



Department of Policy and Business Practices

Discussion paper

ICC recommendations on E.U.-U.S. Mutual Recognition

Prepared by the Commission on Customs and Trade Regulations

Introduction

The International Chamber of Commerce (ICC) has participated actively in the constructive public/private dialogue fostered by the World Customs Organization on the broad array of security and facilitation issues relating to the SAFE Framework. Throughout that dialogue, ICC has maintained that achievement of a mutual recognition (MR) process for companies implementing the Framework procedures is a top priority. Mutual Recognition is necessary to capture the trade benefit of a world standard for security and trade facilitation, i.e., that:

- A supply chain partner accepted as an AEO by a customs administration that participates in the Framework will not be subject to multiple verifications of its status by participating Administrations or other AEOs, i.e., that an AEO would not be subject to multiple inspections or verification by each AEO with which it does business;
- Supply chain partners will be able to apply for AEO status in their own participating countries;
- A supply chain partner accepted as an AEO by a customs administration that participates in the Framework will be afforded program benefits by all participating administrations, including those that are phasing in implementation.

Simplification, harmonization and standardization, of procedures and practices are the sine-qua-non for achieving mutual recognition. Failure to achieve reasonable uniformity would also create counterproductive, costly, and inefficient effects by subjecting AEO traders to many different and conflicting or redundant national approaches.

This is a huge challenge and a key issue for business. In this regard ICC has continued to urge WCO members to minimize any supplementation of the WCO AEO Guidelines with separate national criteria.

While the ultimate goal is to establish a multilateral system of mutual recognition, we recognize the practical reasons for a temporary resort to bilateral or regional solutions. We are encouraged by the recent announcement of a mutual recognition agreement between the U.S. and New Zealand, which demonstrates the feasibility of such agreements. An E.U.-U.S. mutual recognition agreement is highly desirable because it would cover about a forty percent of global trade, and it is matter of urgency now that the E.U. security programs have fixed dates for implementation.



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A great value of E.U.-U.S. mutual recognition would be to have it in place, with legal certainty, in time so that companies on both sides of the Atlantic could avoid having to undergo duplicative application and certification processes: companies meeting C-TPAT requirements would not have to make separate applications to meet AEO security requirements; companies certified as security AEOs would not have to apply to C-TPAT. Considering that EU's AEO program took effect on January 1, 2008, an MR should be achieved as soon as possible. Pending an agreement, the E.U. and U.S. authorities should issue guidance for both business communities and/ or introduce flexibilities in their programs to avoid the situation that companies would have to undergo two sets of security certifications

Specific Concerns

Benefits

Both programs, AEO and C-TPAT, lack substantial benefits for participating companies. A lower risk score resulting in fewer controls and inspections —as provided under both programs—is not a sufficient benefit and does not correspond to the high level of security that companies have demonstrated during the application/validation procedure. Even the E.U. benefit of a reduced data set for pre-arrival and pre-departure declarations is not enough, because reliable companies still have to provide data for every single transaction. From a business perspective, a waiver of individual pre-arrival /pre-departure declarations respectively, a real “green lane,” for AEO/C-TPAT companies would be appropriate. Another approach would be to have a reduced audit program for industries that are already strictly controlled, such pharmaceuticals under the “Good Manufacturing” and “Good Laboratory” practices. Unfortunately, neither the E.U. nor the U.S. has intensified their work on such simplifications.

Structural Asymmetries that Impede Attainment of Mutual Recognition Must be Addressed

1. Failure of the C-TPAT program to deal directly with export security. The scope of the E.U.'s AEO program includes both import and export processes, while C-TPAT focuses solely on the security of goods imported into the U.S. To the extent that AEO is concerned with the export security of goods originating in the territory of the EU as well as those arriving in its territory, it may in this regard provide relatively more protection to its trading partners that have programs like C-TPAT than it receives in return from such partners.

This asymmetry should, however, not be allowed to derail or delay the accomplishment of mutual recognition. First, the difference between the two programs may be more apparent than real. Both programs are concerned with the security of goods originating in third countries. Moreover, while C-TPAT does not explicitly address export security, its requirements provide implicit protections in that they require domestic manufacturing locations to comport with essential physical, personnel, and IT security measures. If one party requires adjustments to the program of the other to facilitate mutual recognition, the need for such adjustments should not be allowed to delay mutual recognition, but rather should be allowed to take place over a reasonable period of time, with mutual recognition given, provided that reasonable progress continues to be made.



