



SAFE WORKING
GROUP

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2nd Meeting
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22-23 April 2008
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Brussels, 23 May 2009.

DRAFT REPORT
SECOND MEETING OF THE SAFE WORKING GROUP
Brussels, 22-23 April 2008

Opening

1. The Second Meeting of the SAFE Working Group (SWG) was held at WCO Headquarters in Brussels on 22 - 23 April 2008, with Mr. Theo Hesselink of the Netherlands presiding as Chair, joined by the sitting Chairperson of the Private Sector Consultative Group (PSCG), Ms. Renée Stein. The list of participants is set out at Annex I hereto.
2. The Chairperson offered some welcoming remarks of a general nature, and explained that the Report of the First Meeting of the SAFE Working Group had been well received by the Policy Commission in its December Meeting in Almaty, Kazakhstan.

Adoption of Agenda

3. The Chairperson offered the draft Agenda for consideration and opened the floor for comment. The first intervention was from the Delegate of the UNITED STATES who said there was a preference to provide time for Customs to meet separately from the private sector in future meetings.
4. An observer said that the SWG should allow some time to discuss the WCO Unique Consignment Reference (UCR). The Delegate of the EUROPEAN COMMISSION suggested adding an item on container seals for all security purposes, and made reference to ISO 17712.

5. The Chairperson stated, in response to the United States' intervention, that the First Meeting of the Group had decided that time for separate meetings would be provided if the need arose. The United States responded that this was sufficient for purposes of the Report, but meeting time must be scheduled in advance as it makes sense for Customs representatives to meet officially and ahead of time. The Chairperson stated that for the next Meeting agenda, some time could be carved out for a Customs only meeting and the time needed can be decided upon.
6. Responding to the suggestions regarding the need for discussion of the UCR and container seals, the Chairperson stated that they could be included under the "Other Business" portion of the agenda. The Draft Agenda was then adopted, subject to these additions.

Adoption of the Report of the First SAFE Working Group Meeting

7. The Chairperson next requested delegates to consider adoption of the Report of the First Meeting of the SAFE Working Group. One Observer organization stated that, as a general matter, one of the best outcomes has been the bringing of the trade community back into the process. We all learn from one another and there is a need to continue joint Customs-trade meetings. The Chairperson acknowledged that we do indeed learn from each other, and that the SAFE Working Group arrangement allows for this to continue.
8. The Chair of the PSCG stated that the separate meeting they had held the day previous had been a general business meeting. She stated that when separate meetings were held in the past, the later plenary discussions had been disjointed. She hoped that no final decisions would be made without the trade being present.
9. The Chairperson then declared that the Report of the First Meeting had been adopted.

Draft Terms of Reference

10. A delegate speaking about the proposal of a Member to have Customs only meetings prior to the SWG plenary session highlighted that it would be useful to have appropriate remarks put in the Terms of Reference under paragraph 5, Means of operation.
11. The Chairperson assured delegates this will be put in the next version of Terms of Reference and presented to the SWG for approval.

Draft SAFE Amendment Process (as Amended)

12. Introducing this Item, the Chairperson felt that there had been some confusion as to whether the Amendment process had already been formally adopted and a number of delegates pointed out that it would be more appropriate to consider this item following discussions under Item VII. The terms of reference were eventually adopted (see report to Item VII, paragraph 49)

Secretariat's Oral Reports

13. The Director of Compliance and Facilitation mentioned that since the last SWG meeting in October, the WCO had sent a letter to the U.S. Senate and House Committees responsible for 100% scanning legislation. This document was distributed to all WCO Members, as well as during the 2007 Policy Commission meeting in Almaty, Kazakhstan. There was an Almaty declaration which was joined in by WCO Members and the PSCG. This document was also forwarded to the Ranking Minority Members in the House and Senate of the United States, expressing the concerns of the 170 WCO Members other than the United States.
14. In December 2007, the WCO organized a SAFE Framework Conference where participants did express their concerns about the scanning legislation that had been passed in the U.S. The Director highlighted that he went to Washington, D.C. to make contact with staff on both the House and Senate sides, Security and Trade Committees. He reported that the staff of the Committee that Senator Joseph Lieberman heads understands the concerns about 100% scanning and admitted that this was a political decision. They did not see much chance of reversing the legislation. The House Committee's view was that this was a strong security statement and the legislation would protect the U.S. They were, however, willing to engage in conversations about the limitations of 100% scanning. The Director stated that he came away from the House Committees with a very firm view that there was no chance to change this legislation.
15. The Director mentioned that he had met with representatives of U.S. Congress Sub-Committees and they were sympathetic to the concerns that not only Customs administrations were expressing about 100% scanning, but also the concerns the private sector had expressed. They seemed to understand the infrastructure, cost and personnel issues.
16. He related that he met also with U.S. Chamber of Commerce representatives and the American Association of Exporters and Importers and their political committees. They were not very confident that the 100% law would be changed in the near term. He mentioned that he also met with the General Accountability Office. They had sought out comments from the WCO on the issue of 100% scanning, and wondered whether the WCO would be willing to testify on behalf of Members and business partners if there are hearings. If there are any hearings to be held, the WCO is expected to be invited to testify.
17. The Director of Compliance and Facilitation referred to the recent testimony of the U.S. CBP Deputy Commissioner before House Appropriations Committee. In his testimony he talked not only about 10+2 but also about 100% scanning. The U.S. CBP is under an obligation to report on pilot projects on 100% scanning. That report was due in April 2008 but was postponed until early May 2008. The Director mentioned that there was a feeling that CBP does not support 100% scanning and the fact that there is a 5 year delay in the implementation and are 6 exemptions in the law is due to the work of CBP and DHS. The surprising fact in the testimony was that the Deputy Commissioner said that 100% scanning was not the answer to security.
18. The Director highlighted that the SAFE Framework with any amendments that go with it is one of the strongest arguments against 100% scanning. In other words,

scanning should be used only as part of risk management. The WCO made it very clear to the Congress that it was not opposed to scanning, it should just be part of a risk management programme.

