
COSTS AND BENEFITS OF FACILITATION AND SECURITY IN TRADE

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I. Executive summary

There was no event in the history which has changed the way to do business than 11th of September 2001 with the terrorism attacks in New York.

This situation determined the need to increase customs systems at border security in the context of the fight against international terrorism. As a result, the United States of America country created its C-TPAT program (Customs Trade Partnership against Terrorism) which ones years later gave rise to the AEO (Authorized Economic Operator) from the perspective of the WTO.

The 9/11 attacks changed security parameters globally and these macro security systems aim to protect the entire supply chain by preventing the movements of international trade serves a tool to combat terrorism and illegal traffic.

The C-TPAT program was a joint initiative of the government and companies to build a commercial cooperation relationship to reinforce and improve the business value chain and border security in the US.

The C-TPAT can only be issued by the US Customs authorities and to be a candidate it must accomplish with certain principles, such as:

- Physical security of the installations
- Safety of containers
- Physical access controls
- Security of technology information
- Etc

The same C-TPAT program was the initiative taken by the WCO through the AEO concept. This figure was and still considered as a key element of the new global scenario where security become a protagonist.

Along the same lines and few years later, the US Customs and Border Protection created the Broker Known Importer Program (BKIP)¹ focuses on the unique relationship between Customs brokers and their importer clients. It's a voluntary program, both for brokers and importers, is targeted for the client who is a regular importer into the United States. An opportunity to identify and address compliance issues with the importer prior to entry, and provides the importer with some benefit for having engaged in the process.

On the other hand, despite the fact that various security programs have been established around the world, trade has continued to grow and increasingly customs, governments and companies look forward to implement trade facilitation agreements.

In recent years, trade volumes and complexity have changed the operating environment for international trading as well as the negative impact of inefficient border procedures on businesses and governments. For example, when authorities are intent on maximizing collection from import duties and other border taxes by checking everything passes across, they cause huge traffic jams at border points.

¹ <https://www.cbp.gov/trade/programs-administration/customs-brokers/broker-known-importer-program>

In this way, governments have to face fraud and national security problems while businesses pay the price of a slow and unpredictable delivery of goods, costly customs procedures and sometimes lost business opportunities.

Those costs of trade are high, in some cases as much as 15% of the value of the goods² traded, that's many economists have argued that for many countries the welfare benefits for more efficient customs procedures could be as high as from reducing tariffs. In other words, the uncertainty over how long it will take to clear a border crossing creates unpredictability, and adds cost to business passed on to consumers on countries where consumers are least able to afford them.

That's why trade facilitation is special important for developing countries. This should promote trade between industrial and developing countries, since comparative advantage differs more between these groups than between industrial countries. The gains from trade should expand for all countries, since tasks where the production processes are allocated more efficiently. For developing countries, the scope of production should also expand to include relatively high skill intensive products and specialize in specific tasks within the production chain.

Trade facilitation aims at simplifying not only the documentation required to clear goods but also the procedures employed by border agencies.

The Agreement on Trade Facilitation was adopted at the World Trade Organization in the ninth Ministerial Conference in Bali, Indonesia in 2013. The Agreement provides a framework of rights and obligations to reform of border procedures around the world.

In the following pages there is a summary of different organizations, entities and agreement that have been carried out to be able to speak nowadays of facilitation and security in trade. And a brief study on the, Union Customs Code³ Regulation (EU) No 952/2013 of the European parliament and the council of 9 October 2013 and its impact on the facilitation of trade and the increasing need to ensure the safety and protection of goods. In addition the importance of being an AEO certified company.

Finally, to conclude this thesis, I thought that it would be interesting to introduce some real experiences as examples to contrast the theory with the day a day of a company. In addition, due to my work studies in detail the different international organizations that contribute to the facilitation and security in trade, I will add a brief part analyzing common denominators between GATT, WCO Safe Framework, TFA, WTO and UCC, related to facilitation and security in trade

² <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0952&rid=1>

³ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0952&rid=1>

II. The Trade Facilitation Agreement in brief

Over the last few decades, countries have made a significant progress in lowering trade tariffs. International trade has increased and manufacturing has become more global with economies connecting with international supply and value chains in terms of exports and imports.

The global distribution and the emergence of e-business have created pressure on governments and authorities to ensure efficient, fast and reliable border crossing and clearance procedures. The lack of transparency, about rules and regulations and multiple documents requirements in different formats and data elements the costs and time doing a trade increase constantly.

Today these obstacles are seen as worst barriers to trade than tariffs and quotas do. It is more important to achieve trade facilitation to improve administrative efficiency and effectiveness, reduce costs and time markets.

Trade facilitation is a key policy for customs, and at the heart of the World Trade Organization (WTO) Doha Round of negotiations. ⁴

European exporters and importers are responsible for 22% of world trade⁵. The primary goal of trade facilitation is to help make trade across borders (imports and exports) faster, cheaper and more predictable in safety and security. In terms of focus, it is about simplifying and harmonizing formalities, procedures and exchange information and documents between the various partners in the supply chain.

For UNECE and its UN Centre for Trade Facilitation and Electronic Business (UN/CEFACT), trade facilitation is “*the simplification, standardization and harmonization of procedures and associated information flows required to move goods from seller to buyer and to make payment*”. ⁶

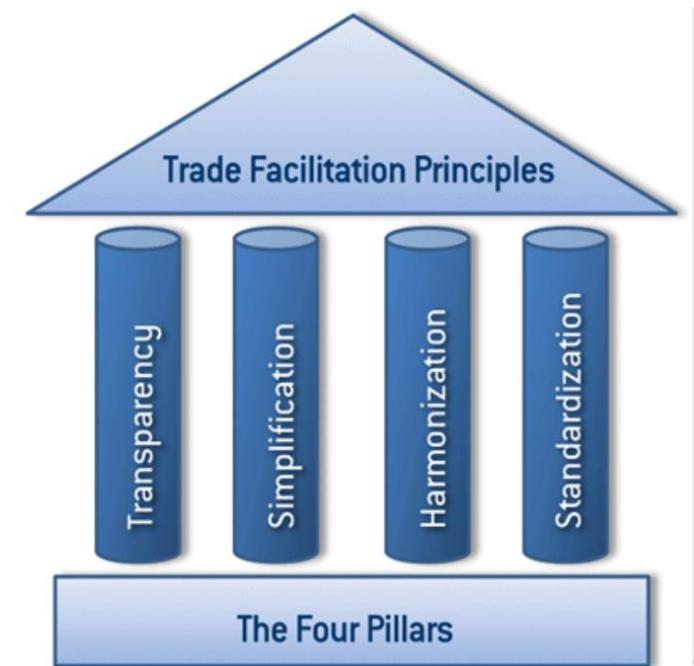
In October 2012, UNECE launched its Trade Facilitation Implementation Guide⁷ a web-based and interactive tool to help countries to have a better access global value chains, through easier and faster trade procedures. UNECE in collaboration with other international organizations arrange workshops to propagate the Guide in five regions of the world and to support trade facilitation implementation. In one hand in these workshops, participants learn how to use the Guide in their own country and in the other are designed to stimulate national practices and encourage discussion on opportunities for regional cooperation in the trade facilitation such as single window implementation, cross border management, documents simplifications etc.

⁴ https://www.wto.org/english/tratop_e/dda_e/dda_e.htm

⁵ http://ec.europa.eu/taxation_customs/general-information-customs/trade-facilitation_en

⁶ <https://www.unece.org/unece/search?q=TRADE+FACILITATION&op=Search>

⁷ <http://tfig.unece.org/>



Trade facilitation has to take place at three levels: at the national, regional and international level. Many trade facilitation measures require a reform and modernization process that depends on an enabling environment, which is based on strong political support and professional program management and change management capabilities. This enabling environment involves different types of interventions and activities addressing the various dimensions of the government, including:

- Legal: Regulatory reforms to be clear, concise and transparent
- Organization: Institutional development, private sector consultation, and inter-agency cooperation
- Technology: Introduction and modernization of infrastructure for electronic processing of trade documents and related data exchange, including IT systems
- Processes: Changes in business processes and procedures
- People: Capacity building of implementing managers and officers.

⁸ <http://tfig.unece.org/details.html>

As a result of these governmental interventions, some examples of recent active strategies and priorities for trade facilitation are:

1. Customs 2020⁹
2. The Union Customs Code ~~Modern Customs Code~~
3. Electronic Customs Projects ¹⁰

III. GATT (General Agreement on Tariffs and Trade)

The GATT was a multilateral agreement regulating international trade. Its purpose was the substantial reduction of tariffs and other trade barriers and the elimination of preferences on a reciprocal and mutually advantageous basis.

