

UNIVERSITY OF KWAZULU-NATAL

**The extent South Africa has incorporated the WCO SAFE Framework of
Standards into its legislation.**

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GLOSSARY OF ACRONYMS

AEOs	Authorised Economic Operators
AEO Programme	Authorised Economic operator programme
CCSI	Container and Cargo scanner initiative
Control Bill/ the Bill	Draft Customs Control Bill
CSI	Container Security Initiative
CSI Ports	Container Security Initiative Ports
C-TPAT	Customs Trade Partnership Against Terrorism
Duty Bill	Draft Customs Duty Bill
EU	European Union
GDP	Gross Domestic Product
ISPS Codes	International Ship and Port Security codes
RKC	Revised Kyoto Convention
SAFE Framework/SAFE	WCO SAFE Framework of Standards
SAPS	South African Polices Services
SARS	South African Revenue Services
South Africa	Republic
The Act	Customs & Excise Act no.91 of 1964
US	United States
WCO	World Customs Organisation
WTO	World Trade Organisation
24 Hour Rule	24 Hour in Advance Vessel Manifest Rule

ABSTRACT

The 9/11 attack on the United States' World Trade Center and Pentagon is one of the most notorious events which occurred in history. The attack has highlighted the weaknesses and accessibility of the international supply chain for terrorists to use as a medium for attacks. To address this problem, the World Customs Organisation (WCO) has created the WCO Security and Facilitation in Global Environment Framework of Standards, 2007 (WCO SAFE Framework of Standards). This international instrument provides a guideline for WCO Members to adopt within their customs legislation and practices to secure the international supply chain, whilst facilitating international trade. South Africa is presently in the midst of transforming its existing customs legislation and practices to meet international customs standards and norms. One of the South African Revenue Services' objectives of its Customs Modernisation Programme is to capture the main objectives of the WCO SAFE Framework of Standards. This study determines the extent South Africa has incorporated the WCO SAFE Framework of Standards into its proposed customs legislation. It is concluded that South Africa's Draft Customs Control Bill has, in its entirety, captured and incorporated the main aims and objectives of the WCO SAFE Framework of Standards. A few shortcomings have, however, been identified within this study. It is highly recommended that the shortcomings of the Draft Customs Control Bill be addressed and revised to fully capture the essences of the WCO SAFE Framework of Standards.

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Introduction

Customs administration plays a significant role in each of our lives, yet it is given very little or no attention by the final consumer.

In this day and age, goods ranging from the food we buy to the cars we drive, are manufactured from materials originating in different parts of the world. For instances, we all are familiar with the terms 'Made in China' or 'Made in India' typically found on the labels of our clothing we purchase. However, how many of us actually stop to consider that this item of clothing was made in another country half way across the world?

International trade has grown at a phenomenal pace over time. As international trade soars to phenomenal heights, so does international terrorism and crime. A notorious example of this is the attacks on the United States (US) on September 11, 2001. This illustrated the vulnerability and accessibility of the international supply chain and its impact on international trade. Countries became fearful and suspicious, and began to question every movement of goods across their borders. The attacks also demonstrated that carrier mediums such as planes, ships, and containers, to name a few, could be utilised as weapons of mass destruction. The 9/11 attacks called for world leaders to set aside their differences and to come together to fight terrorism.

If terrorists were to utilize international transport carriers and containers as a weapon of mass destruction, this would have a catastrophic impact on world trade and the economy of any country targeted. This would especially be the case if the international shipping carrier mediums were utilised as the potential weapon or vessel of destruction and terror¹, since approximately 90% of international trade is transported by sea². To understand the magnitude of this statistic, in 2005 approximately 14 333 million tons of cargo was transported by sea, of which 211 million tons was moved for South Africa.³

If a sea going vessel or any of its consignments were to be utilised as a potential vehicle of destruction by terrorists, the impact in comparison to the 9/11 attack will be immeasurable.⁴ As a hypothetical example, assume that a container liner rigged with explosives exploded in the port of Durban. Since Durban has the busiest container port in South Africa⁵, this would have a devastating impact on South Africa. Not only

¹ Stefan A. Wirths. *What is the relationship between the maritime anti-terrorism systems created by the USA and the existing multilateral maritime security systems?* (2005)3. Available at http://www.publiclaw.uct.ac.za/usr/public_law/LLMPapers/wirths.pdf. (Accessed 11.04.2010).

² Ahoy Cargo. *The Global Shipping Network Revealed*. (15/01/10). Cargo Freight News. Available at <http://www.ahoycargo.com/cargo-freight-news/2188-the-global-shipping-network-revealed.html>. (Accessed 19/03/10).

³ Martin Stopford. *Maritime Economics*. 3rd edition. (2009) 349&378.

⁴ Supra: Footnote 1

⁵ World Port Source. *Ports in South Africa-Port of Durban*. Available at http://www.worldportsource.com/ports/ZAF_Port_of_Durban_50.php. (Accessed 13/04/10)

would thousand of lives be lost in the explosion⁶; the damage to physical infrastructure, businesses, the economy and markets will cost South Africa billions, if not, trillions of Rands. In such circumstances, full recovery is unlikely due to the amount and degree of damages that may be caused as a result of the explosion. This is without taking into consideration the direct and indirect impact and cost to other countries, economies, markets and businesses throughout the world that are linked to South Africa.

The recent Transnet Strike, of May, 2010 illustrates the importance and impact the South African ports system has on South Africa's entire economy.. This 17-day strike⁷, which involved both port and railway Transnet workers⁸, had an enormous impact on South Africa's economy and related industries⁹. The strike cost South Africa an estimated R7 billion, which equates to approximately 0.2% of the country's Gross Domestic Product (GDP).¹⁰ This recent experience demonstrates the significance the South African port system has on its economy and the severity a potential terroristic attack will have on the South African economy if any of its port were to be attacked.

Customs administrations, which are found at every border post of entry and exit of a country, aid with the administration of international trade moving into, out of, or in transit through their respective national borders.¹¹ Customs administrators play a significant role in international trade due to their wide range of responsibilities and duties that are entrusted to them.

⁶ According to 2007 statistics, the population ranges from 500 000 to 3.4 million people living in and the surrounding metropolitan areas in the vicinity of the Port of Durban. For more information on the port of Durban, refer to Supra: Footnote 6.

⁷ Terry Hutson (Ports & Ships). *Transnet increase earnings and profits for half year*. (28 October 2010). Available at http://www.ports.co.za/news/news_2010_10_28_01.php#one. (Accessed 6/11/10).

⁸ Railway Africa Editor. *Effects of Transnet strike*. (18 May 2010) Available at <http://www.railwaysafrica.com/blog/2010/05/effects-of-transnet-strike>. (Accessed 6/11/10).

⁹ Importers; exporters; shipping lines; transporters, manufacturers and local import and export industries such as agriculture, perishable goods, wine, metal, etc in South Africa were severely affected. This is not to mention the international business lost to other countries due the disruption of trade and the international supply chain, and lost due to ships either calling at surrounding ports around South Africa or completely diverting from South Africa's ports. For more information about the strike and the impact it had on the various industries and key role players in the supply chain, the reader may refer to the following articles: (Accessed 6/11/10)

Business Report. *Truck maker warns on Transnet's strike after effects*. (4 June 2010). Available at <http://www.busrep.co.za/index.php?fSectionId=552&fArticleId=5500642>;

Terry Hutson. *Strike continues-BMW forced to cut back production*. (27 May 2010). Available at http://ports.co.za/news/article_2010_05_27_4205.html#one;

From the Old. *DA on SATAWU Transnet strike: will cost jobs*. (26 May 2010) Available at <http://fromtheold.com/news/da-satauw-transnet-strike-will-cost-jobs-2010052618203.html>;

Business Day. *Transnet's strike over*. (26 May 2010) Available at <http://www.businessday.co.za/articles/Content.aspx?id=109950>;

Railway Africa Editor. *Effects of Transnet strike*. (18 May 2010) Available at <http://www.railwaysafrica.com/blog/2010/05/effects-of-transnet-strike>;

Business Report. *Transnet's strike's effects 'devastating'*. (26 May 2010). Available at <http://www.busrep.co.za/index.php?fSectionId=552&fArticleId=5486748>;

Terry Hutson (Ports & Ships). *Strike continues- little cargo being uplifted at Durban or Cape Town*. (17 May 2010). Available at: http://ports.co.za/news/article_2010_05_16_0957.html#one

10 Business Report. *Transnet's strike's effects 'devastating'*. (26 May 2010). Available at <http://www.busrep.co.za/index.php?fSectionId=552&fArticleId=5486748> (Accessed 6/11/10).

¹¹ Mark Goodger (GMLS). (2009) [Lecture Handout] *Customs & International Trade environment: Customs & Excise focused*. (2009) at 2. Customs Theory Module. UKZN: Maritime Studies Unit.

Previously customs administrators primarily focused on revenue collection; policing and protection of the movement of goods, agricultural products, and illegal substances; ensuring trade compliance and supervising national trade agreements relating to the movement of goods through their borders; trade facilitation; protection of domestic industries; and other border policies for their government and agencies.¹² Customs administrators were trained not to trust any person or cargo, to maintain a mental mind frame and attitude to be alert and suspicious of all movement of cargo and passengers entering or leaving their custom territory.¹³ With the exception of trade agreements amongst trading partners and international conventions, custom administrators rarely worked in collaboration with other customs administrators beyond their customs territory, nor did they adopt the same or similar customs practices and policies.

Customs administrations are the only bodies that possess the necessary powers and are in the ideal position to assess, secure and monitor the movement of all goods, capital and people across their respective national borders. The World Customs Organization (WCO) SAFE Framework of Standards, 2007 defines the importance of customs administrations as follows:¹⁴

Customs administrations have important powers that exist nowhere else in government - the authority to inspect cargo and goods shipped into, through and out of a country. Customs also have the authority to refuse entry or exit and the authority to expedite entry. Customs administrations require information about goods being imported, and often require information about goods exported. They can, with appropriate legislation, require that information to be provided in advance and electronically. Given the unique authorities and expertise, Customs can and should play a central role in the security and facilitation of global trade.

Due to their wide range of powers, responsibilities and duties Customs are the most suitable to securitise international supply chains and protect their respective national borders from potential terroristic attacks. Subsequent to the 9/11 attacks, customs administrations duties and responsibilities have been expanded to devote a significant portion of their focus to improve, monitor and modernise customs control measures and securitise the international supply chain. Custom administrators are now assigned the task to secure, protect and monitor the entire international supply chain¹⁵ and movement of goods on all modes of transport. For instance, these authorities, which were previously predominantly import focused, are now required to become internationally focused on the movement of goods. This means customs administrations must not only concentrate on the safety and security of the goods imported into their country, but that they

¹² David Widdowson. 'The changing role of customs: evolution or revolution?' (2007)1(1). *World Customs Journal* at 31.

¹³ Ronnie Van Rooyen. *Custom Theory Lecture Notes*. Customs Theory Module. 2009. University of Kwa-Zulu Natal: Westville.

¹⁴ Supra: Footnote 33.

¹⁵ The entire supply chain constitutes as from the seller's warehouse in the country of export to the buyer's premises in the country of import.

must also monitor the safety and security of the goods exported from their country on behalf of customs administrators in the country of import.¹⁶

The 9/11 attacks on the US highlighted the desperate need for security measures and initiatives to protect and secure the international supply chain and the national borders of each country participating in the supply chain. A number of security measures and initiatives were created, adopted and implemented in different countries in order to secure their supply chain and protect their national borders. In response to the 9/11 attacks, the US immediately took the necessary precautions and measures to tighten the reins of the security structures surrounding their supply chains and national borders. They have created new laws and developed and implemented a number of security initiatives such as the Customs Trade Partnership Against Terrorism (C-TPAT), the 24 Hour in advance vessel manifest rule (24 Hour Rule), Container Security Initiatives ports (CSI ports)¹⁷ and Mega ports initiatives¹⁸ purely for these purposes. The US has also entered into security trading programmes with surrounding trading partner countries such as Canada and Mexico to protect their borders.¹⁹ Other countries, such as Australia, New Zealand, the European Union, Singapore, and Canada fell in step with the US, developing and implementing programmes to protect and secure their respective national borders and supply chains.²⁰

The common aims of all these different security measures and initiatives are to prevent and eliminate any type of potential terrorist act at any point in the international supply chain. These measures and initiatives prevent terrorists from using different modes of international transportation and cargo as a potential vehicle of massive destruction. For example, CSI ports throughout the world, including most US ports and Durban²¹ make use of container scanning machinery and devices to detect potentially high-risk goods such as explosives. Containers suspected of containing high-risk cargo will be detained and inspected by customs administrators. If explosives are detected, this container and all explosives will be removed from the supply chain, thereby protecting the international supply chain and the country of destination.

Each of these individually established supply chain security initiatives and programmes call for different security requirements and procedures that the business operators must comply with, in order for their cargo to enter or exit these countries' borders. Some of these customs administrations set out substantially higher

¹⁶ Ronnie Van Rooyen. *Customs in the 21st century: Emerging Issues on Global Compliance driven by the Role of Customs in the 21st Century; the Impact of Customs-to-Customs and Customs-to-Business in the AEO (Authorised Economic Operator) programmes; Current Status and SARS Implementation*. GMLS: Supply Chain Global Compliance conference. (26/03/10).

¹⁷ This is a security initiative developed by the US Customs and Border Protection Bureau.

¹⁸ Fabienne Vermeeren. *13th EU Policy. Situation of supply chain security in the U.S. and prospects of global effects in other countries*. (17/09/09) Whitecase LLP. Available at www.whitecase.com. (Accessed 28/02/2010).

¹⁹ The U.S. Free And Secure Trade (FAST) program was established between surrounding trading partners, Canada and Mexico. (U.S. Customs Border & Protection. *Free and secure trade (FAST)*. 2008. Available at www.cbp.gov. (Accessed 22/03/10).

²⁰ X Gutierrez...et al. 'Voluntary supply chain security program impacts: An empirical study with BASC members companies.' (2007)1(2) *World Customs Journal* at 31.

²¹ The port of Durban launched this initiative on 23 June 2003. (SARS website. *Container Security Initiative*. Available at: <http://www.sars.gov.za/home.asp?pid=3638>. (Accessed 18 October 2010).

levels of customs security requirements, whilst others were more lenient. This proved to be detrimental to trade facilitation and the flow of legitimate international trade amongst trading countries.²² Other burdensome factors such as the duplication of time-consuming customs procedures²³ to be conducted in both the country of import and export have resulted in further disruptions and delays in the flow of international trade.²⁴

The World Trade Organisation (WTO) supervises, controls, regulates and addresses other issues, which may influence and affect international trade amongst trading nations i.e. its members.²⁵ The WCO is the 'voice of the global customs community' as it is an international organisation that focuses on and addresses all customs related matters.²⁶ The WTO works hand-in-hand with the WCO to promote the facilitation of trade and the movement of goods amongst trading countries.²⁷ The WTO had, with the assistance of the commercial industry, identified the abovementioned disruptions in the flow of legitimate international trade.²⁸

The WCO realized the need for an international instrument, which would set a uniform benchmark for customs administrations to secure the international supply chain whilst ensuring the flow of international trade was not disrupted. Subsequently, the WCO endorsed²⁹ and adopted, the *WCO Security and Facilitation in Global Environment Framework of Standards, 2007*³⁰ (the SAFE Framework or SAFE).

The SAFE Framework is a renowned international instrument, which is changing the manner of international trade compliance and custom procedures throughout the world. The SAFE Framework was developed on the basis of the Revised Kyoto Convention (RKC)³¹ to simplify and facilitate the flow of

²² Supra: Footnote 12.

²³ For example, custom administrators are required to perform an intensive inspection of the goods in both the country of export and import, consuming both valuable time and money of the business operators involved in the transactions. These disruptions are felt substantially in industries using Just-in-Time supply chain methodologies and production systems.

²⁴ Mark Goodger. 'New WCO instruments: The SAFE Framework of standards and the AEO accredited compliance status; their impact on supply chains.' GMLS supply chain compliance conference. Durban: Elangeni Hotel. (26/03/10).

²⁵ Wikipedia. *World Trade Organisation*. Available at www.wikipedia.org. (Accessed 29/05/10)

²⁶ WCO. *World Customs Organisation: About us*. Available at http://www.wcoomd.org/home_about_us.htm. (Accessed 3/12/10)

²⁷ Supra: Footnote 25.

²⁸ The WTO narrowed down the following highlighted areas as the cause trade disruptions:

1. Excessive government documentation requirements;
2. Lack of automation and insignificant technology;
3. Lack of transparency, unclear and unspecified import and exports requirements;
4. Inadequate customs procedures, particularly audit-based controls and risk assessment techniques;
5. Lack of co-operation and modernisation amongst Customs and other governmental agencies, which impedes efforts to deal effectively with increased trade flows.

[Supra: Footnote 12.]

²⁹ In June 2005. [Michel Danet. *WCO SAFE Framework of Standards, 2007: Letter by Secretary General of WCO*. (2007) at 2].

³⁰ Also known as the 'WCO Framework of Standards to Secure and Facilitate Global Environment.'

³¹ Global Options, Inc. *Balancing Security and Trade Facilitation in the 21 Century Global Supply Chain: A Study Evaluating International Agreements to Implement The SAFE Framework of Standards*. (2008) at pg 5. Available at <http://www.uschamber.com/NR/rdonlyres/eaqg7z6ybzktwvsrryqoy74ceamvrqxvnziwwij5tiey53vczhxkm2scbjq6mfgqxsncfbbemltslshsvxggcpcsrh/balancingsecurityandtradefacilitationinthe21stcenturyglobalsupplychain.pdf> (Accessed 19/03/10).

legitimate trade, and the US' security initiative, C-TPAT³² to aid its members with the development and incorporation of security initiatives. The essential principles, concepts and standards of these two instruments laid the solid foundation on which the WCO SAFE Framework stands today. This international instrument modernizes the security standards of the international supply chain, whilst simultaneously facilitating the flow of legitimate trade.

SAFE aims to introduce safer, more efficient and effective international trade regimes by stipulating the minimum threshold of security standards and principles that must be adopted by its members.³³ Change, however, is a slow and an ongoing process, which is dependent on the rate and capacity at which WCO Members can implement the SAFE Framework into their customs practices and legislation.³⁴ The SAFE Framework strives to close and remove any loopholes there may be within the international supply chain, which may be accessible to terrorists.

The 175 WCO members³⁵ account for approximately 99% of international trade.³⁶ By each WCO member adopting and implementing the WCO SAFE Framework of Standards into their national customs legislation and practices, a large proportion of international trade will move through secure and protected supply chains. To date, 161 WCO members have expressed their intention of implementing SAFE Framework into their national customs practices and legislation.³⁷

Countries such as the US, Australia, New Zealand, the European Union,³⁸ Canada³⁹, and Singapore⁴⁰ have already established and implemented the SAFE Framework into their respective customs legislation(s), administration and practices.

South Africa too has also been making the necessary changes to its legislation and practices to implement and incorporate the SAFE Framework. South Africa has gradually been phasing in the standards of the

³² Supra: Footnote 12.

³³ Supra: Footnote 33.

³⁴ The WCO acknowledges and caters for the different levels of capacity of each of its Members to adopt and adhere to this international instrument. It has subsequently made provision for each of its members to implement the instrument into their legislation and administrations within their own capacity. (WCO SAFE Framework of Standards of 2007. *Foreword: Implementation*, page 4.) Based on this provision, WCO members throughout the world are continuously involved in adopting, implementing and phasing in the SAFE Framework into their legislation and administration within their own capacity. Consequently, the SAFE Framework is fully implemented and practiced by each of the WCO members at different stages in time.

³⁵ The number of members of the WCO to date.

³⁶ Supra: Footnote 33.

³⁷ WCO. *Members who expressed intention to implement WCO SAFE Framework of Standards to Secure and Facilitate Global Trade*. (3/5/10) Available at http://www.wcoomd.org/files/1.%20Public%20files/PDFandDocuments/Enforcement/FOS_bil_03.pdf. (Accessed 23/05/10).

³⁸ Michael D Laden. The genesis of the US C-TPAT program: Lessons learned and earned by the government and trade. (2007)1(2) *World Customs Journal* at 75.

³⁹ M Irish. 'Supply chain security programs and borders administration.' (2009) 3(2) *World Customs Journal* at 79. Available at [http://worldcustomsjournal.org/media/wcj/-2009/2/WCJ_V3N2_Irish_\(web\).pdf](http://worldcustomsjournal.org/media/wcj/-2009/2/WCJ_V3N2_Irish_(web).pdf). (Accessed 16/02/10).

⁴⁰ Supply chain security branch, Singapore Customs. 'Singapore's supply chain security program.' (2007) 1(2) *World Customs Journal* at 71. Available at http://worldcustomsjournal.org/media/wcj/-2007/2/singapores_supply_chain_security_program.pdf. (Accessed 18/02/10).

SAFE Framework through its South African Revenue Services' (SARS) ⁴¹ Customs Modernisation Programme. Various security initiatives,⁴² such as the Container and Cargo Scanner Initiative (CCSI) and the International Ship and Port Security Codes (ISPS codes) have been implemented. ⁴³ In addition to these security initiatives, South Africa is currently redrafting its national Customs and Excise legislation, which provides the SAFE Framework with the necessary legislative authority the Framework, calls for from WCO Members.⁴⁴ This will be discussed in detail in chapter 2 of this study.

South Africa's current Customs and Excise legislation, the Customs and Excise Act no.91 of 1964 (the Act), has governed customs' administrations, proceedings and practices from the time of its enactment. However, since South Africa acceded to the RKC on May 18, 2004⁴⁵ and other WCO instruments such as the SAFE Framework, the SARS has decided to redraft the Act.

The redrafting of the Act resulted in the development of the Customs Control Bill and the Customs Duty Bill. The Customs Control Bill develops the South African Customs control system,⁴⁶ and deals directly with the policing and management of the different aspects of the movement of goods and persons through South Africa's borders and the international supply chain processes.⁴⁷ The Customs Duty Bill addresses different aspects of the customs trilogy, namely Classification, Rules of Origin and Valuation. It is also responsible for customs duty impositions, assessments and the payment and collection of customs duties and revenue.⁴⁸

Aside from creating new and separate Acts, which will respectively deal with Customs and Excise, the rationalization behind this decision is to modernise South Africa's customs legislation, procedures, and protocols.⁴⁹ Customs modernisation is important to international trade since it simplifies and facilitates the flow of legitimate international trade through trading nations' borders whilst securitizing the supply chain in which goods move. The Bills are designed to support existing and new emerging international conventions and practices and their respective standards and principles, such as the RKC and the WCO

⁴¹ It must be noted that South Africa's Customs administration is a division within the South African Revenue Services.

⁴² These security initiatives will be discussed at a later stage in this study.

⁴³ SARS. *Container and Cargo scanning initiative*. SARS. Available at [http://www.sars.gov.za/home.asp?pid=3637#SARS strategy](http://www.sars.gov.za/home.asp?pid=3637#SARS%20strategy). (Accessed 25/04/10).

⁴⁴ SARS. *SARS Customs Modernisation presentation to the MCLI*. (February 2010) at 3. Available on <http://www.sars.gov.za/home.asp?pid=29882>. (Accessed 30/4/10).

⁴⁵ Draft Customs Control Bill. Preamble. Page 38.

⁴⁶ Erasmus, D.N. *Redrafting the Customs & Excise Act*. SA ePublications. (2010)20. *TAXtalk*. SABINET. Available at <http://search.sabinet.co.za>. (Accessed 10/04/10).

⁴⁷ Mark Goodger. *Commentary deadline for new Customs Act*. Jacobsen's Articles. (20/11/09). Available at <http://www.customstariff.co.za/index.htm>. (Accessed 13/10/10).

⁴⁸ Draft Customs Bill: Explanatory Memorandum. The Proposed Customs Duty Act. Page 53.

⁴⁹ Maris. L. *Customs, modernisation and Jacobsen's commitment*. Jacobsen's Articles. (13/11/09) Available at <http://www.customstariff.co.za/index.htm> (Accessed 13/04/10).

SAFE Framework of Standards.⁵⁰ This means that South Africa's Customs practices will be in line with international conventions, standards, practices and globalised trends.⁵¹

The Custom Bills were also developed with the SARS's strategic objectives in mind. The essential strategic objective relating to this study is "to enhance trade facilitation and border control through improved trade supply chain management."⁵² This directly addresses the incorporation of the SAFE Framework into South Africa's legislation and practices.

The aim of this study is to determine the extent to which the SAFE Framework of Standards has been incorporated into South Africa's Custom Bills.

Do South Africa's Customs Bills achieve the objective of SARS, to align South Africa's customs legislation with the SAFE Framework? If so, to what extent has South Africa incorporated the SAFE Framework into its new Customs legislation? Have the Customs Bills achieved the core objectives of the SAFE Framework⁵³, namely to secure international supply chains, whilst facilitating trade? Where do the Bills fall short of implementing the SAFE Framework of Standards? What is the impact and effect of these shortfalls in terms of incorporating SAFE? How can these shortfalls be rectified to incorporate SAFE?

This study will attempt to address each of the abovementioned questions.

The appropriate authorities are still in a position to make the necessary alterations to the Draft Bills before they are enacted. Suggested discrepancies in the Bills are currently under consideration and the appropriate alterations are being made.⁵⁴ Once enacted, amendments to the Acts are lengthy procedures, which can take months, or even years. The current period is therefore a crucial stage where kinks in the Customs Bills need to be ironed out and appropriate changes made to bring them more in line with the SAFE Framework and ultimately international practices.

⁵⁰ SARS. *Customs Modernisation: Presentation to delegates at the SARS IDZ Workshop*. (16/07/09). Available at http://docs.google.com/viewer?a=v&q=cache:oaNx7_NykhcJ:www.sars.gov.za/Tools/Documents/DocumentDownload.asp%3FFileID%3D50229+SARS+IDZ+Workshop+Customs+Modernization&hl=en&gl=za&pid=bl&srcid=ADGEEShTvQn3Fs_PnxylvNeFGIDFAJvdrDM9QR0bqZKjPywqRsGdsYRf9Rpb6MTKbZxDt7o9aZUmwA3T0XxNzi3txfHs5N_F9NID-VbX-yFfDZ7hM8EkUkNiEYmExyckfUARw5R8ywGF&sig=AHIEtbQ6n2p9k19U_N4DG1XBxs5Ngq2HGg. (Accessed 06/03/10).

⁵¹ Supra: Footnote 46.

⁵² SARS. *South African Revenue Services Strategic Plan 2009-2012: Update for 2009-2010*. SARS. (24/06/09) page 7. Available at <http://docs.google.com/viewer?a=v&q=cache:tQ0ywb0I2cwJ:www.sars.gov.za/Tools/Documents/DocumentDownload.asp%3FFileID%3D48693+SARS+Strategic+Plan+2009-2012:+Update+for+2009-2010&hl=en&gl=za&pid=bl&srcid=ADGEESi4S9thcTDSkcBrG3quHU-JFVduwVBzq172Qb14ysHx76LV21vbto2eIBJI8fopx7Em6XQZ5Jbqd-Zvv9c9z2hyrUzQwWkkpuROuGbhKTet1iOuuQJvPRr4iQXxLVWRsd7WXeN&sig=AHIEtbQj9adNWOZJSXaq8KcxEb2I7X-MrA>. (Accessed 24/04/10).

⁵³ And the strategic objective of SARS (Supra: Footnote 52).

⁵⁴ According to Advocate Tinus Barnard, the proposed date of the enactment of the new Customs Acts is November 1, 2010. (Barnard, T. *Introduction & critical examination of certain aspects of the proposed new South African Customs and insight into the internal administrative appeal process*. GMLS: Supply Chain Global Compliance conference. (26/03/10).

Furthermore by making the necessary alterations to the Customs Bills, SARS will not only achieve its objective to modernise and align South Africa's customs legislation with international practices,⁵⁵ it will help open additional international business opportunities and facilitate trade. The new legislation will make South Africa a more attractive market to conduct business in, as it will offer international operators a secure and safe supply chain channel. South Africa will be one of the few developing countries to provide a secure supply chain supported by national legislation, allowing the country to retain its current market and giving it an edge over its competitors.

The study will illustrate the flaws in the Custom Bills, giving SARS Customs administration the option to develop security initiatives to address the shortfalls, should they choose not to alter the Customs Bills. SARS may begin with the development and implementation of these security initiatives, subsequently allowing for a more rapid implementation of the SAFE Framework into South Africa's administration and practices.

A portion of this study will dedicated to the WCO SAFE Framework of standards, 2007. This will enable the reader to develop an understanding of the Framework and to be able to determine the extent to which the new South African customs legislation has incorporated the SAFE Framework.

⁵⁵ Supra: Footnote 49.

Chapter One: The WCO SAFE Framework of Standards, 2007⁵⁶

This chapter outlines the WCO SAFE Framework of Standards, 2007. This international instrument, its objectives, aims, twin pillars and their respective standards, need to be incorporated into WCO member's national customs legislation and practices, in order to fully incorporate the SAFE Framework. South African legislation will be compared to the overall objectives and principles of this international instrument, to develop a sense of the extent to which South Africa has incorporated the SAFE Framework into its national legislation.

The SAFE Framework of Standards was developed to secure the international supply chain whilst facilitating trade. It accomplishes these two fundamental goals by setting forth the following objectives:

The SAFE Framework aims to:

1. Establish standards that provide supply chain security and facilitation at a global level to promote certainty and predictability.
2. Enable integrated supply chain management for all modes of transport.
3. Enhance the role, functions and capabilities of Customs to meet the challenges and opportunities of the 21st century.
- 4 Strengthen co-operation between Customs administrations to improve their capability to detect high-risk consignments.
- 5 Strengthen Customs/Business co-operation.
6. Promote the seamless movement of goods through secure international trade supply chains.⁵⁷

The SAFE Framework of Standards has four core elements, which are achieved through the implementation of its twin pillars. These are as follows: (emphasis in the original)⁵⁸

First, it harmonizes the advance electronic cargo information requirements on inbound, outbound and transit shipments. *Second*, each country that joins the SAFE Framework commits to employing a consistent risk management approach to address security threats. *Third*, it requires that at the reasonable request of the receiving nation, based upon a comparable risk targeting methodology, the sending nation's Customs administration will perform an outbound inspection of high-risk containers and cargo, preferably using non-intrusive detection equipment such as large-scale X-ray machines and radiation detectors. *Fourth*, the SAFE Framework defines benefits that Customs will provide to businesses that meet minimal supply chain security standards and best practices.

