

TERMS OF REFERENCE
EU-U.S. JCCC WORKING GROUP ON MUTUAL RECOGNITION

The EU-U.S. JCCC, acknowledging the importance of achieving mutual recognition of their respective trade partnership programmes, C-TPAT and AEO, has decided in its meeting on 22 January 2007 in Washington to create a working group of customs specialists on trade cooperation issues with the following terms of reference.

- The working group will consist of customs experts nominated by both sides. For CBP, representatives will be drawn from the appropriate offices and for the EU, representatives will come from the European Commission and three or at the most four Member States which participated in the EU AEO pilot of 2006.
- The working group will, prior to the formal implementation of the AEO programme on 1/1/2008, draft a road map towards mutual recognition and present the road map for agreement to the EU-U.S. JCCC Steering Group. Additionally the working group shall endeavour to provide recommendations for an U.S.-EU agreement on mutual recognition of their respective trade partnership programmes.
- To facilitate and expedite the work of the working group, the EU-U.S. JCCC, agreed on the following definition of mutual recognition:

Mutual recognition is an important element in securing the transatlantic supply chain on an end-to-end basis. A detailed comparison of the U.S. C-TPAT programme and the EU AEO programme will enable the U.S. and EU to work ambitiously towards mutual recognition of those economic operators which are authorised as secure economic operators on the basis of the standards and requirements outlined in their respective trade partnership programmes and to provide equivalent benefits to each other's mutually recognised operators. This opens the possibility for importers to rely on that part of the transatlantic supply chain that is covered by their suppliers or vendors which are authorised as AEO or C-TPAT member.

- The work should be taken forward in three phases:
 - **Phase I** – finalised by 28 February 2007; establishing an in-depth comparison of the scope, the application processes, validation procedures, the criteria and benefits of the C-TPAT and EU AEO programme.
 - **Phase II** – finalised by 30 April 2007; a pilot programme will be operational between CBP and the EU Member States represented in the working group to determine remaining gaps in the programmes and how best to close them.
 - **Phase III** – finalised by 30 May 2007; based on the conclusions of the phases I and II this last phase will be used by the working group to draft a road map for mutual recognition. This would include, among other features, the possibility of a reduced number of site visits of operators when CBP or an EU Member State Customs Authority is able to indicate that the operator is authorised as a C-TPAT member or AEO.

- The comparison to be taken forward in Phase I should include policy and operational processes of the respective programmes and could be done as a desk research on the basis of the following documents:
 - Results of the trade partnership pilot completed in 2005 by the EU-U.S. trade partnership working group (see annex). In that pilot next to a theoretical comparison of the EU AEO programme (at that time under development) and the U.S. C-TPAT, two EU companies and two U.S. companies were visited by joint teams of U.S. and EU customs officials. The conclusions of the pilot are attached, and provide a good basis to continue discussion on the development of a road map towards mutual recognition.
 - The relevant legislative framework for the AEO programme in Regulation (EC) no. 648/2005 and Regulation (EC) no. 1875/2006; the AEO guidelines and the AEO Compact model; and the report of the EU pilot on the AEO programme which was completed in 2006.

CBP should study the documents and provide questions and comments to the European Commission. To accommodate the work in phase I, the Commission will appoint a contact person who will assist CBP in the study of the relevant AEO background material.

- The working group will decide in the beginning of March on the content of the pilot as well as identifying the participants (companies) in the pilot exercise.

PREVIOUS WORK UNDERTAKEN IN 2005 ON US-EC TRADE PARTNERSHIP STUDY (as referred to in the 5th bullet point of the terms of reference)

Introduction

During 2005 the EU-US JCCC working group on trade partnership established an expert group established to address issues associated with industry partnerships and trade facilitation. Next to a theoretical comparison of C-TPAT and the AEO concept [for which at that time a the legal framework was introduced with the security amendments to the Community Customs Code, Regulation (EC) No. 648/2005], the group also coordinated the creation of joint teams, comprised of customs officials from EU Member States and US, to participate in a study of the C-TPAT program and the AEO concept. In the visits to US and EU companies the US colleagues did their usual C-TPAT site visits on foreign suppliers i.c. two EU companies exporting to the USA. The EU officials visited two companies in the USA which were C-TPAT members and identified the security measures the company had in place to secure international supply chains. The AEO concept was used as a guideline for the EU officials.