In addition to facilitating applied tariff reductions, the early GATT's contribution to trade liberalization "include binding the negotiated tariff reductions for an extended period (made more permanent in 1955), establishing the generality of nondiscrimination through most-favored nation (MFN) treatment and national treatment, ensuring increased transparency of trade policy measures, and providing a forum for future negotiations and for the peaceful resolution of bilateral disputes. All of these elements contributed to the rationalization of trade policy and the reduction of trade barriers.

The GATT Is based on the periodic meetings of the member states, where tariff reduction negotiations are carried out in accordance with the principle of reciprocity. The negotiations become member to member and product to product, by presentation of requests accompanied by the corresponding offers.

GATT was signed by 24 nations (Australia, Belgium, Burma, Brazil, Canada, Ceylon, Chile, China, Cuba, United States, México, France, India, Lebanon, Luxemburg, Norway Noriega, New Zealand, Netherlands, Pakistan, United Kingdom, Republic Czechoslovakia, South Rhodesia , Syria and South Africa) in Geneva on October 30, 1947 and took effect on January 1, 1948.

Before GATT's 40th anniversary, its members concluded that the GATT system was straining to adapt to a new globalizing world economy. In response to the problems identified in the 1982 Ministerial Declaration in Geneva (structural deficiencies, spill-over impacts of certain countries' policies on world trade GATT could not manage etc.), the eighth GATT round known as the Uruguay Round, was launched in September 1986, in Punta del Este, Uruguay. It was the biggest negotiating mandate on trade ever agreed: the talks were going to extend the trading system into several new areas, notably trade in services and intellectual property, and to reform trade in the sensitive sectors of agriculture and textiles; all the original GATT articles were up for review.

⁹ https://ec.europa.eu/taxation_customs/business/customs-cooperation-programmes/customs-2020-programme_en

¹⁰ http://ec.europa.eu/taxation_customs/general-information-customs/electronic-customs_en

The Final Act concluding the Uruguay Round and officially establishing the WTO regime signed 15 April 1994, during the meeting at Marrakesh, Morocco, by the signature of 123 nations.

What's the difference between the GATT and the WTO?

The GATT is a system of rules by nations while the WTO is an international organization.

- The GATT was applied on an interim measure, despite the fact that the governments considered it as a permanent commitment. Commitments under the WTO are legally within full rights and permanent.
- GATT rules applied to trade of goods. The WTO covers not only goods but also trade related to services and property rights.
- Although GATT was designed to serve multilateral agreements, during several rounds of GATT negotiations (particularly the Tokyo Round) plurilateral agreements created selective trading and caused fragmentation among members. WTO arrangements are generally a multilateral agreement settlement mechanism of GATT
- The WTO dispute settlement procedure is faster and more automatic (less possibility to be blocked) comparing the old GATT procedure.

IV. The WTO (World Trade Organization)

The WTO is an intergovernmental organization which regulates international trade. The WTO officially commenced on 1 January 1995 under the Marrakesh Agreement, signed by 123 nations on 15 April 1994, replacing the General Agreement on Tariffs and Trade (GATT).

The WTO deals with regulation of trade between participating countries by providing a framework for negotiating trade agreements and a dispute resolution process aimed at enforcing participants' adherence to WTO agreements, which are signed by representatives of member governments and ratified by their parliaments.

The WTO is attempting to complete negotiations on the Doha Development Round, which was launched in 2001 with an explicit focus on developing countries. As of June 2012, the future of the Doha Round remained uncertain, and the round is still incomplete. For example, the conflict between free trade on industrial goods and services but retention of protectionism on farm subsidies to domestic agricultural sector (requested by developed countries) and the substantiation of fair trade on agricultural products (requested by developing countries) remain the major obstacles. This impasse has made it impossible to launch new WTO negotiations beyond the Doha Development Round, and an increasing number of bilateral free trade agreements between governments.

However, on 7 December 2013, a trade facilitation agreement known as the Bali Package was reached by all members. Bali Package is the first comprehensive agreement in the organization's history.

The WTO establishes a framework for trade policies; it does not define or specify outcomes. That is, it is concerned with setting the rules of the trade policy games.

Five principles are of particular importance in understanding the pre-1994 GATT and the WTO:

1. **Non-discrimination**, (Article V of the GATT 1994)¹¹ which has two major components: the most favored nation rule, (MFN) and the national treatment policy. Both are on goods, services, and intellectual property. The MFN rule requires that a WTO member must apply the same conditions on all trade with other WTO members. For example: Grant someone a special favor and you have to do the same for all other WTO members. National treatment means that imported goods should be treated no less favorably than domestically produced goods (at least after the foreign goods have entered the market) and was introduced to tackle non-tariff barriers to trade.
2. **Reciprocity**. It reflects both a desire to limit the scope of free-riding that may arise because of the MFN rule, and a desire to obtain better access to foreign markets. A related point is that for a nation to negotiate, it is necessary that the gain from doing so be greater than the gain available from unilateral liberalization; reciprocal concessions intend to ensure that such gains will materialize.
3. **Binding and enforceable commitments**. The tariff commitments made by WTO members in a multilateral trade negotiation and on accession are enumerated in a schedule. These schedules establish that a country can change its bindings, but only after negotiating with its trading partners, which could mean compensating them for loss of trade.
4. **Transparency**. The WTO members are required to publish their trade regulations, to maintain institutions allowing for the review of administrative decisions affecting trade, to respond to requests for information by other members, and to notify changes in trade policies to the WTO. These internal transparency requirements are supplemented and facilitated by periodic country-specific reports.
5. **Safety values**. In specific circumstances, governments are able to restrict trade. The WTO's agreements permit members to take measures to protect not only the environment but also public health, animal and health plant.

Seen the five principles of the WTO, there are five essential tasks to develop by the WTO according to them. The WTO manage new multilateral trade agreements, serve as a platform for new negotiations, as well as monitor national trade policies and cooperate with other international agencies in the development of global economic policies.

¹¹ https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art5_e.pdf

The WTO oversees more than 60 different agreements which have the status of international legal texts. Member countries must sign and ratify all WTO agreements on the accession.

Going into greater details, some of the most important agreements discussed were:

- The Agriculture Agreement came into effect at the beginning of 1995, where it has three central pillars: domestic support, market access and export subsidies.
- The General Agreement on Trade in Services created with the main goal to extend the multilateral trading system to service sector, in the same way the GATT was born to provide a system for merchandise trade.
- The Agreement related to Intellectual Property Rights, negotiated at the end of the Uruguay Round in 1994.
- The Agreement of the Application of Sanitary and Phytosanitary Measures negotiated also during the Uruguay Round and establish at the beginning of 1995. With this agreement the WTO sets restrictions on member's policies relating to food safety as well as animal and health plant.
- The International Agreement on Technical Barriers to trade. The object is to ensure that technical negotiations and standards, as well as testing and certification procedures, and not create unnecessary obstacles to trade.
- The Agreement on Customs Valuation where it describes methods of customs valuation that members have to follow.
- In December 2013, the biggest agreement signed as the Bali Package.

V. The Bali Package

It represents a fundamental step in reactivating Doha Round negotiations and reaffirms that the WTO as a leading negotiating forum. While GATT had been in charge of regulating world trade in goods, WTO agreements cover issues as goods, services and intellectual property.

Since the establishment of the WTO, eight conferences has been held, and it was during the fourth meeting in Doha where Ministers decided to start the "Doha Round" (constitutes the most complete and complex multilateral trade negotiation since the creation of the GATT) with the aim of further liberalize world trade.

But in 2011, it was recognized that it would not be possible to achieve a global package and focus new objectives in a new approaches that would allow progress on issues where agreements could be reached; and that's how it was born: Bali Package.

The Bali Package is a trade agreement resulting from the Ninth Ministerial Conference of the World Trade Organization in Bali, Indonesia on 3–7 December 2013.

The accord includes provisions for lowering import tariffs and agricultural subsidies, with the intention of making it easier for developing countries to trade with the developed world in global markets. Developed countries would reduce hard import quotas on agricultural products from the developing world and instead would only be allowed to charge tariffs on amounts of agricultural imports exceeding specific limits. Another important target is reforming customs bureaucracies and formalities to facilitate trade.

