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AEO carriers, AEO freight forwarders, AEO customs agents:

the use of AEO benefits

The intention of this document is to clarify how AEO benefits (which are laid down in Article 14b CCIP) could be used in relation to AEO carriers, freight forwarders or customs agents.

The benefits are dependant not only on the type of the certificate, but also on the AEO's involvement in the responsibilities linked to the customs formalities and customs related operations. It is clear that a customs agent, who, without the obligations of a declarant, is filling in a customs declaration in the name of his client, is not on the same footing as another customs agent submitting a declaration in his own name whose liabilities are connected to the concept of "declarant".

The AEO Certificate is issued to the applicant and not to his clients. Therefore, benefits can be used by the AEO only in his own name. This is a general principle for all AEO Certificates as the certificate relates to the company itself and applies to the company's own business operations but not for another company's operations; Customs is pre-auditing the applicant but certainly not the clients of the applicant.

However, an AEO importer should not be unreasonably disadvantaged if his carrier business partner is not an AEO, or if a part of his customs related operations is performed by a customs agent who does not have the AEO status.

This document's objective is to compile and describe possible situations where a customs or a summary declaration is submitted by an AEO carrier, an AEO freight forwarder or an AEO customs agent with a view to make use of the AEO-benefits.

It also lists situations where the AEO importers/exporters are performing business with non-AEO carriers, freight forwarders, or customs agents. The list is not exhaustive, it can be further developed adding more cases.

Contents:

I.	Fewer controls	page 3
II.	Priority treatment	page 5
III.	Choice of the place of controls	page 5
IV.	Easier admittance to simplifications	page 6
V.	Prior notification	page 7
VI.	Reduced AEO data set	page 7

I. FEWER PHYSICAL AND DOCUMENT BASED CONTROLS

ARTICLE 14b (4) FIRST SUB-PAR.

Article 14b (4) CCIP lays down that an AEO shall be subject to fewer physical and document-based controls than other economic operators. This means that an AEO shall have a lower risk score and enjoy faster clearance.

Situation 1 (can happen from around 1 April 2008): AEO customs agent with a non-AEO client / a CUSTOMS declaration is lodged.

Concrete example: The holder of the AEO certificate is a customs agent and his client whom he represents is a non-AEO. The AEO customs agent is lodging a customs declaration related to importation. He is a direct representative of the importer, and thus "AEO-holder" and "declarant" are not the same persons.

In general, the customs authorities should lower the risk score in accordance with the degree of the AEO customs agent's involvement into the representation of his client. This is depending:

- on the type of representation, as well as
- on any risks identified during the AEO authorisation process.¹

In case of direct representation, the customs agent himself does not bear all the responsibilities laid down in Article 199 CCIP.² Where the AEO-holder is not the declarant, the person who shall comply with obligations laid down in Article 199 is the declarant and not the AEO-holder. (For example, he might not verify whether the proof of origin attached to the declaration is false or not.)

It should be also noted, related to direct representations that, according to the experiences, small and medium sized companies are the typical clients of the direct representatives. The list of clients sometimes changes every day and therefore the condition for AEOS or AEOF regarding security of business partners seems not to make much sense. (It will always be possible to identify the clients of a customs agent but only afterwards, through his past records.)

In case of indirect representation, the customs agent is acting in his own name and thus is bearing the responsibilities enshrined in Article 199. (He is even paying the customs duties on behalf of his client.)

¹ See the AEO COMPACT model:

http://ec.europa.eu/taxation_customs/customs/policy_issues/customs_security/index_en.htm#auth_eco

² According to Art.199 (1) CCIP, the lodging with a customs office of a declaration signed by the declarant or his representative shall render the declarant responsible for the accuracy of information given in the declaration; for the authenticity of the documents attached; and for compliance with all the obligations relating to the entry of the goods in question under the procedure concerned.

It is also a usual situation that a customs agent is acting for one of his client as an indirect representative (as he trusts this client) whereas for another client he acts as an indirect representative.

Situation 2 (can happen from around 1 April 2008): AEO importer has a non-AEO customs agent.

The holder of an AEO certificate is an importer and he works with an appointed customs agent who is not an AEO. The importer is lodging a CUSTOMS declaration.

The risk score reduction should be consistent with the findings – gained during the pre-audit of the importer before issuing an AEO certificate - about the quality of his procedures for verifying the accuracy of customs declarations submitted by his agent or for verifying the accuracy of performing any other customs formalities by his agent.

The management of the risk should also be treated in accordance with the degree of involvement of the customs agent into his client's dealings with customs authorities.

Situation 3 (will happen from 1 July 2009): AEO customs agent with a non-AEO client / a SUMMARY declaration is lodged.

When deciding on the degree of reduction of risk score, one should bear in mind that the AEO or AEOF certificate is issued only if the applicant meets the security criteria. These security criteria are mainly focusing on securing the premises where the goods are stored or securing the containers. Only the 3 sub-criteria of "staff screening", "security training" and "identification of trading partners" may be met by those customs agents who are dealing only with paper work but never see the goods for which they are preparing a customs declaration. In many cases, even the "identification of business partners" can not give reliable results, especially for those customs agents who are dealing with numerous clients on a case by case basis.

