates have issued for small and medium enterprises AND for bigger players.

The increase of the number of certificates shows clearly that the AEO-concept was accepted by all Member States of the European Union. This positive result has led to the consequence that the legislator decided to apply the AEO-criteria for other types of simplifications as well. For being granted to present simplified customs declarations for import and exports the operator has to fulfil some of the criteria to become AEO.

To be competitive in the future more and more companies will apply for an AEO-status. This leads to the cautious prediction that the amount of applications will increase in future constantly.

III. The C-TPAT-Initiative

⁴ Weerth, Zwei Jahre Zugelassener Wirtschaftsbeteiligter (AEO)

The Customs-Trade Partnership against Terrorism (C-TPAT) is a security initiative of the U.S. Customs and Border Protection as a prompt response to the terrorist attacks of 9.11.2001. It was developed in close cooperation with the trade in 2001 to increase the security in the movement of goods, coming into the United States of America.

Up to 2009 in total 10367 companies were certified as a secure trade partner. Next to the security goal a further aim was to grant trade facilitations for trader importing goods to the U.S.A. This initiative bears in his name the most important component, that is the partnership between customs and trade and the authorities recognized that the highest amount of security can only be achieved by a close cooperation between the authorities and the traders.

The legal base for this initiative was given with the "SAFE Port Act from 3.1.2006".

The advantages which come with a certificate depend on the level of benefits:

At the highest level the applicants must exceed the minimal security standards by innovations and own initiatives. Operators with a certificate for this level have the advantage that their consignments are treated with priority (they are at the "Front of the line"). For the level 2 a prior check of the authority is carried out to ensure that the minimum security standards are fulfilled and that the applicant shows further dedication to the aim of the initiative. For the lowest level the applicant has to prove that he has introduced more strictly security measures and his security profile will be checked by the authority.

Each participant in the supply chain can apply to become a C-TPAT-member, for example importers, loading companies, transporters, forwarders, licensed customs agents, producers and all others who are involved in the supply chain.

The security standards cover the following aspects:

- requirements concerning the trading partners,
- security for containers and trailers,
- access controls,
- security concerning the staff,

- security concerning procedures used,
- physical security,
- IT-security.

Like the AEO-concept in Europe this initiative is accepted by the traders widely. It is recognized that the advantages of this concept are greater than the possible costs related to the application, e.g. the companies can determine the door-to-door time in a better way and disturbances in the supply chain can be reduced.

Further advantages are regarded in the reduction of waiting time at the border, getting new clients, reduction of theft and shrinkage and the increase of the security for the staff⁵.

IV. Other Partnership Programs

Apart from the above described programs there are others in the world, like in

Canada	Customs Self-Assessment Program (CSA)
Jordan	Golden List Program
New Zealand	Secure Exports Scheme
Singapore	Secure Trade Partnership
China	AEO
Japan	AEO
Malaysia	AEO
South Korea	AEO
Thailand	Gold Card System

The CSA program in Canada is designed for low-risk, pre-approved importers, carriers and registered drivers. To take advantage of the program, CSA-approved importers and carriers must use a registered driver to carry CSA-eligible goods into Canada in the highway mode.

⁵ Reinhard/Fischer, see Nr. 3

The CSA program simplifies many of the import border requirements so that low-risk shipments can be processed more quickly and efficiently at the border, saving businesses time and money.

The Golden List Program in Jordan is for the purpose of evaluating the due diligence of the Jordanian supply chain companies dealing with international trade. The Program is considered as one of the pilot programs using modern methods in customs work, where it depends on the principles of risk management and due diligence with the customs requirements and international security standards. According to this Program Customs Department applies compliance auditing techniques in order to verify the compliance of Jordanian companies which are nominated for the Program, and to evaluate their compliance with customs requirements and approved international security criteria, through performing actual auditing on the work systems and the processes related to customs declarations, import, export and other systems; as well as verifying the applied security systems in the company and whether they are in harmony with the approved criteria and conditions of this Program through continuous coordination and consultation⁶.