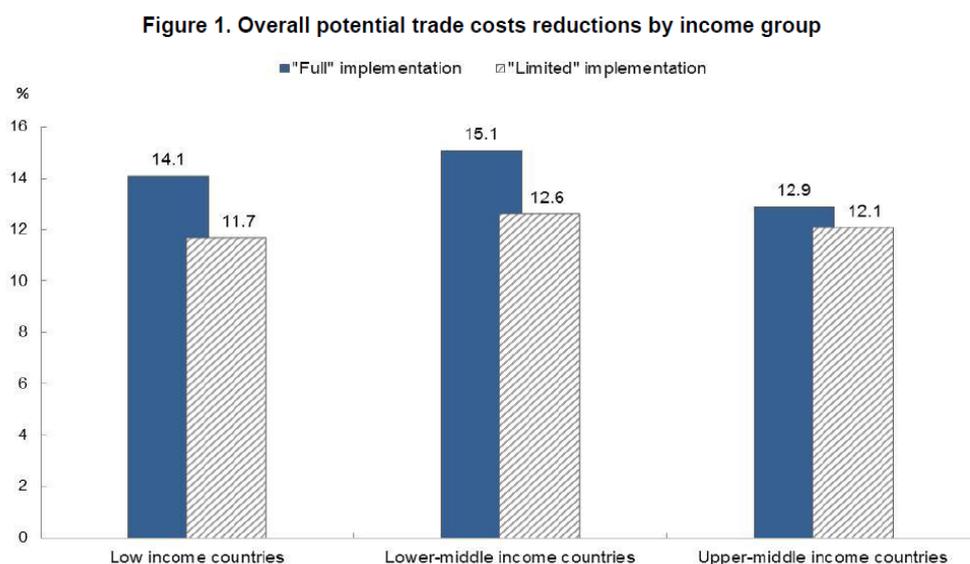
Bali Package covers four areas:

1. Trade facilitation, reaffirms that the non-discrimination principle of Article I and III of GATT 1994 still valid
2. Agriculture, covers food security in developing countries
3. Cotton, subsidies for trading cotton implemented by the WTO
4. Development and LDC issues, covers measures such as preferential treatment and market access.

The calculation of the potential impact of the Agreement is based on two distinct scenarios: a) a “full” implementation scenario where WTO Members would implement all the options contained in the agreement, and b) a “limited” implementation scenario where WTO Members would implement only the mandatory provisions contained in the agreement, leaving aside discretionary provisions, but where countries that already implement best practices would continue doing.

Both scenarios provide a potential trade costs reductions:

- The potential cost reduction from a “full” implementation of the WTO Trade Facilitation Agreement is 14.1% of total costs for low income countries, 15.1% for lower middle income countries and 12.9% for upper middle income countries.¹²
- If countries limit themselves to the mandatory provisions of the agreement, the potential reduction reaches 11.7% for LICs (Lower income countries) 12.6% for LMICs (Lower-middle income countries) and 12.1% for UMICs (Upper-middle income countries)



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An interesting point to pay attention is the article VII in Bali Package Agreement related to the figure of Authorized Operators as a measure of trade facilitation.

¹²

http://www.oecd.org/trade/tradedev/OECD_TAD_WTO_trade_facilitation_agreement_potential_impact_trade_costs_february_2014.pdf

¹³ https://www.oecd.org/tad/facilitation/OECD_Trade_Facilitation_Indicators_updated-flyer_October_2014.pdf (page 2/5)

This article explained that each member shall establish additional trade facilitation measures relating to import, export or transit formalities and procedures. Alternatively, a member may offer such facilitation measures through customs procedures for all operators and shall not be obliged to establish a separate system.

The specified criteria to be an authorized operator are:¹⁴

- An adequate record of compliance with customs laws and regulations and other related laws and regulations
- A system of records management that allows the necessary internal controls
- Financial solvency, including, where appropriate, the provision of a sufficient security / guarantee
- The security of the supply chain

These criteria and benefits of becoming an Authorized Operator are practically the same as the concept of Authorized Economic Operator (AEO) figure, born in 2005 (eight years before) as a result of the terrorist attack in United States.

A study conducted by the Cross Border Research Association on behalf of BASC (Business Alliance for Safe Commerce),¹⁵ explains that since the terrorist attacks in the United States in 2001, the managing security in global supply chains has been increasing in business and governmental agendas. However, a few programs have existed for a longer time, one of them is the BASC (Business Alliance for Secure Commerce) program, active as a business alliance in Latin America since 1996, originally fighting narcotics smuggling, and later converted into a holistic supply chain security management program.

The AEO is one of the main building blocks of the WCO (World Customs Organization) SAFE Framework of Standards to secure and facilitate global trade. The WCO Council's in Brussels adopted in June 2005 the SAFE Framework of Standards. It's an international instrument trying to give a safer world trade regime and it's considered the beginning of an end-to-end management of goods moving across borders recognizing the importance partnership between Customs and Business.

According to the WCO an AEO is *"a party involved in the international movement of goods in whatever function that has been approved by or on behalf of a national Customs administration as complying with WCO or equivalent supply chain security standards. Authorized Economic Operators include inter alia manufacturers, importers, exporters, brokers, carriers, consolidators, intermediaries, ports, airports, terminal operators, integrated operators, warehouses and distributors"*¹⁶

SAFE Framework of Standards to secure and facilitate global trade Framework.

¹⁴ https://www.wto.org/english/thewto_e/minist_e/mc9_e/bali_texts_combined_e.pdf page 20 (Trade Facilitation Measures for Authorized Operators)

¹⁵ <http://www.cross-border.org/project/study-on-basc-program-in-latin-america/>

¹⁶ https://en.wikipedia.org/wiki/Authorized_economic_operator

SAFE is based on four elements:

1. Harmonizes the advance electronic cargo information that Customs needs on inbound, outbound and transit shipments
2. Second, each country that agrees to implement the SAFE Framework commits to employing a consistent risk management approach to use the advance information to identify high risk consignments and address security
3. Requires the outbound examination of high risk consignments using non intrusive detection equipment (example: X-ray machines)
4. The SAFE Framework defines benefits that Customs will provide to businesses that meet minimal supply chain security standards

SAFE Framework rests on two pillars of Customs to Customs arrangement and Customs to Business partnership:

TWO PILLARS OF FRAMEWORK SAFE	
Customs to Customs	Customs to Business
<p>Consisting of 11 standards:</p> <ol style="list-style-type: none"> 1. Integrated Supply Chain Management 2. Cargo Inspection Authority 3. Modern Technology in Inspection 4. Risk-Management Systems 5. High-risk cargo or container 6. Electronic information 7. Targeting and communication 8. Performance measures 9. Security assessments 10. Employee security 11. Outbound security inspections 	<p>Consisting of 6 standards:</p> <ol style="list-style-type: none"> 1. Partnership 2. Security 3. Benefits 4. Technology 5. Communication 6. Facilitation

The essence of the AEO-concept can be found in the Customs-to-Business partnerships.

Operators can be accredited by Customs as AEOs when they prove to have high quality internal processes that will prevent goods in international transport to be tampered with:

- Ensure the integrity of the information,
- Ensure the integrity of its employees for example: will not put goods in the container that should not be there
- Secure access to its premises, to prevent unauthorized persons to put goods in the container

The AEO program (to enhance international supply chain security and to facilitate legitimate trade) is open to all supply chain actors; it covers economic operators authorized for customs simplification (AEOC), security and safety (AEOS) or a mix of both.

Article 39 of the Union Customs Code (UCC), enters into force on 1 May 2016, and describes conditions and criteria for granting of the status of AEO:¹⁷

- a) Compliance with customs legislation and taxation rules and absence of criminal offences related to the economic activity of the applicant
- b) Appropriate record keeping
- c) Financial solvency
- d) Proven practical standards of competence or professional qualifications
- e) Appropriate security and safety measures

According to the European Commission the AEO benefits depends on the type of the authorization, are summarized in the table below:¹⁸

Benefit	AEOC	AEOS
Easier admittance to customs simplifications	X	
Fewer physical and document-based controls <ul style="list-style-type: none"> • related to security & safety • related to other customs legislation 	X	X
Prior notification in case of selection for physical control (related to safety and security)		X
Prior notification in case of selection for customs control (related to other customs legislation)	X	
Priority treatment if selected for control	X	X
Possibility to request a specific place for customs controls	X	X
Indirect benefits (Recognition as a secure and safe business partner, Improved relations with Customs and other government authorities; Reduced theft and losses; Fewer delayed shipments; Improved planning; Improved customer service; Improved customer loyalty; Lower inspection costs of suppliers and increased co-operation etc)	X	X
Mutual Recognition with third countries		X

In other words, compliant traders will benefit from simplifications in the customs procedures and/or from facilitation with regard to customs controls relating to safety and security. Secure AEO's, related to secure certificate, may be informed that their consignment has been selected for controls and will get priority treatment for controls, unless it may jeopardize the controls to be carried out or the results thereof

¹⁷ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0952&rid=1> page 25

¹⁸ http://ec.europa.eu/taxation_customs/general-information-customs/customs-security/authorised-economic-operator-aeo/authorised-economic-operator-aeo_en#what_is

They will also be allowed to submit less data for the pre-arrival declaration and will also be subject to fewer controls as they would be considered as secure partners by customs and as their compliance and reliability would have been thoroughly checked when the AEO certificate was given.