However, in view of achieving end-to-end secure supply chain, we should aim at having as many AEOs in the supply chain as possible. Thus, customs agents can become AEO/Security but Customs should be cautious when reducing the risk scores for them. A customs agent who is also a forwarder or a warehouse keeper is not in the same situation as a customs agent who only performs paper work. This has to be taken into account for the risk assessment of the economic operator.

This is nothing to do with whether the customs agent is a direct or indirect representative, because there is no correlation between the type of representation and the range of work related to the goods themselves (warehousing, loading, transporting etc).

Situation 4 (can happen from 1 July 2009): an AEO freight forwarder is the Principal in a transit declaration comprising the security data set

An AEO freight forwarder is lodging a transit declaration comprising the data set of summary declaration.

For the traditional customs (transit) declaration, the freight forwarder is the Principal and thus he bears (even financial) responsibility for the goods carried and for the accuracy of the information given as well as for the compliance with the transit rules from the office of departure till the office of destination. The risk score related to the customs procedure can be reduced accordingly.

As far as the summary declaration part is concerned, the concept of supply chain security comes in. The more AEOs are in the chain, the more the risk score related to security controls can be reduced.

II. PRIORITY TREATMENT OF CONSIGNMENTS IF SELECTED FOR CONTROL

ARTICLE 14b (4) SECOND SUB-PAR.

According to Article 14b (4) CCIP, when, following risk analysis, the customs office selects for a further examination a consignment covered by a summary or a customs declaration lodged by an AEO, it shall carry out the necessary controls as a matter of priority. This means that the consignment should be the first to be controlled if others are also selected from non-AEO's.

It is clear from the formulation of the legal text that priority treatment should be ensured for those who lodge the declarations (summary or customs declarations). Thus, AEO carriers, freight forwarders and customs agents who are lodging the particular declaration, should enjoy priority treatment for controlling the relevant consignment (even if the declaration has been lodged by an indirect representative).

This practise should also be followed in those situations where the customs formalities related to the particular consignment are performed by an AEO carrier or freight forwarder or customs agent, even if acting on behalf of a non-AEO client.

III. CHOICE OF PLACE OF CONTROLS

ARTICLE 14b (4) SECOND SUB-PAR.

According to Article 14b (4), customs control can be asked by an AEO to be diverted to another place where it can lead to the shortest delay or less costs for the AEO. However, this is subject to an agreement with the customs authority concerned.

This benefit is a logical continuation of the priority treatment, and thus it is recommended that the same approach should apply here in general. However, more detailed guidance can not be given, as there is an important difference between "priority treatment" and "place of controls": in cases of priority treatment, the goods are still under indirect

customs supervision, which is not the case when the controls are not to be carried out at the premises of the customs office.

Example no 1 (can happen from 1 July 2009):

Customs office of entry wants to control a consignment covered by a summary declaration lodged by an AEO ocean carrier related to a non-AEO consignee. The AEO requests the control to be carried out not at the premises of the customs office but somewhere else in the same port. It justifies its request and the customs office finds it reasonable. It carries out the physical controls at the place requested by the AEO ocean carrier.

Example no 2:

The same situation but the AEO requests the consignment to be examined at another port in the same MS. The customs office accepts this request because the port is geographically near and the risk identified through risk analysis "allows" such a diversion.

Example no 3:

The same situation but the AEO requests the consignment to be examined at the premises of the non-AEO consignee. The customs office denies this request, because the consignee has a bad reputation from the point of view of customs compliance.

Example no 4:

A customs agent who is an AEO has lodged an entry summary declaration for his non-AEO client residing in another MS. The customs office wants to perform a physical check of the related consignment. The AEO requests to perform the checks at his premises.

The customs office endorses this request as the requested premise is under the operation of the AEO.

IV. EASIER ADMITTANCE TO CUSTOMS SIMPLIFICATIONS

ARTICLE 14b (1)

Can happen from around 1 April 2008.

Article 14b (1) CCIP lays down that if the person requesting a simplification is an AEO, the customs authority shall not re-examine those conditions which have already been examined when granting the AEO status.

The AEO rules did not change the present system of simplification authorisations. Neither Centralised Clearance nor Single European Authorisation/SASP have been

introduced. Thus the same rules apply for AEO carriers, freight forwarders and customs agents as before.

V. PRIOR NOTIFICATION OF SECURITY CONTROLS

ARTICLE 14b (2)

Can happen from 1 July 2009.

According to Article 14b (2) CCIP, when a summary declaration has been lodged by an AEO, the competent customs office may, before the arrival/departure of the goods into/from the Community, notify him when, as a result of security and safety risk analysis, the consignment has been selected for further physical control.

According to the legislation, this notice shall only be provided where it does not jeopardise the control to be carried out.

This latter issue is dependant, in case of a consignment where the customs formalities are performed by an AEO customs agent on behalf of a non-AEO client, on the results of the risks identified during the customs agent's AEO authorisation process.

VI. REDUCED DATA SET FOR SUMMARY DECLARATIONS

ARTICLE 14b (3)

According to the wording of Article 14b (3), AEO-carriers, AEO-freight forwarders and AEO-customs agents may use this benefit only for their AEO clients. The legal provision is now discussed for clarification in the Customs Code Committee.