⁵⁶ For ease of referencing, a full version of the WCO SAFE Framework of standards, 2007 is available in Annex A of this dissertation.

⁵⁷ WCO. *WCO SAFE Framework of Standards, 2007. Objective and principles of the SAFE Framework*. (2007) at 3.

⁵⁸ Supra: Above: *Four Core elements of the SAFE Framework*.

Twin Pillars

The seamless movement of goods through a safe and secure international supply chain is dependent on two vital entities, i.e. economic business operators, which make up the international supply chain and Customs administrations. Bearing the importance of these entities in mind, the WCO has developed Twin Pillars within the SAFE Framework, which require the assistance and co-operation of these two entities to secure the international supply chain whilst facilitating trade. The SAFE Framework of Standards' Twin Pillars, the Customs-to-Customs network arrangements and Customs-to-Business partnerships, are the heart of the SAFE Framework of standards. It is on the meticulous underpinnings and standards of these two pivotal pillars that the understanding and implementation of the SAFE Framework of Standards rest.⁵⁹

Pillar 1: Customs-to-Customs network arrangements⁶⁰

Customs administrations continuously face the evolving challenges of the 21st century as the complexity of international trade increases over time. WCO Customs administrators are, however, not abandoned to perform and enforce their growing responsibilities and duties alone. With international terrorism threats constantly on the doorstep of international trade, the SAFE Framework of Standards strives to assist WCO members' Customs administrators to prevent and fight international terrorism. Customs administrators may, with the adoption and incorporation of the WCO SAFE Framework in their national Customs legislation and practices, perform their expanding duties and responsibilities with the assistance of other WCO Customs administrators throughout the world and their respective authorised business operators. The SAFE Framework of Standards Customs-to-Customs arrangement network pillar develops an open, co-operative relationship between Customs administrators. These administrators must apply and utilize the 11 Customs-to-Customs Standards stipulated within the first pillar in order to maximize the security of the international supply chain whilst facilitating international trade.⁶¹

Customs- to- Customs standards

The 11 Customs-to-Customs standards will help develop this network between Customs administrations. The standards outline the minimum threshold Customs administrators must implement within their Customs practices and national legislation for them to effectively perform their functions in terms of Pillar 1 of the SAFE Framework. These standards will ensure the safety of goods by calling for Customs administrations to adopt and adhere to specific, uniform Customs practices, roles and duties. These standards, listed in Table 1 below, are the essential and underlying factor for the implementation of the first pillar, the Customs-to-Customs network arrangements.⁶²

⁵⁹ Supra: Footnote 57- *Twin pillars of the SAFE Framework*

⁶⁰ Refer to Annex A: WCO SAFE Framework of Standards, 2007. *Pillar 1- Customs-to-Customs*. pg 7-25 for a detailed breakdown of Pillar 1 and its 11 standards.

⁶¹ WCO SAFE Framework of Standards, 2007. *Pillar 1- Customs-to-Customs: Introduction*. pg 7.

⁶² Supra: Above.

Table 1-1: Customs to Customs Standards⁶³

1. Integrated Supply Chain Management	Follow a uniform set of Customs control procedures.
2. Cargo Inspection Authority	Enhance Customs administrators' powers to inspect all cargo passing through their national borders.
3. Modern Technology in Inspection Equipment	Make of non-intrusive equipment and apparatus to inspect consignments.
4. Risk Management Systems	Use international best practices and automated risk management systems to identify potentially high-risk consignments.
5. High- Risk Cargo or Container	Consignments that have insufficient information; fail to meet the risk assessment criteria; or strategic intelligence may be declared as high risk.
6. Advance Electronic Information	Used to transfer information in advance to importing Customs administrators to perform risk and security assessments.
7. Targeting and Communication	Use common targeting techniques and compatible communication systems to exchange information.
8. Performance Measures	Keep a detailed statistical record of the inspections conducted.
9. Security Assessments	Utilise stringent assessments to identify gaps in the international supply chain.
10. Employee Integrity	Customs administration employees must undergo continuous training to avoid a lapse in the employee's integrity.
11. Outbound Security Inspections	If requested, inspections may be done in the exporting country before departure of the goods.

(For a detailed breakdown of the abovementioned standards, refer to Annex A.)

⁶³ Annex A: WCO SAFE Framework of Standards, 2007. *Pillar 1- Customs-to-Customs: 3.1 Customs-to-Customs Standards.& 3.2. Technical Specifications for the standards implementation* at 7-25.

The main objective behind these standards is to develop an equal, level platform on which WCO customs administrators can establish a network with one another, to secure and facilitate international trade. These 11 standards aim to harmonize Customs control and risk management procedures; keep WCO Customs administrators abreast with international best practices, and assist Custom administrators to enhance their capabilities to identify high-risk consignments. These standards also help to remove common areas and barriers, which may arise due to misinterpretation or uncertainty, which may be detrimental to establishing the Customs-to-Customs network. As a result Customs administrators are enabled to unite and work in harmony to secure and facilitate the international supply chain.

Pillar 2: Customs-to-Business Partnership⁶⁴

Each international supply chain is made up of a series of buyers and sellers of goods and services. International supply chains are used to move goods from the seller in the country of origin, to the buyer in the country of destination. International trade can be broken down into millions of these international supply chains. The mere existence of each of these international supply chains is dependent on the business transactions conducted by these buyers and sellers. Some may be developed for once-off transactions, whilst other international supply chains may be in use for longer periods of time. Irrespective of the duration of the transactions, the business operators within each and every international supply chain can play a pivotal role in securing the international supply chain and the facilitation of international trade. With Customs administrations' new found responsibilities to become increasingly focused on securing the international supply chain in which these goods move, it is virtually impossible to secure and facilitate the entire supply chain without the aid and assistance of the private sector. Customs administrations, with their limited resources, will not be able to secure and protect every movement of goods in the international supply chain whilst facilitating trade. If Customs administrators were to inspect and examine every importer or exporter's consignment, they will be doing so at the cost of trade facilitation. It would be extremely beneficial and resourceful for Customs administrators to enter into a partnership with business operators participating within the international supply chain.⁶⁵

Business operators involved in the international supply chain, who enter into a voluntary partnership with Customs administrators are referred to as *Authorised Economic Operators* (AEOs), which the SAFE Framework defines as:

A party involved in the international movement of goods in whatever function that has been approved by or on behalf of a national Customs administration as complying with WCO or equivalent supply chain security standards. Authorized Economic Operators include inter alia

⁶⁴ Refer to Annex A: WCO SAFE Framework of Standards, 2007. *Pillar 2- Customs-to-Business* at pg 29-54 for a detailed breakdown of Pillar 2 and its 6 standards.

⁶⁵ WCO. *WCO SAFE Framework of Standards, 2007. AEO conditions, requirements and benefits.* (2007) at 29-36.

manufacturers, importers, exporters, brokers, carriers, consolidators, intermediaries, ports, airports, terminal operators, integrated operators, warehouses, and distributors.⁶⁶

The WCO has recognised the importance of utilizing these business operators to help to secure the international supply chain, and has subsequently developed the second pillar of the SAFE Framework of Standards, the Custom-to-Business partnership pillar. Primarily drawing from the principles and concepts of C-TPAT, this pillar serves as a guideline for Customs administrators when establishing a partnership with the business operators participating in the international supply chain. This programme is called an Authorised Economic Operator Programme (AEO Programme) within the SAFE Framework. Each WCO Member adopting the SAFE Framework within their national Customs legislation and practices may develop a national AEO Programme to create a partnership between themselves and the business operators. When creating and developing the criteria and requirements of their AEO Programmes, WCO Customs administrators must utilize the six standards of this pillar, and the conditions and requirements for customs and AEOs⁶⁷ as a manual to ensure the minimum criteria are met within their respective programmes. It must be noted, that each WCO member may name their AEO Programme differently, offer different benefits and may differ in the conditions and criteria to some degree; but they all serve the same purpose, to establish a partnership between Customs administrators and business operators to secure the international supply chain whilst facilitating trade. They are based on the same foundation stipulated within the standards of this pillar.⁶⁸ Canada, for instance, refers to its AEO Programme as the 'Partnership in Protection' programme, whilst New Zealand refers to its programme as the 'Secure Export Scheme' programme.

The ability to secure and protect their respective supply chains is the most important function called for from these business operators, and is the underlying reason for the development of these partnerships. These AEOs agree to assist their Customs administrators to secure and protect the movement of goods through the international supply chain by utilizing their physical assets and abiding by the requirements of the AEO Programmes in exchange for tangible benefits⁶⁹. The AEOs must assist their national Customs administrations by performing self-risk and security assessments, in terms of Customs administrator's AEO Programme requirements, on their own supply chain. Subsequently, the goods are moved through secured supply chains prior to arriving for Customs assessments. By each AEO securing their own supply chain, this reduces the risks and the number of consignments Customs administrators must perform thorough inspections and examinations on, as these consignments will be regarded as 'low-risk' goods. Customs administrators will be enabled to focus their limited resources on potentially high-risk consignments and non-AEOs' goods.

⁶⁶ WCO. *WCO SAFE Framework of Standards, 2007.AEO conditions, requirements and benefits: Definitions.*(2007) at 36.

⁶⁷ WCO. *WCO SAFE Framework of Standards, 2007.AEO conditions, requirements and benefits: Definitions.*(2007) at 37

⁶⁸ Supra: Footnote 65.

⁶⁹ These benefits will be discussed later within this chapter

Customs- to- Business Standards

Since AEOs are assisting Customs administrators to secure the international supply chain by securing the chain in which their goods move, they will be helping to tackle the following issues:

..... threat assessment, a security plan adapted to the assessed threats, a communication plan, procedural measures to prevent irregular or undocumented goods entering the international supply chain, physical security of buildings and premises used as loading or warehousing sites, security of containers and cargo, means of transport, personnel vetting, and protection of information systems.⁷⁰

The six standards of this pillar (in Table 2 below) set out the best security and international practices to address the abovementioned issues.

Table 1-2: Customs to Business Standards⁷¹

1. Partnership	Perform regular security and risk assessments on their operations to enter into partnership.
2. Security	Business operations must be aligned with pre-determined best security practices.
3. Authorization	Customs administrators will determine the benefits to offer AEOs.
4. Technology	AEOs must adopt and utilise modern technology to ensure the safety and integrity of their consignments.
5. Communication	Establish an open line of communication between the two parties and continuously update AEO Programmes to ensure the minimum standards are met.
6. Facilitation	Make necessary amendments to national Customs legislation and practices that previously disrupted the flow of trade and prevented operators from receiving tangible AEO benefits.

(For a detailed breakdown of the abovementioned standards, refer to Annex A.)

⁷⁰ WCO. *WCO SAFE Framework of Standards, 2007. Pillar 2- customs-to-business: Introduction.* (2007) at 29.

⁷¹ Annex A: WCO SAFE Framework of Standards, 2007. *Pillar 2- Customs-to-Business standards: 4.1 Customs-to-Business Standards. & 4.2. Technical Specifications for the standards implementation* at pg30-34.

AEO Benefits

Benefits, the fourth core element of the SAFE Framework of Standards, are the main reason business operators agree to enter into a partnership with Customs administrators to secure the international supply chain. Business operators must agree to undertake and alter their general business practices and their physical premises in order to meet Customs requirements and enter into this partnership. This can prove to be extremely costly and time consuming. Business operators will only agree to undergo such changes and incur such costs, if the benefits they receive for their AEO compliance outweighs the costs incurred. Customs administrators will offer these benefits to these operators for meeting and upholding their AEO status. Benefits offered to operators must be of material value to entice and encourage operators to obtain and maintain their AEO status. Offering these benefits will not only encourage business operators to participate in the securisation of the international supply chain, but will simultaneously aid the facilitation of trade⁷². Some of the tangible benefits used to lure these operators will be discussed below. However, it must be noted that each national AEO Programme's benefits differ from the other. The benefits discussed here are merely a few of the significant benefits business operators will receive.⁷³ The reader must bear in mind that AEOs' consignments are regarded as 'low-risk' consignments by Customs administrators, due to the AEOs' securing their respective supply chains.

The phrase, 'time is money', is a renowned and appreciated phrase in the corporate world. This signifies the importance of the preferential treatment AEOs' consignments receive from their Customs administrators when their consignments are either exported or imported. AEOs' consignments will receive faster customs clearance.⁷⁴ For instance, in the US wherever possible these authorised operators' consignments bypass long queues and are immediately given Customs clearance and released.⁷⁵ Since these are 'low-risk' consignments, the number of lengthy Customs inspections and examinations are reduced to a bare minimum. Customs administrators can also make use of non-intrusive equipment to perform examinations; they will require less documentation for Customs clearance, and offer preferential treatment for these specific consignments. These benefits can prove to be extremely beneficial for these operators, especially for those utilizing just-in time production systems.⁷⁶

Business opportunities will arise for these operators, as AEOs in other WCO Member countries may only wish to conduct business with AEO operators. This gives AEOs a competitive edge over non-AEO compliant operators. Customs administrators may allow their AEOs to access a database revealing the identity of AEO operators in other WCO member countries, with which they can conduct business.⁷⁷ At

⁷² Trade facilitation is one of the primary objectives of the SAFE Framework of Standards.

⁷³ WCO. *WCO SAFE Framework of Standards, 2007.AEO conditions, requirements and benefits*.(2007) at 48-50.

⁷⁴ Supra: Above.

⁷⁵ CBP. *C-TPAT overview*. (13/12/2007) Available at:

http://www.cbp.gov/xp/cgov/trade/cargo_security/ctpat/what_ctpat/ctpat_overview.xml. (Accessed 27/02/10)

⁷⁶ Supra: Footnote 73.

⁷⁷ Supra: Footnote 73.

the request of their AEOs, Customs administrators may enter their AEOs on a similar database in other WCO member countries.

By entering into a partnership and working together with Customs administrators, communication between the two parties will improve. Business operators will have a better understanding of the Customs requirements, and the customs procedures will therefore become more predictable and transparent.⁷⁸

These benefits associated with AEO accreditation play a significant role in the facilitation of international trade. They will assist the SAFE Framework of Standards to achieve one of its fundamental goals, to facilitate international trade.⁷⁹

The objectives, aims, twin pillars and benefits of the SAFE Framework ought to be embodied in WCO members' national Customs legislation and practices in order for the SAFE Framework of Standards to be fully adopted and incorporated.

An analysis of the South African Customs Bills will be conducted in the subsequent chapters of this study, to determine the extent to which South Africa has incorporated the SAFE Framework of Standards into its new Customs legislation. The provisions of these Bills should apply and uphold the main objectives, aims, twin pillars and their respective standards and principles of the SAFE Framework.

⁷⁸ WCO. *WCO SAFE Framework of Standards, 2007.Benefits.* (2007) at 6.

⁷⁹ Supra: Footnote 73.

Chapter Two: South Africa's Draft Customs Bills

South Africa (the Republic), one of the leading developing economies in Africa, is in the midst of transforming, advancing and modernizing its customs systems and practices to meet current and best international trends and practices.⁸⁰ This is achieved through the implementation of SARS' Customs Modernisation Programme.⁸¹ Oupa Magashula, SARS' Customs Commissioner, states that the aim of the programme is "...to minimise the level of customs intervention on cargo movement and maximize the level of trade facilitation, and that will be accomplished by revolutionizing the core customs processing system and enhancing risk management techniques."⁸² SARS will effectively be able to secure South Africa's supply chains, to modernise its customs legislation, practices and procedures to meet international standards, and save significant sums of money in international trade⁸³ with the implementation of this programme.⁸⁴

Irrespective of the number of amendments and additional provisions added to the current Customs Act, it is still incapable of fully adopting and reflecting the modern standards and trends required by the international agreements, conventions and instruments South Africa has acceded⁸⁵ to.⁸⁶ The current Act emphasises customs control, as opposed to establishing a balance between customs control and international trade facilitation.⁸⁷ As a result SARS has begun with the development of the new Customs and Excise Acts, which will ultimately replace the existing Act.⁸⁸

The Customs Control Bill and the Customs Duty Bill will collectively contain all provisions relating to Customs matters, whilst the anticipated Excise Bill will contain all provisions relating to excise matters.⁸⁹ These proposed legislations will embody modernised systems, standards and frameworks which will collectively allow for the efficient and effective collection of revenue; the protection and security of the Republic's national borders and citizens; the monitoring, controlling and securing of all cross border activities and international supply chains; permit the free-flow of legitimate trade; and assist other governmental agencies to enforce their laws.⁹⁰ As mentioned earlier within this study the Bills have been constructed and developed to be more structurally sound, transparent and predictable, efficient and

⁸⁰ Draft Customs Bills: Explanatory Memorandum. Introduction at 1-2.

⁸¹ SARS. *Customs Modernisation*. Available at: <http://www.sars.gov.za/home.asp?pid=60547>. (Accessed 14/8/2010).

⁸² Joy Orlek. 'SARS modernisation plan'(2010) Issue 1922. *Freight Trade Weekly*. 22 at 22.

⁸³ Oupa Magashula stated that South Africa loses approximately R1 350 billion (total amount for import and export trade) in international trade for each day products are delayed for shipment. (Supra: Footnote 82.)

⁸⁴ Supra: Footnote 82.

⁸⁵ Since acceding to the Revised Kyoto Convention on the 18 May 2004, South Africa has acceded to and adopted a number of WCO conventions and instruments such as the WCO SAFE Framework of Standards and WCO Data Model.

⁸⁶ Supra: Footnote 45.

⁸⁷ Supra: Footnote 80.

⁸⁸ The replacement of the current Act with new Customs and Excise legislation is the heart of South Africa's Customs Modernisation Programme.

⁸⁹ Supra: Footnote 80.

⁹⁰ Supra: Footnote 45.

effective, and more user- friendly for importers, exporters and other users, which the existing Act is not capable of.⁹¹

The Customs Control Bill (the Control Bill or Bill)⁹²

The Customs Control Bill essentially develops a Customs control system and Customs control procedures⁹³ which all goods and persons entering and/or leaving the Republic's national territory⁹⁴ are subjected to.⁹⁵ This study will focus solely on the movement of goods in and out of the Republic's national territory.

Since the Control Bill is responsible for and controls the movement of all goods entering or leaving the Republic, this Bill provides a platform, which will ensure the effective collection of taxes imposed by tax levying legislations⁹⁶, and compliance with all other legislation prohibiting or regulating specific goods.⁹⁷ The mere existence and implementation of these legislations pertaining to goods moving across the Republic's borders are entirely dependent on the Control Bill.⁹⁸

There is a very fine line between the provisions within the Customs Control Bill for securing goods to ensure Customs duty has been paid or secured before the goods are released, and to securitise the supply chain in which goods move. In most circumstances these provisions overlap, allowing for the Bill to both secure the supply chain and the payment of tax duties. The SAFE Framework of Standards' main objective does not lie with the collection of tax duties⁹⁹, but rather to create harmonised Customs control procedures and practices to secure and facilitate the international supply chain, which all goods move through. The securitisation of every international supply chain is done by means of controlling and securing the movement of goods through each of its WCO member's national boundaries. Since this Bill is responsible for the Customs control and movement of goods entering or leaving the Republic¹⁰⁰, it can simultaneously secure tax duties due to SARS and the supply chain in which goods move through the Republic. This Bill adopts and implements the SAFE Framework within its provisions.

Securisation of the supply chain must not be sacrificed in the name of international trade, and in the same light international trade must not be sacrificed in the name of the securitisation of the supply chains. They both are equally important and a balance must be developed. The SAFE Framework establishes this balance by achieving its main objectives through its Twin Pillars standards. An analysis has been

⁹¹ Supra: Above.

⁹² For ease of cross referencing for the reader, the Customs Control Bill: Table of Contents has been included in Annex B in this study. This Table of Content reflects the Bills chapters and its respective sections. All sections and subsections referred to hereinafter, unless otherwise stated, refer to the Draft Customs Control Bill.

⁹³ Draft Customs Control Bill. Chapter 1. Section 4(a).

⁹⁴ In terms of section 6.

⁹⁵ Section 5.

⁹⁶ Section 4(b) of the Control Bill.

⁹⁷ Section 4(c) of the Control Bill.

⁹⁸ Draft Customs Bills: Explanatory Memorandum. The Proposed Customs Control Act. Page 2-3.

⁹⁹ Even though it does assist Custom administrators to improve the collection of tax revenues.

¹⁰⁰ Ss4(a) & 5

undertaken below to determine the extent to which the provisions of this Bill have established this balance by capturing and incorporating the main objectives and standards of the SAFE Framework.

1st Aim of SAFE

The SAFE Framework of standards '*aims to establish standards that provide supply chain security and facilitation at a global level to promote certainty and predictability*'.¹⁰¹ This requires a clear, uniform and transparent set of Customs control procedures and standards for all role players in the supply chain to adhere to. These standards secure the supply chain whilst removing all uncertainties and confusion the users may experience, thereby minimizing unnecessary disruptions in international trade and flow of goods. The user will know exactly what to expect, and the requirements, procedures and protocols to abide by. Goods will subsequently move through a safe and secured supply chain with minimum disruptions.

WCO members' national Customs legislation must be easy, clear and simple to use, and they must develop simple, harmonised customs procedures and requirements, which are clearly stipulated and defined. If the national legislation of each of the WCO members supports SAFE within its provisions, collectively they will secure the international supply chain at a global level, whilst facilitating trade, since they will adopt similar provisions, procedures and techniques.

The South African Control Bill has achieved this aim with the following provisions:

1.1. Facilitation provisions:

Sections 2,5,6,7 and 8 of the Customs Control Bill define the goods, persons and areas SARS Customs administrators will have Customs control over. This is significant with regards to the incorporation of SAFE, since the Bill clearly defines what (sections 5, 29, 30, and 31) and where (section 6) it has jurisdiction to apply its Customs control. Section 2 of the Bill defines when goods are regarded as imported and exported into and out of the Republic respectively. This Bill, in accordance with section 6, has jurisdiction over the Republic's territory, which consists of the Republic, its internal and territorial waters, and all airspace over the Republic's territory and territorial waters. All goods and their respective supply chains within this jurisdiction are subjected to all regulations and provisions defined within this Bill. As a result, SAFE's aims and provisions will have, as far as the Republic's legislation incorporates SAFE's provisions, the full support of South Africa and its entire territory to apply its aims and provisions to. These provisions will secure and control the movement of all goods entering, leaving or passing through the Republic's Customs territory as defined in the Bill, whilst facilitating trade.

¹⁰¹ Supra: Footnote 57.

The Customs Control Bill has been structured in a specific, logical and orderly way, which allows for all importers, exporters and other parties to easily understand the structures and provisions, the procedures to follow and the requirements of the Bill, thereby removing any uncertainty and difficulty they may experience. Footnotes, which are not legally binding¹⁰², have been provided within this legislation to provide clarity and background information, and to further ensure that the Bill is as clear and simple as possible, and can be easily understood by all users.¹⁰³

Sections 108 and 111 of Chapter 7 of the Control Bill clearly stipulates that all imported and exported goods, with the exception of some¹⁰⁴, must be cleared in accordance with the clearance procedures for imported and exported goods set forth in the provisions within chapter 9 to 21 of the Bill. The provisions found within chapter 7 stipulate that importers/exporters of goods must abide by and provide the relevant clearance requirements irrespective of the reasons goods are imported/ exported.¹⁰⁵ These goods must be cleared, as called for by this chapter of this Bill, by producing and submitting to Customs administrators the applicable clearance requirements relating to those specific goods in that specific circumstance. For example, if goods are to be imported for home use¹⁰⁶, these goods must be cleared, in accordance with section 108(1)(a), and importers must produce and meet the clearance requirements in terms of provisions found within chapter 10 of this Bill. Chapter 7 eliminates any confusion as to which goods are to be cleared or not in terms of the Bill. If any goods are to be cleared and released, users are to follow and produce the clearance and release procedures as set forth within chapters 9 to 21 of the Bill.

Chapter 9 of the Control Bill presents the standard goods clearance and release procedures for importers and exporters to abide by. Chapter 9 sets the basis for the documentation, and information to produce and the procedure to follow when clearing goods for either home use or one of the 12 different Customs procedures.¹⁰⁷ Part 1 of this Chapter directly addresses all elements involved in the clearance procedure when an importer/exporter is applying for clearance and release of their goods. These elements include the submission of the clearance declaration, who is entitled to submit the clearance declarations, the contents of declarations, how and where to submit, the time frame in which the submission must take place, the acceptance by Customs, the validity of the declaration, permissible amendments and withdrawals, and all other supporting documents to be submitted with the declaration.¹⁰⁸ The importer/exporter must submit, in accordance with s161 of the Bill, a clearance declaration either manually or electronically to their Customs

¹⁰² Section 3 of the Bill

¹⁰³ Draft Customs Bills: Explanatory Memorandum. The Proposed Customs Control Act. Page 3-4.

¹⁰⁴ Found within sections 109 and 112 of the Control Bill for imported and exported goods respectively.

¹⁰⁵ Imported goods may be imported for home use or a customs procedure, whilst goods to be exported can only be exported under a customs procedure. (Sections 108 and 111 of the Bill)

¹⁰⁶ The Control Bill defines (in Chapter 1: Part 1 at page 51) 'Home Use' as:

"in relation to imported goods, means the consumption, utilisation, processing or disposal of the goods in the Republic as goods that are no longer subject to customs control;"

¹⁰⁷ These 12 different customs procedures are namely, the national transit procedure, the international transit procedure, the transshipment procedure, the temporary admission procedure, the warehousing procedure, the tax free shop procedure, the stores procedure, the export procedure, the temporary export procedure, the inward processing procedure, the processing for home use procedure, and the outward processing procedures.

¹⁰⁸ Sections 158 -172 of the Control Bill

office.¹⁰⁹ By the Bill clearly defining and stipulating the standard clearance and release procedures, and all the documentation and information required for the clearance and release of goods, the Bill eliminates any uncertainty and doubt importers and exporters may have surrounding the clearance and release of goods. This reduces unnecessary delays and disruptions, which subsequently facilitates and promotes the flow of goods in international trade.

The Control Bill clearly defines and outlines the specific Customs clearance and release procedures and requirements required for importers, exporters and other users to produce, in addition to the above standard clearance and release procedures, for the different reasons their goods are entering and/or leaving the Republic. The clearance declarations of these goods must state the purpose of clearance for which the goods are entering/leaving the Republic¹¹⁰, which are namely, for home use or one of the 12 different customs procedures. These different customs clearance and release procedures are outlined in Chapters 10-21 of the Control Bill. Where there is a conflict between the provisions in Chapter 9 and the provisions within these chapters, the provisions of these chapters will prevail over Chapter 9's provisions.¹¹¹ Like Chapter 9, the provisions of Chapters 10-21 make the Bill and all the customs clearance and release procedures as clear and transparent as possible, for importers, exporters and all other users to be aware of the exact requirements and procedures to produce and abide by for the different customs procedures goods enter and/or leave the Republic. This Bill further defines the Customs clearance procedure to follow in the event of consignments being imported or exported *via* post in Chapter 22. The aim of these chapters is to ensure that importers and exporters encounter no unexpected surprises, which may delay and disrupt trade.

1.2. Securisation provisions:

In order to secure the supply chain, Customs administrators must secure all key components of the supply chain. Chapter 2 of the Control Bill stipulates what, when and where customs administrators may apply the Customs control provisions of this Bill. Ss 29-31 empower customs administrators with the power to perform their duties and functions, to secure all vital components of the supply chain, namely the goods, persons, and the modes of transportation used in the supply chain. Ss 32-38 of the Control Bill enable Customs administrators to effectively apply Customs control over the designated points of entry, exit and Customs control areas. They are, due to these provisions, able to secure every movement of goods, persons and transportation passing through these designated points and areas. These provisions will enable Customs administrators to perform their duties to secure all supply chains entering, leaving or passing through the Republic's territory, ensuring the safety and security of not only their own national borders, but the national borders of Customs administrators in the country of destination. Since there are specific designated points and areas assigned as the Customs point of entry and exit, this enables administrators to direct their limited

¹⁰⁹ Section 161 of the Control Bill

¹¹⁰ Section 158 of the Control Bill

¹¹¹ Sections 157(4), 181, 194, 225, 249, 278, 303, 332, 358, 380, 384, 398, 405, 428, 434, 455, 462

resources and attention to those specific points and areas, thereby allowing them to control the movement of goods and to secure the supply chains more effectively and efficiently.

Chapter 28 of the Customs Control Bill extends the area and places in which Customs officers have authority to secure the international supply chain which goods must pass to enter or leave the Republic. This chapter provides a list within sections 577 and 579 of the Bill, which calls for all premises which form part of the international supply chain that goods must pass through when either calling at or departing from the Republic to be licensed. Goods within Customs control may only use these secured, specified premises when moving through the international supply chain within the Republic's territory. Sections 580 – 582 of this chapter further call for carriers, carriers' agents and Customs brokers respectively to be licensed in terms of this Bill in order for them to have any dealings in relation to goods entering, leaving or passing through the Republic. Section 590 of this Bill provides a list of license conditions, which entitles and gives access to Customs officers to apply their duties and functions in terms of this Bill on all goods within these licensed premises. This section further requires the licensees to provide any assistance Customs officers may require in terms of this Bill and the Customs Duty Bill.¹¹² These provisions aid South African Customs administrators to secure the entire supply chain which goods must move through when entering or leaving the Republic. With the assistance of licensees, Customs administrators are able to expand their limited resources. Chapter 5 of the Bill works concurrently with this chapter as it requires all licensed cargo depots and terminals to provide outturn reports when international goods are either offloaded/loaded, entered and/or removed or handled at their premises. The Customs control over these licensed areas is extremely tight and strict records are kept of all movement of goods in these areas¹¹³. This enables Customs administrators to monitor the exact movement and secure the movement of all goods entering or leaving the Republic as they must move through these secured premises, thereby securing the international supply chain in which these goods must move. These chapters will tighten the reins and make it difficult for terrorists to access and tamper with these goods, since these goods are required, in accordance with this Bill, to only move through secured channels. If goods are not moved through secured channels such as with a licensed carrier to a licensed premise before loaded on board a foreign-going vessel, they will be regarded as high-risk goods and must undergo lengthy Customs procedures to be cleared and released before departure.

