

Summary of the Presentation:
Authorized Economic Operator: Some Practical Questions on Implementing the AEO
in the EC
By Attorney Dr. Harald Hohmann

The Case: The Japanese multinational Nihon Corporation (N) has 50 subsidiaries within the European Community, namely 1- 2 companies within each EC Member State. The function of these subsidiaries is to import the products from Nihon Europe Ltd., the EC headquarter in London, while the export activities are all done by the Nihon Corporation in Japan, which ships the goods to Nihon Europe Ltd. in London. In addition, the Nihon Europe Ltd. has five branches in the EC Member States.

First set of questions: Nihon Europe Ltd. wants to arrange, that all its subsidiaries and branches could be certified as AEO. Could Nihon Europe Ltd. submit the AEO application for all its subsidiaries and branches? Or must each of the subsidiaries and branches submit their own national application? And in which Member State should Nihon Europe Ltd. file this application? And will that also be recognized by all other EC Member States?

First Result:

Subsidiaries with customs related activities can apply for AEO. Nihon Europe Ltd. can file AEO applications for its branches, while its subsidiaries must file their own AEO applications. In case of joint corporate standards/procedures for their customs related activities, the self-questionnaire could be completed by Nihon Europe Ltd. on behalf of all its subsidiaries, however due to practical reasons, this is rarely done, but that way could be followed, if translations of this one self-questionnaire are offered to the national customs authorities. Competent is the customs agency of the Member State where the main accounts are held and a part of the customs activities is conducted (Rule 1). Alternatives are: the Member State in which there is electronic access to these main accounts and the logistical management and a part of the customs activities is taking place (Rule 2); Rule 3 gives the same conditions, but with a few facilitations. In general, national customs authorities are following the wish of the company which customs authority should be competent, at least if the national customs authority of the Member State with the main accounts agrees with that approach and consultations are done between the Member States involved.

The AEO status granted by one Member State is accepted by all other Member States of the EC. The AEO status of Nihon Europe Ltd. granted by the UK is recognized by all EC Member States, as the AEO status of Nihon Germany GmbH granted by Germany is recognized by all EC Members – in spite of our experience that the national conditions for the implementation of the AEO criteria might be a bit different from one Member State to another.

Second set of Questions:

What are the conditions to be certified as AEO? And what must the company and their subsidiaries demonstrate: Which annexes to the self-questionnaire are necessary in Germany and in Austria?

Second result:

Besides (3) a decent book-keeping system, giving transparency to the flow of goods, and (4) financial solvency of the company, the most important conditions of the AEO are: (1) minimisation of the risk that violations of customs/export law may occur, and: (2) security of the company and its international supply chain. For the first condition, a comprehensive precautionary risk management should be established, in order to allow a risk identification of sensitive factors concerning: country, good & use of good, customer/end-user, company; after that, risk assessment should come to a responding to these risks, by organisational instructions, risk transfers etc. For the second condition, access to the company and its sensitive areas must be secured, in order to avoid manipulation of goods during production, storage or handling, and the safety of employees, service-providers and of the whole international supply chain – at least of the most important of them – must be secured by screening them constantly on sanction lists, by security contracts (or at least: security declarations) and by some trainings and supervising actions. The AEO conditions may be regarded as “best practices” of implementing already existing legal duties of export and customs law. The national implementation of AEO requirements will vary from one Member State to another; especially there will be differences concerning the number of documents to be annexed.

Third set of questions: What are the advantages of becoming certified as AEO? If the talks between METI and the EC Commission on the mutual recognition will be successful: What advantages can be expected?

Third result:

The legal advantages of a certified AEO are: end of any intense checks, reduced data requirements for the 24 hours rule, release from some simplified export notification, assumption of reliability in export and customs law, fewer risks of sanctions in case of negligent export/customs violations, chance of a D&O insurance, no more proofs for applying trade facilitations, and no endangering of existing/new trade facilitations. In addition, there are several economic advantages. The same advantages are also possible for the Nihon Corporation in Japan, if it has certified as AEO in Japan and if the mutual AEO recognition EC – Japan has entered into force.

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