The AEO concept should ensure a safer and more secure end-to-end supply chain. Being recognized as an AEO will constitute an added value for the operator, as it demonstrates compliance with solid security criteria and controls.

Most members of WCO have acceded to the SAFE framework and the majority of customs administrations will introduce AEO-programs.

Further the AEO programs and a longer term goal of AEO is a global system of mutual recognition. The WCO encourage the Customs administrations to work with each other to develop mechanisms for Mutual Recognition (MRA) of Authorized Economic Operator validations, authorizations, control security standards and control results and other mechanisms to eliminate or reduce redundant or duplicated efforts.

The goal of MRA is to link the various international industry partnership programs together to collaborate and create a unified and sustainable security posture that assists in securing and facilitating global cargo trade. MRA promotes end-to-end supply chain security based on program membership.

The first mutual recognition agreement was completed between the United States and New Zealand in June 2007. A similar agreement has been concluded between the EU and Japan. Also, China is in discussions with the EU about mutual recognition as well. The EU and the USA have a mutual recognition between their respective AEO programs in June 2012.

Through mutual recognition, AEO's should be expected to benefit from:

- Improved economic efficiency through reduced time and costs associated with Cross-border Customs controls due to priority treatment
- Improved predictability and precision in moving goods from one's own territory to the territory of the trading partner whilst improving competitiveness of business
- Reduced cargo theft and pilferage by improving the security of the bilateral supply chain
- Reciprocal or comparable compliance benefits whenever equivalent programs are provided

The term 'AEO' is used to refer to Authorized Economic Operators and it used by partner countries in another way:

PARTNER COUNTRY	TERM USED FOR "AEO"
EU	AEO
USA	C-TPAT
JAPAN	AEO
CHINA	AEO
NORWAY	AEO
SWITZERLAND	AEO
CANADA	PIP

Last 29 November to 1 December 2016, the EU organized an AEO Program Workshop in Seneca, where experts from the European Commission introduced the main challenges and

experiences of AEO that must face from a point of view of National Customs Administrations and Economic Operators:

Experiences/challenges of AEO ¹⁹ faced by:	
National Customs Administrations	Economic Operators
<ol style="list-style-type: none"> 1. Taxation and Customs are organized different throughout the Union. Some Customs have access to databases some haven't. 2. Need to harmonize standards of competence on the EU level, such as create a platform for exchange of best practices 3. Possibility to follow trainings in other Member States 4. Survey on implementation by the European Commission could be helpful 5. Close communication between Customs and trade, before and during the AEO audit as well as during the monitoring process 6. Collaborate at a national level more as an AEO community 7. Communication between customs authorities and between customs and trade are really important 8. One legislation for 28 Member States creates difficulties and on the other side opportunities for some countries 	<ol style="list-style-type: none"> 1. Lack of information 2. Request for more harmonized approach on what a training should include 3. The feeling that things are examined differently in Member States when they apply for an AEO 4. The total of physical checks should be limited by a system based on standard controls 5. The way of AEO benefits are implemented is not always transparent 6. No balance between costs and benefits of AEO 7. IT system on economic operators prevent duplication of work with authorization for simplifications

Among other conclusions from this Workshop Program, is that the European Union's Customs legislation is harmonized but the application such as supervision, controls, investigation, indictment and customs sanctions remains in the hands of each Member States.

¹⁹ AEO Program Workshop in Seneca

AEO is considered as an important tool for facilitation of the customs and trade processes for Customs and for traders, the contribution of trade facilitation to the establishment of open markets and to the creation of long-standing opportunities for investment and, consequently, economic growth and MRA “open the doors” to and for other countries.

But this cannot happen if there is not a harmonized assessment of criteria and recognition to become an AEO at EU level, a harmonized data set and a platform establishing a communication on each level and sharing experience from theory to practice.

The Guidelines for developing a mutual recognition arrangement/agreement from the WCO²⁰ describes with details which is the process to achieve mutual recognition between customs administrations:

1. *Establishment of high-level commitment to consider an MRA at the appropriate level*
2. *Assessment of alignment of AEO Programs with the WCO SAFE Framework.*
3. *Consideration and identification of comparable benefits and the conditions under which AEOs certified by one administration will be given access to them in the Customs territory of the other party.*
4. *Completion of a gap analysis based on an in depth side-by-side comparison between AEO Programs focusing on legislation, procedures, standards and guidelines to determine compatibility or differences.*
5. *Undertaking of relevant action to close any unsustainable gaps between AEO Programs.*
6. *On-site joint validation audits to assess the practical implementation of AEO Programs.*
7. *Visits to Customs’ AEO Headquarters’ offices to observe program oversight, if required.*
8. *Exchange of best practices and training materials to enhance AEO Programs, if required.*
9. *Resolution of data protection and data security issues.*
10. *Establishment of data exchange procedures, including required IT systems.*
11. *Establishment of a legal framework for the MRA, if not already in place.*
12. *Consideration of a pilot phase to test proof of concept if required.*
13. *Development of procedures to oversee the governance, operation and maintenance of an MRA.*
14. *Designating and providing the point of contact to the partner country.*
15. *Implementation of review cycles to assess the impact of MRA against agreed objectives. Customs administrations should consult AEOs impacted by the MRA, prior to the review process, to ensure that their input is reflected.*

Nowadays, in 2016 there is a total of 76 Mutual Recognition Agreements²¹ signed:

²⁰ <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/~/-/media/29AC477114AC4D1C91356F6F40758625.ashx>

²¹

http://www.dian.gov.co/descargas/operador/documentos/2016/Compendio_de_acuerdos_de_reconocimiento_mutuo_suscritos_en_el_mundo.pdf

Region	Country	Signed	In negotiation
America y Caribbean	Brazil	0	2
	Canada	5	2
	Costa Rica	0	1
	Dominican Republic	2	0
	Mexico	3	1
	Peru	0	1
	Uruguay	0	1
	USA	10	5
Orient Middle and North Africa	Jordan	1	0
Asia Pacific	China	4	6
	Hong Kong	5	4
	India	2	1
	Japan	7	3
	Korea	10	3
	Malaysia	1	1
	New Zealand	3	3
	Singapore	6	2
	Thailand	1	3
Europe	Andorra	1	0
	EU	7	2
	Israel	3	2
	Kazakhstan	0	2
	Norway	2	1
	Serbia	0	1
	Switzerland	2	2
	Turkey	1	1

VI. The IMF (International Monetary Fund)

IMF “promotes international financial stability and monetary cooperation. It also seeks to facilitate international trade, promote high employment and sustainable economic growth, and

*reduce poverty around the world. The IMF is governed by and accountable to its 189 member countries".*²²

The IMF's first purpose is to ensure the stability of the international monetary system and prevent crisis. In addition, IMF advises its 189 member countries, encouraging policies that foster economic stability, reduce vulnerability, raise living standards and provides to correct balance of payments problems (for example: national authorities design adjustment programs with IMF cooperation to implement with effectivity these programs)

And other important point to consider of IMF is the lending capacity and approved a major financial support mechanism in response to the global economic crisis. Its focus on enhancing crisis prevention, mitigating contagion during systemic crisis and establish instruments based on member's performances and circumstances.

Besides the IMF provides capacity development and training to help member countries to design and implement effective policies including the areas of tax policy and administration, monetary and exchange rate policies, financial and banking supervision and legislative, regulation structure.

To sum up, IMF's original aims are:

1. Promote international monetary cooperation
2. Facilitate the expansion and balanced growth in international trade
3. Assist in the establishment of a multilateral system of payments
4. Promote exchange stability
5. And make resource available to members experiencing balance of payments difficulties

The IMF and the WTO work together on different levels through a cooperation agreement between them.

The IMF participates in meetings of certain WTO committees and working groups. Issues related to fund surveillance activities can be addressed in the context of IMF supported programs. Equally, IMF surveillance reports are relevant inputs to the WTO's periodic reports on member countries trade policies.²³

Informal consultation between IMF and WTO takes place regularly for trade policy and global economic developments and also on advice for individual countries. Examples of consultation are the visits by senior IMF staff to the WTO to make presentations and attend discussions on issues of similar interest or a staff exchange program between the IMF and the WTO Secretariat which started in March 2013. Additionally, they work together to help countries improve their ability to participate in international trade, in other words they integrated a structure for technical assistance to the least developed countries to play more an active role in the international trading system.