Customs administrators may, in terms of sections 4(c); 8 and 16 of the Control Bill, implement and enforce other legislation relating to the goods and persons placed under Customs control. Customs administrators may assist to implement legislation concerning prohibited and restricted goods entering or leaving the Republic.¹¹⁴ Chapters 34 and 35 of the Control Bill stipulate that Customs administrators have the power to seize, detain and dispose of all prohibited and restricted goods, such as arms; ammunition; explosives; and

¹¹² Section 482 additionally gives Customs authorities access to international postal articles in South African Post Offices. The Customs administrators may perform their functions in accordance with section 484 of this Bill.

¹¹³ Sections 237, 286, 287, 314, 315, 416, 443, 482, 484

¹¹⁴ Section 4(c) of the Control Bill.

goods that may spread contagious diseases or jeopardize the safety and health of the public.¹¹⁵ from entering or leaving the Republic. These provisions of the Bill empower customs administrators to secure all supply chains more effectively and efficiently.

All stores on board foreign going vessels, aircrafts and cross border trains must be reported within the time periods stipulated within ss 326 and 327 of this Bill. Customs administrators may seal and secure all stores on board these means of transport, and no person is permitted to interfere or break any seals of any secured stores until the vessel/aircraft/train has departed from the Republic in accordance with section 329 of the Bill. This tightens the reins surrounding the stores on board the carrier. These provisions make it difficult for any unauthorized persons to tamper with these stores, therefore securing and controlling the movement of stores on the carrier itself. For example, no person can plant an explosive amongst these secured stores. The operator of the mode of transport will be held personally responsible for ensuring the security of these stores.¹¹⁶

Section 496 empowers the Commissioner in accordance with this section, to enter into an agreement with the South African Post Offices, to provide security and facilitation of the supply chain which international postal articles must utilise. The provisions within this section create and strengthen an open relationship between Customs administrators and post officers, allowing for the security of international postal articles to be enhanced and maximized, whilst ensuring the facilitation of the movement of goods through this supply chain.

The abovementioned chapters and provisions within this Bill are set out to aid Customs administrators to ensure the safety and security of goods moving through the international supply chain within the Republic's national territory. These provisions allow for Customs to have access to the entire supply chain in which goods move, and call for licensed premises, carriers, agents and other parties handling the movement of goods to be part of this secured supply chain. This reduces and closes gaps which may be utilised to exploit the international supply chain and for it to be used as a potential vehicle of destruction by terrorists.

Based on all of the above mentioned chapters and provisions of the Control Bill, there is clear evidence of SAFE's first aim: to provide clear and simple provisions to secure and facilitate the supply chain throughout the Control Bill. This Bill sets forth provisions which clearly define the procedures importers and exporters must abide by; the exact areas which goods must pass through; the powers, duties and rights of Customs administrators to inspect and secure all goods; ways to facilitate and promote trade by keeping Customs requirements and procedures as clear, simple and predictable as possible; and by offering importers and exporters various expedited customs clearance and release procedures.

¹¹⁵Section 743 (3) of the Control Bill , & SARS: Customs & Excise. *Consolidated list of prohibited and restricted exports & imports*. (2008). Available at <http://www.sars.gov.za/home.asp?pid=4150&tid=65&s=pubs&show=1084>. (Accessed 23/08/10).

¹¹⁶ Section 329(3) of the Control Bill.

2nd Aim of SAFE

SAFE aims 'to enable an integrated supply chain management for all modes of transport'¹¹⁷. The provisions of the Customs Control Bill have captured this aim of SAFE within paragraphs (e) and (f) of the definition of 'Goods'¹¹⁸ and ss 29 (d); (e); (f); and (g)¹¹⁹. These provisions of the Customs Control Bill regard all modes of transport used to convey goods and their respective equipment as 'goods'. Subsequently they are subjected to a uniform set of Customs control procedures.¹²⁰ By subjecting these different modes of transport to a uniform set of control procedures, the Bill will successfully achieve the second aim of SAFE.

Chapter 2 of the Control Bill also assists with the development of an integrated supply chain management for all modes of transport. Sections 32-37 designate the different areas and points of entry and exit the different modes of transport require to enter and exit into and out of the Republic respectively, or transfer goods to or from the Republic as Customs control areas. These effectively enable Customs administrators to perform their duties and implement a uniform set of Customs control procedures at these designated areas more efficiently. Without these designated Customs control areas, administrators will have no jurisdiction to inspect the different modes of transport and the goods they carry at their different points of entry and exit and areas where they land or depart from. Under these circumstances, these goods will have to be transported to a place at which Custom administrators have jurisdiction, which will cause enormous

¹¹⁷ Supra: Footnote 57.

¹¹⁸ The Control Bill defines *Goods* (in Chapter 1: Part I at page 51) as:

"... any wares, supplies, merchandise, articles, products, commodities, substances, documents or any other things capable of being transported, whether loose, packed, in a package or holder, containerized or in bulk, and includes –

- (a) any animals, whether dead or alive, or parts of animals;
- (b) any plants, whether dead or alive, or parts of plants;
- (c) any postal items;
- (d) any baggage of persons entering or leaving the Republic, whether accompanied or unaccompanied;
- (e) any vessels, aircraft, locomotives, railway carriages, vehicles or other means of transport, whether or not used for the transport of goods or travelers;
- (f) any transport equipment whether or not used in the transport of goods, including reusable transport equipment;
- (g) currency;
- (h) any commodity capable of being pumped through pipelines; and
- (i) electricity"

¹¹⁹ Section 29 of the Control Bill states (in Chapter 2 at page 78):

"29. (1) The following goods are for purposes of this Act subject to customs control:

-
- (d) all foreign-going vessels and aircraft, and all vessels or aircraft suspected on reasonable grounds to be foreign-going vessels or aircraft;
- (e) all domestic vessels;
- (f) all cross-border trains and railway carriages, and all trains or railway carriages suspected on reasonable grounds of being cross-border trains or railway carriages;
- (g) all vehicles entering or in the process of leaving the Republic, or suspected on reasonable grounds of having entered or being in the process of leaving the Republic;
-"

¹²⁰ Sections 5 & 29

monetary losses¹²¹ to both international trade and the owner of the goods. These provisions enable administrators to perform their duties as efficiently and effectively as possible, without disrupting trade. They also cater for integrated supply chain management for all modes of transport as Customs administrators have access to all areas for the different modes of transport.

Chapter 3 of the Control Bill is primarily responsible for development and achieves the second aim of SAFE within South Africa's legislation. This chapter of the Control Bill establishes Customs control provisions, and arrival and departure requirements for all foreign-going vessels, aircrafts and cross border trains to abide by in order to call or leave the Republic at their respective customs control designated areas. The sections within this chapter set out similar (and in some cases the same) requirements for different foreign-going modes of transport to call at or leave the Republic. For example, sections 44; 46 and 52 of the Control Bill respectively require foreign-going vessels, aircrafts and cross border trains to submit advance arrival notices to Customs administrators before their arrival at their respective Customs control designated areas in the Republic. These provisions, however, do contain minor differences, such as the period of time in which submissions to Customs must be made for each mode of transport before their arrival¹²², and the contents of the notices to be submitted. This chapter predominantly upholds the same principle throughout its provisions, requiring the different modes of transport to follow the same protocols. The provisions requesting arrival reports¹²³, advance departure notices¹²⁴, departure reports¹²⁵, and manifests¹²⁶ from each mode of transport call for them to follow a similar procedure to each other.

Chapter 4 of the Control Bill additionally establishes a similar integrated supply chain management system for domestic vessels to produce to the Customs authority. These vessels, however, are only required to submit arrival and departure notices¹²⁷ and manifests¹²⁸.

As mentioned above, all modes of transport fall within the definition of 'goods', in terms of this Bill. Goods must be cleared and released by the Customs authority in terms of section 108 of this Bill before they can commence with their dealings in the Republic. However, section 109(1)(b) and Part 4 of chapter 13 provide an exemption for this provision. All vessels, aircrafts, locomotives and railway carriages and reusable transport equipment entering the Republic, in terms of sections 265 and 267 respectively, will automatically enter the Republic under 'Temporary admission'. These modes of transport, with the exception of commercial trucks, will not have to abide by any formal clearance and release procedure.

¹²¹ Large sums of money will be lost due to disruptions in international trade and money spent to transport goods to and from the jurisdictions which customs administrators would have jurisdiction to inspect the goods.

¹²² This conforms to SAFE, as SAFE also assigns different time frames to submit cargo declarations in advance for the different modes of transport. (Standard 1.3.6. Pillar 1 of SAFE)

¹²³ Section 45 and 53 of the Control Bill.

¹²⁴ Sections 46 and 54 of the Control Bill.

¹²⁵ Sections 48 and 55 of the Control Bill.

¹²⁶ Ss69 &71 requires carriers/operators to submit manifests of cargo to be offloaded and loaded to and from the Republic respectively.

¹²⁷ Sections 77 and 79 of the Control Bill respectively.

¹²⁸ Ss78&81 of the Bill requires the cargo to be discharged and loaded to and from the Republic respectively.

Commercial trucks must abide by a simplified clearance and release procedure.¹²⁹ These provisions have established a uniform exemption for all modes of transport, thereby aiding the development of an integrated supply chain management for all modes of transport in the supply chain when entering the Republic.

It is evident through the provisions of these chapters that an integrated supply chain management had been established for the different modes of foreign-going transport and domestic vessels, therefore accomplishing and achieving the second aim of SAFE.

3rd Aim of SAFE

It is apparent throughout the provisions of the Control Bill, that the Bill has achieved the third aim of SAFE since it has expanded the Customs administrators' powers, functions, duties and responsibilities to meet the challenges and opportunities of the 21st century. Sections 10 and 11 of the Bill define the appointment, delegation of duties and powers of Customs officers, whilst section 12(3) of the Bill stipulates that Customs administrators may use any person and/or any aids that may be reasonably required to effectively perform the duties and responsibilities assigned to them in terms of the Bill. It must be noted that administrators may, in terms of this Bill, utilise aids such as imaging equipment, electrical or electronic, and other mechanical devices to assist them to perform their duties and enforcement functions as efficiently and effectively as possible. This provision directly corresponds with the third standard, *Modern Technology in Inspection Equipment*, of the first Pillar of SAFE. Since 2003, SARS Customs administrators have made use of non-intrusive equipment and technology such as large scale cargo scanners, handheld trace detectors, radiation portal monitors, and contraband detector busters as part of its CCSI¹³⁰. CCSI aids SARS Customs administrators to perform their enforcement functions, and to securitise and facilitate legitimate international trade efficiently and effectively.¹³¹

It is the provisions within Chapters 33-36 of the Control Bill that are primarily responsible for the delegation and provide a detailed breakdown of the Customs administrators' exact duties, powers, responsibilities and other enforcement functions. The provisions within these chapters directly assist the Bill to replicate and achieve the third aim of SAFE, to '*enhance the role, functions and capabilities of Customs to meet the challenges and opportunities of the 21st Century*'.¹³² These provisions provide Customs administrators with a broad spectrum of powers. Customs administrators have the power, within Customs control areas and points of entry and exit, to stop, access, inspect, and search premises (including

¹²⁹ Section 266 of the Control Bill.

¹³⁰ CCSI is a security initiative which forms part of the SARS Customs Modernisation programme - a security initiative which has been established after the U.S.' Container Security Initiative and the WCO SAFE Framework of standards. [Refer to the Footnote below]. The port of Durban was the first South African CSI port. [SARS. *Container Security Initiative*. Available at <http://www.sars.gov.za/home.asp?pid=3638>. Accessed 18/10/10.]

¹³¹ SARS. *SARS Container and Cargo scanning initiative*. Available at <http://www.sars.gov.za/home.asp?pid=3637>. (Accessed 25/04/10).

¹³² Supra: Footnote 57.

residential premises with a warrant¹³³), the goods found on these premises, all modes of transport, and goods on board these different modes of transport.¹³⁴ Customs administrators are entitled to take samples of goods where deemed necessary in terms of section 695 of the Bill. Customs may, with the authority of the South African Police Services (SAPS), set up roadblocks for vehicles.¹³⁵ Their powers permit them to use force to access all of the abovementioned areas.¹³⁶ They may perform inspections on goods under Customs control, and may request any additional documents as deemed necessary for their inspection.¹³⁷ Customs administrators hold investigative powers in terms of section 700 of the Control Bill, and may arrest any persons in accordance with sections 702-709 of the Bill. Part 6 of chapter 33 (ss 710-712) gives Customs the authority to carry a firearm to enforce and carry out enforcement functions. Customs administrators are additionally empowered, in terms of ss713-717 of this Bill, to aid and assist the SAPS with border control, and to help fight and stop cross border crime.

Section 722 and Chapter 34 collectively permit Customs administrators to detain, seize and confiscate any goods and their respective documentation, if they suspect these goods are in breach of any of the sections and Acts outlined in this Bill; if the goods are suspected to be prohibited or restricted goods; or if the goods are suspected to have been used or will be used for the commissioning of an offence. In the event of prohibited, restricted or counterfeit goods entering or leaving the Republic, Customs administrators may detain, seize, and where permitted, dispose of these goods in accordance with chapters 35 and 36.

Section 115(b)(i) of chapter 7 of this Bill directly incorporates standard 5 of Pillar 1 of SAFE, as it permits Customs officers to refuse the release of goods if incorrect facts are produced. Due to this misrepresentation of facts, the goods will be declared as high risk, allowing the Customs officers to not release the goods. This chapter additionally contains provisions such as sections 116(b), 117, 121(c)(ii) which aid Customs administrators to protect the international supply chain by refusing, withholding or withdrawing the release of goods to protect public health, the environment, and the public's safety. These directly satisfy the aims of SAFE to protect and secure the international supply chain.

Section 125(2) of Chapter 7 makes provision for goods imported and exported under a specific Customs procedure¹³⁸ to be subjected to Customs control until the goods are released and no longer subjected to Customs control. This ensures the goods remain within a tight secured supply chain throughout its movement and dealings in the Republic.

¹³³ Section 681 of the Control Bill.

¹³⁴ Ss 680, 682, 683, 693, 694 of the Control Bill. These sections are supported by ss 29(h) and (k) of the Control Bill, as they too, enable customs administrators to subject customs control on all goods on board their different modes of transport, including the mode of transport itself.

¹³⁵ Section 684 of the Control Bill.

¹³⁶ Section 685 of the Control Bill.

¹³⁷ ss 698 & 699 of the Control Bill.

¹³⁸ For goods entering/leaving the Republic under one of the twelve customs procedures.

Customs administrators are empowered in terms of section 492, to open, if necessary, international postal articles to carry out and apply all of their enforcement functions and duties in accordance with this Bill. This provision allows for Customs administrators, as one of their many duties, to ensure that international articles imported and exported in and out of the Republic respectively are safe and secure. Section 495 entitles Customs administrators to seize all articles that do not comply with their accompanied declarations.

Section 31 of Chapter 2 expands these powers of Customs administrators, as it states that all goods and their transport, which are passing through the Republic's territorial waters or airspace, will not be regarded as imported/exported, however, will be subjected to all Customs control whilst within the Republic's territory. These provisions demonstrate the enhancement of Customs officers' powers to apply Customs control and enforcement functions over all goods within the Republic's territory, even if those goods and transport are not regarded as entering or leaving the Republic.

Customs administrators may, in accordance with section 210 of Chapter 11 of the Bill, take the necessary steps and precautions to ensure the integrity and securing of the goods throughout its national/international transit operations through the Republic. This provision not only empowers Customs administrators to intervene to secure goods whilst in transit, but also aids with the securisation of the supply chain whilst goods remain under Customs control. A similar provision has been made within this Bill relating to transshipment operations. Customs administrators are empowered to ensure the integrity of transshipment operations in terms of section 238 of the Bill.

In terms of section 47 of Chapter 3 of the Control Bill, all foreign going vessels and aircrafts must receive permission from Customs in order for them to depart from the Republic. In accordance with subsection (3) of s47 of the Bill, if these modes of transport do not depart from the Republic within 12 hours after permission to depart has been granted, the relevant party must apply for new permission. This provision enables Customs to guarantee the security and safety of the vessel/aircraft and all goods on board when the vessel/aircraft departs from the Republic's territory. Similarly, exporters must submit a new export clearance declaration, in accordance with ss111(3) and 363 of the Bill, if their goods are not exported within 72 hours of the release of goods from the Customs authority. These provisions, once again, empower Customs administrators to ensure the safety and security of the goods to be exported from the Republic, thereby securing the supply chain and the national borders of both their country and the country of destination.

All of the abovementioned provisions not only achieves the third aim of SAFE by expanding the roles and powers of Custom administrators; they also directly incorporate and support Standards one and two of Pillar one of SAFE, which call for national legislative support to empower their Customs administrators to

screen, inspect, access and detain all consignments within their Customs territory, irrespective of the reason the consignment is within their territory.

Chapter 31 of the Bill, more specifically ss657 and 658, empowers Customs administrators to obtain security¹³⁹ from the persons whose goods are within Customs control, for payment of Customs tax duties or any other money owed to the Commissioner. Customs administrators may aid with the collection of Customs tax revenue, as one of their many roles, in accordance with the provisions within chapter 31. These provisions enable Customs administrators to protect the state from potential loss of Customs tax revenue for goods within Customs control. This chapter conforms to SAFE, which enables Customs administrators through the adoption and implementation of its standards, to improve revenue collection as one of the benefits for nations and government.¹⁴⁰ This chapter also empowers Customs administrators to aid with and ensure the payment of Customs tax duties assessed and calculated in accordance with Chapter 8 of this Bill¹⁴¹ and other tax levying Acts such as the Customs Duty Bill.

It can be concluded that South Africa has expanded their Customs administrators' powers to the maximum with all of the abovementioned provisions of the Control Bill, to enable their Customs administrators to effectively securitise all supply chains and movement of goods passing through the Republic.

4th Aim of SAFE

Section 17 of the Control Bill creates a direct link to empower South African Customs administrators to assist, co-operate and exchange information¹⁴² with other Customs administrators by entering into an agreement. This section directly achieves the fourth aim of SAFE to '*strengthen co-operation between Customs administrations to improve their capability to detect high-risk consignments*'¹⁴³. Importing Customs administrators may, in accordance with subsection 17(c), perform inspections in the Republic before goods are exported to their country, and South African Customs officials may perform inspections in the exporting country before goods are exported to the Republic. This provision enables administrators to detect high-risk consignments in the country of origin before departure to their country, thereby securing their international supply chain beyond their national borders and jurisdiction. Although capturing the key concept of outbound inspections, this provision differs from the outbound inspections called for in SAFE's third core element and standard 11 of its Pillar 1.¹⁴⁴ Section 17 has created a provision that has, in its

¹³⁹ Section 662 states the different forms of security that can be used.

¹⁴⁰ WCO. *WCO SAFE Framework of Standards, 2007. Benefits: Nations/Governments.* (2007) at 5.

¹⁴¹ This chapter states the tax status of goods imported or exported, depending on the reason goods enter/leave the Republic. (ss132&133)

¹⁴² Subsections 17(a) & 24(1) of the Control Bill.

¹⁴³ Supra: Footnote 57.

¹⁴⁴ This shortfall will be discussed in detail in Chapter 3 of this study.

entirety, captured the essence of the strengthening co-operation between South African Customs administrators and Customs administrators abroad.

SARS is in the process, as part of its Customs Modernisation Programme, of aligning all Customs information requested from importers and exporters with the WCO Data Model (version 3).¹⁴⁵ This model, which is requested to be adopted by SAFE, creates uniformity with the world's best Customs practices by outlining the maximum import and export data to be requested from importers and exporters respectively, and the electronic format in which these declarations must be submitted.¹⁴⁶ Chapter 9 of this Bill establishes the general content and details of Customs clearance declarations and other supporting documentation¹⁴⁷ to be provided by importers/exporters when clearing their goods, irrespective of the reason their goods are imported/exported into or from the Republic.¹⁴⁸ These provisions directly correspond with SAFE's first core element to harmonise all inbound and outbound Customs information. These provisions furthermore correspond with SAFE's export goods and import goods declarations¹⁴⁹, and subsequently establish uniformity of importers' and exporters' declarations.

Standardised declaration requirements will play a significant role in the harmonizing of the import and export declarations of goods across WCO members who also align their Customs information requirements with the WCO Data Model and request similar contents and details from their import/export declarations within their national legislation. Establishing a uniform declaration will promote the exchange of information and aid with the development of a single window declaration to be used for both import and export purposes. This directly conforms to standard 1 of pillar 1 of SAFE.¹⁵⁰ Single import and export declarations aid Customs administrators to share and provide each other with the information they need for clearance and release processing. It eliminates the duplication of the requirements requested from the different customs administrators. This additionally promotes and strengthens Customs co-operations as Customs administrators may utilise and share the same declaration in both countries. The flow of goods will be promoted by utilizing a single declaration, since Customs administrators can share and process goods before their arrival, subsequently facilitating the seamless movement of goods through a safe and secured supply chain.

¹⁴⁵ SARS. *First phase of customs modernisation programme set for roll-out from October 2010*. [29/7/2010]. Available at: <http://www.sars.gov.za/home.asp?PID=54515&ToolID=2&ItemID=60988>. (Accessed 16/8/2010).

¹⁴⁶ WCO. *WCO SAFE Framework of Standards, 2007. Pillar 1: Standard 1- WCO Data Model (1.3.7.)* (2007) at 16.

¹⁴⁷ Sections 160, 169, 170 of the Bill

¹⁴⁸ Goods imported/exported are to be declared and cleared in accordance with the reason they are imported/exported, i.e. home use or for one of the twelve customs procedures. Chapters 10-21 of the Bill are designated for the each specific reason goods are either imported/exported from the Republic. Provisions within all of these chapters (ss183; 197; 251; 282; 305; 334; 360; 387; 401; 410; 431; 438; 458; & 467) requests for additional information over and above the chapter 9's standard requirements.

¹⁴⁹ WCO. *WCO SAFE Framework of Standards, 2007. Pillar 1: Standard 1- Submission of Data (1.3.1.; 1.3.3 & 1.3.7.)* (2007) at 11- 16.

¹⁵⁰ Supra: Footnote 146- *Pillar 1: Standard 1- 1.3.8. Single Window*.

5th Aim of SAFE

The chapters and sections of the Control Bill mentioned below are dedicated to ‘*strengthening the Customs/Business co-operation*’¹⁵¹ as requested by the fifth aim of SAFE.

In order for a person to become accredited and to receive the AEO benefits offered by the Republic, they must abide by all provisions in Chapter 30. Chapter 30 enables Customs to issue accreditation certificates¹⁵² to licensees¹⁵³ and registered persons¹⁵⁴ who abide by and meet the criteria’s¹⁵⁵ stipulated within the provisions of this chapter. These criteria’s set forth in section 643 of the Bill, directly correspond with some of the conditions and requirements Customs administrators must take into consideration when granting accreditation status to applicants.¹⁵⁶ For example, subsection 643(1)(b) requires applicants to have a record of compliance with this Bill for five years before the application. This directly corresponds with the AEO requirement A of the SAFE Framework of standards which requests for AEOs to demonstrate compliance with Customs requirements for a specific period of time designated in accordance with the national legislation.¹⁵⁷ Chapter 30 of the Bill establishes a benchmark which clearly defines and outlines who may apply for accreditation and the application procedure to abide by¹⁵⁸, the criteria for accredited client status¹⁵⁹, the conditions to uphold accredited status¹⁶⁰, the time frame for which the accreditation will be valid¹⁶¹, and other aspects surrounding the accredited status. This provides clarity and removes any confusion, which may arise concerning all aspects of becoming accredited and maintaining accreditation status. Licensees and registered persons¹⁶² will know exactly what is required of them, and the procedures to follow when applying for accreditation, thereby improving the Customs-to-Business co-operation. More importantly it forms a basis to form and develop an AEO Programme, since Customs administrators can only enter into a partnership with accredited persons and operators. This Chapter promotes Customs-to-Business co-operation and provides the necessary national legislative support required to make this cooperation possible and legitimate. These provisions conform with SAFE’s standard 3 of Pillar 2¹⁶³, since they aid with the development of validation, and authorization and outline quality accreditation procedures businesses must adhere to, to receive the tangible benefits of the AEO Programme.

¹⁵¹ Supra: Footnote 57.

¹⁵² Section 645 of the Control Bill.

¹⁵³ Section 577.

¹⁵⁴ Section 621-625.

¹⁵⁵ Section 643.

¹⁵⁶ WCO. *WCO SAFE Framework of Standards, 2007. Conditions & requirements for Customs and the Authorised Economic Operator*. (2007) at 37-48.

¹⁵⁷ Supra: Above at 37.

¹⁵⁸ Section 641 of the Control Bill.

¹⁵⁹ Section 643 of the Control Bill.

¹⁶⁰ Section 647 of the Control Bill.

¹⁶¹ Section 648 of the Control Bill.

¹⁶² Chapters 28 and 29 respectively of the control Bill.

¹⁶³ WCO. *WCO SAFE Framework of Standards, 2007. Pillar 2: Standard 3-Authorization*. (2007) at 33&50.

Customs administrators will benefit from this partnership, as they do not have enough resources, such as manpower, to police all trade passing through their borders.

Section 372 of Chapter 17 of the Bill allows for Customs to approve an accredited export operator's export secured arrangement. The approved export secured arrangements ensure that goods are securely packaged and transported by accredited export operators to the respective licensed terminals where goods will be loaded onto their means of transport and exported from the Republic. This provision ensures the goods have not been interfered or tampered with once packaged and transported to the terminal. Accredited exporters may, in exchange for securing the goods and the movement of goods from a specific point in the supply chain to the licensed export terminal within the Republic, receive an exemption from some or all Customs clearance and release procedures in terms of the provisions within chapter 9 or 17 of the Bill.¹⁶⁴ This exporting provision ensures the safety and security of the goods being transported to the exporting licensed terminals with the help of the accredited exporter, thereby directly securing a part of supply chain in which goods must move.

Customs administrators may only use the information provided by clients and other users of the supply chain for the purpose for which it was obtained. They may not disclose and use the information for any other reasons, and under any circumstances, except where permitted in terms of ss22-24 of the Bill. These provisions, which conform to SAFE's standard 2 of Pillar 2, will additionally aid with the development and strengthening of the Customs-to-Business partnership. Businesses will be more amenable to revealing their confidential information to Customs administrators.

Part 1 of Chapter 24 of the Control Bill directly incorporates standards 3 and 6 of Pillar 2 of the SAFE. These provisions provide the necessary legislative support required in order for tangible benefits offered to AEOs in exchange for assisting Customs administrators to securitise their supply chain to be materialized within the Republic. Part 1 of this Chapter simplifies and minimises all Customs clearance and release procedures for accredited persons.¹⁶⁵ This directly contributes to the Custom-to-Business partnership entered into between Customs administrators and accredited business operators of the supply chain. These accredited persons will receive expedited clearance and release procedures, thereby saving them time and money. Customs administrators are empowered by and in accordance with section 507 within this chapter, to shorten clearance declaration requirements. However, accredited persons must, after the release of their goods, adhere to and provide the full clearance declaration of their consignments to Customs.¹⁶⁶ The shortened procedure is offered to accredited persons to speed up the procedure for their goods to move through Customs faster. Section 508(3) additionally aids accredited persons to avoid submitting duplicated clearance declarations for different consignments of the same kind of goods. This provision entitles

¹⁶⁴ Section 372 (3) of the Control Bill.

¹⁶⁵ Section 506- 510 of the Control Bill.

¹⁶⁶ Section 508 of the Control Bill.

accredited persons to submit a single clearance declaration in accordance with s508(3) of the Bill, which covers a number of consignments of the same kind of goods. This saves the accredited person time and money. This provision provides the necessary legislative support required to strengthen Customs-to-Business co-operation and make this benefit accessible to accredited persons. Part 1 of Chapter 24's provisions, not only assist Customs administrators to strengthen the Customs-to-Business co-operation (aim 5 of SAFE), but it also achieves the sixth aim of SAFE to promote '*the seamless movement of goods through secure international trade supply chains*'¹⁶⁷. This provision additionally abides by the fourth core element of SAFE, to establish benefits for business operators.¹⁶⁸

South Africa is presently revising its Accreditation Programme. The Preferred Trader Programme is presently in operation as a pilot programme with a selected number of importers and exporters. Aligned with the EU AEO Programme, this Programme will establish a partnership between Customs administrators and accredited business operators¹⁶⁹. Accredited importers and exporters will be required to conduct self assessments on their business operations and systems, and comply with all requirements and regulations of the programme to remain in partnership with Customs administrators. They will, in return, be rewarded with promised tangible benefits (some of these benefits are listed above).¹⁷⁰

By requiring that all players and premises of the supply chain be licensed and registered in accordance with chapter 28 and 29 of the Bill respectively, SARS' Customs administrators will be able to develop and maintain profiles for every player in the supply chain. This would aid Customs administrators to evaluate and determine the security profile on each player quickly, by merely referring to their records.

These abovementioned chapters and provisions of the Bill are providing the necessary national legislative support called for from SAFE on WCO members' national legislation in order to create the basis for an AEO Programme and for the AEOs to have legitimate access to the promised tangible benefits of the AEO Programme and to facilitate the free flow of international trade¹⁷¹. They additionally aid to establish and strengthen the Customs-to-Business partnership as required by SAFE.

6th Aim of SAFE

The sixth aim of SAFE is to promote '*the seamless movement of goods through secure international trade supply chains*'¹⁷². South Africa has incorporated provisions within the Customs Control Bill to achieve this

¹⁶⁷ Supra: Footnote 57.

¹⁶⁸ It must be noted some of these benefits are similar to the AEO benefits mentioned in Chapter 1 of this study.

¹⁶⁹ Business Operators can become accredited in accordance with Chapter 30 of the Customs Control Bill.

¹⁷⁰ SARS. *Customs Modernisation: Moving into the future..Trader Pocket Guide*. (July 2010) at 5-8. Available at: <http://www.sars.gov.za/home.asp?pid=60547>. (Accessed 14/8/10).