19. There was reference to the papers submitted by the WCO, the private sector and European Commission to the U.S. CBP on 10+2 rulemaking. Information indicates that over 200 comments had been received on the proposed rulemaking and under the process in the U.S., CBP would have to consider comments received and then prepare a Final Rule. The estimate for issuance of the Final Rule is sometime during the summer of 2008.
20. One Delegate mentioned that his country was running a trial on 100% scanning and that had given them a chance to have access not only to Customs but to political interests as well. It had allowed them to see what 100% scanning involved. He noted that his country had hosted a Congressional delegation in February 2008 which was trying to appreciate the merits and demerits of 100% scanning..
21. The delegate said that there are people open to listening to arguments against the law. However, he noted that 'getting someone prepared to listen is not the same as getting the law changed'. Thus, the common feeling was that there was little hope that the law could be changed. In addition, he noted that not a single government around the world would be willing to have its highly skilled and trained officers spending a great deal of their time checking low risk goods.
22. A delegate from the PSCG expressed his opinion that 100% scanning is a political issue. He mentioned that it was easy to enact the legislation, but difficult to take the risk of changing that legislation. The international community had to wait and see what would happen. He stressed that he was not very optimistic about this whole process.
23. The Delegate of the UNITED STATES stated that his administration had completed pilot projects in three ports. The pilots made clear that scanning all of the 11.5 million sea containers that enter U.S. territory each year will represent significant operational, technical and diplomatic challenges, and the cost is very high.
24. The pilots revealed some additional issues, especially in areas that potentially exceed the capability of technology, such as the communication bandwidth required to send the images to the U.S. and the number of highly trained personnel needed to derive maximum value from a very large number of images. He pointed out that these image experts are very highly trained staff that spend a lot of their time reading the images.
25. He stressed that it makes much more sense to address all mentioned challenges in a manner consistent with a both the WCO SAFE Framework and the layered risk management approach that CBP already has in place. He also mentioned that it was clear that data is the strategy key and that was the reason "10+2" became a key piece of the U.S. CBP effort to persuade the U.S. Congress that 100% scanning is not cost-effective. The Congress was notified that CBP has invested significant efforts and resources in port and cargo security.

26. The U.S. delegate highlighted the diplomatic challenges. With NII equipment, several different agencies of foreign governments need to provide their approval to even deploy the technology. He pointed out that the final conclusion of testimony to the U.S. Congress was that 100% scanning is not equal to 100% security and 100% scanning is only a worthwhile investment in very high-risk trade cargoes. He also mentioned that 2008 is an election year and he did not anticipate any real result in this area in 2008.
27. A delegate, commenting on 100% scanning legislation, stated that there were very slim chances that the law could be reversed. He appreciated the position of the U.S. CBP on using a layered risk approach and stressed that the U.S. Congress had not aimed the law at foreign Customs administrations, but at national trade and national institutions. He said that when other governments invested in customs staff working in ports and taking images of the cargo according to the U.S. legislation, basically these governments would reduce themselves to being an executive body of the U.S. legislators.
28. Furthermore, he stated that Customs administrations should promote a risk-based approach, mentioning that there should not be investment in scanning equipment alone.
29. The Chairman supported the sentiment that it was very unlikely the law would be repealed.
30. Another delegate opined that the 100% scanning legislation was a political decision and that it would be difficult to change the law. He mentioned two issues in this regard. First was that the law itself contained remarks on the postponement of its implementation. Secondly, neither Customs nor the trade community can foresee changes in the law. In this regard, he wondered what the chances might be that the law could be modified in implementation, meaning not 100% scanning in all the cases, e.g. AEO containers and non AEO containers. However, for logistical operators this could cause enormous difficulties, e.g. AEO and non AEO containers on the same ship.
31. A delegate mentioned that some of the ports had difficulties in implementing 100% scanning requirements even at the pilot project stage applied to part of their port operations. He appreciated frank statements about practical difficulties involved with the implementation of 100% scanning legislation.
32. A PSCG representative noted that his company had testified at the 2 April Congress hearing. The hearing was before the House Appropriations Committee, the body which would have to authorize and set aside money for the implementation of this legislation. Judging by the follow-up questions received, it was clear that there was common understanding of all of the challenges that the U.S. delegate had described.
33. He stated that business and Customs are one community in this area. There is a common need to show the U.S. that there are better means of addressing cargo security, i.e. a multilayered risk management approach. He appreciated the words of the Director for Compliance and Facilitation and noted another requirement of the SAFE Port Act, to which the WCO had no objection, namely that all containerized maritime cargo should be subject to radiation control prior to shipment.

34. Commenting on the proposal from the floor concerning 100% scanning of non AEO containers, he stated that starting to scan only non-AEO containers would create havoc in marine terminals and would completely destroy the way the industry is operating today.
35. The Director of Compliance and Facilitation confirmed that the WCO was constructively engaged with the legislators in the U.S. He appreciated the fact that there is unanimity on the issue of 100% scanning and he assured the meeting that the WCO would continue such engagement in the future.
36. A representative of the PSCG mentioned that at the last EastWest Institute Conference which was held at the WCO in February 2008, it had become clear that port operators were looking at the date of possible application of the U.S. legislation and were making massive investments. He stressed that everyone had to bear this in mind, because there was a risk that one aspect of trade will be fighting another aspect of trade.
37. One delegate, supporting the remarks of one of the PSCG members, mentioned that Customs administrations should continue lobbying by saying that there are better systems such as multi-layered risk management programmes to address cargo security. He noted that some ports were starting to invest in scanning systems. In the meantime they are trying to say that Customs administrations should provide the staff to analyze the images. However, he explained that it was not a customs issue and if there are images taken, they should be examined by the U.S., unless there is a real suspicion identified locally.
38. The UNITED STATES Delegate expressed that it was a wrong time to be pessimistic. It is very important to keep up the pressure on the effort of addressing 100% scanning requirements. He noted that technically it was not that hard to change laws in the U.S.
39. He also commented upon the idea of trying to scan on a differential basis. The U.S. is using the membership of the companies in their AEO programme as part of the decision making or risk assessment process. If scanning is required, it is quite simple to identify the small number of containers to be scanned.
40. The delegate of the EUROPEAN COMMISSION confirmed that the EC continues lobbying against and opposing the 100% scanning legislation. There was an assessment prepared on the impact of the 100% scanning requirements on bigger ports and it confirmed that these requirements should not be introduced as they were not cost-effective when measured against a multilayered risk management approach. The delegate mentioned that the EC was carrying out a long-term study on the impact of 100% scanning and that it should be finalized by the end of 2008. It was pointed out that the SAFE Working Group should consider the possibilities if 100% scanning is implemented..
41. A PSCG Member supported the previous statements, saying that 100% scanning requirements are difficult to implement, not cost effective and wasteful in using available resources to look at low risk cargo. Commenting on 100% scanning and 10+2 rule he stated that the whole of the trading community was left wondering why

they had made big investments and suddenly they were asked to send additional data when in fact that could be very expensive. He urged other countries that were trying to establish AEO programmes to consider additional benefits if they were to require additional elements other than now required in the SAFE Framework.