VII. Facilitation and security under the UCC

The Union Customs Code (UCC), enters into force last 1 May 2016, is part of the modernization of customs and serves as the new framework regulation on the rules and procedures for customs throughout the EU., Although the UCC is applicable from 1 May 2016 it may likely

²² <http://www.imf.org/en/About/Factsheets/IMF-at-a-Glance>

²³ https://www.wto.org/english/tratop_e/tp_r_e/tp_rep_e.htm

take until the end of 2020 to put in place all of the IT systems necessary to implement all UCC provisions. Transitional rules will apply during this period from May 2016 to December 2020.

The motivation and goal of the new community legislation is the achievement of a “true Customs Union”, on one hand subjective (economic operators, actors involved and State authorities of the various Member States should act uniformly in all Member States) and on the other hand, from an objective perspective ~~objective~~ (through the application of harmonized rules related to customs legislation and a uniform manner to operate the customs procedures); as well as ensuring the security of the Customs Union.

The terms of **facilitate** (business activity and provision of information) and **security and control** (in the exchange of goods simplification and uniformity of the procedures) appear constantly in the new legislation.

The mission of customs authorities is described in the article 3 Union Customs Code:²⁴

- protecting the financial interests of the Community and its Member States;
- protecting the Community from unfair and illegal trade while supporting legitimate business activity;
- ensuring the security and safety of the Community and its residents, and the protection of the environment, where appropriate in close cooperation with other authorities; and
- Maintaining a proper balance between customs controls and facilitation of legitimate trade.

*“Customs authorities shall be primarily responsible for the supervision of the Community's international trade, thereby contributing to fair and open trade, to the implementation of the external aspects of the internal market, of the common trade policy and of the other common Community policies having a bearing on trade, and to overall supply chain security”.*²⁵

Explicitly whereas of the UCC is mentioned²⁶: (related to facilitation and security)

(15) *“The facilitation of legitimate trade and the fight against fraud require simple, rapid and standard customs procedures and processes”*

(16) *“(…) and the reinforced need to ensure security and safety at the external borders of the Union has transformed the role of customs authorities giving the leading role within the supply chain…”*

(17) *“The use of information and communication technologies is a key element in ensuring trade facilitation and, at the same time the effectiveness of customs controls thus reducing costs for business and risk for society”*

(24) *“AEO should be able to take maximum advantage of widespread use of customs simplifications or benefit from facilitation relating to security and safety”*

²⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0952&rid=1> Article 3 (Mission of customs authorities)

²⁵ http://ec.europa.eu/taxation_customs/general-information-customs/eu-customs-strategy_en#mission

²⁶ Union Customs Code, Regulation (EU) No 952/2013 of the European parliament and the council of 9 October 2013. Part (Whereas)

(28) *“In order to minimize the risk to the Union, (...) the harmonized application of customs controls by the Member State should be based upon a common risk management framework and a electronic system for its implementation”*

(53) *“In order to ensure the customs supervision of goods brought into and taken out the customs territory of the Union and the application of security-related measures (...) in respect of the rules relating to entry summary declaration and pre-departure declarations”*

Nowadays, Customs are in a unique position to be able to:

- Facilitate and promote trade,
- Protect the financial interest of the European Union and ensure the safety and security of its citizens.

Customs authorities implement EU policies in almost every field connected with international trade. They are in the front line in the fight against fraud, terrorism and organized crime.

Until recently, the role of the customs consisted primarily of collecting customs duties and indirect taxes at import. Numerous developments, including enlargement and the development of e-commerce and the threat of terrorist attacks and the internationalization of organized crime, have altered the environment in which customs operate.

Due to constants changes in trade, the European Commission defines a new strategy ²⁷to be adopted for customs activities in the European Union in order to adapt to the present and future changes and to propose concrete actions to be taken. This new strategy refers to best practices, cooperation between the structures involved, training of officials and operators, simplification of legislation and investments in infrastructure and equipment as instruments to meet the above-mentioned challenges.

The European Union's strategic objectives in the field of customs for the coming years are:

1. Provide a framework based on transparent, stable and appropriate rules for the development of international trade;
2. Provide the Community and Member States with the necessary resources;
3. Protect society from unfair trading and to safeguard its financial, commercial, health and environmental interests.

On the other hand, although the UCC tries to unify criteria and a uniform customs law structure for all its Member States, we can highlight some important weaknesses:

The European Union is formed by 28 Member States and all of them supposedly apply the same external tariffs with all non-EU imports and follow the same EU customs rules, in practice the application within the Member States can differ a little bit.

²⁷ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A111014>

Let's take the case of the United States as an example. US Customs and Border Protection imposes and interprets all US customs rules for all 50 states. By contrast, the EU gives the legal authority to each 28 Member States national customs administrations be charge for it and inevitably leading to different decisions; even though all Member States operate in the same framework.

This situation reflects on one hand the tensions between EU-level institutions and on the other hand the insufficient political supports to create a central EU Customs agency due to most of the 28 countries are unwilling to give up sovereignty in this area. This circumstance creates several obstacles for companies seeking to ensure that their EU competitors do not receive more favorable treatment than them.

Another criticism is the broad discretion among Member States to implement certain rules. For instance, the EU allows Member States to decide how they ~~will interpret and implement~~ legislation. Regulation is directly applicable, however due to the regulation is a result of the consensus of 28 States; the European Union allows a margin of discretion that each member can understand/interpret the regulation in his own profit. As a result, varying national preferences have led to different results, as an example: because Member States were allowed to develop their electronic systems at their own pace, companies have to face up with 28 different electronic customs systems which are not linked between them.

In addition, some Member States currently allow companies to use certain simplified procedures without requiring a financial guarantee to cover potential customs duties, while others do not.

Finally, there is not a consistent EU penalty for companies that infringe customs rules. This means that the same infringement can create vastly different consequences in different Member States, such as classifying a shipment under the wrong tariff heading.

Despite these obstacles just described to build a true customs union, each Member State of the EU have to apply ~~implement~~ immediately the new UCC rules, to afford global custom businesses.

VIII. The Authorized Economic Operator under the UCC

The status of AEO becomes the central axis around which the UCC rotated, in the way that any simplification or benefit is made dependent on the fulfillment of AEO requirements or directly from the possession of the AEO certificate. Thus, the higher of the number of AEO requirements that an operator complies, the most beneficial situation will get. Some studies,

argued that with the UCC, the AEO becomes an authorization/permit, and consequently all AEO certifications will have to be reviewed in the new UCC guidelines.

As mentioned before, AEO is not mandatory but it gives certain simplified customs procedures and in some cases a “fast-track” in shipments through customs procedures safe and secure.

Even some situation changed under the UCC, there still existing direct AEO benefits as fewer physical and document-based controls, pre-notification in case of controls, easier access to customs simplifications and other customs authorizations as well as to mutual recognition with third countries.

For instance, compared to the previous Customs Community Code (CCC), Member States had the discretionary power to not require companies to provide a financial guarantee in order to ensure payment of customs duties that might be incurred later. However, under the UCC generally all customs procedures will require companies to provide a guarantee covering existing or potential amounts they might later owe to a customs authority.

In this case, companies accomplish AEO criteria may benefit in several ways, including being able to provide a guarantee that covers more transactions or receiving waivers or reductions of the guarantee amount correctly due.

Other advantages of being an AEO company under the new UCC:

1. Conditions for granting authorizations for entry in the declarant's records (Article 150 from Delegated Act UCC, Commission delegated regulation (EU) 2015/2446 of 28 July 2015. and fulfil the criteria laid down in Art. 39 a), b) and d) of the UCC)
2. Comprehensive guarantee (Article 95 of the UCC, Article 84 from Delegated Act and fulfil the criteria from Article 39 UCC a), b), c) and d))
3. Authorization of regular use of simplified customs declarations (Article 145 from Delegated Act and fulfil criteria a) from Article 39 UCC)
4. Facilitation for issuing a proof by an authorized issuer (Article 128 Delegated Act and criteria from Article 39 a) and b)).

IX. Conclusion

During many years it has been an international acceptance of a need to provide a high level of trade facilitation in the international trading community. Customs authorities relies that an appropriate balance between trade facilitation and a regulatory intervention becomes necessary in the supply chain of international trade.

New initiatives, as the new UCC, try to provide increased security to the global supply chain and show tangible benefits thanks to cooperate with customs authorities. Simplification, harmonization, standardization and modernization are on the agenda of customs authorizations and the European Commission.