By becoming a Secure Exports Scheme partner in New Zealand the operator is providing the administration with increased assurance surrounding the security of his exports. He will also significantly reduce the likelihood of your shipment requiring examination.

The advantages of joining the scheme include:

- Secure supply chain from point of packing to time of loading for export
- Ability to demonstrate compliance with security standards when contracting to supply overseas importers that are committed to supply chain security
- Joining the scheme will enhance your border clearance privileges in the MRA partner countries

⁶http://www.customs.gov.jo/customsDynamic/public_News/Nws_NewsDetails.aspx?Lang=3&site_id=0&page_id=150&NewsID=42&Type=P&Path=

- Following trade disruption caused by security alerts, partners' exports are likely to experience minimal disruption as their security can be assured
- The World Customs Organisation's Framework of Standards to Secure and Facilitate Global Trade is being adopted and implemented by a large number of international Customs administrations. By joining this scheme, partners will already have in place security measures that comply with these standards
- Reduced fees for the lodgement of all export entries
- Customs can provide advice and assistance if you strike unexpected issues with your export goods at overseas borders with which Customs has a mutual recognition agreement⁷.

The Singapore Secure Trade Partnership (STP) is a voluntary certification programme administered by Singapore Customs that encourages companies to adopt robust security measures in their trading operations, thereby contributing to the improvement in the security of the global supply chain.

Through the STP programme, Singapore Customs seeks to:

create awareness of the importance of adopting a total supply chain approach to cargo security;

encourage companies to play their part in securing their own processes within supply chains;

enhance the security of global supply chain and prevent disruptions to the smooth flow of goods; and

profile Singapore as a secure trading hub.

The STP programme provides companies with a framework to guide the development, implementation, monitoring and review of their supply chain security measures and practices.

⁷ <http://www.customs.govt.nz/exporters/Secure+Exports+Scheme.htm>

By participating in the STP programme, companies will be demonstrating their commitment to adopting and implementing appropriate security measures and a willingness to assume responsibility for keeping their supply chains secure⁸.

The AEO Program in Japan was developed in close cooperation with the business sector, aiming at ensuring security while facilitating legitimate trade. For that purpose, Japan Customs, as a main entity in the field of international trade, has developed a comprehensive AEO program with combination of programs for importers, exporters, warehouse operators, Customs brokers and logistics operators, such as forwarders and carriers. Under this program, an AEO in Japan can enjoy specific benefits according to its type of AEO, in addition to the benefits such as increased reputation as a more compliant and security-oriented company, favourable consideration in Customs enforcement proceedings and better relations with Customs. Programs for importers/exporters provide Authorized Importers and Authorized Exporters with benefits such as compliance-reflected reduced examination and inspection.

Furthermore, “pre-arrival lodgement of import declaration and permission”, “release of cargoes before duty/tax payment declaration and duty/tax payment” and “periodical lodgement of duty/tax payment declaration” are allowed for Authorized Importers, and the requirement to deposit cargoes into the Customs area before export declaration is waived for Authorized Exporters⁹.

The AEO Program in Malaysia allows the trader who is certified to have a faster clearance of imported goods and enhance competitiveness.

Applicants must demonstrate a high level of compliance with legal requirements, not have committed any customs offences for the past three years and not been blacklisted.

⁸ <http://www.customs.gov.sg/leftNav/trad/Supply+Chain+Security.htm>

⁹ <http://www.customs.go.jp/english/aeo/pamphlet.pdf>

CUSTOMS & BUSINESS PARTNERSHIP

One of the advantages of using this program is that businesses with AEO status are given green lane clearance. This means that the usual customs formalities of registration, inspection and duties collection, which takes up to 13 hours, is cut down to a mere 15 minutes as the process is completely done online.

In addition to this, AEO status holders have the option of deferred duty payments.

Currently, there are 22 companies with AEO status. Among them are IKEA, National Panasonic and Samsung.

Another 17 companies are in the process of approval¹⁰.

