



International Chamber of Commerce

The world business organization

Department of Policy and Business Practices

ICC Recommendations on the Administration of the AEO Program in the European Community: Parent-Subsidiary Companies with Common Systems and Procedures

Prepared by the Commission on Customs and Trade Regulations

Summary

Multi-national companies see value in the Authorized Economic Operator (AEO) model for both security and trade. However, current European Community (EC) rules requiring companies to file applications in each member state is not conducive to achieving corporate wide control and harmonized compliance with trade and security goals. The ICC believes that the EC should adopt an AEO “mutual recognition” strategy among member states that will enable a company with multiple legal entities in various states to list multiple legal entities in one application, according to the corporate structure most suitable to the company, and file in one member state. It should be the responsibility of the customs authority in which the application is filed to coordinate and obtain the concurrence of each other member state; AEO certificates should be issued to each legal entity included in the single application.

Background

The EC Customs Code Implementing Regulation provides that an application for AEO must be made to the appropriate customs office in the member state either:

where the applicant's main accounts related to the customs arrangements involved are held

or

where those accounts are accessible in the applicant's computer system by the competent customs authority using information technology and computer networks, and where the applicant's general logistical management activities are conducted

In accepting AEO applications, priority is also given to either of these member states if at least parts of the operations to be covered by the AEO certificate are conducted.

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Many multinational companies have a large number of separate legal entities each carrying out AEO-type activities in different member states and are considering how best they can apply for AEO status and co-ordinate ongoing AEO maintenance in a structured manner. Many of these companies see an advantage in establishing a co-ordination function to manage AEO applications and provide a “centre of excellence” resource that various affiliates can turn to for support and guidance.

The “centre of excellence” model might entail the core entity itself requesting the issuance of AEO certificates as representative of the related legal entities. Or it may nominate an existing entity to represent the affiliated companies it lists in the application. Moreover, it would be responsible for implementation of ongoing compliance monitoring programs within and between each of the participating related entities and would work with the supervising customs authority to correct any compliance deficiencies. Provided that they do not result from systemic failure to enforce internal standards, issues arising in one entity should not jeopardize the status of sister entities. The controlling organization providing these services would be legally responsible for the payment of duties and compliance with the company’s customs and security compliance programs. In this way, a company can ensure all its activities are consistent and interconnected and optimize its internal expertise and compliance related expenses.

In relation to security, the central function would develop common corporate security procedures and practices to be implemented by each of the separate legal entities and establish necessary internal monitoring and controls. It would be responsible for the development, promulgation, implementation and review of the corporate security policies and procedures and for audit of covered entities for compliance with company and EC security requirements and policies.

The Challenge

Although the European Commission published on June 29, 2007 (TAXUD/2006/1450)¹ AEO Guidelines that in section II.3.3 allows parent/subsidiary companies with common systems & procedures to submit applications referring to these common systems and procedures, current EC procedures do not explicitly support the single application model. Each legal entity of the company is required to file an application locally and submit to local processes and rules. This is inconsistent with the goal of a harmonized Europe and suggests a lack of “mutual recognition” even within the EU. Moreover the existence of different rules and protocols makes administration of a company’s compliance program both unwieldy and excessively costly.

We believe that in order for a centralized AEO function to be operationally effective an essential element is a close relationship with one single customs authority. This will enable the applicant’s customs authority to, in turn, work in partnership with the various member states responsible for approving and monitoring the operations of the legal entities of the applicant company in other member states, and to issue AEO certificates to each of the entities listed in the application.

¹

http://ec.europa.eu/taxation_customs/resources/documents/customs/policy_issues/customs_security/AEO_guidelines_en.pdf



Our concern extends beyond the management efficiency of the applicant company to the customs administration itself. A serious concern is that working separately with the customs authorities of each of the EU Member States will result in duplicative and redundant processes and lead to sub-optimal utilization of resources for both the applicant company and the customs administrations involved. The existence of multiple relationships, each requiring regular contacts, would give rise to significant practical problems including communications, variations between the member states in relation to the information requirements, resource challenges and an overlap of checks and inspections.

The proposed single application solution would work to the advantage of both customs and the company, by enabling the AEO certificates (for the legal entities listed in the single application), to be issued and supervised by one customs administration in a similarly structured 'enterprise' manner that would facilitate the support of the other member states. In this way, the customs team taking the lead role would also gain a holistic understanding of the company's operations, mirroring the integrated approach of the company itself. We believe this approach reasonably applies the premise underpinning the Community's cargo security initiatives, both in terms of overall supply chain efficiency and an integrated Community risk management approach.

Proposed Solution

We believe that companies with multiple legal entities in multiple member states should be permitted to file a single application covering those entities it deems appropriate and over which it exercises control in terms of customs and security, according to its unique corporate structure. In addition, it should be the role and responsibility of the customs authority in which the application is filed to coordinate with the other member states for the issuance of AEO certificates to the legal entities listed in the single application.

Conclusion

The purpose of this paper is to ensure that the provisions of the Customs Code will be applied with the greatest degree of flexibility to achieve a streamlined model both for AEO program implementation and within the company itself. In addition the paper aims to build a constructive and long term 'partnership' for a company with a single supervising customs administration.

We believe this to be in the interest of both customs and industry, as well as critical for the smooth functioning of the EU Internal market. It is also a practical implementation of the Customs Code, which supported by the provisions of Article 50 of the Customs Code, takes advantage of the cooperative approach which customs have been working bilaterally with counterparts in other member states as well as with the companies concerned.



About ICC

ICC is the world business organization, a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world. ICC promotes an open international trade and investment system and the market economy, and helps business corporations meet the challenges and opportunities of globalization. Business leaders and experts drawn from ICC's global membership establish the business stance on broad issues of trade and investment policy as well as on vital technical subjects. ICC was founded in 1919 and today it groups thousands of member companies and associations in 130 countries.