As a result of the study the EU-US JCCC working group on trade partnership concluded the following:

- (1) Future comparison of the programs will be even better accomplished once the AEO program will be operational. The EU therefore will resolutely continue its work on the development of the Authorised Economic Operator Programme (AEO) to achieve a quick implementation of the programme. For the development of the AEO program the best practice experiences from this study and the U.S. best practices with the C-TPAT program will be taken into account. The comparison of standards taken forward by this expert group and the WCO framework of standards will present the common standards enabling customs authorities to finally achieve a mutual recognition of each other's trader security programs.
- (2) Although there exist differences in the general approaches of both programs - C-TPAT is only security related and the AEO will incorporate security into the already existing measures and obligations for the use of customs simplifications – it can be acknowledged that the AEO conditions, methodology and criteria in the EU's draft legislation will enhance supply chain security. In particular the security requirements of both trade partnership programs should achieve the same results.
- (3) The companies, which participated in the visits, indicated that C-TPAT has stimulated a more structured and cross-functional approach in their logistical processes, although most of the security requirements which had to be implemented, already existed. However, the C-TPAT programme obliged them to document the existing procedures and measures, providing a complete picture of the companies' security policies in the business processes.
- (4) The companies regard the C-TPAT requirements not as an additional burden. Most of the requirements were already in place before C-TPAT was issued. The requirements can therefore easily be implemented on top of an already existing strong foundation based on, for example, company's internal programmes and processes such as ISO standards.
- (5) The sequence of phases in the application process of C-TPAT is different to the EU authorization process. In the EU an onsite inspection / audit has to be completed before the decision is taken to grant an authorization for an operator or the status of AEO. Consequently the operator will receive the simplifications for customs procedures and/or benefits for his compliant behaviour. C-TPAT already awards benefits (tier 1) to certified members before an on-site validation is conducted, but those companies will have their security profiles examined and analyzed by a Supply Chain Security Specialist. They also will have to pass a vetting process which will be accomplished to ensure that the companies will not have other customs infringements, before they become a certified member.

- (6) However, with the introduction of the tiered approach, CBP has introduced a difference in benefits for operators, depending on their evolution in introducing security standards of the C-TPAT programme in their business processes. A certified C-TPAT member will receive less benefits (tier 1) compared to a company which has developed a whole palette of measures and best practices even going beyond the requirements of the C-TPAT programme (tier 3). The higher level of benefits can only be awarded when validation occurs and is successful.
- (7) Both programs base their validation/auditing of operators on the information provided by the companies, also the information on the companies' foreign suppliers. However, another difference recognised is the performance of validations by U.S. officials abroad. The EU will not conduct validations of foreign suppliers to EU importers which apply for AEO status. EU importers will be required to verify and assure security arrangements with their foreign suppliers and the EU would like to cooperate with other customs administrations on the basis of mutual recognition of trade partnership programmes and reciprocity to establish secure end-to-end supply chains, for inbound and outbound shipments. The comparison of standards taken forward by this expert group and the WCO framework of standards will present the common standards enabling customs authorities to finally achieve a mutual recognition of each other's trader security programmes.
- (8) The study has shown that, the companies participating in the study were multi-nationals with a sound corporate policy on security; for such companies the corporate security measures are already global standards.
- (9) The EC has the objective of monitoring and securing the supply chain from the moment of stuffing of a container until the moment of unloading at the final destination, both inbound and outbound. C-TPAT only covers imports/importers into the U.S. The C-TPAT programme is, in principle, not open for companies which perform solely export activities. However, the visit of the companies in the study demonstrated that the security requirements in required and implemented for import processes, provided significant if not total familiarity with export processes (e.g. security measures for facilities, personell checks and storage of goods are for import the same as for export) In the U.S.A. as well as in the EU, different programmes on export controls related to the export of strategic goods and dual-use goods exist.