Many studies have been developed to give recommendations of how companies can afford this big issue and find the breakeven point between facilitation and security.

Achieve the appropriate levels of trade facilitation and border protection and being maintained can be obtained by incorporating some security requirements into broader partnership arrangements between customs authorities and private sector in the supply chain.

Common denominators between GATT, WCO Safe Framework, TFA, WTO and UCC, related to facilitation and security in trade:

The GATT was an organization arose from the need to establish a set of trade and tariff rules and it's considered as the precursor of the Word Trade Organization.

The GATT promoted multilateral trade cooperation aimed at liberalizing and regulating world trade. From 1948 to 1994 this agreement showed a high growth in international trade but it

was necessary to bring it to a reorganization due to it was very unstable and it was only an agreement and organization created on a temporary basis. There were initial intentions to create a third institution under the name ICO (International Customs Organization) that would work with the World Bank and with the IMF.

This project was not carried out for some reasons between them. Nevertheless, it was still very clearly necessary to create an organism that promoted and normalized international trade and GATT was just an agreement not sufficiently renewed to respond to trade problems of that era as such as the growing protectionist measures of the different countries due to low tariffs and economic recessions and unemployment and constant closure of companies.

Consequently, following the conviction of its members that multilateral trade policies needed to be expanded and renewed, the WTO was born, which took place in the Uruguay round in 1993, but which began to operate in 1995, replacing the GATT.

While GATT had mainly dealt with trade in goods, the WTO and its Agreements currently cover trade in services, and inventions, creations and designs that are subject of commercial transactions (property rights).

WTO tries to follow with the chain of rounds negotiations that had been carried out with the GATT. WTO intended to complete negotiations on the Doha Development Round, where the focus was on developing countries; but the round is still incomplete nowadays. Parallel, WTO members agreed to add trade facilitation to the 2004 Doha Development Agenda. The agreement reached in Bali, December 2013, at the Ninth Ministerial Conference in Bali, Indonesia, where it took place the first and most important agreement in the organization of the WTO: "the Bali Package". The purpose of this Agreement is to boost world trade by expediting the movement, uprising and customs clearance of goods. In other words, focus all future negotiations on trade facilitations and consequently determines a framework for rights and obligations that will lead to reform in border some procedures and provided a technical assistance to the developing countries.

To start building this "Bali Package", members of WTO agreed to start negotiations to: "*Clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting movement, customs clearance and the circulation of goods, including goods in transit.*"

3 provisions on trade facilitation in GATT 1994:²⁸

- Article V: Freedom of transit
- Article VIII: Simplification of fees and formalities connected with importation and exportation

²⁸ https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm

- Article X: Publication of trade regulations: uniform, impartial, reasonable implementation of regulation and institution of appeal system

Apart from the study to calculate the potential impact of the Trade Facilitation Agreement- as I explained in page 10 of my thesis, there were a special provisions allowing developed and least developed countries to implement the Agreement at their own pace. Each country will determine when it will apply the various technical provisions and can specify the provisions that it will only be able to apply if it receives technical assistance and support.

Supplementary, as I indicated in part of Bali Package of this thesis, there is article VII section 7 from the Bali Ministerial Declaration introducing a measure of trade facilitation: the figure of Authorized Operators, very similar to the status of AEO born in 2005 as a result of the terrorist attack in United States. OEA figure was incorporated in the context of WCO Framework of Standards²⁹ to secure and facilitate global trade, when WCO members decided to developed a regime that will enhance the security and facilitation of international trade.

Bali Ministerial Declaration covers four areas, the first one related to trade facilitation and the application of non-discrimination principle reaffirms that still valid Article I and III from GATT 1994³⁰ (Other common denominators between them)

Furthermore, in 9th WTO Ministerial Conference in Bali 2013, at the first meeting the Negotiating Group agreed to invite the International Monetary Fund (IMF), the Organization for Economic Cooperation and Development (OECD), UNCTAD, the World Customs Organization and the World Bank to attend on an ad hoc basis. The World Customs Organization and the World Bank also made written contributions to the negotiations, and identified areas in which assistance can be provided to developing country members.

As we can check different international organizations (IMF, OECD, WCO, World Bank among other) all with the common aim of promoting and facilitating measure to encourage security and facilitate on international trade. ³¹

Another relevant intergovernmental organization in the field of trade is the WCO which is noted for its work in areas covering the development of international conventions, instruments, tools on topics like commodity classification valuation, rules of origin, supply chain security, international trade facilitation, drugs and illegal weapons trading and delivering sustainable capacity building to assist with customers reforms and modernization. The WTO and the WCO both are significant “players” in international trade matters. They cooperate in a number of

²⁹ <http://www.mh.gob.sv/portal/page/portal/PMH/Temas/Aduana/OEA-SV/OEA/Marco%20SAFE%20Ver%202012%20Espa%F1ol.pdf>

³⁰ https://www.wto.org/english/tratop_e/envir_e/envt_rules_gatt_e.htm

³¹ https://www.wto.org/english/tratop_e/tradfa_e/wks_wcotf14_e.htm
https://www.wto.org/english/tratop_e/tradfa_e/intergov_e.htm
https://www.wto.org/english/news_e/pres14_e/pr725_e.htm

areas, including market access, the Information Technology Agreement (ITA) and maintain the International Harmonized System (HS) goods nomenclature, and administer the technical aspects of the WTO Agreements on customs valuation, rules of origin and trade facilitation.

Going into a little more detail, the WCO has developed, in order to respond to Member's needs, many tools and instruments for trade facilitation such as the Revised Kyoto Convention, Time Release Study³² and such WCO tools fully cover the customs related provisions and articles in the WTO Agreement on Trade Facilitation (ATF).

We could say that in international trade each organization play their respective rules, for example the WTO will negotiate multi-lateral trade agreements and the WCO will administrate global customs standards. Together, their complementary roles facilitate the global supply chain.³³

What is excluded from the AEO program³⁴ under the UCC?

The SAFE Framework consists of four core elements. First, it harmonizes the electronic cargo information requirements. Second, each country joining the SAFE Framework commits to employing a risk management approach to security threats. Third, it requires a risk methodology sending nation's Customs administration when they will perform on outbound inspection of high-risk cargo or transport, non-intrusive detection equipment like X-ray

³² <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/time-release-study.aspx>

³³ http://www.wcoomd.org/en/topics/wco-implementing-the-wto-atf/~/_/media/D8987BCC78544F2C83E365472AAF494E.ashx

³⁴

http://www.dian.gov.co/descargas/operador/documentos/2016/Compendio_de_acuerdos_de_reconocimiento_mutuo_suscritos_en_el_mundo.pdf

machines and radiation detectors. And finally, the fourth core element suggests benefits that Customs will provide to businesses that meet minimal supply chain security standards and best practices.

To sum up, The SAFE Framework is a platform that will enhance global trade, ensure the security and increase the contribution of Customs and to achieve the economic and social well-being of nations. In addition, it will improve the ability of Customs to detect and control high-risk shipments and increase the management of goods, thereby accelerating the delivery of the same.

To achieve the security and facilitation goals of the SAFE Framework, Customs administrations must adopt a transparent in the area of customs operations that can be modernized, adjusted and improved to the benefit of the international trade community. On the other hand, in order to keep the private sector support it's necessary to be clear what is involved in being an AEO. The ideal supposed is the existence of a common understanding of the conditions and requirements of AEO status, which should be enumerated in detail in national AEO programs.

The SAFE Framework, based on the previously described four elements, rests on the twin pillars of Customs-to-Customs and Customs-to-Business partnership, where the figure of AEO and program of AEO was incorporated it.

As The SAFE Framework defines *“the Authorized Economic Operators (AEOs) will reap benefits, such as faster processing of goods by Customs, e.g. through reduced examination rates. This, in turn, translates into savings in time and costs. One of the main tenets of the SAFE Framework is to create one set of international standards and this establishes uniformity and predictability. It also reduces multiple and complex reporting requirements. These processes will ensure that AEOs see a benefit to their investment in good security systems and practices, including reduced risk-targeting assessments and inspections, and expedited processing of their goods”*³⁵

The main focus of this pillar Customs-to-Business is the creation of an international system for identifying private businesses that offer a high degree of security guarantees in respect of their role in the supply chain.

In Standard 6- Facilitation from the SAFE Framework of Standards³⁶, it's literally mentioned that the co-operatively work between Customs Administration with AEO's companies has the goal of maximize security and facilitation of the international trade supply chain originating in or moving through its Customs territory. To be more exhaustive, achieve pillar Customs-to-

³⁵ <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/~media/55F00628A9F94827B58ECA90C0F84F7F.ashx>

³⁶ <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/~media/55F00628A9F94827B58ECA90C0F84F7F.ashx>

Business means joint efforts of: partnership, security, authorization, technology, communication and facilitation.