¹⁷¹ WCO. *WCO SAFE Framework of Standards, 2007. Pillar 2: Standard 3-Authorization & Standard 6- Facilitate*. (2007) at 33-34.

¹⁷² Supra: Footnote 57.

aim. For example, many provisions within the Customs Control Bill favour the submission of electronic data in accordance with section 849 of the Bill, such as export and import declarations¹⁷³, and advance cargo arrival and departure notices¹⁷⁴, which aids Customs administrators to process imported and exported goods faster.¹⁷⁵ These provisions encourage the seamless movement of goods through a safe and secure supply chain. It must be noted that importers and exporters are given the option to submit declarations manually or electronically in terms of the standard clearance and release procedure in section 161 of the Bill. However, some of the specific Customs clearance declarations, which take precedence over section 161¹⁷⁶, require importers and exporters to submit their declarations electronically to Customs administrators¹⁷⁷.

Electronic submissions made in advance to Customs administrators assist Customs administrators to speed up the processing of goods and to identify potentially high-risk goods prior to their arrival or departure.¹⁷⁸ South Africa has incorporated these provisions within its Customs Control Bill, for importers¹⁷⁹ and exporters¹⁸⁰ to submit declarations in advance, and carriers/cargo reporters to submit cargo arrival and departure notices in advance to Customs administrators¹⁸¹. This enables the Customs administrators to perform their declaration processing and risk and security assessments in advance prior to the arrival and departure of goods.¹⁸² For example, section 163(2) of the Bill provides Customs administrators with the national legislative support for them to proceed with the processing of importers' declarations in advance prior to the arrival of the goods in the Republic. This allows them to identify and stop potentially high-risk consignments, and allows for low-risk goods to proceed to their respective destinations. This results in the seamless movement of goods through Customs, since the goods would have been cleared and released for the reason it enters or leaves South Africa by the time it enters or leaves South Africa. As a result these provisions allow for the avoidance of any form of delays and disruption of the flow of goods through Customs. It must be noted that cargo advance notices must be submitted by the cargo reporter in advance before the arrival/departure of goods¹⁸³, but importers are given the option to submit declarations in advance¹⁸⁴ or within three days after arrival of their imported goods¹⁸⁵. These differ from SAFE, which

¹⁷³ Sections 161(1)(b) and 161(2)(b) collectively makes provision for the electronic submission of import and export declarations. Export declarations must be submitted electronically in accordance with section 361 of the control Bill. Accredited importers must submit import declarations electronically in accordance with section 184 of the Bill. Other provisions for the different customs procedures for goods to enter/leave the Republic, such as sections 198; 229; 380; 405 & 455 of the Bill, require declarations to be submitted electronically to customs administrators.

¹⁷⁴ Sections 68(5)(b) and 70(4)(b).

¹⁷⁵ Draft Customs Bills: Explanatory Memorandum. The Proposed Customs Control Act. Page 16.

¹⁷⁶ Section 157(3)&(4) of the Bill.

¹⁷⁷ Ss 184, 198, 229, 361, 405 & 455.

¹⁷⁸ Supra: Footnote 175.

¹⁷⁹ Section 163 of the Control Bill.

¹⁸⁰ Section 362 specifies the time frame in which export declarations must be submitted electronically (section 361) in advance. The time frame in which declaration must be submitted in advance depends on the mode of transport used.

¹⁸¹ Sections 68 and 70 of the Control Bill respectively requests for arrival and departures notices from cargo reporters.

¹⁸² These provisions conform to SAFE's standards 5 of Pillar 1 and standard 6 of Pillar 2.

¹⁸³ In terms of sections 68 and 70 of the Bill.

¹⁸⁴ Section 163 of the Control Bill.

¹⁸⁵ Sections 108(3) of the Bill.

calls for declarations to be submitted before cargo is either loaded on board its means of transport or arrives at the country of destination.¹⁸⁶

The agreement entered into by the Commissioner with the South African Post Office may, in terms of section 496, allow for international postal goods moving through a secured supply chain to undergo a shortened, more simplified clearance and release procedure.

As mentioned above¹⁸⁷, the provisions of part 1 of Chapter 24 of the Control Bill, directly incorporates and implements the sixth aim of SAFE. Part 1 only deals with expedited Customs and release procedures for accredited persons. These provisions collectively promote the sixth aim of SAFE, since accredited persons move their goods through a secured and safe supply chain and in exchange receive faster Customs clearance and release procedures. The Republic has incorporated these provisions within its legislation to facilitate the flow of international trade across the Republic's national borders and territory with the least amount of disruptions and delays as possible. Part 2 of Chapter 24 contains additional provisions to promote the seamless movement of goods in a similar manner as an accredited person's goods; however, these provisions do not necessarily require goods to pass through a secured international supply chain.

The Customs Control Bill has, in its entirety, achieved and incorporated the WCO SAFE Framework's aims and objectives. It has, with the exception of some differences and shortfalls¹⁸⁸, captured and reflected the main concepts and aims of SAFE throughout its provisions. Chapters 1 to 24, 28 and 29 of the Bill deal directly with the area, goods and persons the Bill applies to; the simplified Customs control procedures pertaining to different parties and modes of transport; and the simplified procedures to utilise in order to expedite Customs clearance and release of goods depending on the reason goods enter or leave the Republic. These chapters collectively address and achieve the various aims of SAFE. Chapters 24, 28 and 30 of this Bill provide the legal backing required to support the fifth aim and Pillar two of SAFE and create a partnership between business operators and Customs administrators. Chapters 33 to 36 expand the duties, responsibilities and powers of Customs administrators, subsequently reflecting and embodying the third aim of SAFE into South African legislation. The Control Bill has, in its entirety, managed to reflect and embody SAFE's key goals and aims. It has established a balance between simplified Customs control and securisation measures which ensures the safety and security of the goods moving into and out of the Republic, whilst promoting and facilitating legitimate trade.¹⁸⁹ However, a few shortcomings in terms of the Bill's incorporation of SAFE have been identified. These will be discussed in more detail in chapter 3 of this study.

¹⁸⁶ WCO. *WCO SAFE Framework of Standards, 2007. Pillar 1: Standard 1- Time Limits (1.3.6.)* (2007) at 16.

These shortfalls will be discussed in more detail in Chapter 3 of this study.

¹⁸⁷ Within the fifth aim of SAFE.

¹⁸⁸ These will be identified and discussed in detail in chapter 3.

¹⁸⁹ Draft Customs Control Bill: Preamble. Page 38.

The Customs Duty Bill (the Duty Bill)

The Customs Duty Bill is responsible for all Customs duty impositions, assessments¹⁹⁰, payments and collection of duties on all goods entering and leaving the Republic.¹⁹¹ This Bill is one of the tax levying legislations which is dependent on the Control Bill. As mentioned earlier, the SAFE Framework is primarily concerned with the development of harmonised Customs control procedures and controlling and securing the international supply chain and the movement of goods, and not the imposition, assessment and collection of tax duties. SAFE does, however, aim to improve the collection of Customs duties since it enables Customs to control the movement of all goods passing through the country.¹⁹² Since this Duty Bill purely focuses on different aspects of the Customs Trilogy¹⁹³ and evaluating and collecting Customs Duty, it is not in the position to, nor does it incorporate the SAFE Framework and its aims, objectives and standards. This Bill will not be discussed in any further detail within this study.

The reader must bear in mind that the Control Bill and the Duty Bill work in conjunction with each other. Between the two, they cover all Customs matters in the Republic. However, only the Customs Control Bill incorporates the SAFE Framework within its provisions.

After conducting an extensive analysis of the Customs Control Bill within this chapter, it can be concluded that the Control Bill is primarily responsible for the incorporation of SAFE within its provisions. This Bill has captured the essence of SAFE. A few differences and shortcomings have, however, been discovered. These differences and shortcomings will be identified and discussed in the next chapter of this study. The effects and suggestions of possible solutions to these shortcomings in the Bill on the SAFE Framework of standards principles and norms will also be addressed in the next chapter.

¹⁹⁰ Self assessments to be performed by importers and exporters within this proposed Act are part of the customs clearance procedure. These operators must determine and pay the tax amount applicable on their own goods imported/exported. They must determine the applicable tariff classification of their goods; perform their own valuation and origin assessment to calculate the applicable taxes liable for their goods. (Draft Customs Bills: Explanatory Memorandum. The Proposed Customs Duty Bill. Page 53.) The SAFE Framework, on the other hand, calls for importers and exporters to perform risk and security self assessments to secure their business premises, and supply chains to become AEO accredited.

¹⁹¹ Draft Customs Bills: Explanatory Memorandum. The Proposed Customs Duty Bill. Page 53.

¹⁹² Supra: Footnote 140.

¹⁹³ Classification, Valuations and Rules of Origin.

Chapter Three: Shortfalls of the Customs Control Bill

South Africa has done a fine job of embracing and incorporating the SAFE Framework of Standards' main goals and aims into its Customs Control Bill. A few shortcomings and differences have, however, been identified. These shortfalls will be discussed in this chapter. The effects of these shortcomings in terms of incorporating SAFE's principles and standards, and suggestions of possible solutions to rectify these shortcomings will also be addressed.

To begin with, it appears that no provisions have been made within the Bill requesting Customs administrators to make use of non-intrusive machinery as requested by SAFE in standard 3 of Pillar 1. Section 12(3)(b) of the Bill instead stipulates: (my emphasis)¹⁹⁴

.....(3) When performing an enforcement function, a customs officer may –

(a).....

(b) use any aids such as a dog, or chemical substances, or imaging equipment, or any other mechanical, electrical or electronic devices, subject to compliance with any legislation applicable to the use of such aids.

Although SARS' Customs administrators in practice utilise non-intrusive machinery in their CCSI¹⁹⁵, they are, under no circumstances in terms of national legislation, restricted to these types of machinery when performing their enforcement functions on low-risk goods and consignments. SARS' Customs administrators are given the option, in terms of this Bill, to decide which aids to use to perform their functions. If, for example, intrusive equipment is acquired to perform their enforcement functions on low-risk goods, this would disrupt the flow of trade. An additional provision must be made to this provision of the Bill, requiring Customs administrators to make use of non-intrusive aids and tools for inspecting low-risk goods, and only in the event of suspicious consignments containing potentially high-risk goods, should they be entitled to make use of intrusive machinery and equipment.

Section 17(c) does not entirely conform to the third core element and standard 11 of Pillar 1 of SAFE. SAFE enables Customs administrators in the importing country to request Customs administrators in the country of export to perform an outbound inspection. This encourages Customs administrators to trust one another to perform a harmonised set of security and risk inspections and examinations on goods on one another's behalf efficiently and effectively, thereby extending the importing Customs' control on the supply chain to protect their country's borders and saving the importing Customs administrators' limited resources. Subsection 17(c) of the Bill, conversely, enables the importing Customs administrators to perform their own inspections and examinations in the Republic and *vice versa*. Once again, this provision does not entirely achieve the objective SAFE is aiming at achieving through its standards and norms. Although this provision extends the control of the importing Customs administrators in the supply chain

¹⁹⁴ Draft Customs Control Bill. Chapter 1:Part 3: Administration of this Act. Page 71.

¹⁹⁵ Supra: Footnote 131.

beyond their borders, it does not establish and encourage the two Customs administrators to build and develop a network between them. Based on this provision, the importing Customs will still be utilizing their limited resources to perform inspections and examinations in the country of export. In actual fact they will be required to outlay more resources than previously used, to establish Customs offices with fully trained Customs officers in the different countries across the world.¹⁹⁶ This provision defeats the purpose of SAFE's standard. This shortfall in the Bill can be rectified in two ways. The first solution is to amend subsection 17(c), to enable exporting Customs administrators to perform outbound inspections and examinations on behalf of the Republic's Customs administrators and *vice versa*. Or an additional provision can be added to section 17, to enable exporting Customs administrators to perform inspections on behalf of the Republic and *vice versa*. This gives importing Customs administrators the choice of establishing offices in the country of export or asking for outbound inspections to be conducted by exporting Customs administrators. These suggested provisions will additionally aid with the development and strengthening of the Customs-to-Customs network.

Custom administrators are one of the key players in the SAFE Framework of Standards. Any discrepancies or misdeeds in terms of the role they play will result in the entire supply chain being compromised, making it easily accessible by terrorists. In order to ensure employee integrity, as SAFE calls for within standard 10 of Pillar 1, employees must undergo the relevant training to uphold the provisions and aims of their national Custom's legislation, and to perform their functions and duties efficiently and effectively. The Control Bill makes provision in section 26(a) to enable the Commissioner to make rules for the following (my emphasis):

26. The Commissioner may in terms of section 842 make rules to facilitate the implementation of this Chapter, including rules prescribing –
- (a) training requirements for customs officers, including –
 - (i) the levels of training;
 - (ii) the standards required to ensure competency in respect of any particular tasks; and
 - (iii) the establishment of a training academy for customs officers, including cadet customs officers;.....

Since the Rules have not, to date, been published for public comment in accordance with s843(1), it is unclear if these training requirements have been established for the Republic's Customs officers. If the Commissioner has included this provision within his Rules, the Republic would have taken the necessary steps to ensure the integrity of its Customs officers, thereby conforming to SAFE provided he stipulates the exact standards expected of Customs officers and the minimum training levels they must possess. If the Commissioner, on the other hand, has not made any provision in his Rules regarding the level of training and standards of Customs officers, the Republic would not be conforming to SAFE. This would be a significant shortfall, as there will be no national legislative support outlining and defining the minimum

¹⁹⁶ Customs branches may be established in the different countries, which have entered into an agreement in accordance with section 17 of the Customs Control Bill.

level of training and standards Customs officers must possess to perform their function and duties effectively. If the Republic's Customs administrators are unable to perform their enforcement functions effectively, this will destroy the creditability of the Republic's ability to perform reliable and proper security checks of their supply chain and movement of goods. The incompetency of the Republic's Customs officers will ultimately affect all trade and collaboration between the Republic and other countries in the world since all goods emerging from the Republic will be regarded as high-risk goods. Furthermore, a lack of national legislative support stipulating the minimum training levels and standards Customs officers possess, will make these Customs officers more accepting of bribery, and allowing illegitimate trade to happen on their watch. It has been suggested within the *Customs Modernisation Programme frequently asked questions*¹⁹⁷ that SARS Customs' employees will require dedicated training to be able to effectively perform their functions according to the terms of the new Customs Bills; however, there are no suggestions stating the specific type of training Customs employees must undergo.

In order to avoid such chaos, section 26(a) must be amended, obliging the Commissioner to establish the minimum level of internationally recognised training required for Customs officers in the Commissioner's Rules. This will ensure Customs officers possess the minimum training requirements and standards required to perform their functions and duties efficiently and effectively. There must be some national legislative support for a Customs officers' training programme that will ensure that Customs officers are competent to perform their functions in accordance with this Bill.

The SAFE Framework of Standards requests for an advance electronic cargo declaration from carriers for maritime containerized cargo to be made prior to the container being loaded onto the vessel for Customs administrators to effectively perform security assessments.¹⁹⁸ SAFE has established such provisions since these goods within the container, once stuffed and sealed, will not be removed or tampered with until it has reached its point of final destination in the supply chain. It would be too late at this stage, if the container is used as a medium of mass destruction by terrorists, since the goods would have already landed and done some damage in the country of destination. South Africa's Customs Control Bill does not make any provision within its sections relating to foreign going vessels for advanced electronic cargo declarations from cargo reporters for containerised cargo to be submitted prior to being loaded on board the vessel. Instead it calls for cargo reporters, in accordance with ss 68(1)&(5) of the Bill, to submit an electronic arrival cargo declaration of cargo on board the vessel in advance before the arrival of the vessel at the first Customs seaport in the Republic. A similar provision has been made within sections 70(1)&(4) of the Bill for cargo to be exported from the Republic. The containerised cargo is, in accordance with these provisions, already loaded onto the vessel before the vessel arrives at or departs from the Republic, which defeats the purpose of SAFE requesting the advance declaration prior to loading the container onto the vessel. These

¹⁹⁷ SARS. *SARS Customs Modernisation programme frequently asked questions*. (29 July 2010) at page 6. Available at <http://www.sars.gov.za/home.asp?pid=60547>. (Accessed 14/08/2010).

¹⁹⁸ WCO. *WCO SAFE Framework of Standards, 2007. Pillar 1: Standard 1.3.2. & 1.3.6*. (2007) at 13 & 16 respectively.

provisions would prove to be detrimental to both the security and facilitation of the international supply chain and international trade. To rectify this problem, additional provisions within sections 68(1) and 70(1) of the Bill must be created to specifically cater for containerised cargo in accordance with SAFE¹⁹⁹.

A discrepancy within section 54(2) of the Bill must be noted. This provision states "*An advance train departure notice referred to in subsection (1) must be submitted at least one hour before the train is expected to leave the Republic*"²⁰⁰ (my emphasis). This provision does not specify a point in the Republic, such as "*before the train departs from a licensed railway terminal where the goods were loaded*", as stated within section 70(2) of the Bill. This discrepancy can prove to be detrimental, as carriers may exploit it and, for example, submit departure declarations an hour before crossing the border of the Republic. This does not give Customs administrators sufficient time to perform their security assessments and to seize potentially high-risk cargo prior to the train departing from the Republic's territory in which they have jurisdiction²⁰¹. This discrepancy creates a loophole which terrorists may exploit to use the international supply chain as vehicle of mass destruction. To rectify this discrepancy, this provision must be amended to specify the point of departure within the Republic, as illustrated by section 70(2) of the Bill.

The submission of cargo declarations by road carriers, in accordance with SAFE, must be submitted an hour in advance before the arrival and departure of the carrier in the importing and exporting countries respectively.²⁰² Sections 58 and 59 of the Control Bill pertaining to vehicles entering and leaving the Republic respectively, do not require road carriers to submit declarations in advance. This is a shortfall in terms of incorporating the SAFE Framework of Standards, since Customs administrators are not given sufficient time to perform security and risk assessments before the arrival or departure of the vehicle. This will inevitably disrupt the flow of trade, since administrators will perform their assessment upon the arrival or departure of the carrier at the land border post. This will bring the flow of trade to a halt, until the appropriate security assessment has been conducted and Customs administrators are satisfied with the results. Time lost, due to these avoidable delays, will cause unnecessary losses for both the road carrier and the business operator whose goods are being transported.²⁰³ This problem can be rectified by amending these provisions requiring submission of electronic declarations to be made in advance for the arrival and/or departure of carriers entering and leaving the Republic respectively. These amended provisions will conform to SAFE requirements, thereby facilitating trade. It must be noted that sections 68(4) and 70(3) of the Bill, relating to the advance electronic cargo declarations on board road carriers conform to SAFE requirements.

¹⁹⁹ SAFE has created separate provisions for containerised cargo. Declarations for the containerised goods must be submitted in advance before the containers are loaded onto the vessel.

²⁰⁰ Section 54(2) of the Customs Control Bill.

²⁰¹ Section 6 of the Bill.

²⁰² WCO. *WCO SAFE Framework of Standards, 2007. Pillar 1: Standard 1.3.6.* (2007) at 16.

²⁰³ Time is money for both the entities. The longer the assessments take, the more money and future business opportunities will be lost.

In addition to the abovementioned shortfalls of the Bill, the provisions within s 68 of the Bill, with the exception of s 68(4), does not provide sufficient amount of time for Customs administrators to effectively perform their security and risk assessments for goods on board the carriers. SAFE's standard 6 of Pillar 1 calls for Customs administrators to request for declarations in advance for them to perform adequate security and risk assessments.²⁰⁴ The minimum time frames stipulated within these provisions of the Bill in which cargo reporters and carriers must submit their electronic declarations of cargo board the carriers in advance are unrealistic.²⁰⁵ The probability of Customs administrators successfully completing security and risk assessments before the goods arrive is unlikely, especially in high peak seasons such as Christmas, where the volume of goods imported is exceptionally high. If Customs administrators cannot perform security and risk assessments on inbound cargo within these designated time frames, it defeats the purpose of requesting the declaration of the cargo in advance. This is especially the case if importers choose to submit their declarations in accordance with s 108(3) after the arrival of their goods in the Republic. Not only would Customs administrators not be able to perform security assessments and secure their national borders, but they will also disrupt the flow of trade since goods must wait until the appropriate assessments are completed and clearance and release is issued in accordance with the Bill for the goods to proceed to their final destination within the Republic. To resolve this shortfall, amendments must be made to extend the minimum time frame in section 68 of the Bill in which these declarations must be submitted in advance to Customs administrators. A more realistic time frame must be designated, after taking into consideration the time required to successfully perform security and risk assessments for goods bound for the Republic and the mode of transport they are imported on.

Sections 70(1), 70(2) & 362(1)(a) of the Bill, on the other hand, designates too much time for declarations to be submitted in advance for goods to be exported on board a foreign going vessel and cross border train, and for sea exporters' clearance declarations respectively. Advance cargo departure declarations are required to be submitted, in accordance with ss 70(1) & (2), at least 72 hours before the departure of the vessel or train from their respective Customs seaport and licensed rail cargo terminal in the Republic. Similarly, export declarations are required to be submitted, in accordance with section 362(1)(a), at least 72 hours before the goods are delivered to the sea cargo terminal where they will be exported from. This is more than enough time for Customs administrators to receive declarations, process them, and successfully perform security and risk assessments before the departure of the goods. These provisions respectively enable carriers and exporters to submit at any time before the 72 hours of the departure of the vessel or train from their respective terminals and the delivery of the goods at the exporting sea terminal. There is no time limit on when these declarations must be submitted. If, for example, cargo reporters submit declarations, in accordance with ss 70(1) and (2), one week in advance prior to the departure of their goods on board a vessel/train, the goods will remain in the Republic until departure. There will be a high

²⁰⁴ WCO. *WCO SAFE Framework of Standards, 2007. Pillar 1: Standard 6.* (2007) at 20.

²⁰⁵ For example, cargo reporters are required to submit an electronic declaration 30mins in advance of the arrival of the cargo (section 68(1)(ii)) on board a foreign going vessel travelling for less than 96 hours in the Republic.

probability these goods can be altered or their security can be breached, or tampered with, subsequently defeating the purpose of performing the security assessment. These provisions, as an alternative, should require cargo reporters, carriers and exporters to submit declarations at least 48 hours in advance and at most 72 hours. This places a time limit in which declarations can be submitted to Customs administrators. This is a more realistic time frame in which would enable Customs administrators to comfortably perform their security assessments and authorise release of goods, and the probability of the goods' security being breached will be minimised.

Sections 111 (3) and 363, relating to export clearance declarations (in ss 111 and 362 of the Bill), must also be amended. These provisions require goods released for export to be exported from the Republic within 72 hours of release. These provisions allocate more time than is required for the goods to be exported from the Republic. The least amount of time the goods remain in the Republic, after their release is authorised by Customs authority, the less likely the goods would be tampered with and their security would be breached. A more practical and realistic time frame for submission would be 48 hours. This time frame gives the parties involved sufficient time for them to sort out their particulars and leave the Republic. These amendments will ensure the safety and security of the goods exported from the Republic.

SAFE requests for WCO members to make provision within their national legislation for exporters, importers and carriers to submit electronic declarations in advance to Customs administrators, and the time frame in which the declarations must be submitted, to aid Customs administrators to perform their risk, security and control assessments before the arrival or departure of goods in the country.²⁰⁶ This is one of the key provisions Customs administrators require to protect their national borders and the national borders of the country of destination, and to ensure the safety and security of the supply chain. Whilst the Control Bill has managed to abide by and provide the necessary national legislative support for exporters²⁰⁷ and carriers²⁰⁸ to submit cargo declarations in advance before the arrival or departure of the goods, it has not managed to achieve the same for importers. Importers are given an option as to when they wish to submit their declarations to Customs administrators. If goods are imported by a foreign going vessel, aircraft or cross border train, the importer may submit declarations within three days of arrival of the goods at their respective designated areas in the Republic²⁰⁹ before the release of the goods from the Customs authority²¹⁰. If goods are imported by vehicle or by a person on foot, import declarations must be submitted and cleared upon arrival at the land border-post before the release of the goods into the Republic.²¹¹ Importers are given the option, in accordance with section 163, to submit their import declarations in

²⁰⁶ WCO. *WCO SAFE Framework of Standards, 2007. Pillar 1: Standard 1: Integrated Supply chain management* (2007) at 9-16.

²⁰⁷ Sections 162(1), 362, 405 & 455 of the Bill.

²⁰⁸ Section 68 and 70 of the Control Bill.

²⁰⁹ Section 108(3) of the Control Bill.

²¹⁰ Section 162(1) of the Control Bill.

²¹¹ Section 108(4) & 162(1) of the Bill.

advance prior to the arrival of their goods. However there is no time frame stipulated within which the declarations must be submitted in advance.

The provisions within Chapters 10 to 15, with the exception of Chapter 12²¹² of the Bill relating to goods imported into the Republic support the above mentioned provisions pertaining to importers' declarations. All of the above mentioned provisions do not correspond with SAFE's requirements, since the Bill provides importers with the privilege of deciding when to submit declarations. Customs administrators will only be able to perform their security and risk assessments once they receive these declarations from importers. SAFE requires importers, in accordance with standard 1.3.3²¹³, to submit declarations in advance before the arrival of the goods in the country of destination. This provides Customs administrators with adequate time to perform security assessments and identify high-risk goods prior to the arrival of the goods at its destination. If importers decide to submit their declarations after the arrival of their goods in the Republic²¹⁴, this leaves the Republic, to some degree²¹⁵, open and vulnerable to terroristic attacks. These provisions will additionally result in the disruption of the flow of trade into the Republic, as Customs administrators may only begin with the processing of the importers' declarations once the importer has submitted them. Goods may not be released from the Customs authority, until declarations are submitted.²¹⁶ These are significant shortfalls in the Bill, which contradict the core aims of SAFE.²¹⁷ These shortfalls can, however, be easily rectified by amending the abovementioned provisions. These provisions must call for importers to submit declarations in advance to administrators before the arrival of goods in the Republic, irrespective of the mode of transport utilised. In addition, a time frame must be designated in which submissions must be made in advance by importers, depending on the mode of transport used. All provisions, such as sections 108(3), 108(4) and 163 of Bill, must be amended to remove any privileges which entitle importers to choose when they wish to submit their import declarations. By amending these provisions in accordance with the above suggestions, the Control Bill will effectively secure the international supply chain for goods bound for the Republic, whilst facilitating trade.

Furthermore, all importers, with the exception of accredited importers²¹⁸, are not obliged in accordance with the Bill, to submit their declarations electronically in advance to Customs administrators when

²¹² When the importer submits and uses their advance cargo arrivals notice as a transshipment clearance declaration in accordance with section 231 of the Bill.

²¹³ WCO. *WCO SAFE Framework of Standards, 2007. Pillar 1: Standard 1.3.3.* (2007) at 15.

²¹⁴ In accordance section 108(3) of the Bill.

²¹⁵ More information provided from different sources, will make it easier for customs administrators to pick up discrepancies. Customs administrators will have to rely on the advance cargo arrival notices (section 68) to perform security assessments of the goods expected to enter the Republic if the importers choose to submit declaration in accordance with section 108(3) or 108(4), depending on their mode of transport used. Customs administrators will have no additional sources of information to compare the cargo declaration information too, to ensure there are no discrepancies in the information provided by the carrier/cargo reporter. It must also be noted the time frame in which advance cargo arrival notices (section 68) is submitted in advance is insufficient for customs administrators to perform security assessments. (This shortfall is discussed in detail above)

²¹⁶ Section 162(1).

²¹⁷ Namely to secure and facilitate international trade.

²¹⁸ Section 184 of the Bill requires accredited importers to submit declarations electronically to customs administrators.

declaring and clearing their goods for home use. There is no other provision within the Bill obliging importers to submit electronically to Customs administrators. Importers are, once again, given the option to submit manually or electronically in accordance with section 161 of the Bill. These provisions do not correspond with SAFE's requirement of inbound data from importers to be submitted electronically in advance to Customs administrators.²¹⁹ Giving importers²²⁰ the option to submit manually or electronically can slow down trade, as opposed to facilitating it. Customs administrators must obtain, process and capture all manually submitted declarations into their systems, thereby taking a longer period of time for the clearance and release of goods. These provisions not only frustrate the movement of trade, but require more of Customs administrators' limited resources for the clearance and release of those specific goods, which defeats the aim and goals of SAFE. This shortfall can be easily rectified by amending section 184 of the Bill, to call for all importers to submit declarations electronically for the clearance and release of their goods for home use.

Section 364 aims to accelerate the process of Customs clearance and release procedures for low-risk goods, since it empowers the SARS' Commissioner to simplify the export clearance and release procedures for these specific goods. It must be noted, however, that this Bill defines 'low-risk goods' as specific goods which have a low risk for 'tax evasions'. SAFE, on the other hand, defines low-risk goods and consignments on the basis of their threat to supply chain security and the national borders of its WCO members.²²¹ In accordance with section 364, the Commissioner will be rewarding exporters with faster processes and simplified procedures for not committing tax evasions, as opposed to providing and ensuring their goods move through a safe and secured supply chain. This provision is promoting non-tax evasions. An additional provision, similar to this provision, must be established within this chapter of the Bill to accelerate the process of Customs clearance and release procedures for goods that are of little or no threat to the security of the international supply chain and national borders. This provision will be another tangible benefit for AEO operators and will additionally contribute to strengthening the Customs-to-Business partnership and conforms to SAFE's standard 3 of Pillar 2.

Section 643 of the Bill outlines the criteria licensees and registered persons must possess to be granted with an accredited status. These criteria directly correspond with some of the conditions and requirements Customs administrators must take into consideration when granting accreditation status to applicants.²²² However, there are a number of important criteria in accordance with SAFE's conditions and requirements which have not been requested from applicants within this provision or any other provision within this Bill. For example, there is no provision within the Bill empowering Customs administrators and obliging AEOs to provide full access to their internal commercial records.²²³ Other conditions and requirements the Bill

²¹⁹ WCO. *WCO SAFE Framework of Standards, 2007. Pillar 1: Standard 1: Submission of data. (1.3.3.)* (2007) at 15.

²²⁰ With the exception of accredited importers (section 184).