42. Another PSCG Member mentioned that port operators in general were trying to force 100% scanning requirements by saying that it was required for all the containers to be put through scanning equipment which they hoped to operate. In the port of Rotterdam 47% of containers do not come through the gate and no one including the port operators was able to explain how to scan containers which arrive otherwise than through the gate.
43. Speaking of port operators, he mentioned that one of these operators was disqualified to be an operator in the U.S. The question was whether the U.S. Congress was willing to trust 100% scanning and risk-assessment to this operator. He noted that the 100% scanning law was completely silent on how it was going to work and regulate such issues.

U.S. Proposals to Amend SAFE

- **Relocate Data Elements within SAFE;**
- **Data Element Maintenance Mechanism;**
- **Security Filing (10+2); Data Elements to be Added to SAFE**

44. The Chairperson invited the Delegate of the United States to open the discussion of this agenda item.
45. The Delegate of the UNITED STATES began by detailing the various amendments which had previously been made to the SAFE Framework document. The United States believes that SAFE represents the Standards which all wish to achieve, and joins in the consensus that there will be a need to amend SAFE from time to time. The U.S. is committed to seeing SAFE implemented by all Members and promotes SAFE and related aspects in various forums. Constructive cooperation is at the heart of the U.S. commitment.
46. The SAFE Framework is not intended to contain all operational answers, and the data tables will benefit from the small additions being proposed by the United States. Regarding those data tables, nobody has locked themselves down to the items in them, and making technical additions to the data requirements will not harm the SAFE implementation process. Currently the United States is programming the capability for including the WCO Data Model into its Automated Commercial Environment (ACE) system.
47. The U.S. went through a process of consultation with the trade going back over a period of four years and is quite confident that the data elements being proposed are needed, as a minimum, to fill the gaps in information from the point of container stuffing to the vessel loading point. The questions of who, where, and how long are addressed in our 10+2 proposal. As concerns the pilot projects the U.S. is currently running, it is known that the information being sought will be helpful. It is acknowledged that this will not be simple for some companies. There will be a long period of informed

compliance, and the U.S. will find ways for companies to meet the new requirements. We have extensive experience in implementing informed compliance programmes.

48. The United States has three proposals. These proposals concern:
- (a) Moving the data tables to an Annex in order to make them more readable. There is an opportunity presented to update the tables in line with Version 3 of the Data Model, which the United States is confident will be approved at the 2008 Council Sessions;
 - (b) A Data Element Maintenance Mechanism which includes three criteria to be satisfied when Members propose the addition of data elements. If these criteria are met, then the document submitted by the U.S. describes a process;
 - (c) Specific data elements are proposed by the U.S. to be added to those already in the SAFE Framework. The proposal follows the steps outlined in the U.S. document. Version 3 of the Data Model deals with information at the "class level." Only five more elements are needed to be added. Over 70 companies were in a pilot with the U.S. regarding this matter.
49. The Chairperson thanked the United States Delegate, but said that it would first be necessary to adopt the SAFE Framework amendment process as discussed under previous agenda item number V. The United States then recommended approval of that document (LF 0007E1). The Chairperson thereafter stated that the cited Amendment process document had been adopted and allowed discussion to proceed on the U.S. data element proposal.
50. A United States expert on the Data Model stated that Version 3 of the WCO Data Model has three components which are content, modeling and messaging, respectively. Due to certain problems there had been adjustments needed to the release schedule but there is now Data Model Process Team and Permanent Technical Committee approval of the version. Content and modeling will be complete by June of 2008, and the messaging aspect will be complete by December 2009. The messaging must go through the UNEDIFACT process which has its own schedule. Version 3 starts at a high level of data with little detail, and gets progressively more detailed as one proceeds. This capability was graphically demonstrated for the attendees. The "drilling down" capability may be applied to such information categories as "location", "party", "role", or "document." Many of the Version 3 data requirements are not unique to Customs or to any other agency.
51. One Observer noted that the word "need" is freely used. He asked what process might be in place for cross examining every data item which is requested. Who needs it, and why and when is it needed. Is it required for official reasons or for commercial purposes. These matters are imposed upon us.
52. A PSCG Member stated that the SAFE Framework is a stable platform, and unless a proposed change is demonstrably vital it should be avoided.

53. The Delegate of the UNITED STATES said that the amount of numbers existing for any given transaction is astounding. There is redundancy of data. The WCO Unique Consignment Reference offers a way to track consignments and can eliminate redundancy.
54. The Chairperson moved discussion to consideration of the U.S. proposal to place the data elements in an Annex, and asked for any comments from delegates.
55. The Chair of the PSCG stated that the Group supported the idea of removing the elements from the SAFE Framework and placing them in an Annex. This was quickly followed by expressions of support from, CANADA, AUSTRALIA, JAPAN and the World Shipping Council. The EUROPEAN COMMISSION voiced support, subject to compliance with the rules applicable to SAFE Framework amendments.
56. The Delegate of CHINA voiced support in principle, but said that before being moved to an Annex, the elements should be updated to Version 3 provisions.
57. The Chairperson stated that the Annex proposal was approved, subject to updating as proposed by China, and compliance with the rules established for amendments to the SAFE Framework. He also noted that by removing the elements and creating an Annex it would be necessary to make certain technical amendments to the SAFE Framework such as references in that document to the location of the data elements (eg., references in paragraphs 1.3.1, 1.3.2, 1.3.3, and 1.3.7 in section 3). He stated that the Secretariat would identify the needed changes.
58. He then turned to the U.S. proposal on the Data Element Maintenance Mechanism. He called upon the United States to elaborate upon its proposal.
59. The Delegate of the UNITED STATES stated that the proposal would require three initial steps. It would first be necessary that a Member have legislation supporting a requested change. It would next be necessary that any element proposed to be added to the SAFE Framework be found to exist in the Data Model. Finally, it would be necessary to complete a process of consultation with the affected trade community. There are then five specific amendment steps to follow as included in the U.S. document. These would require: notification of the Secretariat by submission of a "Framework Data Element Maintenance Request" and certification that trade consultations were already underway; the Secretariat to expeditiously call for a meeting of the SAFE Working Group or place the matter on an already pending SWG agenda; the SWG to consider whether the requesting Member had thoroughly reviewed the matter internally and considered trade views; the SWG to recommend to the Policy Commission via the Permanent Technical Committee whether to accept the Member proposal; and, the Policy Commission to forward a recommendation to the Council as to whether to adopt the proposal.
60. The Delegate of the EUROPEAN COMMISSION (EC) expressed some doubts concerning the proposal. The U.S. proposal legitimizes the Member country implementing legislation regardless of WCO approval. It would be better to focus on finding a way out were this circumstance to transpire. Regarding the mechanism itself, numbered paragraph 2 of the U.S. proposal speaks of whether a Member has demonstrated that addition of a new data element is internally feasible. It should also be necessary that there be demonstrated, some justification based upon risk