In the AEO program, Border Inspection Services such as SOIVRE (Official Service Inspection, Supervision and Regulation of Exports), Pharmaceutical Inspection and **Phyosanitary** are not included it. All these services, are developed by certain agencies of the General Administration of the State that are in charge of the control and inspection of the products that are imported and exported in order to ensure that they accomplish hygienic-sanitary conditions, commercial quality and industrial safety.

In this context, the Technical Barriers to Trade Agreement aims to ensure that technical regulations, standards, and conformity assessment procedures are non-discriminatory and do not create unnecessary obstacles to trade. At the same time, it recognizes WTO members' right to implement measures to achieve legitimate policy objectives, such as the protection of human health and safety, or protection of the environment.

For instance, SOIVRE has the goal of market surveillance for certain goods to comply with legal requirements in defense of the consumer, competition giving support to the exportation and the environment. It makes physical control (Calibration, maturity, hardness, acidity, sugars...) presence (appearance, absence of foreign odors) and labeled.

As a result of its control SOIVRE agency issues a certificate of verification indicating that the product is suitable for export or import and therefore meets all the requirements demanded by the supervisory entity.

The dilemma turns around in the lack of recognition and validation of these certificates issued in the country of origin by the agencies of supervision and inspection in the country of destination and vice versa. Exporters and importers have to duplicate the certificates due to they are not recognized in the country where goods are send, and consequently costs and time to clearance goods increase.³⁷

A possible solution of this lack of mutual recognition between agencies of supervision and inspection in border would be the creation of the third pillar of the AEO: Customs-to-Border Inspection Services. In this way, the certificates generated in the country of export considered as indispensable for its exportation will be recognized by the inspection agencies in the country of import.

Another interesting issue to include in the AEO program is “in a safe logistic scenario and within the benefits of mutual recognition, the procedures of the customs of export were automatically validated by the customs authorities of importation”.

For instance, in a context where Customs of origin knows trustworthily the origin, value of the goods why Customs of import must double check the value, origin of the goods?

³⁷ <http://www.comercio.gob.es/es-ES/comercio-exterior/control-calidad-asistencia-tecnica-exportador/PDF/prestacion-servicios/ORDENECO33342002.pdf>

Mutual recognition is considered as an action or decision taken or an authorization that has been properly granted by one Customs administration is recognized and accepted by another Customs administration. In this sense, mutual recognition can be means to avoid duplication of security controls and can contribute to the facilitation and control of goods moving in the international supply chain. The standardized approach to AEO authorization provides a platform for development of international system of mutual recognition of AEO status at global levels.

Thereby, Customs should provide the use of standardized sets of targeting criteria, and compatible communication and information exchange to develop a system of mutual recognition between states.

But the day-to-day shows that this is not the case; despite being a mutual recognition agreement between the administrations of the validations and authorizations of the AE mostly, there is a double control by Customs authorities (export-import) in the operational carried out.

We could say that the global operation is controlled by the export and import Customs, when the most pragmatic option and as a result of a mutual recognition agreement between states would be eliminate or reduce redundant or duplicated validation and authorization efforts.

In this sense, the products can be exported and enter into the market of destination without being subjected to further certification or homologation procedures. This will avoid the risks, expenses and delays that can cause to obtain the certification/homologation at destination.

There is a report from Kommerskollegium 2010, National Border on Trade ³⁸ where is made to answer the questions on the basis of the study of MRA's complexity.

At least, one missing point in the AEO program is the harmonization of the Non-tariff barriers to trade (NTBs). NTBs are trade barriers that restrict imports or exports of goods or services through mechanisms different to the imposition of tariffs, such as import licensing, customs and administrative entry procedures, standards, pre-shipment inspections, government participation in trade, import quotas and local requirements etc. ³⁹

³⁸ <http://www.kommers.se/Documents/dokumentarkiv/publikationer/2010/skriftserien/report-2010-3-mutual-recognition-of-aeo-programmes.pdf>. Page 14 and 19

³⁹ <http://www.tradebarriers.org/measures>

With the exception of export subsidies and quotas, NTBs are most similar to the tariffs. Tariffs for goods production were reduced during the eight rounds of negotiations in the WTO⁴⁰ and the General Agreement on Tariffs and Trade (GATT). After lowering of tariffs, the principle of protectionism demanded the introduction of new NTBs such as technical barriers to trade (TBT).

The problematic is: in which way having AEO programs, mutual recognition agreements and an infallible communication between Customs authorities if later in the most countries require to accomplish certain non-tariffs barriers to import the goods⁴¹ to protect their own market.

It's considered that in many cases, NTBs are a largest impediment that tariff barriers to importing goods from another country. National regulations are nowadays more important and are often used by governments as instruments of trade policy. NTBs are very heterogeneous, as different products are subject to different kinds of regulation with varying impacts. So non-tariff measures can contribute significantly to a general trade restriction. Unlike tariffs, where the magnitude of the impact can be directly calculated or more or less estimated.

The International Trade Centre conducted national surveys and began publishing a series of technical papers on non-tariff barriers faced in developing countries. By 2015 it launched the NTM Business Surveys website⁴² listing non-tariff barriers from company perspectives.⁴³

For example, one of the main American institutions that regulate the entry of products to the USA is the Food and Drug Administration (FDA) which is responsible for protecting public health of American citizens through the regulation of human and veterinary medicinal products, biological products, food, cosmetics and tobacco products. This institution imposes a series of requirements that products want to enter into this country has to comply.

Another distinguished case is the strong regulations and restrictions non-tariffs. A case to emphasize is Mexico⁴⁴. It's considered that is the 15th largest economy in the world in nominal terms, the second largest economy in Latin America, with an important trade power and the country with the greatest number of free trade agreements. Mexico joined the GATT in 1986

⁴⁰ https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm

⁴¹ http://www.tradebarriers.org/ntb/non_tariff_barriers

⁴² <http://www.intracen.org/itc/market-info-tools/non-tariff-measures/publications/>

⁴³ <http://ntmsurvey.intracen.org/what-we-do/trade-obstacle-alert/>

⁴⁴ <http://www.gob.mx/tramites/economia>
<https://www.export.gov/article?id=Mexico-Trade-Barriers>

and today is an active participant of the WTO; it has signed 12 free trade agreements with 44 countries⁴⁵.

In spite of its many free trade agreements signed and its developed activity in the area of international trade there are multiples non-tariffs barriers known as regulations and restrictions non tariffs⁴⁶ which difficult hugely the trade in this country.

Some examples of these non-tariffs barriers:

- Concept of import quotas→ is a type of protectionist trade restriction related to the quantity of goods that can be imported into the country during a specified period of time. Quotas will reduce imports and help domestic suppliers. There is 3 types of quotas: Absolute quota-a simple physical limit on number; tariff rate quota-these allow a certain number of imports to gain a discount on the usual tariff rate, and voluntary export restraints- when a government limits the amounts of exports from one country to another for a particular type of goods. Examples⁴⁷
- Concept of countervailing duties→ are trade import duties to neutralize the negative effects of subsidies. An investigation finds that a foreign country subsidizes its exports injures domestic producers in the importing country. According to the WTO rules, a country can launch its own investigation and decide to charge extra duties in accordance with the GATT Article VI. ⁴⁸ In cases foreign producers attempt to subsidize the goods being exported by them so that it causes domestic production to suffer because in domestic demand towards cheaper imported goods. This raise the price of the goods leading to domestic goods again being equally competitive and attractive. Examples⁴⁹
- Concept of safeguard measures→ the WTO defined them as “*emergency actions with respect to increased imports of particular products, where such imports have caused or threaten to cause serious injury to the importing Member’s domestic industry. Such measures, which in broad terms take the form of suspension of concessions or obligations, can consist of quantitative import restrictions or of duty increases to higher than bound rates*”⁵⁰. The maximum duration of any safeguard measure is four years,

⁴⁵ https://en.wikipedia.org/wiki/Economy_of_Mexico

⁴⁶ *Regulaciones y restricciones no arancelarias*, Ricardo Méndez Castro, Cencomex . Primera edición en México, octubre 2016.