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2. Treatment of groups of related companies under common control. C-TPAT provides for a single application and security verification process for groups of related companies subject to common internal security requirements that are enforced through a robust internal compliance process within the group. In contrast, AEO will require each separately incorporated legal entity in such a group to file a separate application and undergo a separate verification process. ¹ It is important that any system of mutual recognition provide group-wide benefits in cases when benefits are conferred by the host jurisdiction on the basis of a security verification process that examines security at the level of the group rather than the level of individual legal entities.

Beyond the question of mutual recognition, where related companies are governed by common procedures enforced through a robust internal compliance process within the group, a single AEO application and verification process should be implemented with a lead customs administration to which the others would defer. Consultations by the lead authority with the customs administrations of other Member States would still be appropriate, but there would be one decision made by a single authority, based on a single verification process.

The one-decision/one verification process/single authority approach would have many advantages both for the group of related importers and for the Member State administrations. While establishment of investment entails legal requirements in each host Member State, a much more efficient use of administration and company resources could be gained through a more flexible coordination among E.U. members.

Interoperable Electronic Systems and "single window"

There should be interoperability in terms of software and electronic messaging between the U.S. and the E.U. (and among E.U. Members), coupled with the single window facilitation so that electronic data elements only need to be submitted one time. However, achievement of interoperability may take some time and a MR agreement on certification and verification should not be held up to wait for this result.

Confidentiality of Proprietary and Sensitive Data

Business remains very concerned about safeguards to protect sensitive and proprietary data; for, example, U.S. business has reservations about sharing export data with foreign jurisdictions. Equally, E.U. business has these concerns and objects to the unrestricted publication in the U.S. of data received in customs declarations under the "Freedom of

¹ We appreciate the revision made in the E.U.'s AEO Guidelines, which would allow subsidiaries of a common parent that apply common procedures to use a common questionnaire response in connection with each of its filings. Each entity still would need to file separately, but using a common questionnaire response. Customs authorities would be required to "arrange their AEO application processes, including consultation procedures, where necessary, with other customs administrations, accordingly." (http://ec.europa.eu/taxation_customs/resources/documents/customs/policy_issues/customs_security/AEO_guidelines_en.pdf at Section II: 3:3) While this is a helpful revision, it still envisions a process of multiple applications, with multiple independent reviews in all 27 Member States.



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Information Act.” Mutual Recognition should adhere to WCO guidelines and “ensure the confidentiality of commercial and security sensitive information and that information provided be used solely for the purposes for which it was provided;” [Section F (a.) of the WCO AEO Guidelines].

Data Requirements

Every effort should be made to have minimum and identical requirements of the same data elements. The total data set required for each consignment is a huge amount of data, which would entail substantial investment in larger data management capacity that would be particularly burdensome for SMEs.

Interface with large regional trade partners

E.U.-U.S. Mutual Recognition would emphasize logistics disadvantages (especially with regard to road transport) with significant neighboring trade partners outside the agreement such as Mexico, Canada, Switzerland and Norway. These countries should either be included in the agreement or be brought into separate MR agreements in parallel time frames. Achievement of MR agreements with other significant trade partners, such as Japan, Brazil, China and India, should be accelerated.

Stability of the MR requirements

Security programs are still evolving, e.g., with the developing U.S. requirement for additional “10+2” data. Business needs a transparent, predictable and consultative process for the development of security measures. If new measures are continually introduced, the adjustment costs will be higher and implementation will be less effective.

Costs and Discrimination

Costs must be kept to a minimum and discriminatory burdens should be avoided. Mutual recognition of national security programs should involve equivalency in content, process of attainment and revocation, in order to avoid discrimination.

Risk Management

Mutual Recognition (and all programs to enhance the security of traded goods) should be based on a multilayered risk management approach, as embodied in the WCO SAFE Framework rather than scanning of each individual shipment. National authorities should avoid over-dependence on scanning technologies that can add significant costs and delays to trade. Inspection and scanning should focus on “high risk” cargo in the context of a comprehensive, multi-layered, risk management approach.

Flexibility for SMEs

The ICC has hundreds of thousands of small and medium sized operators in its membership. An E.U.-U.S. agreement on mutual recognition must make AEO/C-TPAT status available to SMEs by including flexibility to minimize cost burdens and requirements such as those for data and demonstrating financial viability.