management principles. The EC would not want to see this mechanism introduced into the SAFE Framework.

61. The Delegate of JAPAN stated that it could accept the proposal, but the second line in step one should include mention of regulations in addition to legislation. There is also a need to limit discussion to elements needed for security purposes.
62. An Observer stated that the intervention of the EU was in line with provisions of the Revised Kyoto Convention. The word “authorized” is 2-pronged. It means required or imposed. There is a need to assure consultation prior to imposition of any new requirement.
63. The Chair of the PSCG voiced some concerns. One troubling area is that the steps lead to a *fait accompli*. Following the steps will lead to approval. There is no burden of proof, and no criteria for putting a request forward to the SWG. There must be a reasonable link to a security need. The document needs to be revised as there should be higher standards.
64. The Delegate of CANADA supported the U.S. proposal in principle. Looking at other statements, there appears to be the need for some language changes. We do agree in principle that a mechanism is needed. We do not know what the future holds. Do purely technical changes need to go through the whole Policy Commission process? Maybe we need a 2-step process.
65. The Chairperson replied that there is already a technical track established which involves the Permanent Technical Committee.
66. The Delegate of the UNITED STATES said that the ongoing discussion went to the heart of the SAFE Framework. The U.S. proposal document states that current WCO Member practices should be followed. The SAFE data list has great value in guiding administrations. In response to earlier comments, he stated that trying to impose a reasonableness test would start a process with no end. There could never be consensus. It is important that the process be a reflection of what administrations require by law or regulation. The regulatory environment will change. With respect to a reasonableness or justifiability test, there is nothing in the SAFE which may be enforced. The WTO is one way to enforce reasonableness, but SAFE should not be viewed like that. The data elements should reflect the current regulatory practices of Members. The existence of national requirements is evidence that new elements are not frivolous. The CBP Notice of Proposed Rulemaking (NPRM) goes through each pre-publication comment and analysis. We will address each point raised by comments in the Final Rule, and will benefit from our trade discussions. We need to finish the national regulatory process. There is no connection whatsoever between the NPRM process in the U.S. and the SAFE Framework amendment process. He asked the Secretariat to capture this last comment carefully in the Report.
67. The Delegate of AUSTRALIA expressed support for the United States. He stated that regarding the sequence as set forth in the U.S. proposal, there was merit in the step one process. He noted that there was no mention of reasonableness in step three of the process, and asked whether this might be added by the United States.

68. An Observer stated that if the SAFE Working Group is about cooperation, but only starts where government has already made up its mind, then that is not cooperation. The United States is not alone in seeking new requirements. India is seeking the provision of value information upon export. Would the United States welcome that?
69. A PSCG Member endorsed the Observer's comment and said that even though there had been consultation, the trade needs predictability and a maximum data set. There is a need for reasonableness and practicality.
70. Another PSCG Member said that advanced data for security purposes is a "crunch" area. The U.S. proposal for transparency is fine, but we need to address what comes first, SAFE or the national law. In phase one of the amendment process we provide for urgent cases required under national law, and are given a mandate to add to the SAFE Framework. There is the need for some language regarding reasonableness and practicality. We need to know why some of this is needed, and maybe need to form a small group to look at the wording.
71. The Chair of the PSCG said that the SAFE Framework is about "standards" not just best practices. As such, any amendment will have global trade effects. With regard to the data elements in SAFE, there was much negotiation about what would be included. There was give and take, negotiation, exchange of ideas and dialogue. The trade takes the SAFE data elements as standards, applied globally.
72. The Director, Compliance and Enforcement referred back to the process in 2004, saying that the point made about cooperation was correct. There was an open dialogue in a joint working group, and there were concessions made at the time.
73. The Chairperson said that it was difficult to come to a conclusion. The SAFE Working Group had looked at the U.S. proposal. We have seen merits, but we have some reservations. The proposal to form a small group to look at the text is a good one. He then asked for volunteers for such a group. The volunteers included FedEx, TIACA, GEA, ICS, WSC, the United States, the European Commission and the United Kingdom. A virtual group was thereby formed.
74. The Delegate of the UNITED STATES then addressed the topic of the specific data elements which were offered for placement in the SAFE Framework. He stated that there was only the need to add five items of data, and due to the expected approval of Version 3 of the WCO Data Model, we can eliminate some existing elements. The U.S. has engaged in pilot programs with over 70 companies. It is precisely because the SAFE represents standards that we need to do these amendments.
75. The Chairperson noted the need to get to a more technical level. If something is not in Version 2, will it be in Version 3? The ultimate question is how to proceed. There is a need to proceed under the assumption that the WCO Data Model Version 3 will be adopted by the Council in June 2008, and not to be restricted to consideration of the U.S. proposal under the terms of Version 2 alone. We need a meeting of experts to report back to the SAFE Working Group. A meeting of such experts is proposed for 6-7 May 2008, with a special meeting of the SAFE Working Group convened before the end of May 2008. Are there any comments on this plan?