²²¹ WCO. *WCO SAFE Framework of Standards, 2007. Pillar 1: Standard 7: Targeting and Communication* (2007) at 22.

²²² Supra: Footnote 156.

²²³ This is in accordance with condition and requirement B of SAFE.

has failed to request from their potential AEOs are, the development and enforcement of education, training and awareness programmes; cargo security; conveyance security; the security of premises; personnel security; trading partner security; crisis management and incident recovery; and measurement, analyses and improvement. This is a significant shortfall, as most of the important conditions and requirements of an AEO Programme have been left out. If the Republic does not request these requirements and these conditions from their accredited clients, its AEO Programme will not conform to SAFE's and other trading partners AEO Programmes. Non-compatible programmes will eliminate the possibility of establishing mutual recognition of AEO Programmes between trading partners countries and will not request the minimum international security standards from their AEOs to secure their respective supply chains. Since section 643(1)(f) of the Bill enables the Commissioner to prescribe any other criteria for accredited status, these shortfalls can easily be rectified by including these missing criteria and any other criteria within the Commissioner's Rules of the Bill. It must be noted that the Commissioner's Rules have not, to date, been published in the public domain²²⁴. It is therefore unknown if these missing criteria have been included within these Rules. These missing criteria can, as an alternative, be called for from accredited persons when entering into a partnership with Customs administrators through the Republic Accreditation programme, known as the Preferred Trader Initiative. Both of these recommended solutions will ensure that the Republic's AEO Programme will be aligned with and conforms to SAFE's requirements and conditions for AEO Programmes, and other trading partners' AEO Programmes across the world.

The Customs Duty Bill contains a self assessment chapter for importers and exporters to perform their own self-assessments of customs duty payable on their imported and exported goods.²²⁵ The Customs Control Bill, on the other hand, contains no provisions requiring accredited operators to do their own security and risk self assessments on their supply chains. Like the Duty Bills' self assessment chapter, a security self assessment chapter must be developed within the Customs Control Bill, obliging accredited clients to perform security self assessments on their own supply chains. By including a security self assessment chapter within the Customs Control Bill, this chapter would provide the Republic's Accreditation Programme with some national legislative support, obliging accredited operators to conform to the minimum security criteria of the Bill or as stipulated in the AEO programme. This security self-assessment chapter would also directly conform with SAFE's standard 1 of Pillar 2.

After conducting an extensive analysis of the Customs Control Bill, it can be concluded that the Bill has, in its entirety, done a fine job of incorporating the SAFE Framework of Standards into its provisions. However this Bill is not without its flaws and shortfalls in terms of its incorporation of SAFE. These have been identified within this chapter. As illustrated, these shortfalls can be easily rectified by making amendments or adding more provisions. After these shortfalls have been addressed, this Bill, and in turn

²²⁴ In accordance with s843(1).

²²⁵ Draft Customs Duty Bill. Chapter 5: Assessment of Duties at 61.

South African Customs legislation, will be in line with the WCO SAFE Framework of Standards and achieve its main goals and aims, as well as minimum international security practices.

The development of the new Customs legislation is only a part of the SARS' Customs Modernisation Programme. Before concluding this study a brief look at the remainder of the Customs Modernisation Programme and the various security initiatives and projects SARS is undertaking to align its customs practices with SAFE's norms will be conducted.

Chapter Four: Other Initiatives to incorporate SAFE into Customs practices

Since the 9/11 attacks on the US and after acceding to a number of the WCO international agreements such as the RKC and the WCO SAFE Framework of Standards, South Africa's Customs legislation and practices have been evolving. SARS Customs has undertaken the enormous task of transforming the Republic's Customs practices and legislation with the development and incorporation of their Customs Modernisation Programme.

The development of the new Customs legislation is only one part of the SARS' Customs Modernisation programme. This Chapter aims to provide additional information on the different aspects of the SARS Customs Modernisation Programme relating to SAFE. A quick look at the different security initiatives SARS Customs has adopted and are, or will be, utilizing to further capture and apply the SAFE Framework of Standards into its national Customs practices will be conducted.

SARS Customs has recently reconstructed their Customs website.²²⁶ This is an excellent form of communication to keep its clients well informed on all matters and information relating to Customs. SARS Customs provides useful and accessible information on their user-friendly website such as training modules, manuals, guides, etc on Customs procedures. These training modules and guides assist clients to adjust to the changing Customs procedures and process, making the transformation as easy as possible for clients and users. These measures aid clients to learn about how to abide by and comply with the new Customs procedures and processes being implemented, which thereby conforms to the first aim of SAFE. The website also contains contact and call center numbers which clients may phone for assistance on any matters relating to Customs and/or to report Customs offences and discrepancies. Customs information and notifications of Customs changes, updates, news and all electronic forms are also available and are constantly updated aiding clients to know exactly what and when things are taking place. These measures promote certainty and transparency of procedures and processes to abide by and provide up-to-date information at all times. The website establishes an open line of communication between Customs administrators (SARS) and Customs clients, thereby promoting and strengthening Customs-to-Business relationships and co-operation, which conforms to SAFE's standard 5 of Pillar 2.

In addition to the above, SARS Customs has established an integrated call center equipped with SARS trained agents to assist with all types of Customs queries. They are presently in the process of increasing the number of call centers to be able to efficiently and effectively address all Customs queries.²²⁷ These call centers will aid and facilitate the flow of trade, as these agents will be able to provide accurate and correct information to their clients, further reducing or eliminating any confusion and uncertainties they may have.

²²⁶ SARS Website. Available at <http://www.sars.gov.za/home.asp?pid=60547>.

²²⁷ SARS. *Customs Modernisation: Moving into the future. Trader Pocket Guide*. (July 2010) at 5-6. Available at: <http://www.sars.gov.za/home.asp?pid=60547>. (Accessed 14/8/10).

Central offices, referred to as 'Trade Administration Centers' will be established to perform specific activities such as administrative, risk assessments and auditing tasks.²²⁸ These centers will enable Customs administrators to combine their limited resources to work collectively on processing all Customs transactions and perform risk and security assessments in one location, as opposed to different locations throughout the country. For instance, as part of their Customs Modernisation Programme, SARS will be establishing four hubs around South Africa for all Customs processing. This enables them to provide better and more efficient services to their clients.²²⁹ SARS has already begun with the closure and relocation of branches such as Schoeman Street and the Germiston and Carlton center in Pretoria and Johannesburg respectively, to create central offices across South Africa.²³⁰

The development of electronic communication and submission of documents will be beneficial to both Customs administrators and business operators.²³¹ Traders may submit all documentation to Customs administrators electronically, thereby saving time and money. Electronic submission reduces the amount of paper work Customs administrators must process and capture, thereby enabling them to direct their limited resources to identifying potentially high-risk goods. As mentioned earlier, SARS is aligning their declaration requirements with the WCO Data Model (version 3).²³² This model requires importers and exporters to produce a harmonised set of international data requirements, which will enable SARS to exchange desirable information with other Customs administrators abroad. South Africa has, as of December 7, 2007, become a contracting party to the Johannesburg Convention.²³³ This international instrument allows and assists contracting parties to exchange information amongst each other to securitise the international supply chain. These Customs administrators will be able to perform cargo security and risk assessments in advance.²³⁴

Since 2003, SARS Customs has made use of non-intrusive machinery such as large scale cargo scanners; handheld trace detectors; radiation portal monitors; and contraband detectors busters²³⁵, when conducting inspections in their CCSI. CCSI is a South African security initiative, which is constantly updated to adopt new advancing technology and machinery and international security initiatives. These machinery and equipment enable Customs administrators to secure the goods whilst facilitating trade. The use of non-

²²⁸ Supra: Footnote 227 at 5.

²²⁹ FTW Online. *New SARS changes to note- from Friday*. (2 December 2010). Available at: <http://www.ftwonline.co.za/NewsPrint.aspx?NewsNo=12175>. (Accessed 2/12/10)

²³⁰ Supra: Above. & FTW Online. *SARS to open new Edenvale branch*. (6 December 2010) Available at: <http://www.ftwonline.co.za/Default.aspx?NewsNo=12187>. (Accessed 6/12/2010)

²³¹ Supra: Footnote 227 at 4.

²³² SARS. *First phase of customs modernisation programme set for roll-out from October 2010*. [29/7/2010]. Available at: <http://www.sars.gov.za/home.asp?PID=54515&ToolID=2&ItemID=60988>. (Accessed 16/8/2010).

²³³ WCO. *Position as regards Ratification and Accessions (as of 30 June 2008): International Convention on Mutual Administrative Assistance In Customs Matters (Johannesburg Convention)*. (19 August 2008). Available at: <http://www.wcoomd.org/files/1.%20Public%20files/PDFandDocuments/Conventions/EG0014E1.pdf>. (Accessed 7/12/10)

²³⁴ WCO. *The Johannesburg Convention: a new tool to facilitate-Mutual Administrative Assistance among WCO Members*. Available at: http://www.wcoomd.org/home_about_us_conventionslist_johannesburg_convention.htm. (Accessed 7/12/10)

²³⁵ Supra: Footnote 43.

intrusive machinery to perform security inspections directly conforms to SAFE's and ISPS code's²³⁶ requirements.²³⁷

South African exporters exporting cargo to the European Union (EU) will be required as of December 31, 2010 to comply with the '*European 24-hour advanced manifest rule*', when submitting export declarations to the EU. The declarations must be submitted at least 24 hours before goods are loaded onto their vessel in the exporting country (South Africa). This provides the EU Customs administrators with sufficient time to perform their risk and security assessments before the arrival of the goods. This directly conforms to SAFE's standard 1 of Pillar 1. South African EU exporters must comply with these requirements (even though it is not part of their own national legislation) if they wish to export goods to the EU.²³⁸

Discussion is underway for the development of 'Regional Accreditation and Audit Programme.' This, however, is still in the discussion stages with surrounding countries.²³⁹ If surrounding countries agree to the adoption of SARS accreditation programme and policy as a regional programme, this would be very beneficial to traders through these countries. Goods would be able to flow freely and securely between these countries, without any disruption to trade. This region as a whole will be able to protect the borders of their own countries as well as neighbouring countries.

These initiatives illustrate that SARS is making all the necessary changes not only to their national Customs legislation, but to their national Customs practices to fully embrace and incorporate the SAFE Framework of Standards.

²³⁶ This international security initiative has been developed in 2004 after the 9/11 attacks on the US to improve the security and control surrounding ships and port facilities throughout the world.

²³⁷ Supra: Footnote 43.

²³⁸ Freight & Trading Weekly. *Exporters to EU should gear up for 24-hour security rule*. (3 September 2010) Freight & Trading Weekly.

²³⁹ Supra: Footnote 227 at 7.

Conclusion:

The attack on the US on September 11, 2001 highlighted the vulnerabilities of the international supply chain to potential terroristic attacks. As a result of these attacks, countries throughout the world began to develop and implement security initiatives to protect their national borders and citizens by increasing the security surrounding their international supply chains. These different security initiatives proved detrimental to trade facilitation and the flow of international trade.²⁴⁰ The WCO has subsequently endorsed²⁴¹ the WCO SAFE Framework of Standards, 2007 to establish a harmonised set of internationally recognised security measures countries may adopt to secure the international supply chain whilst facilitating trade.

The WCO SAFE Framework of Standards established six aims and four elements, which are achieved through the standards of its Twin Pillars. These are the Customs-to-Customs network arrangement Pillar and the Customs-to-Business partnership Pillar. WCO members that chose to adopt and implement the SAFE Framework, such as South Africa, are requested to make the necessary changes to both their national Customs legislation and practices in order to fully incorporate the SAFE Framework of Standards.

South African Customs administrators (SARS) have developed a Customs Modernisation Programme to align South Africa's legislation and practices with international trends and standards. The Customs Control Bill controls the movement of goods and persons through the Republic's national borders and territory²⁴², whilst the Customs Duty Bill is responsible for the different aspects surrounding the Custom Trilogy and the Customs duty on goods.²⁴³ One of the SARS' key objectives is to align their legislation and practices with the SAFE Framework of Standards.²⁴⁴

The objective of this study was to determine the extent to which the WCO SAFE Framework of Standards, 2007 has been incorporated into South Africa's new Customs legislation.

Since the Control Bill is responsible for controlling the movement of goods through the Republic's national borders and territory,²⁴⁵ it has provided the necessary legislative support the SAFE Framework calls for through its provisions. After conducting an extensive analysis of this Bill (in chapter 2 of the study) it was concluded that the Republic has, to a large degree, captured the main goals and aims of the SAFE Framework through the provisions of its Customs Control Bill. The table below illustrates the provisions of the Customs Control Bill that correspond with each of the six aims of the SAFE Framework of Standards respectively.

²⁴⁰ Supra: Footnote 12.

²⁴¹ In June 2005. [Michel Danet. *WCO SAFE Framework of Standards, 2007: Letter by Secretary General of WCO*. (2007) at 2].

²⁴² Section 4(a) of the Customs Control Bill.

²⁴³ Draft Customs Bills: Explanatory Memorandum. The Proposed Customs Duty Bill. Page 53.

²⁴⁴ Supra: Footnote 44.

²⁴⁵ Supra: Footnote 242.

Table 5-1:

SAFE Framework of Standards aims: ²⁴⁶	Corresponding provisions of the Customs Control Bill:
1. Establish standards that provide supply chain security and facilitation at a global level to promote certainty and predictability.	<ul style="list-style-type: none"> • Ss2, 4, 5, 6, 7, 8, 16 29-38, 108-111, 326, 327, 329, 496, 577, 579, 580-582, 590 • Chapters 5, 9-22, 28, 34, 35
2. Enable integrated supply chain management for all modes of transport.	<ul style="list-style-type: none"> • Ss29, 32-37, 109, 265, 267 • Chapter 2, 3, 4, 13
3. Enhance the role, functions and capabilities of Customs to meet the challenges and opportunities of the 21st Century.	<ul style="list-style-type: none"> • Ss 10, 11, 12, 31, 47, 111, 115, 116, 117, 121, 210, 238, 363, 492 • Chapter 7, 31, 33-36
4. Strengthen co-operation between Customs administrations to improve their capability to detect high-risk consignments.	<ul style="list-style-type: none"> • Ss 17, 24 • Chapter 9
5. Strengthen Customs/Business co-operation.	<ul style="list-style-type: none"> • Ss 22-24, 372, 507, 508 • Chapter 17, 24, 28, 29, 30
6. Promote the seamless movement of goods through secure international trade supply chains.	<ul style="list-style-type: none"> • Ss 161, 163, 496, 849 • Chapter 24

There are, however, a few shortfalls in the Customs Control Bill, which were identified and addressed in chapter 3 of the study. These shortfalls can be easily rectified with possible solutions suggested to ensure the full incorporation of the SAFE Framework into the Republic's Customs legislation. It is recommended that these shortfalls be addressed and revised to fully capture the SAFE Framework of Standards in the Republic's legislation. With these amendments and adjustments to the Bill, South Africa's new Customs legislation will provide their Customs administrators and their current and future Customs security initiatives with the necessary national legislative support to securitise their international supply chains and protect their national borders. These amendments will further align South Africa's legislation with international security practices and trends.

²⁴⁶ Supra: Footnote 57.

SARS has additionally taken or in the process of undertaking and implementing a number of different initiatives, as part of its Customs Modernisation Programme, to incorporate the SAFE Framework of standards into its national Customs practices. This will ensure the full incorporation of the SAFE Framework of Standards in South Africa's Customs legislation and practices.

Although taking their time in comparison with other countries such as the US; the EU; Australia, Singapore and Canada²⁴⁷, it is evident that South Africa is on the right path to incorporate the SAFE Framework of Standards and to fully protect their national borders and supply chains whilst facilitating trade. Based on this study it can be concluded that SARS Customs will effectively achieve some of its key goals upon the completion and full operation of its Customs Modernisation Programme. These are, namely, to improve the security and efficiency of the Republic's supply chain whilst facilitating trade²⁴⁸, and to align their national legislation with international conventions and agreements such as the Revised Kyoto Convention and WCO SAFE Framework of Standards²⁴⁹.

It is concluded that South Africa has, to a large extent, incorporated the WCO SAFE Framework of Standards into its new Customs legislation, i.e. its Customs Control Bill.

²⁴⁷ South Africa's Customs administrators are still in the process of enacting and promulgating their proposed national customs legislation and are revising its Accreditation programme, which are expected to be formally launched within 2011.[Supra: Footnote 227 at 8.] This is only the first phase of their multi-year Customs Modernisation Programme. Furthermore, the Commissioner's Rules, which must be published before the enactment and promulgation of the Custom Bills, are yet to be published for the public comments in accordance with section 843(1) of the Control Bill. This means the Republic's new customs modernizing procedure will only be fully operational in the years to come.

²⁴⁸ Joy Orlek. *A new Customs era is about to dawn*. Freight & Trading Weekly. 6 August 2010. Issue No: 1922.

²⁴⁹ SARS. *Customs Modernisation* at 4. (February 2010) Available at: <http://www.sars.gov.za/home.asp?pid=60547>. [Accessed 14/8/2010]

Annexure A



WORLD CUSTOMS ORGANIZATION

WCO SAFE

Framework of Standards

June 2007



SAFE FRAMEWORK OF STANDARDS

At the June 2005 annual Council Sessions in Brussels, Directors General of Customs representing the Members of the World Customs Organization (WCO) adopted the SAFE Framework of Standards by unanimous acclamation. Not only did the adoption of this unique international instrument usher in a safer world trade regime, it also heralded the beginning of a new approach to working methods and partnership for both Customs and business.

Since that time, work has progressed on modernizing and improving the document, principally by incorporating into its text detailed provisions concerning Authorized Economic Operators (AEO) which had been initially developed in a separate document. It is perceived that both Customs and our business partners will benefit from having all SAFE and AEO provisions readily available in a single comprehensive instrument.

For those Customs administrations expressing a need, assistance in the form of a programme for sustainable capacity building (Columbus Programme) is being implemented by the WCO Secretariat, with the committed support of other WCO Members. Phase one of this Programme involving Diagnostic Missions is now almost complete, and work has already begun on Phase two. This work draws on the expertise of our diagnosticians trained to that end, and is aimed at satisfying Members' requests for assistance in implementing this instrument. In particular, the Phase two work is focusing essentially on developing action plans and securing funding. These are crucial steps for our Members on the road to full implementation of the SAFE Framework of Standards.

The commitment and willingness shown by WCO Members to implement the SAFE Framework of Standards clearly demonstrates their desire to secure and facilitate world trade and to reap the ensuing economic, financial and social benefits. This consolidated instrument is intended for all WCO Members, whether developed or developing, and should make it possible for us to derive greater benefits in this era of trade globalization.

Michel Danet
Secretary General
World Customs Organization
June 2007



WORLD CUSTOMS ORGANIZATION

WCO SAFE FRAMEWORK OF STANDARDS

June 2007

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1. Foreword

1.1. Introduction

International trade is an essential driver for economic prosperity. The global trading system is vulnerable to terrorist exploitation that would severely damage the entire global economy. As government organizations that control and administer the international movement of goods, Customs administrations are in a unique position to provide increased security to the global supply chain and to contribute to socio-economic development through revenue collection and trade facilitation.

There is a need for a World Customs Organization (WCO) endorsed strategy to secure the movement of global trade in a way that does not impede but, on the contrary, facilitates the movement of that trade. Securing the international trade supply chain is only one step in the overall process of strengthening and preparing Customs administrations for the 21st Century. Accordingly, to strengthen and go beyond existing programmes and practices, WCO Members have developed a regime that will enhance the security and facilitation of international trade. This is the WCO SAFE Framework of Standards to secure and facilitate global trade (hereafter referred to as the "SAFE Framework"). The SAFE Framework sets forth the principles and the standards and presents them for adoption as a minimal threshold of what must be done by WCO Members.

The reason that the WCO is the appropriate platform for this initiative is readily apparent. The WCO has the membership and thus the participation of Customs administrations representing 99 percent of global trade. Customs administrations have important powers that exist nowhere else in government - the authority to inspect cargo and goods shipped into, through and out of a country. Customs also have the authority to refuse entry or exit and the authority to expedite entry. Customs administrations require information about goods being imported, and often require information about goods exported. They can, with appropriate legislation, require that information to be provided in advance and electronically. Given the unique authorities and expertise, Customs can and should play a central role in the security and facilitation of global trade. However, a holistic approach is required to optimize the securing of the international trade supply chain while ensuring continued improvements in trade facilitation. Customs should therefore be encouraged to develop co-operative arrangements with other government agencies.

It is an unacceptable and an unnecessary burden to inspect every shipment. In fact, doing so would bring global trade to a halt. Consequently, modernized Customs administrations use automated systems to risk manage for a variety of issues. In this environment, Customs administrations should not burden the international trade community with different sets of requirements to secure and facilitate commerce, and there should be recognition of other international standards. There should be one set of international Customs standards developed by the WCO that do not duplicate or contradict other intergovernmental requirements.

The SAFE Framework also considers the critical elements of capacity building and requisite legislative authority. While certain aspects of this instrument can be implemented without capacity building, it is recognized that many administrations will need assistance to implement the standards. The SAFE Framework contemplates appropriate assistance with capacity building for those Customs administrations that adopt it.



1.2. Objectives and principles of the SAFE Framework

The SAFE Framework aims to :

- Establish standards that provide supply chain security and facilitation at a global level to promote certainty and predictability.
- Enable integrated supply chain management for all modes of transport.
- Enhance the role, functions and capabilities of Customs to meet the challenges and opportunities of the 21st Century.
- Strengthen co-operation between Customs administrations to improve their capability to detect high-risk consignments.
- Strengthen Customs/Business co-operation.
- Promote the seamless movement of goods through secure international trade supply chains.

1.3. Four Core Elements of the SAFE Framework

The SAFE Framework consists of four core elements. *First*, it harmonizes the advance electronic cargo information requirements on inbound, outbound and transit shipments. *Second*, each country that joins the SAFE Framework commits to employing a consistent risk management approach to address security threats. *Third*, it requires that at the reasonable request of the receiving nation, based upon a comparable risk targeting methodology, the sending nation's Customs administration will perform an outbound inspection of high-risk containers and cargo, preferably using non-intrusive detection equipment such as large-scale X-ray machines and radiation detectors. *Fourth*, the SAFE Framework defines benefits that Customs will provide to businesses that meet minimal supply chain security standards and best practices.

1.4. Two Pillars of the SAFE Framework

The SAFE Framework, based on the previously described four core elements, rests on the twin pillars of Customs-to-Customs network arrangements and Customs-to-Business partnerships. The two-pillar strategy has many advantages. The pillars involve a set of standards that are consolidated to guarantee ease of understanding and rapid international implementation. Moreover, this instrument draws directly from existing WCO security and facilitation measures and programmes developed by Member administrations.

1.5. Capacity Building

It is recognized that effective capacity building is an important element to ensure widespread adoption and implementation of the SAFE Framework. However, it is also recognized that parts of the instrument can be implemented immediately. To this end, strategies are required to enhance the capacity building provided to Members to enable implementation of the SAFE Framework. For capacity building to be successful, a foundation of political will and integrity must already exist. Thus, countries that demonstrate a commitment to implement the SAFE Framework and the necessary political will should be assisted by the WCO and a consortium of countries and other co-operating partners.

1.6. Implementation

In order for this instrument to be implemented, not only will capacity building be necessary, but also an understanding that a phased approach will be required. It is unreasonable to expect that every administration will be able to implement the SAFE Framework immediately. While the SAFE Framework is considered a minimum set of standards, it will be implemented at various stages in accordance with each administration's capacity and the necessary legislative authority. Further development of Implementation Plan will proceed as directed by the WCO Council.

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2. Benefits

This SAFE Framework provides a new and consolidated platform which will enhance world trade, ensure better security against terrorism, and increase the contribution of Customs and trade partners to the economic and social well-being of nations. It will improve the ability of Customs to detect and deal with high-risk consignments and increase efficiencies in the administration of goods, thereby expediting the clearance and release of goods.

Adoption of the SAFE Framework brings benefits for nations/governments, Customs administrations and the business community.

2.1. Nations/Governments

One of the main objectives of the SAFE Framework is to secure and facilitate global trade. This will enable international trade to contribute to economic growth and development. This will help to secure trade against the threat of global terrorism and, at the same time, the SAFE Framework will enable Customs administrations to facilitate the movement of legitimate trade and improve and modernize Customs operations. This will, in turn, improve revenue collection and also the proper application of national laws and regulations. This instrument therefore supports economic and social protection, and will enable foreign direct investment.

The SAFE Framework also encourages the establishment of co-operative arrangements between Customs and other government agencies. There should be recognition of other already existing international standards. This will assist governments to ensure integrated border management and control. By putting the necessary measures in place, the SAFE Framework also empowers governments to expand the mandate and responsibilities of Customs administrations in this area.

2.2. Customs

One of the main thrusts of the SAFE Framework is to establish Customs-to-Customs network arrangements to promote the seamless movement of goods through secure international trade supply chains. These network arrangements will result, inter alia, in the exchange of timely and accurate information that will place Customs administrations in the position of managing risk on a more effective basis. Not only will this improve the ability of Customs to detect high-risk consignments, it will also enable Customs administrations to improve their controls along the international trade supply chain and make for better and more efficient allocation of Customs resources. The Customs-to-Customs network arrangements will strengthen co-operation between Customs administrations and enable administrations to carry out controls earlier in the supply chain, e.g. where the administration of an importing country requests the administration of the exporting country to undertake an examination on its behalf. The SAFE Framework also provides for the

mutual recognition of controls under certain circumstances. The application of this instrument will enable Customs administrations to adopt a broader and more comprehensive view of the global supply chain and create the opportunity to eliminate duplication and multiple reporting requirements.

As stated above, the SAFE Framework will enable Customs administrations to cope with the challenges of the new international trading environment by putting the building blocks in place to undertake Customs reform and modernization. The SAFE Framework has also been structured in a flexible manner to enable Customs administrations to move at different speeds. This will enable Customs administrations to implement it in line with their own unique levels of development, conditions and requirements.

2.3. Business

The SAFE Framework creates, amongst other things, the conditions for securing international trade, but also facilitates and promotes international trade. This encourages and makes it easier for buyers and sellers to move goods between countries. The SAFE Framework takes account of, and is based on, modern international production and distribution models.

Authorized Economic Operators (AEOs)¹ will reap benefits, such as faster processing of goods by Customs, e.g. through reduced examination rates. This, in turn, translates into savings in time and costs. One of the main tenets of the SAFE Framework is to create one set of international standards and this establishes uniformity and predictability. It also reduces multiple and complex reporting requirements.

These processes will ensure that AEOs see a benefit to their investment in good security systems and practices, including reduced risk-targeting assessments and inspections, and expedited processing of their goods.

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¹ Authorized Economic Operator is a party involved in the international movement of goods in whatever function that has been approved by or on behalf of a national Customs administration as complying with WCO or equivalent supply chain security standards. Authorized Economic Operators include inter alia manufacturers, importers, exporters, brokers, carriers, consolidators, intermediaries, ports, airports, terminal operators, integrated operators, warehouses, distributors.



3. Pillar 1 – Customs-to-Customs : Introduction

Customs administrations must work co-operatively with common and accepted standards to maximize the security and facilitation of the international trade supply chain as cargo and container shipments move along the nodes of the global trading system. The Customs-to-Customs Pillar achieves this objective. It provides an effective mechanism for securing the international trade supply chain against the effects of terrorism and other forms of transnational crime.

Traditionally, Customs administrations inspect cargo once it has arrived at their domestic ports. Today, there must be an ability to inspect and screen a container or cargo before it arrives. In view of their unique authority and expertise, Customs administrations contribute to both securing and facilitating global trade.

The central tenet of this pillar is the use of advance electronic information to identify high-risk containers or cargo. Using automated targeting tools, Customs administrations identify shipments that are high-risk as early as possible in the supply chain, at or before the port of departure.

Provision should be made for the automated exchange of information. Systems should therefore be based on harmonized messages and be interoperable.

To be effective and to ensure that the process does not slow down the movement of trade, Customs administrations should use modern technology to inspect high-risk shipments. This technology includes, but is not limited to, large-scale X-ray and gamma-ray machines and radiation detection devices. Maintaining cargo and container integrity by facilitating the use of modern technology is also a vital component of this pillar.

Drawing from, *inter alia*, the Revised Kyoto Convention², the Integrated Supply Chain Management (ISCM) Guidelines, and national programmes³, Customs administrations joining the SAFE Framework will standardize Pillar 1³.

3.1. Customs-to-Customs Standards

Standard 1 – Integrated Supply Chain Management

The Customs administration should follow integrated Customs control procedures as outlined in the WCO Customs Guidelines on Integrated Supply Chain Management (ISCM Guidelines).

² In many cases the SAFE Framework, and in particular the technical specifications, are taken directly from these sources.

³ The technical specifications for the Pillar 1 of the SAFE Framework are presented in 3.2 of this instrument.

Standard 2 – Cargo Inspection Authority

The Customs administration should have the authority to inspect cargo originating, exiting, transiting (including remaining on board), or being transhipped through a country.

Standard 3 – Modern Technology in Inspection Equipment

Non-intrusive inspection equipment and radiation detection equipment should be available and used for conducting inspections, where available and in accordance with risk assessment. This equipment is necessary to inspect high-risk containers or cargo quickly, without disrupting the flow of legitimate trade.

Standard 4 – Risk-Management Systems

The Customs administration should establish a risk-management system to identify potentially high-risk shipments and automate that system. The system should include a mechanism for validating threat assessments and targeting decisions and identifying best practices.

Standard 5 – High-risk Cargo or Container

High-risk cargo and container shipments are those for which there is inadequate information to deem shipments as low-risk, that tactical intelligence indicates as high-risk, or that a risk-scoring assessment methodology based on security-related data elements identifies the shipment as high-risk.

Standard 6 – Advance Electronic Information

The Customs administration should require advance electronic information on cargo and container shipments in time for adequate risk assessment to take place.

Standard 7 – Targeting and Communication

Customs administrations should provide for joint targeting and screening, the use of standardized sets of targeting criteria, and compatible communication and/or information exchange mechanisms; these elements will assist in the future development of a system of mutual recognition of controls.