The Authorized Economic Operator (AEO) system of Korea Customs has evolved responding to changes of the times. Since the KCS launched the Customs-business partnership in 1990s by concluding MOUs with the private sectors, it has long built the foundation for adoption of the AEO system, by introducing risk management techniques and developing systems for measuring and assessing compliance level of ex/import and logistics companies. The Commissioner can certify as AEOs trade-related parties that meet the security standards provided by the Presidential Decree, and provide those advantages in the clearance procedure. Korea Customs can also provide advantages in the clearance procedure to AEOs of other countries under the reciprocal condition¹¹.

A Gold Card Scheme for importers/exporters in Thailand is another measure to facilitate import and export procedures. In this connection, importers/exporters with good record and reliable background who meet the Customs established criteria are granted gold card status. Various privileges relating to processing Customs procedures are granted to the gold card importers/exporters. The applicant has to fulfil the following obligations:

1. Place a bond and security contract and deposit a bank guarantee or other forms of guarantee with Customs in the amount of not more than 2 million baht.

¹⁰<http://biz.thestar.com.my/news/story.asp?file=/2008/2/5/business/20080205133751&sec=business>

¹¹ www.wcoasiapacific.org/wcoweb/board/download.jsp?...rocb

However, an importer or exporter under the Gold Card Scheme who is also a member of the Customs Transparency Partnership Project is allowed to deposit not more than 1 million baht-security.

2. Keep the original Declaration including all relevant documents for at least 5 years
3. Allowed a competent Customs officer to visit their premises or any other relevant places to examine the accounts, documents, evidences, and information in any form

The benefits of being granted a Gold Card Trader are the following:

For Importation

- Processing import procedures via “Green Line”
- A manifest is written off after the clearance of goods
- The goods are exempted from examination unless it is a random examination

For Exportation

- Processing export procedures via “Green Line”
- The goods are exempted from examination unless it is a random examination¹²

V. Mutual Recognition

Worldwide threat through terrorism and international organized crime is increasing. Therefore it is important to have a global response to these threads. It is essential to know that the security of the supply chain can only be increased if as many states as possible implement security measures and envisage a mutual recognition of their concepts and programs¹³. This mutual recognition has to be implemented by international agreements. Only systems which are recognized mutually can help to secure the international supply chain from one end of the world to the other. One positive effect is that controls will be carried out more efficient and the burden on the trade will be decreased as much as possible. As the mutual recognition shows that the

¹²http://www.customsclinic.org/index.php?option=com_content&view=article&id=157&Itemid=204&lang=en

¹³ Aigner, Gegenseitige Anerkennung des AEO

trader is regarded as a reliable partner, it helps to increase the chances on the Third-Country-Markets.

For the European Union the most important issue in this respect is the recognition of the AEO concept by the U.S. and China, followed by recognition concepts for Japan. In principle there is an agreement that on paper the same conditions to get the status have to be applied. From the very first beginning it became clear that there is a different approach however. Whereas the AEO-concept in the EU has a concept in mind, which is rather "all inclusive", the C-TPAT program aims to enhance the security. Although there was a slight fear on the side of the U.S. that the AEO-concept was not implemented in all European countries in the same way, a common goal from the beginning was to achieve mutual recognition. It would not be acceptable for the trade if a trader was AEO but his consignments would not be treated for customs clearance only due to the fact that there is another standard in another country in place which he does not fulfil. Of course it is possible for a trader to participate in more than one program, which means that he could apply to become AEO PLUS C-TPAT-member.

Another aspect of the partnership between different customs administrations and trade is the trust of the administrations in the trader: If a trader is already AEO the US-Customs and Border Protection would not examine the supply chain again as there is trust that this has been done by European customs offices already¹⁴. On the other hand has a trader who is already member of the C-TPAT-program to fulfil further criteria to become an AEO. These further criteria are related to non-security issues, given the fact that the security-criteria are already fulfilled by the C-TPAT-certificate. The C-TPAT-certificate is regarded as an ISO-standard¹⁵. Insofar there would be mutual recognition between the U.S. and the EU in place as well.