76. The Delegate of the EUROPEAN COMMISSION stated that the meeting of experts was necessary partly due to insistence by the EC for more information. We have some sympathy for the U.S., but need more detail. If we agree on a data element, we need to agree on the same data element. We must make an informed decision. We have sympathy for the consignee/consignor type of information, but we need data and targeting experts to look at the matter. Any Member unilaterally requiring data will risk getting unreliable data. If we introduce individual requests we get away from standards. We also need to know whether the data collected will go to PIERS under the Freedom of Information Act in the United States.
77. The Chair of the PSCG posed three questions. She asked: will the U.S. be submitting a proposal to eliminate data elements; what about the possibility of expansion of the U.S. regulatory requirements to all modes of transport; and finally, is it the intent of the new requirements to cover shipments from the point of container stuffing, and if so how may redundancy under the C-TPAT profile be avoided?
78. A PSCG Member stated that there is perhaps some concern from a technical standpoint. He encouraged Customs to use a risk-based model. There are considerable costs to the trade involved in this process.
79. The Delegate of JAPAN agreed with many of the concerns expressed by the private sector delegates. The U.S. should respond to some of these, that is, give time and opportunity to allow the private sector to engage and also allow some flexibility in penalty regimes. If comfort is given to the private sector on these, Japan can in a general sense support the United States proposal. Given a choice of evils between this and 100% scanning of cargo, we would choose 10+2.
80. The Delegate of the UNITED STATES said that Security Filing (10+2) is mandated by law, beginning with a pre-publication consultation period that lasted all of 2007. The NPRM was published in January 2008 and hundreds of comments have been received. In response to the European Commission's comments, the U.S. has had technical level discussions. If the purpose is to determine which of the 10+2 elements need to be added to the SAFE, we would make experts available. With regard to whether the data would be released to the public, the answer is no. The Trade Secrets Act would prevent this. As far as the removal of data elements from SAFE, this will be accomplished during the removal of the elements from the SAFE and placement in an Annex to the document. Concerning application to other transport modes, only maritime trade is under discussion now, though it may make sense to expand to other modes. The C-TPAT profile contains some of the same data elements, but targeting is done on a shipment basis. Only 50% of goods are covered under C-TPAT. As for the comment from Japan, there will be a phased approach involving informed compliance. We will work with the trade to implement. There is no intention to impose penalties immediately. As far as a connection between 10+2 and 100% scanning, we seek to counter the 100% scanning approach and need 10+2 to demonstrate the best use of risk management.
81. A PSCG Member opined that the U.S. would proceed with the 10+2 regulations without approval from the WCO. The worst scenario would be if each country were to act on its own. The WCO should act in concert, continued cooperation being vital.

82. The Chairperson agreed that “go it alone” actions are not the right approach.
83. A PSCG Member wondered what effect the 10+2 requirements might have on mutual recognition.
84. Another PSCG Member asked whether the private sector might attend the meeting of technical experts. In regard to the maritime status notifications contained in the U.S. regulatory proposal, there are technical issues to consider. Container stowage position aboard a vessel is different from a vessel stow plan. There is great concern concerning 100% scanning. The U.S. is urged to work via the WCO.
85. The Chairperson stated that the technical meeting is intended to tackle some of the issues mentioned by previous speakers. Once the technical issues are understood, we can move forward. In regard to the planned meeting of 6-7 May, the Secretariat should send letters of invitation to all WCO Members. The summary of tasks for the technical experts’ meeting would include: looking at the U.S. proposal; determining exactly the definitions of the requested data elements; finding whether the elements are in Version 2, or will be in Version 3 of the WCO Data Model; and, determining whether any of the elements are already in the SAFE Framework. The SAFE Working Group will later look at the missing data elements and will decide whether to add them. The date for the Special Meeting of the SAFE Working Group is 16 May 2008. This will give the experts time to report outcomes to their administrations. It will be a one-day meeting with no separate meeting for Customs. (See Summaries of Outcomes of 6 May and 16 May 2008 Meetings, appended to this Report respectively Annexes II and III). The Chairperson then called for the meeting to move to consideration of the next agenda item.

SAFE AEO Appeal Process (as Amended)

86. The Chairperson introduced an amended outline appeal process contained in document LF0005.
87. A number of delegates and observers had comments on this revised draft. One delegation felt that the existing language in SAFE adequately met the needs, feeling it was inappropriate to have a highly legalistic document for a voluntary programme. In their own national programme 90% of such cases were swiftly resolved without such a process being outlined. An observer responded that the Private Sector had invested great resources in complying with AEO programme requirements and the prospect of having this status revoked without a post mortem could be very costly. Another observer questioned the truly voluntary nature of the programme and, for SMEs in particular, loss of AEO status could put them out of business. Supporting strongly the draft Appeal process, the Chair of the PSCG said that not all Customs administrations had highly developed appeal mechanisms and should welcome a clearly defined programme. An observer added that a clearly outlined appeal process could be a benefit and indeed a selling point for an AEO programme.
88. Another observer felt that the revised Kyoto Convention concept of ‘Omission’ would need to be re-visited at a future date. Notwithstanding these comments, parties were willing to compromise in recognition that neither Customs nor the private sector

were getting everything desired. A revised version of the Appeals procedure was adopted and is appended to this Report (Annex IV).

Small and Medium Enterprises (Frequently Asked Questions)

89. Document LF 0008 had been distributed to all members. It presented a series of frequently asked questions (FAQ) relevant to the significant portion of the trading community represented by Small and Medium Enterprises. Identifying and communicating with this important segment of supply chain participants presented significant challenges.
90. A number of delegates and observers thanked the Secretariat for this initiative and indicated the FAQ could be a very useful publication in terms of raising awareness amongst this important sector of the trading community.
91. An observer commented that the best placed organizations to represent SMEs were national and local Chambers of Commerce. In the context of the WCO this could be through a cascading down of information through the World Federation of Chambers of Commerce.
92. Several delegates and observers wondered whether there was a definition of SME which could help and also when the FAQ would be finalized. The Secretariat responded that there were a number of definitions internationally and they were aware, for example, of EU definitions. In the EU financial support could be forthcoming according to a company's categorization so the reason for having a definition was logical. However it felt that in the context of the WCO a definition would not be particularly helpful as well as potentially being very difficult and time consuming to formulate. In respect of finalizing the FAQ the Secretariat asked if delegates and observers would send in any comments in a reasonable time frame – say a month or so - in order for a finalized version to be prepared for the next SWG.
93. One delegate mentioned that in their national programme, which had about 8000 participants, several thousand SMEs would qualify. The key was to have as simplified a process as possible. Often SMEs had a simpler supply chain and the consequent burdens need not be that great.
94. Another delegate mentioned that, to date, 70% of applications for AEO status had come from SMEs. They were particularly interested in achieving a quality status and enjoying mutual recognition. All companies should be included in AEO programmes.
95. Another delegate pointed out that mutual recognition of AEOs should be clearly mentioned in the FAQ.
96. An observer pointed out that a large proportion of their client base were SMEs in developing countries. While the aim should be to get as many as possible of these on board there is a good proportion that are not interested in AEO status. The observer felt it would be useful to examine the relevant SAFE Pillar 2 standards from an SME point of view and include this in the FAQ.