Standard 8 – Performance Measures

The Customs administration should maintain statistical reports that contain performance measures including, but not limited to, the number of shipments reviewed, the subset of high-risk shipments, examinations of high-risk shipments conducted, examinations of high-risk shipments by Non-intrusive inspection technology, examinations of high-risk shipments by Non-intrusive inspection and physical means, examinations of high-risk shipments by physical means only, Customs clearance times and positive and negative results. Those reports should be consolidated by the WCO.

**Standard 9 – Security Assessments**

The Customs administration should work with other competent authorities to conduct security assessments involving the movement of goods in the international supply chain and to commit to resolving identified gaps expeditiously.

Standard 10 – Employee Integrity

The Customs administration and other competent authorities should be encouraged to require programmes to prevent lapses in employee integrity and to identify and combat breaches in integrity.

Standard 11 – Outbound Security Inspections

The Customs administration should conduct outbound security inspection of high-risk containers and cargo at the reasonable request of the importing country.

3.2 Technical Specifications for Standards Implementation**1. Standard 1 – Integrated Supply Chain Management**

The Customs administration should follow integrated Customs control procedures as outlined in the World Customs Organization's (WCO) Customs Guidelines on Integrated Supply Chain Management (ISCM Guidelines).

1.1. Scope

The implementation of the integrated Customs control procedures requires appropriate legal authority that will allow Customs administrations to request the advance electronic submission to Customs of data from the exporter (see 1.3.1) and by the carrier (see 1.3.2) for security risk-assessment purposes. In addition, the integrated Customs control procedures involve cross-border co-operation between Customs administrations on risk assessment and Customs controls, to enhance the overall security and the release process, that require a legal basis. Both of these requirements are supported by WCO-developed instruments: Guidelines for the Development of National Laws for the Collection and Transmission of Customs Information; the Model Bilateral Agreement; and the International Convention on Mutual Administrative Assistance in Customs Matters (Johannesburg Convention). As part of this co-operation, Customs administrations should agree on mutual recognition of control/inspection results and authorized economic operator programmes.

1.2. General control measures

1.2.1. Customs control

The Revised Kyoto Convention provides in the General Annex (Standard 6.1) that all goods, including means of transport, which enter or leave the Customs territory, shall be subject to Customs control. For the purpose of Standard 1, the integrity of the consignment has to be ensured from the time the goods are loaded into the container, or if not containerized, onto the means of transport until they have been released from Customs control at destination.

1.2.2. Risk assessment

In the integrated Customs control chain, Customs control and risk assessment for security purposes is an ongoing and shared process commencing at the time when goods are being prepared for export by the exporter and, through ongoing verification of consignment integrity, avoiding unnecessary duplication of controls. To enable such mutual recognition of controls, Customs should agree on consistent control and risk management standards, the sharing of intelligence and risk profiles as well as the exchange of Customs data, taking into account the work which has been carried out within the context of the WCO Global Information and Intelligence Strategy. Such agreements should foresee the possibility of joint monitoring or quality control procedures to oversee the adherence to the standards.

1.2.3. Controls at departure

The Customs office of departure must take all necessary action to enable the identification of the consignment and the detection of any unauthorized interference along the supply chain. In respect of maritime containerized consignments, any such screening, risk assessment and action should be taken prior to loading the container onto the ship. The ISPS Code (b1630-37) outlines in broad terms the measures which should be taken by the port facility. In addition, the Customs administrations along the supply chain should agree to use an electronic messaging system to exchange Customs data, control results and arrival notifications, in particular for high-risk consignments. If necessary, Customs administrations should modify their enabling statutory authority, so that they can fully screen high-risk cargo.

1.2.4. Sealing

In the interest of supply chain security and the integrated Customs control chain, in particular to ensure a fully secure movement from stuffing of the container to release from Customs control at destination, Customs should apply a seal integrity programme as detailed in the revised Guidelines to Chapter 6 of the General Annex to the Revised Kyoto Convention (see 3.3.). Such seal integrity programmes, based on the use of a high-security mechanical seal as prescribed in ISO 17712 at the point of stuffing, include procedures for recording the affixing, changing and verification of seal integrity at key points, such as modal change.

Additionally, Customs should facilitate the voluntary use of technologies to assist in ensuring the integrity of the container along the supply chain.

1.2.5. Unique Consignment Reference (UCR)



Customs administrations should apply the WCO Recommendation on the UCR and its accompanying Guidelines.

1.3. Submission of data

1.3.1. Export Goods declaration

The exporter or his or her agent has to submit an advance electronic export Goods declaration to the Customs at export prior to the goods being loaded onto the means of transport or into the container being used for their exportation. For security purposes the Customs should not require the advance export Goods declaration to contain more than the details listed below.

The exporters have to confirm to the carrier in writing, preferably electronically, that they have submitted an advance export Goods declaration to Customs. Where the export Goods declaration was an incomplete or simplified declaration, it may have to be followed up by a supplementary declaration for other purposes such as the collection of trade statistics at a later stage as stipulated by national law.

No.	WCO ID	Name	Description
1	042	Exporter, coded	To identify the name and address of party who makes, or on whose behalf the export declaration is made, and who is the owner of the goods or has similar right of disposal over them at the time when the declaration is accepted.
	041	Exporter, if no code	Name [and address] of the party who makes - or on whose behalf - the export declaration - is made - and who is the owner of the goods or has similar right of disposal over them at the time when the declaration is accepted.
2	072	Consignor, coded, if different from exporter	To identify the party consigning goods as stipulated in the transport contract by the party ordering transport.
	071	Consignor, if no code	Name [and address] of the party consigning goods as stipulated in the transport contract by the party ordering transport.
3	050	Carrier identification	To identify a party providing the transport of goods between named points.
	049	Carrier name, if no ID	Name [and address] of party providing the transport of goods between named points.

No.	WCO ID	Name	Description
4 or	040	Importer, coded	Identifier of party who makes - or on whose behalf a Customs clearing agent or other authorized person makes - an import declaration. This may include a person who has possession of the goods or to whom the goods are consigned.
	039	Importer, if no code	Name [and address] of party who makes - or on whose behalf a Customs clearing agent or other authorized person makes - an import declaration. This may include a person who has possession of the goods or to whom the goods are consigned.
5	052	Consignee, coded, if different from importer	Identifier of party to which goods are consigned.
	051	Consignee, if no code	Name [and address] of party to which goods are consigned.
6	058	Notify party, coded	Identification of a party to be notified.
	057	Notify party, if no code	Name [and address] of party to be notified.
7	034	Delivery destination, if different from importer's or consignee's address	The address to which goods are to be delivered. Address, region and/or country as required by national legislation or according to national requirements.
8	064	Country(ies) of routing, coded, to the extent known	Identification of a country through which goods or passengers are routed between the country of original departure and final destination.
9	061	Agent, coded, if applicable	Identification of a party authorized to act on behalf of another party.
	060	Agent, if no code	Name [and address] of a party authorized to act on behalf of another party.
10	145	Tariff code number (Customs)	Code specifying a type of goods for Customs, transport, statistical or other regulatory purposes (generic term).
	137	Description of goods, if no code	Plain language description of the nature of a goods item sufficient to identify it for Customs, statistical or transport purposes.
11	143	UNDG Number (Dangerous Goods Code), if applicable	United Nations Dangerous Goods Identifier (UNDG) is the unique serial number assigned within the United Nations to substances and articles contained in a list of the dangerous goods most commonly carried.
12	141	Type of packages identification	Code specifying the type of package of an item.
	144	Number of packages	Number of individual items packaged in such a way that they cannot be divided without first undoing the packing.
13	131 136	Total gross weight	Weight (mass) of goods including packaging but excluding the carrier's equipment for a declaration.



No.	WCO ID	Name	Description
		(incl. Measure unit qualifier)	
14	159	Equipment identification number, if containerized and available	Marks (letters and/or numbers) which identify equipment, e.g. container or unit load device.
	152	Equipment size and type identification	Code specifying the characteristics, i.e. size and type of a piece of transport equipment.
15	165	Seal number, if applicable and available	The identification number of a seal affixed to a piece of transport equipment.
16	109 135	Total invoice amount (incl. currency, coded)	Total of all invoice amounts declared in a single declaration.
17	016	Unique consignment reference number	Unique number assigned to goods, both for import and export.

1.3.2. Cargo declaration

The carrier or his/her agent has to submit an advance electronic cargo declaration to the Customs at export and/or at import. For maritime containerized shipments, the advance electronic cargo declaration should be lodged prior to the goods/container being loaded onto the vessel. For all other modes and shipments, it should be lodged prior to arrival of the means of transport at the Customs office at export and/or import. For security purposes, Customs should not require more than the details listed below.

The advance cargo declaration may have to be followed by a supplementary cargo declaration as stipulated by national law.

No.	WCO ID	Name	Description
1	070	Place of loading, coded	To identify a seaport, airport, freight terminal, rail station or other place at which goods are loaded onto the means of transport being used for their carriage.
	069	Place of loading, if no code	Name of a seaport, airport, freight terminal, rail station or other place at which goods are loaded onto the means of transport being used for their carriage
2	050	Carrier identification	To identify a party providing the transport of goods between named points.

No.	WCO ID	Name	Description
	049	Carrier name, if no ID	Name [and address] of party providing the transport of goods between named points.
3	159	Equipment identification number, if containerized	Marks (letters and/or numbers) which identify equipment, e.g. container or unit load device.
	152	Equipment size and type identification, if containerized	Code specifying the characteristics, i.e. size and type of a piece of transport equipment.
4	165	Seal number, if applicable	The identification number of a seal affixed to a piece of transport equipment.
5	160	Identification of means of transport crossing the border of the Customs territory	Name to identify the means of transport used in crossing the border.
	175	Nationality of means of transport crossing the border of Customs territory, coded	Nationality of the active means of transport used in crossing the border, coded.
6	149	Conveyance reference number	To identify a journey of a means of transport, e.g. voyage number, flight number, trip number.
7	098	Transport charges method of payment, coded	Code specifying the payment method for transport charges.
8	047	Customs office of exit, coded	To identify the Customs office at which the goods leave or are intended to leave the Customs territory of despatch.
9	085	First port of arrival, coded	To identify the first arrival location. This would be a port for sea, airport for air and border post for land crossing.
10	064	Country(ies) of routing, coded, to the extent known pre-loading	Identification of a country through which goods or passengers are routed between the country of original departure and final destination.
11	172	Date and time of arrival at first port of arrival in Customs territory, coded	Date and time / scheduled date and time of arrival of means of transport at (for air) first airport, (land) arrival at first border post and (sea) arrival at first port, coded.
12	138	Brief cargo description	Plain language description of the cargo of a means of transport, in general terms only.
13	016	Unique consignment reference number	Unique number assigned to goods, both for import and export.



1.3.3. Import Goods declaration

The importer or his/her agent has to submit an advance electronic import Goods declaration to the Customs at import prior to arrival of the means of transport at the first Customs office. For security purposes, Customs should not require more than the details listed in 1.3.1. Where the import Goods declaration was an incomplete or simplified declaration, it may have to be followed up by a supplementary declaration for other purposes such as duty calculation or the collection of trade statistics at a later stage as stipulated by national law. The Authorized Supply Chain (see 1.4.2) provides the possibility to integrate the export and import information flows into one single declaration for export and import purposes, which is being shared between the Customs administrations concerned.

1.3.4. Exchange of information for high-risk consignments

As part of the integrated Customs control chain, Customs administrations along the supply chain must consider Customs-to-Customs data exchange, in particular for high-risk consignments, to support risk assessment and facilitate release. Such an electronic messaging system could include the exchange of notifications about the export transaction, including the control results, as well as a corresponding arrival notification.

National legislation must contain provisions to allow Customs to transmit information they collect for their purposes to other Customs administrations. If not, such provisions must be developed and enabled. The Guidelines for the Development of National Laws for the Collection and Transmission of Customs Information may be used as a basis to develop these provisions. In addition, existing WCO tools such as the Johannesburg Convention and the Model Bilateral Agreement may serve as a basis to exchange information on high-risk goods.

1.3.5. "No load", "No unload" notification

Customs should establish a system whereby notifications will be issued only for those consignments which cannot be loaded or unloaded. Such notifications should be issued within a specified time following the submission of data required for risk assessment.

1.3.6. Time limit

The exact time at which the Goods and Cargo declarations have to be lodged with the Customs administration at either export or import should be defined by national law after careful analysis of the geographical situation and the business processes applicable for the different modes of transport, and after consultation with the business sector and other Customs administrations concerned. Customs should provide equal access to simplified arrangements to Authorized Economic Operators regardless of the mode of transport. However, in order to ensure a minimum level of consistency and without prejudice to specific situations, Customs should not require the advance declarations to be submitted more than :

Maritime

- Containerized cargo : 24 hours before loading at port of departure.
- Bulk/Break bulk : 24 hours before arrival at first port in the country of destination.

Air

- Short haul : At time of "Wheels Up" of aircraft.
- Long haul : 4 hours prior to arrival at the first port in the country of destination.

Rail

- 2 hours prior to arrival at the first port in country of destination.

Road

- 1 hour prior to arrival at the first port in country of destination.

1.3.7. WCO Data Model

Customs administrations should ensure that their respective IT systems are interoperable and are based on open standards. To this end, Customs should use the WCO Customs Data Model, which defines a maximum set of data for the accomplishment of export and import formalities. The Data Model also defines the electronic message formats for relevant Cargo and Goods declarations. The WCO Data Model includes all the data elements listed in paragraphs 1.3.1, 1.3.2 and 1.3.3 above that may be required by way of advance information for security purposes.

1.3.8. Single Window



Governments should develop co-operative arrangements between Customs and other Government agencies involved in international trade in order to facilitate the seamless transfer of international trade data (Single Window concept) and to exchange risk intelligence at both national and international levels. This would allow the trader to electronically submit the required information once to a single designated authority, preferably Customs. In this context, Customs should seek close integration with commercial processes and information flows in the global supply chain, for example by making use of commercial documentation such as the invoice and the purchase order as the export and import declarations.

1.3.9. Integrated Border Management

Similarly, governments should develop co-operative arrangements among their government agencies that are involved in international trade. Governments should also work with the border agencies of neighbouring foreign governments in order to maximize the harmonization of border control functions. The implementation of such co-operative arrangements could address border issues such as national and international co-operation and co-ordination and the adoption of international standards. Integrated border management should lead to the facilitation of trade through a secure supply chain. In order to assist Customs administrations, the WCO has developed a guide to Integrated Border Management (see Volume 9 of the WCO's Customs Compendium Collection 11/2006).

1.4. Authorized Supply Chain

1.4.1. Authorized Economic Operators

Authorized Economic Operators who meet criteria specified by the Customs (see 4.2.) should be entitled to participate in simplified and rapid release procedures on the provision of minimum information. The criteria include having an appropriate record of compliance with Customs requirements, a demonstrated commitment to supply chain security by being a participant in a Customs-Business partnership programme, and a satisfactory system for managing their commercial records. Customs administrations should agree on mutual recognition of Authorized Economic Operator status.

1.4.2. Authorized Supply Chain

The Authorized Supply Chain is a concept under which all participants in an international trade transaction are approved by Customs as observing specified standards in the secure handling of goods and relevant information. Consignments passing from origin to destination entirely within such a chain would benefit from an integrated cross-border simplified procedure, where only one simplified declaration with minimum information would be required for both export and import purposes.

2. Standard 2 – Cargo Inspection Authority

The Customs administration should have the authority to inspect cargo originating, exiting, transiting (including remaining on board), or being transhipped through a country.

3. Standard 3 – Modern Technology in Inspection Equipment

Non-intrusive inspection equipment and radiation detection equipment should be available and used for conducting inspections, where available and in accordance with risk assessment. This equipment is necessary to inspect high-risk containers or cargo quickly, without disrupting the flow of legitimate trade.

Modern technology

To assist its Members, the WCO maintains a Data Bank on Advanced Technology and has produced detailed Guidelines on the purchase and operation of container scanning equipment in a Customs Compendium.

4. Standard 4 – Risk-Management Systems

The Customs administration should establish a risk-management system to identify potentially high-risk containers and automate that system. The system should include a mechanism for validating threat assessments and targeting decisions and identifying best practices.

4.1. Automated selectivity systems

Customs administrations should develop automated systems based on international best practice that use risk management to identify cargo and container shipments that pose a potential risk to security and safety based on advance information and strategic intelligence. For containerized maritime cargo shipments, that ability should be applied uniformly before vessel loading.



4.2. Risk management

Risk management is "the systematic application of management procedures and practices which provide Customs with the necessary information to address movements or consignments which present a risk".

4.3. WCO Global Information and Intelligence Strategy

An effective risk-management regime has as an important component the collection of information, its processing and dissemination in support of Customs controls and operations. This intelligence function, coupled with Standardized Risk Assessments, which produce risk indicators for Customs targeting and screening of goods and conveyances, is contained in the WCO Global Information and Intelligence Strategy.

4.4. References

The WCO Risk-Management Guide, the WCO Global Information and Intelligence Strategy, WCO Standardized Risk Assessment and General High-Risk Indicators are useful references for risk management (and assessment).

5. Standard 5 – High-Risk Cargo or Container

High-risk cargo and container shipments are those for which there is inadequate information to deem shipments as low-risk, that tactical intelligence indicates as high-risk, or that a risk-scoring assessment methodology based on security-related data elements identifies the shipment as high-risk.

Selectivity, profiling and targeting

Customs should use sophisticated methods to identify and target potentially high-risk cargo, including - but not limited to - advance electronic information about cargo shipments to and from a country before they depart or arrive; strategic intelligence; automated trade data; anomaly analysis; and the relative security of a trader's supply chain. For example, the Customs-Business Pillar certification and validation of point-of-origin security reduces the risk, and therefore, the targeting score.

6. Standard 6 – Advance Electronic Information

The Customs administration should require advance electronic information on cargo and container shipments in time for adequate risk assessment to take place.

6.1. Need for computerization

The advance electronic transmission of information to Customs requires the use of computerized Customs systems, including the use of electronic exchange of information at export and at import.

6.2. Revised Kyoto Convention ICT Guidelines

Standards 7.1, 6.9, 3.21 and 3.18 of the General Annex to the Revised Kyoto Convention require Customs to apply Information and Communication Technologies (ICT) for Customs operations, including the use of e-commerce technologies. For this purpose, the WCO has prepared detailed Guidelines for the application of automation for Customs. These Kyoto ICT Guidelines should be referred to for the development of new, or enhancement of existing, Customs ICT systems. In addition, Customs administrations are recommended to refer to the WCO Customs Compendium on Customs Computerization.

6.3. Use of economic operators' systems

The ICT Guidelines also recommend the possibility to use economic operators' commercial systems and to audit them to satisfy Customs' requirements. In particular in the context of the Authorized Supply Chain, the possibility for Customs to have online access to the commercial systems of the parties involved, once any confidentiality or legal issues have been resolved, would provide enhanced access to authentic information and offer the possibility for far-reaching simplified procedures. Another example is Cargo Community Systems (CCS) where in ports or airports all parties involved in the transport chain have established an electronic system by which they exchange all relevant cargo and transport related data. Provided that these systems contain the necessary particulars for Customs purposes, Customs should consider participating in such systems and extracting the data required for their purposes.

6.4. Electronic data-exchange standards

The Kyoto Convention ICT Guidelines recommend to Customs to offer more than one solution for the electronic exchange of information. While EDI using the international standard UN/EDIFACT is still one of the preferred interchange options, Customs should also look at other options such as XML. Depending on the risks involved, even the use of e-mail and telefax could provide a suitable solution.

6.5. WCO Data Model



Economic operators required to submit Cargo and Goods declarations to Customs based on the data sets of the WCO Data Model should use the electronic message specifications of the WCO Data Model.

6.6. ICT Security

The use of ICT in general and electronic exchange of information over open networks in particular requires a detailed ICT security strategy. ICT security therefore has to be seen as an integral part of any Customs supply chain security strategy. To arrive at an effective and efficient IT security strategy, Customs have to undertake risk assessment. The Kyoto ICT Guidelines outline ways in which a comprehensive ICT security strategy can ensure the availability, integrity and confidentiality of the information and of IT systems and the information they handle, including, for example, the avoidance of repudiation at origin or receipt. There are many ways to implement ICT security, for which purpose reference is made to the Kyoto ICT Guidelines.

6.7. Digital signatures

One essential ICT security element for a supply chain security strategy is related to digital signatures. Digital signatures, or Public Key Infrastructure arrangements, can play an important role in securing the electronic exchange of information. The integrated Customs control chain includes the possibility that traders can submit their declarations in advance to both the Customs administration at export and to the Customs administration at import. It would be beneficial if economic operators would also benefit from mutual recognition of digital certificates. This would allow the economic operator to sign all electronic messages to those Customs administrations having accepted to recognize this certificate. This cross-border recognition of digital certificates can help increase security but, at the same time, provide significant facilitation and simplification for the trader. For this purpose, Customs administrations are encouraged to apply the WCO Recommendation concerning the electronic transmission and authentication of Customs and other relevant regulatory information.

6.8. Capacity building

Customs administrations requesting assistance in developing or acquiring the requisite automated systems will have to have the political will to implement the SAFE Framework.

6.9. Data privacy and data protection

The exchange of data either among Customs administrations or with the private sector as requested by Customs should be initiated only after consultation between the government entities concerned about the necessary data privacy and data protection. Data privacy and data protection legislation is enacted in order to protect the individual's right to privacy, trade confidentiality and to allow individuals to have access to their personal data held to verify its accuracy.

In this respect, national legislation must contain provisions that specify that any data collected and or transmitted by Customs must be treated confidentially and securely and be sufficiently protected, and it must grant certain rights to natural or legal persons to whom the information pertains.

Similarly, data protection and confidentiality are addressed in existing WCO tools such as the Johannesburg Convention and the Model Bilateral Agreement.

7. Standard 7 – Targeting and Communication

Customs administrations should provide for joint targeting and screening, the use of standardized sets of targeting criteria, and compatible communication and/or information exchange mechanisms; these elements will assist in the future development of a system of mutual recognition of controls.

7.1. WCO Global Information and Intelligence Strategy

Chapter IV of the WCO Global Information and Intelligence Strategy has provisions for Standardized Risk Assessments. They are an important part of intelligence work and they produce risk-indicator products for Customs officers for the purpose of targeting and screening goods and conveyances.

7.2. WCO Standardized Risk Assessments document

The Standardized Risk Assessment document introduces five risk indicator clusters for Customs administrations. These specific clusters - The mode of transport; Revenue protection; Drugs and precursors; Security; and Other prohibitions and restrictions - set out standardized targeting criteria. The clusters are further divided into several risk indicator chapters which are updated regularly.

7.3. WCO General High-Risk Indicator document

The WCO General High-Risk Indicator document contains indicators which set out standardized sets of targeting criteria for Customs administrations to detect Customs infringements in a general manner. Headings for the document are : Details of the carriers manifest; Identification of high-risk country; Commodity and transportation factors that may indicate high-risk conditions; Known high-risk commodities used for concealment purposes; List of dangerous goods that may be potentially used in a terrorist attack; and Factors which



may reflect high-risk, such as container, importer/exporter and shipper. These sets of indicators are also updated regularly.

7.4. WCO Handbook for Customs Officers on Risk Indicators - Factors for Intellectual Property Infringement

The Handbook contains a list of factors indicating a high risk for piracy and counterfeiting. These 17 risk indicators are intended to be a standardized set of targeting criteria and to be used by front-line Customs officers to help them determine which shipments present a high risk of potential intellectual property rights violations.

7.5. Legal considerations

Joint targeting and screening are activities that can be carried out by Customs administrations to increase their effectiveness in ensuring the security of shipments and in combating transborder organized crime. Rules and conditions for such joint efforts are normally established between Customs administrations. WCO tools such as the Johannesburg Convention and the Model Bilateral Agreement contain provisions that support such international or bilateral co-operation.

8. Standard 8 – Performance Measures

The Customs administration should maintain statistical reports that contain performance measures including, but not limited to, the number of shipments reviewed, the subset of high-risk shipments, examinations of high-risk shipments conducted, examinations of high-risk shipments by Non-intrusive inspection technology, examinations of high-risk shipments by Non-intrusive inspection and physical means, examinations of high-risk shipments by physical means only, Customs clearance times and positive and negative results. Those reports should be consolidated by the WCO.

Collection of data

Customs administrations will collect and apply data to performance measures to evaluate the impact and effectiveness of their adherence to the SAFE Framework. For this purpose, the WCO Time Release Study (TRS) is an appropriate instrument.

9. Standard 9 – Security Assessments

The Customs administration should work with other competent authorities to conduct security assessments involving the movement of goods in the international supply chain and to commit to resolving identified gaps expeditiously.

10. Standard 10 – Employee Integrity

The Customs administration and other competent authorities should be encouraged to require programmes to prevent lapses in employee integrity and to identify and combat breaches in integrity.

10.1.1. WCO Revised Arusha Declaration

The WCO Revised Arusha Declaration is the pre-eminent source of guidance for Customs administrations to install anti-corruption systems.

10.1.2. Training

Security and facilitation along the global supply chain require highly trained and motivated staff in the Customs administration, as well as in all other parties involved in the supply chain. Customs have to ensure that all levels of staff are regularly provided with the necessary training to build up and maintain the skills required to perform effective and efficient Customs controls and to operate in an electronic environment.

11. Standard 11 – Outbound Security Inspections

The Customs administration should conduct outbound security inspection of high-risk containers and cargo at the reasonable request of the importing country.

11.1. Examination on request

When a Customs administration, in applying risk assessment, has reason to believe that a container or cargo destined to any of its ports of entry may represent high risk, it can request the Customs administration of the outbound country to conduct an examination of the container or cargo, preferably prior to loading (see 4.1).



11.2. Legal considerations

Among other administrative arrangements, WCO tools such as the Johannesburg Convention and the Model Bilateral Agreement make it possible for a Customs administration to request another Customs administration to carry out such an activity.

3.3 Seal Integrity for Secure Containers

Importance of specifying security relationships

Greater clarity and consensus about the relationships among the parties in the movement of secure containerized goods, coupled with consistent application and enforcement of those relationships, will provide multiple benefits to all of those parties. These benefits include :

- Improved security against acts of terrorism that exploit the global trade in goods.
- Reduced risk of economic hardship caused by disruptions to or closures of trade in response to terrorist acts.
- Improved security against theft and diversion of cargo, with consequent reductions in direct losses and indirect costs, such as insurance.
- Improved security against illegal transport of materials such as narcotics and weapons, and of persons.
- Improved security against the illegal movement of "black market" and "grey market" trade goods.
- Reduced risk of evasion of duties and taxes.
- Increased confidence in international trading systems by current and potential shippers of goods.
- Facilitation dividends, such as a reduced number of examinations (reduced border times) and access to simplified procedures.

Responsibilities along the chain of custody

A. Cross-cutting responsibilities

There are responsibilities and principles that apply throughout the life cycle of a containerized shipment of goods. The emphasis is on the relationships among parties upon changes in the custody or possession of the container. That emphasis does not reduce and should not obscure the fundamental responsibility of the shipper for the safe and secure stuffing and sealing of the container. Each party in possession of the container has security responsibilities while cargo is entrusted to them, whether at rest at a node or while moving between nodes. Each party with data that needs to be filed with the government for Customs and security screening purposes has responsibilities. Those responsibilities include :

- Protecting the physical goods from tampering, theft, and damage.
- Providing appropriate information to government authorities in a timely and accurate manner for security screening purposes.

- Protecting the information related to the goods from tampering and unauthorized access. This responsibility applies equally to times before, during and after having custody of the goods.

Security seals are an integral part of the chain of custody. The proper grade and application of the security seal is addressed below. Security seals should be inspected by the receiving party at each change of custody for a cargo-laden container. Inspecting a seal requires visual check for signs of tampering, comparison of the seal's identification number with the cargo documentation, and noting the inspection in the appropriate documentation. If the seal is missing, or shows signs of tampering, or shows a different identification number than the cargo documentation, then a number of actions are necessary :

The receiving party must bring the discrepancy to the attention of the party tendering the container and the shipper. The receiving party must note the discrepancy on the cargo documentation. The receiving party should notify Customs or law enforcement agencies, in accordance with national legislation. Where no such notification requirements exist, the receiving party shall refuse custody of the container pending communication with the party tendering the container and until such discrepancies can be resolved. Once discrepancies have been resolved, the receiving party shall affix a security seal to the container and note the particulars, including the new seal number, on all pertinent cargo documentation.

Security seals may be changed on a container for legitimate reasons. Examples include inspections by an exporting Customs administration to verify compliance with export regulations; by a carrier to ensure safe blocking and bracing of the lading; by an importing Customs administration to confirm cargo declarations; and by law enforcement officials concerned with other regulatory or criminal issues.

If public or private officials should remove a security seal to inspect the lading, they will install a replacement in a manner that meets the requirements specified below, and note the particulars of the action, including the new seal number, on the cargo documentation.

B. Stuffing site

The shipper/consignor is responsible for securely stuffing the container and for the accurate and complete description of the cargo. The shipper is also responsible for affixing the cargo security seal immediately upon the conclusion of the stuffing process, and for preparing documentation for the shipment, including the seal number.

The cargo security seal should be compliant with the definition of high-security mechanical seals in ISO 17712. The seal should be applied to the container in a manner that avoids the vulnerability of the traditional container door handle seal location to surreptitious tampering. Among the acceptable ways to do this are alternative seal locations that prevent swivelling of an outer door locking cam or the use of equivalent tamper evident measures, such as cable seals across the door locking bars.

The land transport operator picks up the load. The transport operator receives the documentation, inspects the seal and notes the condition on the documentation, and departs with the load.



C. Intermediate terminal

If the container movement is via an intermediate terminal, then the land transport operator transfers custody of the container to the terminal operator. The terminal operator receives the documentation, inspects the seal and notes the condition on the documentation.

Normally, the terminal operator sends an electronic notification of receipt (status report) to other private parties to the shipment. The terminal operator prepares or stages the container for its next movement, which could be by road, rail or barge. Similar verification and documentation processes take place upon pickup or departure of the container from the intermediate terminal. It is rare that public sector agencies are involved in or informed about intermodal transfers at intermediate terminals.

D. Loading ocean terminal

Upon arrival at the loading ocean terminal, the land transport operator transfers custody of the container to the terminal operator. The terminal operator receives the documentation and normally sends an electronic notification of receipt (status report) to other private parties to the shipment. The terminal operator prepares or stages the container for loading upon the ocean vessel.