⁴⁷ <http://english.hankyung.com/business/2016/12/20/1045341/mexico-expands-import-quota-for-koreanmade-cold-rolled-steel>
<http://images.mofcom.gov.cn/trb/accessory/201004/1271302115998.pdf> page 16

⁴⁸ https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm#top

⁴⁹ http://trade.ec.europa.eu/doclib/docs/2007/july/tradoc_135144.pdf

⁵⁰ https://www.wto.org/english/tratop_e/safeg_e/safeg_info_e.htm

unless it's extended according to the Agreement's provisions. In particular, it could be extended only if it's found, through an investigation that it's still necessary to prevent a serious injury and only if evidence shows that the industry is adjusting. The initial period of application cannot exceed eight years. In addition, safeguard measures in place for longer than one year must be progressively liberalized at regular intervals during the period of application. Examples ⁵¹

- Concept of certificates issued specifically by Mexican institutions → Mexico sometimes exercises stricter demand on part of imported products than on its own products and different ports may handle same goods in different ways.
Mexican official norms are issued by different institutions; each institution has its own qualification evaluation procedure. As the Mexican government stipulates that only its domestic producer and importer can apply for Mexican official certification. This concept is related to NOMs (Official Mexican Standards). All products imported into Mexico must comply with applicable standards and requirements. Mandatory and proposed standards are published by the Mexican Government in the Diario Oficial de la Federación (Official Gazette) - the Mexican equivalent of the US Federal Register. They are published in the form of a Norma Oficial Mexicana (NOM) (Official Mexican Standard), or a Proyecto de Norma Oficial Mexicana (Proposed Official Mexican Standard)⁵²

To conclude, with the information previously cited and the report made by World Trade Report 2012 ⁵³ the non-tariffs barriers (NTMs) measures in international trade, in some countries, is considered at almost twice as trade restrictive as tariffs⁵⁴. Actually NTMs contribute much more than tariffs to the overall level of trade restrictiveness. On the other hand, evidence shows that contributions of NTMs as a protection of local trade cause an increase of GDP per capita. Mexico it's a clear example of how NTMs affect its international trade.

Real cases in Spain:

As I mentioned in part VIII- the AEO under the UCC- in my thesis, Article 39 describes conditions and criteria for granting of the status of AEO⁵⁵ such as an appropriate record

⁵¹ <http://noticias.universia.net.mx/en-portada/noticia/2011/12/13/897759/medidas-salvaguardia-productos-chinos.html>

⁵² http://www.gob.mx/cms/uploads/attachment/file/105610/2.2.2_NOM_NMX.pdf,
<http://www.economia-noms.gob.mx/noms/inicio.do>

⁵³ https://www.wto.org/english/res_e/booksp_e/anrep_e/wtr12-2d_e.pdf

⁵⁴ https://www.wto.org/english/res_e/booksp_e/anrep_e/wtr12-2d_e.pdf Page 3- Estimating the trade effects of NTMs and services measures

⁵⁵ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0952&rid=1> Article 39

keeping, financial solvency, the demonstration by the applicant of a high level of control of his or her operation of the flow of goods etc.

Accomplishing some criteria define in Article 39 of the UCC, companies can get certain benefit making easier their day-to-day. However, from the theoretical point of view it's seems that achieving some of these criteria from Article 39, to obtain certain benefit, is not so complex by the applicant but the day by day demonstrate not the same.

For instance, applying for a comprehensive guarantee with a reduced amount or to have a guarantee waiver⁵⁶, Article 95 of the UCC, its mention as requirements:

- To be established in the customs territory of the Union;
- And fulfil the criteria laid down in point a), b), c) and d) of Article 39;

But in fact, the Customs Department in Spain request for more specific issues not listed under the Article 39 of the UCC. Let's see a real example concerning the obtaining this benefit mentioned before and how the company has to manage against the administrative burden to achieve it.

When a company sends its request to the Spanish Customs Department in relation to get a comprehensive guarantee (with reduced amount or guarantee waiver) the notification received say:

"Is required to provide the following information within 30 calendar days:

1. *For the verification of the absence of any serious infringement or repeated infringement of customs legislation and taxation rules, including no record of serious criminal offences relating to the economic activity of the applicant, it's necessary to fit out:*
 - *Identification the members of the decision-making body and the person responsible for customs matters*
 - *Criminal record of the applicant and the person responsible*
 - *In case the applicant has been sanctioned in relation to his economic activity by an organ other than the AEAT, the organ and the motive must be identified.*

2. *Practical standards of competence or professional qualifications directly related to the activity carried out, must include:*
 - *Description of the activities of the company related to the application of customs legislation*
 - *Regarding the person in charge of customs matters, it's necessary the documentary accreditation of the fulfillment of professional training*

⁵⁶ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0952&rid=1> Article 95

- *Regarding the person responsible for customs matters, history of activities carried out in connection with customs legislation*
 - *In case that the person in charge of the customs matters is an external person it must be identified by a contractual relation.*
3. *The demonstration by the applicant of a high level of control of his or her operations and of the flow of goods, by means of a system of managing commercial and, where appropriate transport records which allows appropriate customs controls, through:*
- *Description of the company's registration system: financial accounting, integration between systems*
 - *Identification of the procedure to be used to give the customs authority access to the registration system*
 - *Description of the organization of the company and quantification of personal and material resources in charge of customs matters*
 - *Description of security systems and computer protection*
 - *Description of the logistic system that allows to know at all times the location and status of the goods*
 - *In case it operates with licensed products it's necessary to describe the system of management and the conservation of licenses and documents.*
4. *Financial solvency, which shall be deemed to be proven where the applicant has good financial standing, which enables him or her to fulfil his or her commitments, with due regard to the characteristics of the type of business activity concerned:*
- *Financial annual accounts of the last 3 years and provide audit reports*
 - *Related to commercial creditors, represented more than 5% of the liabilities due, creditor certification to be aware of payment obligations*
 - *Related to bank liabilities, represented more than 5% of the liabilities due, certification of the financial institution to be aware of payment obligations*
 - *Related to assets and liabilities with other companies in the group, provide the contractual justification*
 - *Related to the individual assets of the fixed assets that imply more than 5% identify them*
 - *In respect of customer receivables for individual transactions by customer or debtor, which represent more than 5% of the assets, identification of the debtor"*

These are all the detailed requirements asked by the Customs Spanish Department when a company certified as an AEO requested the possibility to obtain a comprehensive guarantee with a reduced amount or to have a guarantee waiver.

Theoretically being an AEO company facilitates the procedures in the management to achieve some benefit that the UCC proposes. However, reality shows something totally different, even in some cases there is not different "starting point" to request some advantage (such as an

authorization for entry in the declarant's records or an authorization of regular use of simplified customs declarations) independently it's an AEO company or not who appeal it.

There are other cases, such as a company that has an AEO certification and submits the Article 95 of the UCC related to global guarantee application⁵⁷, but determines not to apply for any type of reduction as mentioned in Article 84 of Delegate Act⁵⁸.

Even so, Customs required to this company to keep computer records of the system that will be used to control the global guarantee, which is completely meaningless: in the first place because it's an AEO company and secondly, because the company has not requested any type of reduction or waiver guarantee.

In another case, not being an AEO company this one requested to present a global guarantee without any reduction. In this case, and even being strictly a financial question, it is required by the Customs authority to provide: a criminal certificate of the persons who form the administrative body of the company, a detail of the sanctions that have been imposed and the reason for them, a description of the activities of the company related to the customs activity and fulfillment of professional training of the person responsible for customs matters. All this, I understand that it is outside the submission of an application for global guarantee since it is a purely a financial issue.

List of abbreviations;

AEO: Authorized Economic Operator

AEOS: Authorized Economic Operator Safety

AEOC: Authorized Economic Operator Security

ATF: Agreement on Trade Facilitation

⁵⁷ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0952&rid=1>

⁵⁸ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2446&from=EN>

BASC: Business Alliance for Safe Commerce

CCC: Customs Code Community

C-TPAT: Customs-Trade Partnership against Terrorism

Delegated Act: The UCC Delegated Act was adopted on 28 July 2015 as Commission Delegated Regulation No 2015/2446.

Implementing Act: The UCC Implementing Act was adopted on 24 November 2015 as Commission Implementing Regulation No 2015/2447.

FDA: Food and Drugs American administration

GATT: General Agreement on Tariffs and Trade

HS: Harmonized System

IMF: International Monetary Fund

LDC: Least Developed Countries

MFN: Most Favored Nation

MRA: Mutual Recognition Agreement

NTBs: Non-tariffs barriers to trade

NTMs: Non-tariffs measures to trade

UCC: Union Customs Code, Regulation (EU) No 952/2013 of the European parliament and the council of 9 October 2013

UMIC: Upper-Middle Income Countries

UNECE: United Nation Economic Commission for Europe

TFA: Trade Facilitation Agreement

WCO: World Customs Organization

WTO: World Trade Organization