97. The Director, Compliance and Facilitation added that he would be attending BASC and IFCBA events. Both of these organizations also have large SME membership. Finally an observer with a large number of SME clients felt that links to relevant websites would be useful.

Members' Implementation via Pilot Projects

98. The Chairperson called upon the Delegate of CHINA to present information regarding the Smart and Secure Trade Lanes (SSTL) project on behalf of participants in the program which includes China, the Netherlands, the United Kingdom and the European Union. The presenter said the various terrorist attacks which have been noted around the world created the need to assess the risks of terrorism. The result of the need is the SSTL project which is included in EU legislation as well as in legislation in China. The speaker presented expected outcomes, working methods, developmental stages, and timetables. He stated that many are looking closely at the progress of the project, which has been given a high profile due to the SAFE Framework. A risk-based approach is being employed and the first phase of the project involves reliance on 15 data elements. New Authorized Economic Operator laws had been finalized in China and became effective on 1 April 2008. One major aspect of the project is to test container seals and information technology systems. In operational terms, the project requires cargo data submission 24 hours prior to vessel loading. There is communication with Customs officials in the importing country. In principle, there is no Customs intervention in the process. There are six points at which container seals are read electronically. These are: at the point that the container is stuffed; when the container enters the port of export; at vessel loading; at vessel unloading in the import location; when leaving the importation port; and, at the final delivery point.
99. The Chairperson thanked China for the presentation, finding it very impressive and a good merger of security with facilitation.
100. The Chair of the PSCG thanked the presenter and asked whether the WCO would be analyzing the project to see whether it was consistent with the SAFE Framework. She also inquired whether new AEO programs would be posted on the WCO website for easy access.
101. The Director of Compliance and Facilitation stated that the Secretariat hears of new programs all the time. His Directorate is coordinating with the Capacity Building Directorate on these since SAFE implementation is their mandate. He said that the matter of placing AEO program information on the website would be explored.
102. The Chair of the PSCG then asked China whether their new legislation had been translated into English, whether information on the 15 data elements being used would be available, and whether AEO benefits are part of the legislation.
103. The Delegate of CHINA replied that the law would be translated and made available. Regarding information on the 15 data elements, while it was alright with China to release information there was a need to coordinate with the EU partners. Regarding AEO benefits, there are annexes to the law which list benefits which may be granted to different enterprises.

104. The Delegate of the NETHERLANDS stated that it was a difficult pilot project, but that there was cooperation from all parties. He thanked the participants for moving with a keen eye for the interests of all.
105. An Observer stated that he had seen in the presentation a view of Customs in the 21st Century. Hopefully there will eventually be created an “authorized Customs” concept. All of the involved administrations are examples of first class Customs operations. He then asked, relative to the pilot under discussion, whether there would be only one submission to Customs one time. Is there some intermediate Customs point to get data or will there be only a single submission by some means.
106. The Delegate of CHINA stated there would be one submission. This is an expected outcome and it is believed it will be fulfilled.
107. The Delegate of the UNITED STATES expressed interest in the results regarding container seals. He asked about the anomaly rate and what percentage of the alerts require a response. He also asked for information on what the deadline might be for submission of a pre-declaration for import under the project.
108. The Delegate of CHINA stated that the project was in the first phase. There had been some difficulties with seals and efforts were undertaken in cooperation with the EU to resolve those issues. Information on the results should be shared, but there is first the need to consult with the project partners. Regarding import pre-declaration, the time limit is in line with the SAFE Framework time frames.
109. A PSCG Member asked whether copies of the presentation might be made available to the private sector. In regard to the new Chinese 24 hour rule, he asked whether the data elements to be required had been published and whether they were the same elements being used in the pilot project. He stated that the EU, U.S. and Canadian programmes of this sort are based on information technology principles. Would the Chinese rule contemplate “hard copy” amendments of electronic information. If so, paper submissions would create a huge challenge.
110. The Delegate of CHINA stated that the 24 hour rule is based upon the SAFE Framework. The pilot includes 15 data elements, but the new 24 hour program will require more. Those elements were recently released. When China receives the advance information, risk management applications will lead to quick release unless it is determined that merchandise is of a prohibited nature, such as solid or radioactive waste. The pre-arrival declaration in the new law does not require hard copies. A “means of transport” declaration does require hard copies. This “means of transport” document will be amended next year. The delegate stated that as far as making the presentation available, it would be necessary to consult with the pilot project partners.
111. The Delegate of JAPAN thanked the presenter and said that although the program was a pilot, success was anticipated. Hopefully the parties to the project will be able to share programme information which would benefit everybody. Japan is trying to establish green lanes together with China and the EU. Japan is also in partnership with Malaysia, New Zealand, Australia, Indonesia and others and hopes to sign an AEO Mutual Recognition agreement with New Zealand soon.

112. A PSCG Member asked whether there was a time table for an AEO status programme, whether such a programme is being developed mutually with the EU, and whether China is currently granting AEO status to traders.
113. The Delegate of CHINA responded that the new law allows for AEO application, and there are several levels of authorization. Customs will evaluate applications and as soon as a trader moves up in status more benefits are granted. Regarding mutual recognition in concert with the EU, discussions are ongoing.
114. The Chairperson thanked all participants and moved the meeting to consideration of the next agenda item.

The SAFE Framework and Emerging Countries

115. A delegate mentioned that there is great will among developing countries to implement the SAFE Framework. He mentioned that even if Customs is ready in some countries, there are cases where the private sector in those countries is not ready for the implementation of the SAFE Framework. He stressed that emerging countries need to work on Pillar 1 of the SAFE Framework and mutual recognition of Customs controls.
116. The Chairperson assured the meeting that the capacity building programme is running and that the WCO Secretariat is working on fulfilling diagnostic missions which were requested by WCO Members.
117. A Delegate expressed appreciation to one of the WCO Members for providing the financial support for developing countries that were trying to implement the provisions of the SAFE Framework, and stated that there was a meeting planned in May for the countries of Western Africa who had received Phase I diagnostic missions.