The carrier or the ocean terminal as agent for the carrier inspects the condition of the seal, and notes it accordingly; this may be done at the ocean terminal gate or after entry to the terminal but before the container is loaded on the ship. Public agencies in the exporting nation review export documentation and undertake necessary export control and provide safety certifications. The Customs administrations that require advance information receive that information, review it, and either approve the container for loading (explicitly or tacitly) or issue "do not load" messages for containers that cannot be loaded pending further screening, including possible inspection.

For those countries that have export declaration and screening requirements, the carrier should require from the shipper documentation that the shipper has complied with the relevant requirements before loading the cargo for export. (The shipper/consignor is, however, responsible for compliance with all prevailing documentation and other pertinent export requirements.) Where applicable, the ocean carrier must file its manifest information to those importing Customs agencies that require such information. Shipments for which "do-not-load" messages have been issued should not be loaded onboard the vessel pending further screening.

E. Transshipment terminal

The transshipment terminal operator shall inspect the security seal between the off-loading and re-loading of the container. This requirement may be waived for transshipment terminals which have security plans that conform to the International Ship and Port Facility Security Code (ISPS Code produced by the International Maritime Organization).

F. Off-loading ocean terminal

The receiver/consignee usually arranges for a Customs broker to facilitate clearance of the shipment in the off-loading ocean terminal. Generally, this requires that the cargo owner provide documentation to the broker in advance of arrival.

The ocean carrier provides advance electronic cargo manifest information to the terminal operator and to the importing Customs administration as required. Customs may select containers for different levels of inspection immediately upon off-loading or later. Customs may inspect the condition of the seal and related documentation in addition to the cargo itself. If the container is to travel under Customs control to another location for clearance, then Customs at the off-loading terminal must affix a Customs seal to the container and note the documentation accordingly.

The receiver/consignee or Customs broker pays any duties and taxes due to Customs and arranges the Customs release of the shipment. Upon pickup for departure from the ocean terminal, the land transport operator inspects and notes the condition of the seal, and receives documentation from the terminal operator.

G. Intermediate terminal

The processes in intermediate terminals in the importing country are analogous to those in intermediate terminals in exporting countries.

H. Unloading site

Upon receipt of the container, the consignee or deconsolidator inspects the seal and notes any discrepancy on the documentation. The consignee unloads the container and verifies the count and condition of the lading against the documentation. If there is a shortage, damage, or an overage discrepancy, it is noted for claims or insurance purposes, and the shipment and its documentation are subject to audit and review. If there is an anomaly related to narcotics, contraband, stowaways or suspicious materials, the consignee Customs or another law enforcement agency must be informed.



4. Pillar 2 – Customs-to-Business : Introduction

Each Customs administration will establish a partnership with the private sector in order to involve it in ensuring the safety and security of the international trade supply chain. The main focus of this pillar is the creation of an international system for identifying private businesses that offer a high degree of security guarantees in respect of their role in the supply chain. These business partners should receive tangible benefits in such partnerships in the form of expedited processing and other measures.

The following statement from the "High Level Guidelines for Co-operative Arrangements between WCO Members and Private Industry to Increase Supply Chain Security and Facilitate the Flow of International Trade" sums up the critical relationship between Customs and Business in adding another layer to the protection of international trade :

"To the extent that Customs can rely on its partners in the trade community to evaluate and address threats to their own supply chain, the risk confronting Customs is reduced. Therefore, companies that demonstrate a verifiable willingness to enhance supply chain security will benefit. Minimizing risk in this way helps Customs in performing their security functions, and in facilitating legitimate trade."

Such programmes push assessments on the security of cargo and containers further back into the supply chain by involving the private sector and by requiring increased security at the point of origin, e.g. the point of stuffing a container at a foreign manufacturer's loading docks, and as the container is moved from point to point through the supply chain.

This SAFE Framework sets forth the criteria by which businesses in the supply chain can obtain authorized status as a security partner. Such criteria address issues such as threat assessment, a security plan adapted to the assessed threats, a communication plan, procedural measures to prevent irregular or undocumented goods entering the international supply chain, physical security of buildings and premises used as loading or warehousing sites, security of containers and cargo, means of transport, personnel vetting, and protection of information systems.

The priorities of validating or authorizing participants can be determined by a number of factors, including import volume, security-related anomalies, the strategic threat posed by certain geographic regions, or other risk-related information. Deciding which factors to emphasize will inevitably change based on evolving circumstances.

General agreement on the minimum benefits that Business partners can reap from the authorized operator status is also crucial. Benefits include quicker movement of low-risk cargo through Customs, improved security levels, optimized supply chain cost through security efficiencies, enhanced reputation for the organization, increased business opportunities, improved understanding of Customs requirements, and better communication between the AEO and the Customs administration.

Many businesses that function along the nodes of the international supply chain already must meet existing international security requirements and/or have internal security programmes in place that address concerns of Customs administrations. The systems within the Customs-to-Business Pillar of the SAFE Framework must be based on the quality accreditation of Customs routines that use information technology to facilitate the procedures commonly associated with cross-border trade and that offer special benefits to those importers, exporters, brokers, forwarders, carriers and other service providers that qualify.

Drawing from the a number of innovative national AEO programmes, Customs administrations and international trade businesses joining the SAFE Framework will standardize Pillar 2⁴.

4.1. Customs-To-Business Standards

Standard 1 – Partnership

Authorized Economic Operators involved in the international trade supply chain will engage in a self-assessment process measured against pre-determined security standards and best practices to ensure that their internal policies and procedures provide adequate safeguards against the compromise of their shipments and containers until they are released from Customs control at destination.

Standard 2 – Security

Authorized Economic Operators will incorporate pre-determined security best practices into their existing business practices.

Standard 3 – Authorization

The Customs administration, together with representatives from the trade community, will design validation processes or quality accreditation procedures that offer incentives to businesses through their status as Authorized Economic Operators.

Standard 4 – Technology

All parties will maintain cargo and container integrity by facilitating the use of modern technology.

Standard 5 – Communication

The Customs administration will regularly update Customs-Business partnership programmes to promote minimum security standards and supply chain security best practices.

Standard 6 – Facilitation

⁴ The technical specifications for the Pillar 1 of the SAFE Framework are presented in 4.2 of this instrument.



The Customs administration will work co-operatively with Authorized Economic Operators to maximize security and facilitation of the international trade supply chain originating in or moving through its Customs territory.

4.2. Technical Specifications for Standards Implementation

World Customs Organization Members and the private trade sectors recognize the dual importance of securing the supply chain while facilitating the flow of goods across borders. They also recognize that in working to effect improvements on one side of the equation, they derive benefits on the other as well. In this respect, attention is called to the "*SAFE Framework for Sector-Specific Co-operative Arrangements to Increase Supply Chain Security and Facilitate Trade*", which could serve as a useful blueprint for such a system during the initial implementation phase of the SAFE Framework. The cornerstone of successful Customs-to-Business Partnerships relies on several critical factors, accompanied by a mutual respect for each other's roles and responsibilities in this regard. While by no means exhaustive, the following overarching themes should guide the Customs-to-Business joint efforts : Partnership, Security, Authorization, Technology, Communication and Facilitation.

Standard 1 – Partnership

Authorized Economic Operators involved in the international trade supply chain will engage in a self-assessment process measured against pre-determined security standards and best practices to ensure that their internal policies and procedures provide adequate safeguards against the compromise of their shipments and containers until they are released from Customs control at destination.

A Customs-to-Business partnership programme should allow for the flexibility and customization of security plans based on the AEO's business model.

The Customs administration and AEO should jointly determine and document the appropriate partnership security measures that will be implemented and maintained by the AEO.

The jointly produced Customs-to-Business partnership document should have written and verifiable processes to ensure, as far as possible, and in accordance with the AEO's business model, that the AEO's business partners, including manufacturers, product suppliers and vendors declare their intention to comply with the security standards set forth in the SAFE Framework.

Periodic reviews of the AEO's processes and security measures should be conducted (based on risk) and should be consistent with the security procedures set forth in the respective business security-related agreement.

Standard 2 – Security

Authorized Economic Operators will incorporate pre-determined security best practices into their existing business practices.

The Authorized Economic Operator will implement security measures that assure the security of buildings as well as those that monitor and control exterior and interior perimeters and access controls that prohibit unauthorized access to facilities, conveyances, loading docks and cargo areas.

Access control of facilities in the secure supply chain should incorporate managerial control over the issuance and adequate control of identification badges (employee, visitor, vendor, etc.) and other access devices, including keys, access cards, and other devices that allow for unfettered access to company property and assets.

Access control to facilities in the secure supply chain should incorporate prompt and thorough removal of a terminated employee's company-issued identification and access to premises and information systems.

Trade-sensitive data should be protected through use of necessary automated back-up capabilities, such as individually assigned password accounts that require periodic recertification, appropriate information system security training, and protection against unauthorized access to and misuse of information.

Personnel security programmes should incorporate screening of employees and prospective employees, as appropriate and as allowed for by national legislation. These programmes should include periodic background checks on employees working in security-sensitive positions, noting unusual changes in an employee's apparent social and economic situation.

In accordance with the AEO's business model, security programmes and measures should be in place to promote the integrity of a business partner's processes that are related to the transportation, handling and storage of cargo in the secure supply chain.

Procedures should be employed to ensure that all information used for cargo processing, both electronic and manual, is legible, timely, accurate, and protected against alteration, loss or introduction of erroneous data. The AEO and Customs will ensure the confidentiality of commercial and security-sensitive information. Information provided should be used solely for the purposes for which it was provided.

An AEO shipping or receiving cargo should reconcile it with the appropriate shipping documentation. The AEO shall ensure that cargo information received from business partners is reported accurately and in a timely manner. Persons delivering or receiving cargo must be identified before cargo is received or released.

The AEO should conduct specific training to assist employees in maintaining cargo integrity, recognizing potential internal threats to security and protecting access controls. The AEO should make employees aware of the procedures the company has in place to identify and report suspicious incidents.

Standard 3 – Authorization

The Customs administration, together with representatives from the trade community, will design validation processes or quality accreditation procedures that offer incentives to businesses through their status as Authorized Economic Operators. These processes will ensure that they see a benefit to their investment in good



security systems and practices, including reduced risk-targeting assessments and inspections, and expedited processing of their goods.

The Customs administration should co-operate (by various means) with business partners to determine joint benefits to be derived by collective participation in the secure supply chain.

The Customs administration should be receptive to the concerns of the AEO and its authorized representatives and determine, in consultation with them, a formalized method of communication that ensures that issues are properly received, addressed and resolved.

The Customs administration should document the tangible benefits that the administration expects to provide (within its jurisdiction) to fully engaged business partners in the secure supply chain. These benefits should be measured and reported, and should keep pace with obligations as Customs phase in national programmes.

Customs administrations should agree on mutual recognition of AEO status.

The Customs administration should, where appropriate, seek or amend provisions and implement procedures to expedite the processing for consumption or export of shipments that are determined to be in a low-risk category for security concerns.

The Customs administration will derive benefits through the enhanced security of goods in the international supply chain, where improved intelligence processes, risk-assessment capabilities and better targeting of high-risk consignments will lead to optimized use of resources.

The Customs administration, as well as AEOs, will derive benefits from the use of self-assessment and verification.

Standard 4 – Technology

All parties will maintain cargo and container integrity by facilitating the use of modern technology.

AEOs should conform, at a minimum, to the current requirements as set forth in various international agreements, including, but not limited to, the 1972 Customs Container Convention and the Customs Convention on International Transport of Goods under Cover of TIR Carnets (TIR Convention, 1975).

Customs administrations should encourage and facilitate, through appropriate incremental incentives, the voluntary use by AEOs of more advanced technologies beyond mechanical sealing for establishing and monitoring container and cargo integrity, as well as reporting unauthorized interference with container and cargo.

AEOs should have documented procedures that set forth their internal policy regarding the affixing and processing of cargo and containers that employ high-security seals and/or other devices that are designed to prevent tampering with cargo.

The Customs administration should have documented procedures that set forth its seal verification regime, as well as its operational procedures for addressing discrepancies.

The Customs administration and the AEO should maintain an open dialogue on areas of common concern to collectively benefit from advancements in industry standards and container integrity technologies, as well as mutual operational readiness as related to identified instances of security seal breach.

Standard 5 – Communication

The Customs administration will regularly update Customs-Business partnership programmes to promote minimum security standards and supply chain security best practices.

Customs should establish, in consultation with an AEO or its representatives, procedures to be followed in the event of queries or suspected Customs offences, including providing the AEO or its agents with telephone numbers where appropriate Customs officials can be contacted in an emergency.

Customs should engage in regular consultation, at both the national and local level, with all parties involved in the international supply chain to discuss matters of mutual interest including Customs regulations, and procedures and requirements for premises and consignment security.

The AEO should be responsive to Customs co-ordination of the above-described outreach efforts and contribute to a dialogue that provides meaningful insight to ensure that the Programme remains relevant and well-grounded in minimum security standards that benefit both partners.

Standard 6 – Facilitation

The Customs administration will work co-operatively with AEOs to maximize security and facilitation of the international trade supply chain originating in or moving through its Customs territory.

The Customs administration should seek or amend provisions and implement procedures that consolidate and streamline the submission of required information for Customs-related clearance to both facilitate trade and identify high-risk cargo for appropriate action.⁵

The Customs administration should establish mechanisms to allow for business partners to comment on proposed amendments and modifications that significantly affect their role in securing the supply chain.

5. AEO Conditions, Requirements and Benefits

The World Customs Organization has designed standards to secure and to facilitate the ever-growing flow of goods in international commerce. These standards are set forth in the SAFE Framework, which was adopted by the WCO Council at its 2005 Sessions. A vast

⁵ The Revised Kyoto Convention offers a global model through which this can be accomplished.



majority of WCO Member administrations have expressed the intention to begin the process of implementing the SAFE Framework provisions. In recognition of the urgency of launching this new programme without undue delay, the Council adopted the basic SAFE Framework document which provides the broad overarching principles concerning security and facilitation of the global supply chain.

The SAFE Framework incorporates the concept of the Authorized Economic Operator and provides baseline technical guidance for the implementation of AEO programmes at the global level between WCO Members and the international trade community. It is designed to serve as a starting point for national AEO programme implementation and supports the effective application of the standards that are outlined in Pillar II (Customs-to-Business Partnerships) of the SAFE Framework. This guidance will provide for long-term application of meaningful standards that will apply to both Customs and AEOs at the global level. These *core international standards* shall form a "baseline" that must be followed by all parties engaged in this effort.

Customs administrations recognize that the international trade supply chain is not a discrete identifiable entity. Rather, it is a series of *ad hoc* constructs comprised of players representing varied trade industry segments. Some "supply chains" possess a degree of permanence in that the same cast may play recurring roles on a long-term basis on behalf of a regular importer of goods into a given country. In other "supply chains", participants either change frequently or are assembled for the purpose of executing a single import transaction. Regardless of either the regularity or the temporal nature of any particular supply chain, Customs does appreciate that it does not own any portion of the trade supply chain. The global supply chain is "owned" by the multitudes in the private sector who operate as part of any chain. It is for this reason that the support and participation of private sector business interests is fundamental to the success of the SAFE Framework concept.

To achieve the ultimate security and facilitation goals of the SAFE Framework, Customs administrations must adopt a transparent and forthcoming attitude in the area of Customs operations that can be further modernized, adjusted and improved to the benefit of the international trade community. In this sense, Customs should proactively consider ways in which they can, based on their current or projected resources, assist the trade in completing their business in the most effective way possible. The international trade and transport communities have experience and knowledge that can benefit Customs administrations in the management of their facilitation and security responsibilities. The private sector should take advantage of this opportunity to forge new and appropriate alliances with Customs, to assist Customs administrations with their security-related mandates.

In order to garner and keep private sector support, it is necessary that there be a clear statement concerning what is entailed in being an AEO. There must be a common understanding of the conditions and requirements of AEO status, which should be specifically enumerated in detail in national AEO programmes. Even more fundamentally, as a first step, there must be clear presentation of the tangible benefits to be realized by participation in the SAFE Framework programme. An appreciation by the private sector of the benefits which may be provided by WCO Member Customs administrations, as well as the benefits of active participation in efforts to strengthen global supply chain security, is a critical element in the private sector being able to justify the additional costs incurred in the

process of enhancing existing security measures. Clear and tangible benefits will help provide a needed incentive to business.

It is clear that WCO Members will face certain challenges in starting up AEO programmes in their national Customs administrations, but one thing is certain - now is the time to raise the global profile of Customs as a major player in securing the economic and physical well-being of the nations they serve by protecting the flow of trade throughout the global supply chain. To the extent that WCO Members can develop flexible approaches to AEO programme development, they will be better able to manage growth and necessary amendments to nationally developed AEO programmes. This document should serve as the baseline platform to accomplish this.

Finally, it should be acknowledged that a global system of mutual recognition of AEOs will require some time to accomplish and, in this respect, it has been suggested by WCO Members and the Secretariat that the SAFE Framework be implemented in a progressively "phased approach", so too should be the expectations for the future application of mutual recognition of Customs' systems of control for AEO programmes. Customs and business partners stand to gain additional effectiveness in both the security and facilitation of the international supply chain, provided they capture the momentum of the SAFE Framework and take affirmative action to implement its provisions as soon as practicable.

5.1. Definitions

Authorized Economic Operator : defined in the SAFE Framework as, "...a party involved in the international movement of goods in whatever function that has been approved by or on behalf of a national Customs administration as complying with WCO or equivalent supply chain security standards. Authorized Economic Operators include inter alia manufacturers, importers, exporters, brokers, carriers, consolidators, intermediaries, ports, airports, terminal operators, integrated operators, warehouses, distributors".

Shipment or transport conveyance : includes a maritime cargo container, aircraft container, truck trailer or rail car.

Third party validator : any manner of outside (non-Customs) entity that is employed to assist a Customs administration in the accomplishment of security risk assessment reviews and related validation procedures. The authority of a Customs administration to grant AEO status and applicable benefit levels shall not be delegated to a third party validator.

Validation : procedure whereby the supply chain of an AEO, and all relevant processes employed by them to reach that status, are subject to full and transparent review by a Customs administration and/or a Customs-designated third party validator, which may have been specifically deployed by Customs to assist in the actual validation efforts.

Authorization : recognition of AEO status in an AEO programme, based on a structured methodology that includes such processes as review of an applicant's submitted documentation, physical worksite assets and security processes, in order to determine compliance with the core international standards of the SAFE Framework.

Phased approach : step-by-step implementation of the SAFE Framework by an administration in accordance with its capacity and with the objective to achieve mutual recognition of AEO status.



5.2. Conditions and Requirements for Customs and the Authorized Economic Operator

The SAFE Framework recognizes the complexity of international supply chains and endorses the application and implementation of security measures based upon risk analysis. Therefore, the SAFE Framework allows for flexibility and the customization of security plans based on an AEO's business model. Certain Customs-identified best security standards and best practices are discussed below. These are the standards, practices and procedures which members of the trade business community aspiring to AEO status are expected to adopt into routine usage, based on risk assessment and AEO business models. Also presented are the expectations for Customs administrations and business. Both are grouped under titled sub-categories.

Customs administrations should not burden the international trade community with different sets of requirements to secure and facilitate international commerce. There should be one set of international Customs standards developed by the WCO that do not duplicate or contradict other recognized intergovernmental security requirements.

Verifiable compliance with security requirements and standards set by other intergovernmental organizations, such as International Maritime Organization (IMO), UN Economic Commission for Europe (UNECE), and International Civil Aviation Organization (ICAO), may constitute partial or complete compliance with applicable Customs-identified best security standards and best practices set forth below, to the extent the requirements are identical or comparable.

A. Demonstrated Compliance with Customs Requirements

Customs shall take into account the demonstrated compliance history of a prospective AEO when considering the request for AEO status.

This element requires that :

The AEO :

- a. not have committed, over a period determined by the national AEO programme, an infringement/offence as defined in national legislation, which would preclude designation as an AEO;
- b. if established for less than the period mentioned in "a", be judged on the basis of available records and information during the application process;
- c. or its designee have a demonstrated record of compliance within the same time period, mentioned in "a".

B. Satisfactory System for Management of Commercial Records

The AEO shall maintain timely, accurate, complete and verifiable records relating to import and export. Maintenance of verifiable commercial records is an essential element in the security of the international trade supply chain.

This element requires that :

The AEO :

- a. maintain records systems which permit Customs to conduct any required audit of cargo movements relating both to import and export;
- b. give Customs full access to necessary records, subject to the requirements of national legislation;
- c. have internal records access and control systems which are satisfactory to the approving Customs administration;
- d. appropriately maintain and make available to Customs any authorizations, powers of attorney and licences relevant to the importation or exportation of merchandise;
- e. within any limitations provided in national legislation, properly archive records for later production to Customs;
- f. employ adequate information technology security measures which will protect against access by unauthorized persons.

C. Financial Viability

Financial viability of the AEO is an important indicator of an ability to maintain and improve upon measures to secure the supply chain.

This element requires that :

The AEO :

- a. have a good financial standing which is sufficient to fulfill its commitments with due regard to the characteristics of the type of business activity.

D. Consultation, Co-operation and Communication

Customs, other competent authorities and the AEO, at all levels, international, national and local, should consult regularly on matters of mutual interest, including supply chain security and facilitation measures, in a manner which will not jeopardize enforcement activities. The results of this consultation should contribute to Customs development and maintenance of its risk management strategy.

This element requires that :

The AEO :



- a. provide clearly identified and readily accessible local points of contact or a corporate contact that can arrange immediate access to a local contact for all matters identified as being of compliance and enforcement interest to Customs (cargo bookings, cargo tracking, employee information, etc.);
- b. individually or, as appropriate, via an industry association, engage in an open and continuing mutual exchange of information with Customs, exclusive of information that cannot be released due to law enforcement sensitivities, legal basis or other precedent;
- c. through particular mechanisms set forth in the national AEO programme, notify an appropriate Customs official of any unusual or suspicious cargo documentation or abnormal requests for information on shipments;
- d. through particular mechanisms set forth in the national AEO programme, provide timely notification to Customs and any other relevant authorities when employees discover illegal, suspicious or unaccounted for cargo. Such cargo should be secured, as appropriate.

Customs :

- a. establish, in consultation with an AEO or its agents, procedures to be followed in the event of queries or suspected Customs offences;
- b. when appropriate and practical, engage in regular consultation at both the national and local level with all parties involved in the international supply chain to discuss matters of mutual interest, including Customs regulations, procedures and requirements for premises and cargo security;
- c. upon request of the AEO, provide specific feedback on the performance of the AEO in addressing security issues related to the international supply chain;
- d. provide the AEO or its agents with telephone numbers where appropriate Customs officials can be contacted.

E. Education, Training and Awareness

Customs and AEOs shall develop mechanisms for the education and training of personnel regarding security policies, recognition of deviations from those policies and understanding what actions must be taken in response to security lapses.

This element requires that :

The AEO :

- a. make every reasonable effort, as logically based on its business model, to educate its personnel, and where appropriate its trading partners, with regard to the risks associated with movements of goods in the international trade supply chain;

- b. provide educational material, expert guidance and appropriate training on the identification of potentially suspect cargo to all relevant personnel involved in the supply chain, such as, security personnel, cargo-handling and cargo-documentation personnel, as well as employees in the shipping and receiving areas to the extent they are within the AEO's control;
- c. keep adequate records of educational methods, guidance provided and training efforts undertaken to document the delivery of such programmes;
- d. make employees aware of the procedures the AEO has in place to identify and report suspicious incidents;
- e. conduct specific training to assist employees in maintaining cargo integrity, recognizing potential internal threats to security and protecting access controls;
- f. upon request and if practicable, make Customs familiar with relevant internal information and security systems and processes, and assist Customs in appropriate training in search methods for those premises, conveyances and business operations the AEO controls.

Customs :

- a. undertake efforts to educate affected Customs personnel with regard to the risks associated with movements of goods in the international trade supply chain, in co-operation with AEOs;
- b. make educational material and expert guidance on the identification of potentially suspect cargo available to all relevant Customs security personnel;
- c. notify the AEO's designated contact person of the procedures the Customs administration has in place to identify and respond to suspicious incidents;
- d. conduct specific training to assist personnel in maintaining cargo integrity, recognizing potential threats to security and protecting access controls;
- e. upon request and if practicable, make an AEO familiar with relevant Customs information and processes, in order to assist in appropriate training and research;
- f. upon request and if practicable, assist the initiatives of the AEO in development and implementation of voluntary company guidelines, security standards, best practices, training, authorization schemes and materials, etc., calculated to raise security awareness and assist in taking measures to minimize security risks;
- g. upon request and if practicable, make educational material and expert guidance on the identification of potentially suspect cargo available to all relevant personnel in an AEO, including for example persons associated with security, cargo handling and cargo documentation. Such guidance should include awareness of risks such as are documented in the WCO Risk Management Guidelines;
- h. assist, upon request and if practicable, the AEO in recognizing potential threats to security from a Customs perspective.



F. Information Exchange, Access and Confidentiality

Customs and AEOs, as part of an overall comprehensive strategy to secure sensitive information, shall develop or enhance the means by which entrusted information is protected against misuse and unauthorized alteration.

This element requires that :

The AEO and Customs :

- a. ensure the confidentiality of commercial and security sensitive information and that information provided be used solely for the purposes for which it was provided;
- b. actively pursue the full and timely implementation of electronic data exchange capability amongst all relevant parties of information used to release merchandise/cargo subject to appropriate data privacy laws. Continued reliance upon documents and hand signatures shall be discouraged;
- c. employ the use of international standards developed regarding electronic data structure, timing for submission and message content. Data elements required for security reasons should be compatible with the AEO's then-existing business practices and limitations and should not require more than the security-related data elements set forth in the SAFE Framework;
- d. work co-operatively toward realizing the commitment of the AEO for the submission and use of advance electronic information for risk assessment purposes.

The AEO :

- a. in the case of AEO importers, have appropriate procedures in place to ensure that all information used in the clearing of merchandise/cargo is legible, complete and accurate and protected against the exchange, loss or introduction of erroneous information. Similarly, that AEO carriers have procedures in place to ensure the information in the carrier's cargo manifest accurately reflects the information provided to the carrier by the shipper or its agent, and is filed with Customs in a timely manner;
- b. have a documented information security policy and procedures and/or security-related controls, such as firewalls, passwords, etc., in place to protect the AEO's electronic systems from unauthorized access;
- c. have procedures and back-up capabilities in place to protect against the loss of information.

Customs :

- a. familiarize the appropriate AEO staff with relevant requirements of Customs electronic communication systems, and establish specific reporting systems for last-minute consignments and amendments;
- b. as far as possible, promote the adoption by governments of a single window system and procedures which allow for the single transmission to a sole designated point by international supply chain participants, including AEOs, of all relevant transport and cargo data. This transmission to a single designated governmental authority for all official control and release purposes implies a single notification of release;
- c. consider not requiring an AEO to provide paper documents and hand signatures in addition to or in lieu of an electronic transmission. Customs authorities unable to accept data electronically might, for example, accept digital documents, i.e. documents created in a standard format from electronic data, for example, UNeDOCS⁶, submitted by AEOs in lieu of "original" paper documents;
- d. at all times maintain control and jurisdiction over all electronic data provided by AEOs to Customs and establish an effective record retention policy and procedure to ensure the proper destruction of all copies of such data as appropriate, as well as having procedures and back-up capabilities in place to protect against the loss of or unauthorized access to information.

⁶ UN electronic Trade Documents aim to become the world electronic trade document standard under UN auspices.



G. Cargo Security

Customs and AEOs shall establish and/or bolster measures to ensure that the integrity of cargo is maintained and that access controls are at the highest appropriate level, as well as establishing routine procedures that contribute to the security of cargo.

This element requires that :

The AEO :

- a. develop and maintain a security policy manual or other tangible guidance by making relevant reference to the security-related guidelines issued by the WCO which contains detailed guidelines on procedures to be followed to preserve the integrity of cargo while in its custody;
- b. ensure that it and/or its business partners in the supply chain with sealing responsibilities have written procedures in place to properly seal and maintain the integrity of the shipment or transport conveyance while in its custody;
- c. ensure that it and/or its business partners employ the use of seals that meet or exceed the then-existing ISO Standard;
- d. ensure that written procedures are developed and utilized that stipulate how seals are to be controlled and affixed to loaded containers, to include procedures for recognizing and reporting compromised seals and/or containers to the Customs administration or the appropriate foreign authority;
- e. for integrity purposes, ensure that only designated personnel distribute container seals and safeguard their appropriate and legitimate use;
- f. have procedures for inspecting the structure of the transport conveyance including the reliability of the access controls. When appropriate to the type of conveyance a seven-point inspection process is recommended :
 - Front wall
 - Left side
 - Right side
 - Floor
 - Ceiling/roof
 - Inside/outside doors
 - Outside/undercarriage;
- g. regularly examine, through particular mechanisms set forth in the national AEO programme, its security and control procedures to ensure that it is difficult for unauthorized persons to gain access to cargo or for authorized persons to manipulate, move or handle it improperly;

- h. store cargo and transport conveyances in its custody in secure areas and have procedures in place for reporting detected unauthorized entry to cargo and transport conveyance storage areas to appropriate law enforcement officials;
- i. verify the identity of the carrier collecting or delivering cargo and transport conveyances where existing business processes permit and, in the case of there being no such authority, take action to promptly achieve such mandate;
- j. where feasible, compare the cargo with its description on the documents or electronic information to be submitted to Customs for consistency;
- k. establish procedures to manage and control cargo within the cargo storage facility;
- l. establish procedures to positively control all cargo being removed from the storage facility;
- m. establish procedures to manage, secure and control all cargo in its custody during transport and while loading into or unloading from a transport conveyance.

Customs :

- a. where Customs deems it appropriate and legal, and as may be further outlined in a national AEO programme, in recognition of the fact that it may be necessary to examine cargo covertly, invite a representative of the AEO controlling the cargo to be present in the event that cargo is physically inspected or removed for inspection. In the event the AEO is unable to be present for whatever reason, the AEO with responsibility for the security of the cargo should be notified of such an inspection as soon as possible after the event in case of subsequent liability claims.

