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GUEST COLUMNIST

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Coping With the Homeland Security Border

SINCE 9/11, SWEDISH EXPORTS to the U.S. face an increasingly complex and security-conscious U.S. border, now patrolled by the Department of Homeland Security (DHS). While U.S. Customs used to guard these borders, DHS took over these responsibilities last March and, in the process, fundamentally changed the face that greets exports and imports into the U.S. Sophisticated exporters and importers of all types of commodities, from manufacturing equipment to processed food, should be fully aware of these and future security-related changes, because the failure to comply with them can result in barriers to the U.S. market. The paradigm shift to a Homeland Security border also presents opportunities to market security-related products and services to the government and private industry.

When the former U.S. Customs transferred to DHS last March, it joined forces with the border functions of the Agriculture Department and the Immigration and Naturalization Service. U.S. Customs doubled in size and became the Bureaus of Customs and Border Protection (CBP) and the Immigration and Customs Enforcement (ICE). In the process, the number-one border mission became clear – to prevent terrorists and their weapons from entering the U.S. by extending the reach of U.S. laws beyond the country's physical borders (e.g., to foreign manufacturers and ports). In reality, therefore, the U.S. border now greets a Swedish exporter in Sweden – not on U.S. shores.

As is now well known in the trade community, the primary border initiative is a “voluntary” program called the Customs-Trade Partnership Against Terrorism (C-TPAT). This is an initiative whose purpose is to strengthen supply-chain security for imports into the U.S. by calling on all parties (e.g., foreign manufacturers, importers, and carriers) to adhere to a set of security-related principles, such as cargo, facility and personnel. It is clear that companies who do not enroll in this program do so at their peril, because trade benefits are increasingly conditioned upon it. For example, an importer or manufacturer will not be eligible for reduced import examination rates unless enrolled in C-TPAT. Over 5,000 companies have joined this program and the drumbeat continues to sound louder from U.S. government officials that more should apply.

Another benchmark change expanding the reach of the U.S. border are the advance notice requirements now imposed on all modes of

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transportation for exports to the U.S. For example, U.S.-bound carriers must provide CBP with a detailed description of all cargo, including the exporting and importing parties, well in advance of the arrival of the carrier in U.S. ports. For vessel carriers, the information must be provided 24 hours prior to loading in a foreign port. In some cases, CBP officers are now stationed in foreign ports to screen U.S. bound cargo for potential security threats. Notably, through a 2003 executive agreement between the U.S. and Sweden called the “Container Security Initiative,” CBP officers are now stationed in Göteborg to screen cargo destined for the U.S. market. Exporters and their carriers must be careful to ensure that shipping documents are in order to comply with these requirements.

More border security changes have occurred in the past few months and more will undoubtedly appear as the war on terrorism continues. As of December 2003, for example, the U.S. Bioterrorism Act now requires prior notice to CBP and the FDA of imported food. In addition, foreign food facilities that hold food that is exported to the U.S. are also required to register in advance with the FDA. In addition, in early January 2004, CBP implemented the “US Visit Program,” which required most travelers to the U.S. to undergo digital photographing and fingerprinting.

Aside from these sometimes onerous security obligations, which savvy exporters and importers should follow, it is clear that the Homeland Security border now gives some companies a chance to compete for profitable federal and state government contracts for security products (e.g., handheld radiation detection technology) and services (e.g., supply chain security consulting). Whether it is access to the U.S. market or marketing security, however, only those companies that are able to cope with these changes will be able to compete effectively in the new era of the Homeland Security border.

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