Post Incident Recovery: the SWG perspective

118. The Director, Compliance and Facilitation introduced an APEC Trade Recovery Programme Study report that had been submitted by Singapore. In respect of future work for the SWG the question of post incident recovery had already been raised and the work already undertaken by APEC could be a useful starting point for a future Incident recovery 'annex' in SAFE. A number of delegates welcomed this initiative.
119. One delegation informed the Group that administrations had undertaken a lot of work in this area and felt that the WCO could play an important role in the development. The key, in their opinion, was good communication at all levels; between government agencies, between governments and also between business and government.
120. The delegate suggested that the WCO could consider hosting a 'table-top' exercise, including full participation of the private sector.
121. The Chairman of the PSCG indicated the Group's support for such an initiative.

Other Business

122. The EC representative mentioned that currently there is a process of examining standard (ISO 17712) referenced in the SAFE Framework for high-security seals. As a result of the first analysis, he expressed some doubts whether the SAFE should refer to this standard, because it was not yet finalized, was covering only containers and it was prepared without customs administrations' participation. Therefore, he proposed considering an amendment to the SAFE Framework.
123. The Secretariat noted that it was aware of the EC group which was working with high-security seals issue. It was proposed that the EC should share their comments with the WCO Secretariat and for the next SAFE Working Group there should be a substantial debate on this issue.
124. A PSCG Member, being a part of ISO working group on mechanical seals, appreciated the fact that the EC has reached out to this group. He pointed out that an international standard on mechanical seals would facilitate trade, because there will be no need to go and get approval from all WCO Members. He stated that he would really appreciate any Customs administration participating in next technical meeting planned for June 2008.
125. Another PSCG Member mentioned a newly formed coalition of trade associations (ACSIF) dealing with air cargo security. It consists of 26 associations. He stated that he wanted to draw the attention of the SAFE Working Group to the fact that such a group existed and that a lot of the work had been done in the area of air cargo security.
126. The delegate of the EU informed the meeting that in its opinion the SAFE Working Group should re-examine the reference to ISO Standard 17712 concerning high security mechanical seals. The matter was being considered by ISO in June and the delegate felt that a discussion in the SWG should follow this.
127. The Chairperson thanked all delegates for their contributions to the meeting and declared the Second Meeting of the SAFE Working Group to be closed.

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SAFE Working Group 2nd Meeting/Groupe de travail SAFE 2^{ème} réunion
22 – 23 April/avril 2007

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SUMMARY OF OUTCOMES

Meeting of Data Element and Targeting Experts Concerning SAFE Framework Data Element Addition Proposal, 6 May 2008

As directed by the SAFE Working Group, which last met on 22-23 April 2008, a meeting of national experts in data elements and targeting met at the WCO on 6 May 2008. The meeting was called at the suggestion of Members who wished clarification regarding the list of data elements which are proposed by the United States to be added to those already residing in the SAFE Framework.

The assembled experts reviewed the 10 data elements and the 2 status messages which appear in a Notice of Proposed Rulemaking (NPRM) published in the United States. Such publication is preparatory to promulgation of a final rule in the U.S. which will have the force and effect of law and which will, when implemented, require additional elements of information from importers and carriers. The United States seeks to have those elements from their list which are not now contained within the SAFE Framework, added to the elements listed in that document.

The method used by the group involved comparing the U.S. data elements in the NPRM against those in the SAFE Framework, as well as against the data elements currently to be found in either Version 2 of Version 3 of the WCO Data Model. Adoption of Version 3 is expected at the 2008 Council Sessions. Of the 10 proposed U.S. data elements to be supplied by importers, it was determined that 6 of them are not currently included in the SAFE Framework of Standards. Those 6 elements are:

- a) Manufacturer or Supplier Name and Address;
- b) Seller (both text and coded);
- c) Buyer (both text and coded);
- d) Container stuffing location;
- e) Consolidator (stuffer);
- f) Country of Origin.

Of the 2 messages to be required of carriers, it was determined that neither reside in the SAFE Framework. These 2 messages are:

- 1. Container stow plan;
- 2. Container status code.

Additionally, it was determined that for elements "b" and "c", above, the U.S. proposal would require the name and address of the "owner" of goods for which the name and address of a seller or buyer, respectively, are not known at the time information is required to be sent to Customs. With respect to elements "d" and "e", above, it was determined that data elements requiring the provision of information regarding the location at which break bulk goods are made "ship ready", or the name and address of the party making break bulk goods "ship ready" are not to be found in the SAFE Framework.

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Further with regard to the 2 status messages, it was determined that while neither are in the SAFE Framework, 9 sub-elements of message “2”, above, are not found either in the WCO Data Model, nor in the UN/EDIFACT Code List, the document from which all commercial data elements and their definitions are derived. It would be necessary to amend that overlying UN document as a first step to incorporating this message into the WCO Data Model and the SAFE Framework.

The assembled experts indicated at the conclusion of the meeting that their questions had been exhausted. It now remains for the SAFE Working Group to consider the inclusion of the identified data elements and messages in the SAFE Framework.

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SUMMARY OF OUTCOMES

Special Meeting of the SAFE Working Group, 16 May 2008

As decided by the SAFE Working Group in its meeting of 22-23 April 2008, a Special One Issue Meeting of the SAFE Working Group was convened at WCO Headquarters on 16 May 2008. The purpose of the meeting was to review the findings of a 6 May 2008 meeting of data element and targeting experts who were given the task of reviewing data elements proposed for addition to the SAFE Framework by the United States. In addition, the 16 May 2008 Meeting was to recommend whether the data elements sought for inclusion by the United States should be recommended to the WCO Council via the Permanent Technical Committee and the Policy Commission.

The United States had proposed in writing at the 22-23 April Meeting of the SAFE Working Group, to add 5 elements of data to the SAFE Framework. These elements are:

1. Buyer (text);
2. Buyer (coded);
3. Seller (text);
4. Seller (coded);
5. Container Status Code (this was subsequently clarified by the U.S. to mean "Container Status Messages").