H. Conveyance Security

Customs and AEOs shall jointly work toward the establishment of effective control regimes, where not already provided for by other national or international regulatory mandate, to ensure that transport conveyances are capable of being effectively secured and maintained.

This element requires that :

The AEO :

- a. ensure, to the extent and scope of its authority and responsibility, that all transport conveyances used for the transportation of cargo within its supply chain are capable of being effectively secured;
- b. secure transport conveyances within its supply chain, to the extent and scope of its ability and responsibility, when left unattended, and check for security breaches upon return;
- c. ensure, to the extent and scope of its authority and responsibility, that all operators of conveyances used for the transportation of cargo are trained to maintain the security of the transport conveyance and the cargo at all times while in its custody;



- d. require operators, as specifically detailed in national AEO programmes, to report any actual or suspicious incident to designated security department staff of both the AEO and Customs for further investigation, as well as to maintain records of these reports, which should be available to Customs, as legal and necessary;
- e. consider potential places of concealment of illegal goods on transport conveyances, ensure that these places are regularly inspected, and secure all internal and external compartments and panels, as appropriate. Records are to be made and maintained following such inspections, indicating the areas inspected;
- f. notify Customs, or other relevant body, of any unusual, suspicious or actual breach of transport conveyance security.

Customs :

- a. advise operators of transport conveyances of potential places of concealment of illegal goods in transport conveyances, where appropriate and legal, as based on their Customs perspective and expertise;
- b. investigate notification of any unusual, suspicious or actual breach of transport conveyance security.

I. Premises Security

Customs, after taking into account the views of AEOs and their necessary compliance with mandatory international standards, shall establish the requirements for the implementation of meaningful Customs-specific security enhancement protocols that secure buildings, as well as ensure the monitoring and controlling of exterior and interior perimeters.

This element requires that :

The AEO :

- a. in accordance with its business model and risk analysis, implement security measures and procedures to secure buildings, as well as monitor and control exterior and interior perimeters and prohibit unauthorized access to facilities, transport conveyances, loading docks and cargo areas that may reasonably affect the security of its areas of responsibility in the supply chain. If access control is not possible, increased precautions in other security aspects may be needed. Premises security should include the following, as appropriate and based on risk :
 - Buildings must be constructed of materials that resist unlawful entry.
 - The integrity of structures must be maintained by periodic inspection and repair.
 - All external and internal windows, gates and fences must be secured with locking devices or alternative access monitoring or control measures.

- Management or security personnel must control the issuance of all locks and keys.
 - Adequate lighting must be provided inside and outside the facility including the following areas : entrances and exits, cargo handling and storage areas, fence lines and parking areas.
 - Gates through which vehicles and/or personnel enter or exit must be manned, monitored or otherwise controlled. The AEO should assure that vehicles requiring access to restricted facilities are parked in approved and controlled areas, and that their licence plate numbers are furnished to Customs upon request.
 - Only properly identified and authorized persons, vehicles and goods are permitted to access the facilities.
 - Appropriate peripheral and perimeter barriers.
 - Access to document or cargo storage areas is restricted and there are procedures to challenge unauthorized or unidentified persons.
 - There should be appropriate security systems, such as, theft alarm and/or access control systems.
 - Restricted areas should be clearly identified.
- b. as required or upon request, provide Customs with access to security monitoring systems that are utilized for premises security.

Customs :

- a. aside from any legal right to access certain locations and related information, seek partnership arrangements with AEOs that provide for access to security monitoring systems and not be denied access to information necessary for a Customs administration to carry out enforcement activities;
- b. permit AEOs to implement alternative means of compliance to satisfy specific security requirements not practical or compatible with a particular AEO's business model to the extent the alternative means provide the same or equivalent security benefits.

J. Personnel Security

Customs and AEOs shall, based on their authorities and competencies, screen the background of prospective employees to the extent legally possible. In addition, they shall prohibit unauthorized access to facilities, transport conveyances, loading docks and cargo areas that may reasonably affect the security of those areas in the supply chain under their responsibility.

This element requires that :

The AEO :

- a. take all reasonable precautions when recruiting new staff to verify that they are not previously convicted of security-related, Customs or other criminal offences, to the extent permitted by national legislation;



- b. conduct periodic or for cause background checks on employees working in security sensitive positions;
- c. have employee identification procedures, and require that all employees carry proper company issued identification that uniquely identifies the individual employee and organization;
- d. have procedures in place to identify, record and deal with unauthorized or unidentified persons, such as photo identification and sign-in registers for visitors and vendors at all points of entry;
- e. have procedures in place to expeditiously remove identification, premises and information systems access for employees whose employment has been terminated.

Customs :

- a. have identification procedures, and require that all officers carry proper identification that uniquely identifies the individual officer and the organization he/she represents;
- b. as necessary, ensure that persons operating access controls are able to independently verify the identification produced by a Customs officer;
- c. have procedures in place to expeditiously remove identification, premises and information systems access for employees/officers whose employment has been terminated;
- d. subject to national legislation, seek agreements with AEOs that provide for access to information about specified personnel, including sub-contractors, working at AEO facilities for prolonged periods.

K. Trading Partner Security

Customs shall establish AEO requirements and mechanisms whereby the security of the global supply chain can be bolstered through the commitment of trading partners to voluntarily increase their security measures .

This element requires that :

The AEO :

- a. if necessary, when entering into negotiated contractual arrangements with a trading partner, encourage the other contracting party to assess and enhance its supply chain security and, to the extent practical for its business model, include such language in those contractual arrangements. In addition, the AEO is to retain documentation in support of this aspect to demonstrate its efforts to ensure that its trading partners are meeting these requirements and make this information available to Customs upon request;

- b. review relevant commercial information relating to the other contracting party before entering into contractual relations.

L. Crisis Management and Incident Recovery

In order to minimize the impact of a disaster or terrorist incident, crisis management and recovery procedures should include advance planning and establishment of processes to operate in such extraordinary circumstances.

This element requires that :

The AEO and Customs :

- a. develop and document, in conjunction with the appropriate authorities, where advisable or necessary, contingency plans for emergency security situations and for disaster or terrorist incident recovery;
- b. include periodic training of employees and testing of emergency contingency plans.

M. Measurement, Analyses and Improvement

The AEO and Customs should plan and implement monitoring, measurement, analysis and improvement processes in order to :

- assess consistency with these guidelines;
- ensure integrity and adequacy of the security management system;
- identify potential areas for improving the security management system in order to enhance supply chain security.

This element requires that :

The AEO :

- a. regularly undertake, as specifically outlined in the national AEO programme, assessments of the security risks in its operations and take appropriate measures to mitigate those risks;
- b. establish and conduct regular self-assessments of its security management system;
- c. fully document the self-assessment procedure and the responsible parties;
- d. include in the review assessment results, feedback from the designated parties and recommendations for possible enhancements to be incorporated in a plan for the forthcoming period to ensure continued adequacy of the security management system.

5.3. Benefits to the Authorized Economic Operator



The SAFE Framework is premised upon four core elements, the last of these relating to benefits that Customs will provide to businesses meeting minimum supply chain security standards and best practices (see 1.3). Further, the SAFE Framework offers certain specific examples for consideration (see 3.3). Ultimately, effective implementation of the SAFE Framework will best be realized by striking a balance between trade security and trade facilitation. Tangible benefits for Authorized Economic Operators are a measure of such balance.

Due to possible limitations imposed by national legislation, any benefits within Customs control must necessarily be defined and offered by individual Members. Pillar 2, Standard 3 of the SAFE Framework provides that such benefits be tangible and documented. These benefits should be enhancements above and beyond the normal procedures utilized when working with non-Authorized Economic Operators and not result in a loss of access to normal procedures already in place.

The ultimate goal of the SAFE Framework is implementation of a core set of WCO international standards. These international standards may be supplemented by national requirements. An attempt should be made to keep benefits apace with requirements as SAFE participants implement these programmes. It is important that benefits be allowed to evolve during implementation. Capacity building being offered to Members should address their ability to deliver benefits, such as facilitation mechanisms for lower risk cargo, and the enhancement of global supply chain security.

Benefits should be meaningful, measurable and reportable. The examples of benefits included in this section are separated into categories and offered for consideration by administrations. These do not establish a required set of benefits that all administrations must offer - they are an indicative list of example benefits that are subject to specific Customs consideration, offering and approval. These examples are drawn from several sources including WCO studies, Conventions, certain operational programmes of WCO Member administrations, the regulations of the European Union, and input from the trade community.

A. Measures to expedite cargo release, reduce transit time and lower storage costs :

1. A reduced data set for cargo release;
2. Expedited processing and release of shipments;
3. Minimum number of cargo security inspections;
4. Priority use of Non-intrusive inspection techniques when examination is required;
5. Reduction of certain fees or charges for AEOs in good standing;
6. Keeping Customs offices open on a continuous basis when a tangible need for such coverage has been specifically identified.

B. Providing access to information of value to AEO participants :

1. Names and contact information for other AEO participants, with the consent of those participants;
2. List of all countries adopting the SAFE Framework;
3. List of recognized security standards and best practices.

C. Special measures relating to periods of trade disruption or elevated threat level :

1. Accord priority processing by Customs during period of elevated threat conditions;
2. Priority processing following an incident requiring the closing and re-opening of ports and/or borders;
3. Priority in exporting to affected countries after an incident.

D. First consideration for participation in any new cargo processing programmes :

1. Account-based processing rather than transaction-by-transaction clearance of accounts;
2. Simplified post-entry or post-clearance programmes;
3. Eligibility for self-audit or reduced audit programmes;
4. Expedited processes to resolve post-entry or post-clearance inquiries;
5. Favourable mitigation relief from Customs assessments of liquidated damages or non-criminal administrative penalties, except for fraud;
6. Increased paperless processing of commercial shipments for both export and import;
7. Priority response to requests for rulings from national Customs authorities;
8. Eligibility for remote Customs clearance procedures;
9. Ability to file a corrective action or disclosure prior to the initiation of a Customs non-criminal administrative penalty procedure, except for fraud;
10. No penalties or liquidated damages imposed for late payment of duties, with only interest accruing.

5.4. Validation and Authorization Procedures

The SAFE Framework contains the mandate for design of validation and authorization procedures. The SAFE Framework, Pillar 2, Standard 3 (Customs-to-Business Partnerships), provides as follows.

The Customs administration, together with representatives from the trade community, will design validation processes or quality accreditation [authorization] procedures that offer incentives to businesses through their status as Authorized Economic Operators.

Since the obligation for design of these procedures lies with the individual WCO Members agreeing to implement the SAFE Framework, the goal of these validation and authorization provisions is to provide guidance and possible direction to WCO Members.

Customs administrations should design and implement authorization and validation procedures that conform to the standards described in the SAFE Framework, taking into account the good practices established in existing national Customs/Business supply chain security management programmes. The authorization process should take into account the different levels of compliance that an Authorized Economic Operator might achieve. The core standards are set forth in 5.2. The implementation process should include incentive-based benefits and should take into account the differences in risk rating with regard to the various activities and roles undertaken within the international trade supply chain.

This "Validation and Authorization Procedures" portion divided into major topic areas with discussion text and specific requirements. An outline of a possible process to manage an AEO application is described in 5.5.

Application and Authorization



The Authorized Economic Operator will commit itself to an application and authorization process with its national Customs administration to implement supply chain security standards as set out in the SAFE Framework. These standards must be incorporated into the AEO's business practices and procedures. It will establish a self-assessment process to manage and monitor performance. In order to execute effective self-assessment, the AEO shall appoint an individual within its management structure to be responsible for all supply chain security measures with regard to a specific national AEO programme. This nominated person shall also be responsible for communication with the Customs administration regarding the AEO approval system and maintenance of the standards. Authorization will be granted by the national Customs administration after validation of the fulfilment of AEO conditions and requirements.

The systems and procedures which govern the establishment and maintenance of AEO status are, by reference, incorporated into this document in their entirety.

The conditions and requirements established in 5.2 must be fulfilled within prescribed time limits determined by the authorizing Customs administration. The time periods may vary according to the particular role being played by the applicant and other specifications that will be determined by the complexity and nature of the trade being undertaken.

The AEO authorization will be valid until suspended, revoked or withdrawn for a material failure to abide by the terms and conditions of the authorization. National AEO programmes need to include a means of appeal against decisions by Customs administrations regarding AEO authorization including denial, suspension, revocation or withdrawal.

All standards and programmes implementing the SAFE Framework shall be voluntary, and Customs administrations shall not require that non-AEOs participate.

Customs administrations shall respond to an AEO application within a reasonable period of time to be established in the national AEO programme. The AEO programme may also include provisions regarding single AEO applications from groups of related companies.

Validation Procedure

The security procedures and Customs-identified best practices contained in the SAFE Framework require a validation process to be undertaken by Customs. While Customs shall retain ultimate authority for accrediting an AEO and for suspending or revoking such authorization, it may decide to designate third party validators to perform the assessment of an AEO applicant's compliance with the SAFE Framework security standards and best practices and/or for validating such compliance. Third party validators should possess appropriate experience in certification systems, knowledge of the supply chain security standards, sufficient and appropriate knowledge of operations of the various economic and business sectors and have appropriate resources for conducting timely validations. Use of third party validators should not inhibit mutual recognition by Customs administrations of AEO authorizations under individual national AEO programmes. The AEO should still have the option to request validation by the Customs administration directly.

Customs administrations should not burden the international trade community with different sets of requirements to secure and facilitate commerce.

The Customs administration or the designated third party validator will ensure that personnel designated to carry out the validation procedure are trained and qualified.

Any information obtained in the course of the validation procedure and within the scope of the AEO Authorization is confidential between the Customs administration and/or the designated third party validator and the individual AEO and may be used solely for the purpose for which it was provided.

A system of feedback and gradual improvement should be built into the authorization and validation arrangements made by the Customs administrations and AEO.

This monitoring process may consist of audits based on risk or cause and, where appropriate, random spot checks by Customs or the designated third party validator, if applicable. The AEO will also maintain, and have available for inspection, necessary documentation as set out in the national AEO programme's AEO authorization requirements on the security procedures being undertaken or utilized by the AEO.

Review and Maintenance

Regular communication and joint reviews between Customs and AEO will be carried out in order to maintain the level of compliance and, where feasible, to identify possible measures to enhance the level of security. Such reviews will assist AEOs in making amendments to their security programme as soon as possible and will provide the Customs administration with a mechanism for maintaining the operating standard of an AEO.

As part of the authorization process and in order to assure regular communication and facilitate the validation process, the AEO may, in conformance with the criteria set out in the national AEO programme, be requested by the Customs administration to complete periodic reports capturing the information that the AEO should provide according to the security standards set out in the portion of this document regarding 5.2.

In order to establish and maintain an effective AEO authorization programme, Customs administrations may find it useful to hold regular seminars to discuss the development of their national AEO programme, to identify and address common problems, and to share good practices.

Future Developments

The standardized approach to AEO authorization provides a solid platform for development of international systems of mutual recognition of AEO status at bilateral, sub-regional, regional and, in the future, global levels. Such systems will involve a WCO Member Customs administration recognizing the AEO authorization system in another WCO Member with an operational AEO programme as being equivalent to its own. This will afford the AEO the same benefits and therefore improve predictability and efficiency of operation in all countries applying the AEO standards.

5.5. Process outline for business involved in the handling of cargo within the international trade supply chain



1. The Applicant and Customs should acknowledge that this is a voluntary programme and agree to implement core requirements pertaining to the role of an Authorized Economic Operator as described in the SAFE Framework.
2. The Applicant shall implement, in conformance with its business model and risk analysis, the systems, procedures, conditions and requirements established in 5.2.
3. The Applicant and Customs shall work cooperatively toward realizing the commitment of the Applicant for the submission and use of advance electronic information for risk assessment purposes.
4. Customs administrations will consider the following indicative list of quality criteria when reviewing applications from businesses wishing to become accredited as AEOs :
 - Compliance record with Customs and other relevant enforcement authorities
 - Adherence to relevant laws and regulations
 - Evidence of having been established in accordance with national laws
 - Information indicating permanency of business premises
 - Evidence of existing quality assurance systems
 - Absence of criminal convictions of a relevant nature amongst senior personnel
 - Evidence of adequate company controls on staff, premises, equipment and other assets.
5. The Customs administration must validate that the applicant satisfies all SAFE Framework requirements relating to Authorized Economic Operator status before authorization will be granted. The Customs administration may designate a third party validator to perform the assessment of compliance with the security standards and best practices. However, decisions regarding authorization and validation will in such instances remain the purview of the Customs administration. The Customs administration and the designated third party validator, if applicable, shall complete validation within a reasonable period of time.
6. Any information obtained in the course of the validation procedure and within the scope of the Authorization is confidential between the Customs administration and the individual AEO and may be used solely for the purpose for which it was provided.
7. Upon the validation of the AEO's successful implementation of required measures, the Applicant shall be duly authorized as an Authorized Economic Operator by the national Customs administration.
8. The validation process will be performed by designated officials of an authorizing Customs administration or by representatives of a designated third party validator and shall be based on internationally recognized principles of audit and inspection.
9. The Applicant should maintain the records specified in the applicable national Customs laws and regulations concerning commercial transactions relating to goods being traded in the international trade supply chain and agrees to make these available to the Customs administration for the purpose of validation and periodic audit.

10. The integrity of systems and procedures being applied under the Authorization should be verified by periodic reviews conducted by the Customs administration or on its behalf, regular communication between designated officials and, where appropriate, random spot checks and visits.
11. The AEO authorization will be valid unless it is revoked, withdrawn or suspended for a material failure to abide by the terms and conditions of the Authorization.

Examples of when authorization may be revoked, withdrawn or suspended :

- If the applicant or AEO does not abide by the terms and conditions of the authorization;
 - If the company and/or its officers fail to observe criminal or civil laws governing the conduct of such companies, and/or the nature of pending or unresolved legal proceedings involving those parties would preclude direct involvement with Customs administrations;
 - If the company fails to make available to the Customs administration the appropriate documentation and/or information access concerning personnel, company premises, equipment and assets as provided in 5.2.
12. The authorization validation and monitoring processes can be adjusted at the discretion of the national Customs administration, especially if changes occur in either the risk rating of the trade in which the Applicant is engaged, or the performance of the Applicant. However, any such adjustment should only be done after having solicited input from the AEO and affording it the opportunity to review and comment on the reasons presented by the Customs administration.

5.6. Mutual Recognition

The Resolution on the SAFE Framework calls on those WCO Members and Customs or Economic Unions, which have notified the WCO of their affirmative intention to implement the SAFE Framework, to do so as soon as practicable in accordance with the WCO Members or Customs or Economic Union capacity. Further, it calls upon Customs administrations to work with each other to develop mechanisms for mutual recognition of AEO validations and authorizations, and Customs control results and other mechanisms that may be needed to eliminate or reduce redundant or duplicated validation and authorization efforts.

Mutual recognition is a broad concept whereby an action or decision taken or an authorization that has been properly granted by one Customs administration is recognized and accepted by another Customs administration. The standardized approach to Authorized Economic Operator authorization provides a solid platform for long-term development of international systems of mutual recognition of AEO status at bilateral, sub-regional, regional and, in the future, global levels.

In order for a system of mutual recognition to work it is essential that :

- There be an agreed set of common standards that include sufficiently robust "action" provisions for both Customs and AEOs;



- Standards are applied in a uniform manner so that one Customs administration may have confidence in the authorization of another;
- If the certification process is delegated to a designated authority by an authorizing Customs administration, there shall be an agreed upon mechanism and standards for that authority;
- Legislation to enable the implementation of a mutual recognition system is in place.

In the context of the SAFE Framework, mutual recognition relates to three distinct areas :

- **Pillar 2, Standard 3 - Authorization** : Customs should agree on mutual recognition of Authorized Economic Operator status.
- **Pillar 1, Standard 6 - Advance Electronic Information** : Economic operators should also benefit from mutual recognition of digital certificates, allowing the economic operator to submit all electronic messages to those Customs administrations having agreed to recognize this certificate.
- **Pillar 1, Standard 7 - Targeting and Communication** : Customs should provide for joint targeting and screening, the use of standardized sets of targeting criteria, and compatible communication and/or information exchange mechanisms; these elements will assist in the future development of a system of mutual recognition of controls.

Mutual recognition can be a means to avoid duplication of security controls and can greatly contribute to the facilitation and control of goods moving in the international supply chain. This portion of the AEO document examines options for establishment of mutual recognition. However, it is recognized that decisions on mutual recognition will be made by individual Customs administrations and/or unions.

Mutual Recognition of Authorized Economic Operators

Guidance is provided for administrations to introduce the mutual recognition concept in 5.2, 5.3 and 5.4 of this instrument. A model application and authorization form is also provided in the Process Outline for Business (5.5.). These arrangements provide an excellent foundation for the eventual development of an international system of mutual recognition. It must be acknowledged that a global system of mutual recognition of AEO status will require some time to accomplish and, in this respect, it is noted that just as it has been suggested by WCO Members and the Secretariat that the SAFE Framework be implemented in a progressively "phased approach", so too should be the expectations for the future application of mutual recognition of Customs systems of control for partnership programmes. Bilateral, sub-regional or regional initiatives are being developed as useful stepping stones toward such a global system.

Mutual Recognition of Customs Controls

This is an area which presents a challenge to Customs administrations. Although there is a history of mutual administrative assistance and information sharing regarding Customs

infractions, the requirements of the SAFE Framework covering the more routine sharing of information and control results are relatively new.

In the SAFE Framework, the elements which may contribute towards a system of mutual recognition of controls cover a wide range of Customs activities, such as the WCO Global Information and Intelligence Strategy, WCO Standardized Risk Assessments, WCO General High Risk Indicator Document and the WCO Handbook for Customs Officers on Risk Indicators. Further, the Johannesburg Convention and Model Bilateral Agreement contain provisions which can support joint screening activities.

Role for the WCO

The Resolution on the SAFE Framework recognizes the value of periodic evaluation meetings. Such meetings could provide a platform for advancing mutual recognition of AEO status as well as control results and digital certificates. The Policy Commission encourages Members to actively participate in such meetings and provide reports of pilot projects and progress made towards the goal of mutual recognition. It may well be desirable for the WCO to participate in selected pilot projects. Such projects could assist the learning process and identify practical problems for analysis and discussion. The WCO Secretariat could then develop appropriate guidance materials to assist implementation.

* * *



**6. RESOLUTION OF THE CUSTOMS CO-OPERATION COUNCIL ON THE
FRAMEWORK OF STANDARDS TO SECURE AND FACILITATE GLOBAL
TRADE**

THE CUSTOMS CO-OPERATION COUNCIL⁷,

Recognizing that the implementation of the principles contained in the WCO Framework of Standards will be an important step in enhancing security of the international trade supply chain and lead to a greater facilitation of legitimate trade;

Noting the increased concern with respect to acts of international terrorism and organized crime and the importance and vulnerability of global trade;

Considering that Customs administrations contribute to the economic and social development of nations through the collection of revenue, and that implementing the Framework of Standards will also be equally important in this regard;

Taking into account the Resolutions of the Customs Co-operation Council on Security and Facilitation of the International Trade Supply Chain (June 2002) and Global Security and Facilitation Measures concerning the International Trade Supply Chain (June 2004), and IMO Conference Resolution No. 9 on the enhancement of security in co-operation with the WCO;

Believing in the need for Customs administrations to implement standards regarding integrated Customs procedures and in the need for co-operation between Customs administrations and business;

Noting that Members and Customs or Economic Unions may need to consider modifications to their legal or other provisions to support the implementation of the WCO Framework of Standards.

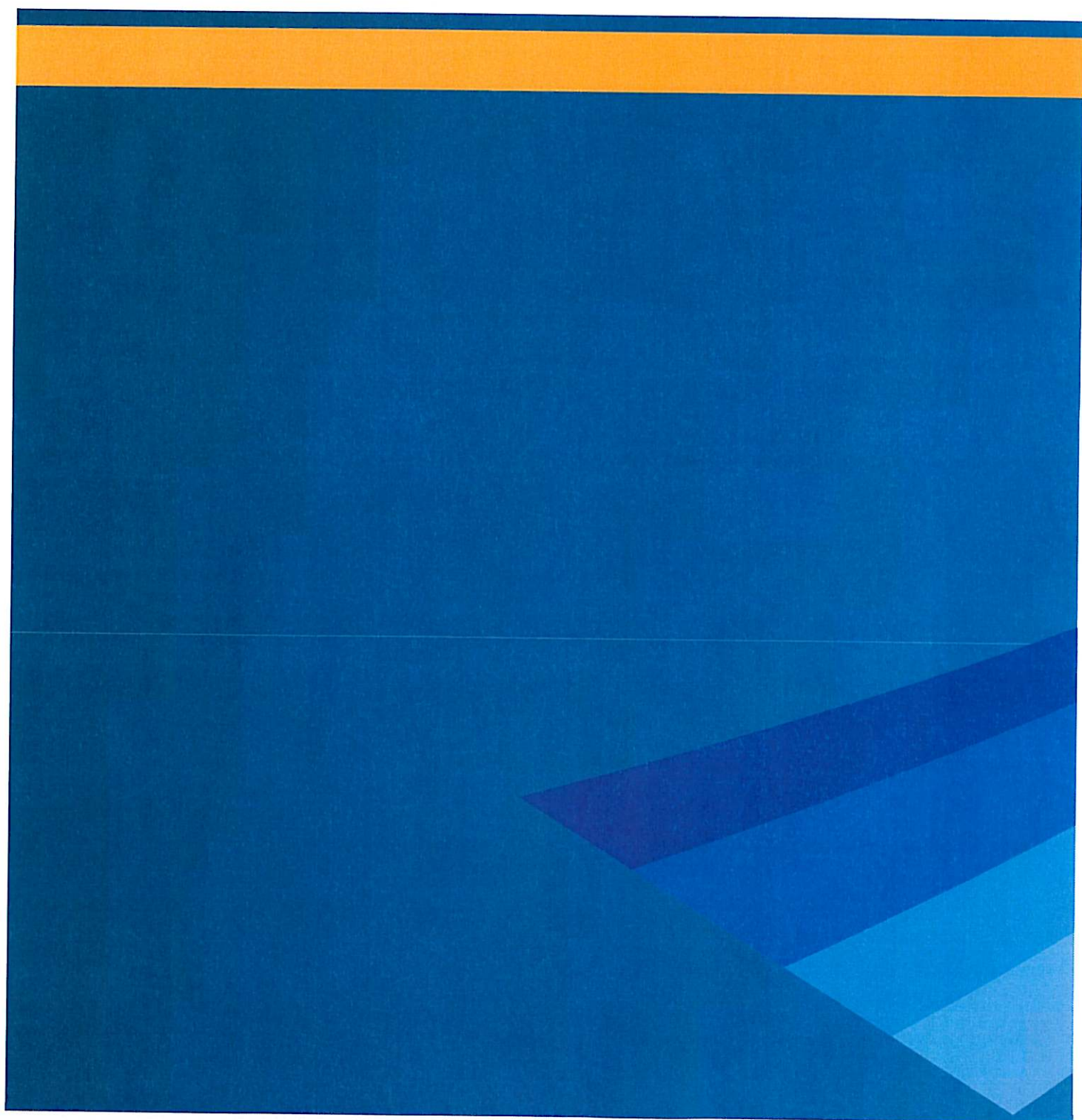
RESOLVES :

1. To adopt the Framework of Standards to Secure and Facilitate Global Trade.
2. That the Members of the Council and Customs or Economic Unions should :
 - 2.1. implement as soon as possible in accordance with each administration's capacity and necessary legislative authority the principles, standards and other provisions contained in the WCO Framework of Standards;
 - 2.2. encourage any necessary improvements in Customs capability and integrity to provide a comprehensive framework for global trade security;
 - 2.3. identify the required sustainable capacity building measures including the modifications to national legal and administrative rules and procedures, where

⁷ Customs Co-operation Council is the official name of the World Customs Organization (WCO).

- appropriate, and pursue their realization to enable a comprehensive implementation of the provisions of the Framework of Standards;
- 2.4. foresee the provision of technical assistance in order to encourage the implementation of the Framework of Standards;
 - 2.5. submit to the WCO an indicative timetable for implementation of the Framework of Standards suitable to their capacities;
 - 2.6. endeavour to secure the full co-operation of business in the implementation of the Framework of Standards;
 - 2.7. participate in periodic evaluation meetings to assess progress towards implementation;
 - 2.8. provide to the WCO periodic reports on progress towards implementation of the Framework, to be discussed during each evaluation meeting; and
 - 2.9. consider the use of benchmarking methods to evaluate each Member's own implementation process.
3. That Members and Customs or Economic Unions should notify the WCO of their intention to implement the Framework of Standards. The WCO will transmit this information to the Customs administrations of all Members and to those Customs or Economic Unions which have notified the WCO.
 4. That those Members and Customs or Economic Unions which have notified the WCO of their intention to implement the Framework of Standards should work with each other to develop mechanisms for mutual recognition of Authorized Economic Operator validations and accreditations and Customs control results, and other mechanisms that may be needed to eliminate or reduce redundant or duplicated validation and accreditation efforts.

P. GORDHAN,
Chairperson



Annexure B

DRAFT CUSTOMS CONTROL BILL
CUSTOMS CONTROL BILL
To provide for customs control of all goods and persons entering or leaving the
Republic; and for matters incidental thereto.
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19 September 2010

Ms M Naidoo
7 Valview Road
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KLOOF
3610

Dear Ms Naidoo

PROTOCOL: The extent South Africa has incorporated the WCO SAFE Framework of Standards into its legislation
ETHICAL APPROVAL NUMBER: HSS/1091 /2010 M: Faculty of Management Studies

In response to your application dated 16 September 2010, Student Number: 205506060 the Humanities & Social Sciences Ethics Committee has considered the abovementioned application and the protocol has been given **FULL APPROVAL**.

PLEASE NOTE: Research data should be securely stored in the school/department for a period of 5 years.

I take this opportunity of wishing you everything of the best with your study.

Yours faithfully



Professor Steve Collings (Chair)
HUMANITIES & SOCIAL SCIENCES ETHICS COMMITTEE

SC/sn

cc: Adv. B Hitchens (Supervisor)
cc: Mrs. C Haddon