¹⁴ Mullen, in Podiumsdiskussion zur Umsetzung des AEO in Deutschland, den Praxisberichten zum AEO aus den Mitgliedstaaten und dem Status der gegenseitigen Anerkennung des AEO, European Customs Law Conference 2008

¹⁵ Aigner, in Podiumsdiskussion zur Umsetzung des AEO in Deutschland, den Praxisberichten zum AEO aus den Mitgliedstaaten und dem Status der gegenseitigen Anerkennung des AEO, European Customs Law Conference 2008

Concerning China it has to be pointed out that there is a pilot-project running, which aims to test the security of the supply-chain from one end to the other. The Chinese AEO-program developed in 2008 is under comparison with the EU-concept. In case that both systems are equivalent, negotiations on the mutual recognition shall be opened. The same applies to Japan¹⁶. Already in 2008 the EU-Japan Joint Customs Cooperation Committee expressed its view that a mutual recognition should have priority. Although the legislation in both countries has turned out to be similar, a formal decision for mutual recognition is needed

But what does mutual recognition means in the daily life practice?

It means that the following facilitations for trade should be granted:

- Customs clearance with priority
- Recognition of export data for risk analyse purposes in the country of destination
- Reduced amount of inspections, since the systems have been checked already
- Granting fiscal attractions for providing a guarantee

Only these facilitations will lead to achieve the common goal of a secure harmonized world trade without barriers¹⁷.

Conclusions from the research

The examples mentioned before have shown that there is a partnership possible between customs and trade. And not only that it is possible, but it is already in place in many different ways and through many different programs and concepts.

In order to further develop the relationship between the customs administrations on the one hand and the trade on the other hand it is necessary to take the trade on board and to listen to their ideas and their input.

¹⁶ Aigner. See Nr. 13

¹⁷ Böer, Stand der C2B-Partnerschaftsprogramme und gegenseitige Anerkennung

Bibliography

1. European Commission. Working Document "Trade Contact Group – Terms of Reference", Document Number TAXUD/1426/2007 from 18 December 2008, http://ec.europa.eu/taxation_customs/resources/documents/customs/policy_issues/customs_trade_consultations/tcg_terms_of_reference_en.pdf
2. Dr. Deffaa, Walter. TAXUD talks business, WCO News Nr. 61, February 2010
3. Prof. Dr. Reinhard, Hartmut/ Fischer. Reinhard Ein Ziel – zwei Wege? AW-Prax 4/2010, S. 123
4. Dr. Weerth, Carsten. Zwei Jahre Zugelassener Wirtschaftsbeteiligter (AEO), AW-Prax 4/2010, S. 130
5. Dr. Aigner, Susanne. Gegenseitige Anerkennung des AEO, Compendium of the European Customs Law Conference (Europäischer Zollrechtstag) 2008, EFA-Schriftenreihe Band 40 S. 93
6. Dr. Aigner, Susanne. Oral Statement in Podiumsdiskussion zur Umsetzung des AEO in Deutschland, den Praxisberichten zum AEO aus den Mitgliedstaaten und dem Status der gegenseitigen Anerkennung des AEO, Compendium of the European Customs Law Conference (Europäischer Zollrechtstag) 2008, EFA-Schriftenreihe Band 40 S. 99ff
7. Mullen, Michael. Oral Statement in Podiumsdiskussion zur Umsetzung des AEO in Deutschland, den Praxisberichten zum AEO aus den Mitgliedstaaten und dem Status der gegenseitigen Anerkennung des AEO, Compendium of the European Customs Law Conference (Europäischer Zollrechtstag) 2008, EFA-Schriftenreihe Band 40 S. 99ff
8. Böer, Jürgen. Stand der C2B-Partnerschaftsprogramme und gegenseitige Anerkennung, Compendium of the European Customs Law Conference (Europäischer Zollrechtstag) 2009, EFA-Schriftenreihe Band 43 S. 101