After discussing these elements for inclusion, it was the consensus of those assembled that data listed elements 1 through 4, inclusive, should be recommended for addition to the SAFE Framework list of data elements. With respect to item 5, above (one of two carrier supplied messages being sought in ongoing rulemaking in the United States), the U.S. would require this message only if available to the carrier and in the format present in the carriers' systems. In the end, it was determined that more information was required from the United States and that a recommendation for inclusion should not be made until needed clarifications could be offered. The same result pertained to the second of these carrier messages over which there was definitional confusion. Until it is known whether the messages being requested by the United States concern the "Container Stow Location" or, alternatively, the "Vessel Stow Plan", no recommendation could go forward to the Council. The Report to the Policy Commission will indicate that there was no consensus by the SAFE Working Group to add either of the U.S.-requested status messages to the SAFE Framework. The Policy Commission will be requested to consider this matter and to provide guidance.

The delegates also took notice of the Summary of Outcomes of the specially convened 6 May 2008 meeting of data element and targeting experts, as authorized by the SAFE Working Group at its meeting of 22-23 April 2008. In that document it was reported that several other elements of data which the United States is seeking to require from importers via a rulemaking procedure are not presently included in the list of elements found in the SAFE Framework.

Nearly all of those present felt that those elements would first need to be presented for inclusion by the United States under established procedures before they could be considered. The United States did not wish to discuss the data elements identified at the 6 May 2008 meeting of experts as it is of the opinion that the elements listed in that Summary

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of Outcomes document (also attached to this Meeting Report) are already included in the SAFE Framework. This being so, the United States did not propose them for addition at the meeting of 22-23 April 2008. It was noted that the U.S. did participate in the experts meeting of 6 May 2008, and did not amend its original proposal document subsequent to that meeting. This outcome would also be reported to the Policy Commission for its consideration.

Finally, it was determined that the draft of a document presented by the United States at the 22-23 April 2008 meeting and further developed by an authorized virtual drafting group, would be considered at the next scheduled meeting of the SAFE Working Group in October 2008.

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DRAFT MODEL AEO APPEAL PROCEDURES

SAFE Framework of Standards, Annex

The WCO Authorized Economic Operator guidelines (see AEO guidelines, II. Validation and Authorization; Application and Authorization, paragraph 4) specify as follows :

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.

The following Draft Model Appeal Programme, to be annexed to the SAFE Framework, is offered for consideration by Members. The unspecified time limits appearing in paragraphs (e), (f), and (g) are to be determined by the adopting Members. These draft voluntary provisions are not in conflict with those found in the Revised Kyoto Convention, General Annex, Chapter 10.

Denial, Suspension, Revocation or Withdrawal of Authorization

- (a) Authority for Denial, Suspension, Revocation or Withdrawal: The National Customs administration or its controlling authority (hereinafter referred to jointly as the Granting Authority) may deny, suspend, revoke or withdraw the authorization which it has granted an Authorized Economic Operator. The reasons for such actions are totally within the competence and discretion of such Granting Authority.
- (b) Prior Consultation: Before denying, suspending, revoking or withdrawing a pending or existing AEO authorization, the Granting Authority may consult with the applicant or AEO in an attempt to determine if resolution other than denial, suspension, revocation or withdrawal is appropriate.
- (c) Action on Denial, Suspension, Revocation or Withdrawal: If the Granting Authority determines under the preceding section that an alternative resolution is not appropriate, it may for a material failure to abide by the terms and conditions of the authorization deny, suspend, revoke or withdraw a pending or existing AEO authorization.
- (d) Notice Regarding Denial Suspension, Revocation or Withdrawal: The Granting Authority may deny, suspend, revoke or withdraw existing or pending AEO authorization by serving notice of the proposed action in writing upon the AEO or applicant. Such notice should specifically set forth the grounds for the proposed action, and would be final and conclusive upon the party served unless the AEO or applicant files a written notice of appeal with the Granting Authority in accordance with paragraph (e) of this document. Any action to deny suspend, revoke or withdraw AEO authorization should become effective only after the conclusion of an initial administrative appeal to the Granting

Authority which results in an adverse decision, or upon expiration of the period specified in paragraph (e) for the filing of such initial appeal.

- (e) Notice of Appeal: The party served may file a written notice of appeal from the proposed action of the Granting Authority within **XX** days following receipt of the written notification of proposed action. The notice of appeal should set forth the response of the AEO/applicant to the statement of the Granting Authority. The AEO/applicant may request a hearing as part of a notice of appeal.
- (f) Hearing on Appeal: (1) Notification of place and time of hearing : If a hearing is requested, it should be held before a hearing officer designated by the senior official of the Granting Authority or his or her designee within **XX** days following the date of application therefore. The AEO/applicant should be notified of the time and place of the hearing at least **XX** days prior thereto. (2) Conduct of Hearing : The AEO/applicant may have a representative of his or her choice at the denial, suspension, revocation or withdrawal hearing. All evidence and testimony of witnesses in such proceeding, including substantiation of charges and the answer thereto, should be presented with both parties having the right of cross-examination. A record of the proceedings should be made and a copy thereof be delivered to the AEO/applicant. At the conclusion of such proceedings or review of a written appeal, the hearing officer should expeditiously transmit all papers and the record of the hearing, if held, to the senior official of the Granting Authority or his or her designee, together with a recommendation for final action. (3) Additional Arguments : Following a hearing and within **XX** calendar days after delivery of a copy of the record, the AEO/applicant may submit additional views and arguments on the basis of such record to the senior official of the Granting Authority or his or her designee. (4) Failure to Appear : If neither the AEO/applicant nor any designated representative appears for a scheduled hearing, the hearing officer should conclude the hearing and transmit all papers with a recommendation to the senior official of the Granting Authority or his or her designee.
- (g) Decision on the Appeal: The senior official of the Granting Authority or his or her designee should within **XX** calendar days after the date of the hearing render a decision, in writing, stating the reasons therefor, with respect to the action proposed by the hearing officer. Such decision should be transmitted to the proper party in the Granting Authority and served by that party on the AEO/applicant.
- (h) Further Administrative Appeal: National legislation may provide an AEO/Applicant receiving an adverse opinion following initial appeal procedures with the opportunity for a final administrative appeal to an authority independent of the Granting Authority.
- (i) Court Review: Subject to provisions of National Law, any AEO/applicant adversely affected by a decision of the Granting Authority may appeal the decision in the appropriate Court of competent jurisdiction.
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