AEO – Can the balance between trade facilitation and safety procedures be met?

By: Lillian Udell MSc, 2016
Table of contents

Table of contents .................................................................................................................. 2
1. Introduction ......................................................................................................................... 3
  1.1 History and Background ................................................................................................. 3
    1.1.1 21st Century Catalyst for Change .......................................................................... 3
    1.1.2 Trade Facilitation ................................................................................................. 4
    1.1.3 European Union’s Introduction of AEO ................................................................. 4
2. The International Perspective on Authorised Economic Operators .............................. 5
  2.1 World Trade Organization ............................................................................................. 5
  2.2 World Customs Organization – SAFE Framework ...................................................... 5
  2.3 The Authorised Economic Operator ............................................................................. 6
  2.4 Risk Assessment and Management .............................................................................. 7
  2.5 Mutual Recognition Agreements .................................................................................. 8
3. European Union Perspective on Authorised Economic Operators .............................. 9
  3.1 AEO under the Union Customs Code .......................................................................... 9
    3.2.1 The Union Customs Code ................................................................................... 10
    3.2.2 The Delegated Act ............................................................................................... 11
    3.2.3 The Implementing Act ......................................................................................... 11
  3.3 Impact of the Union Customs Code ............................................................................. 12
4. Benefits and Challenges of the EU’s AEO program ..................................................... 13
  4.1 Benefits to the AEO ...................................................................................................... 13
  4.2 Associated Costs and Challenges for the Economic Operator ................................... 14
    4.2.1 Costs .................................................................................................................... 14
    4.2.2 Challenges .......................................................................................................... 15
      4.2.2.1 The Self-Assessment .................................................................................... 15
      4.2.2.2 Operational Management ............................................................................ 16
5. Conclusion .......................................................................................................................... 16
6. Future Research Opportunities ....................................................................................... 17
Annex 1 – C-TPAT ............................................................................................................... 18
Abbreviations List ................................................................................................................ 19
Literature list .......................................................................................................................... 20
1. Introduction
Globalization and the decline of protectionism has increased the flows of products around the world. More and more countries, manufacturers, suppliers, operators, and transporters are operating to move goods across the globe, thus expanding the supply chain and all of its components. Extended supply chains provide greater opportunities for operators to make errors in control and with growing political, economic, and social tensions increasing throughout the world these extended supply chains have become increasing vulnerable to tampering and manipulation.

As a result, new measures of safety and security have been introduced around the world based on the framework developed by the World Customs Organization (WCO) and supported by the World Trade Organization’s (WTO) Trade Facilitation Agreement, among many other international organizations. The WCO created the Authorised Economic Operator (AEO) scheme to help balance the need for great scrutiny at each link in the supply chain without significantly disrupting the global flow of goods. The AEO scheme has been adopted by many countries throughout the world, however not in a uniform manner. This thesis will focus on the development of the European Union’s (EU) AEO program as both a means of supporting trade facilitation and bolstering safety and security. In addition, it will investigate some of the obstacles, challenges, and benefits to the AEOs within the EU.

1.1 History and Background
Trade facilitation and safety and security measures within the supply chain have always been a priority for economic operators and customs authorities alike. Economic operators are attracted to customs jurisdictions with clear processes and support from the admirations, such as custom simplifications and transparency between the operators and the customs authorities. Economic operators also depend on a secure and reliable supply chain to meet their financial and commercial obligations. Customs administrations rely on trade facilitation measures to ensure traders are provided fast and efficient processing through points of entry, thus making their customs points more appealing to traders. The authorities also enforce safety and security measure to ensure illicit products do not enter, or cross through, their territories and to protect their territories. However, following the events of the 9/11 terrorist attack in New York the existing safety and security measures were thrust into the spotlight for greater scrutiny. The threat from the globalized world become very evident. The United States (US) immediately installed new advanced security measures for all imported goods. This immediately halted all incoming traffic into the US, however the act of thoroughly vetting each container, economic operator, etc. has now become the worldwide norm.¹

1.1.1 21st Century Catalyst for Change
Following the 9/11 attacks, the US Government introduced immediate measures to stop all inbound air traffic into the US, and installed strict inspection protocols for individuals and cargo at land and sea entry points. Additional legislative amendments ensued to tighten the security measures around the entering supply chain in all modes. One of these amendments was the ‘Advance Manifest’ reporting regime, which required carriers with inbound cargo (in all forms of transport) to pre-notify US Customs and Border Protection (USCBP).²

These new measures brought international trade to a near screeching halt as exporters from around the world now had to accommodate to these new and restrictive measures in order to

¹ See Annex 1 for more information on C-TPAT.
gain access to one of the world’s largest markets. It became clear that this protective stance was going to be maintained by the US and that the rest of the global trade world would have to adapt in order to minimize the negative impact on commercial flows. The US developed a voluntary program called the Customs-Trade Partnership Against Terrorism (C-TPAT), which was focused on identifying high risk imports before they entered the US territory. Under C-TPAT companies with internal policies, systems, and structures that met strict standards of supply chain safety and security were granted a provisional low-risk status allowing them to minimize the regulatory impact of these new measures.3

1.1.2 Trade Facilitation
Safety and security measures are unavoidable in international trade and they sit under the umbrella of trade facilitation. Trade facilitation, in all of its forms, has always played a role in the development of international trade and has been solidified in hard law, and even plays a role in the development of free trade agreements. From the customs authorities’ perspective, safety and security measures are a key component of customs controls. Therefore, a key concern for all customs administrations is in what way to develop a legal framework that strikes the correct balance between trade facilitation and security related customs controls. It is extremely important that trade facilitation and security concerns have an established legal framework with ‘hard law’ characteristics to ensure certain standards are uniformly adhered to.

The international community decided that there was a need for strategic guidelines to help countries around their world respond to these new security measures, but also to develop their own trade facilitation measures for safety and security. The WCO responded by publishing the SAFE Framework of Standards to Secure and Facilitate Global Trade, which among other trade facilitation measures, introduced the authorised supply chain scheme with the authorised economic operator (AEO). The AEO is to be compliant with the specific criteria defined by their country’s customs administration and will benefit from simplified data reporting requirements that will allow them to participate in simplified and expedited release processes.4

1.1.3 European Union’s Introduction of AEO
Prior to the introduction of the AEO scheme into the EU customs legislation, the simplifications that are now linked to AEO were already in use and many economic operators already had individual authorisations for said simplifications.5 The EU legally established the AEO program through security amendments to the Community Customs Code6 in 2008.

The EU introduced AEO not only for safety and security authorisations, but also for customs simplifications and a combination of the two, resulting in a total of three different authorisations. The safety and security authorisation has different criteria for qualification than does the customs simplification authorisation. It is also the case that these two authorisations provide separate benefits for their holders and unless and economic operator pursues the combination AEO Safety and Security and Customs Simplification authorisation they will not have access to the full scale of benefits.

3 Ibid.
5 EU legislation defines an economic operator as “a person who, in the course of his or her business, is involved in activities covered by the customs legislation. (European Parliament and Council Regulation (EU) No 952/2013)
It is important to note that while this thesis will focus on the economic operators utilising AEO, there are significant benefits to the customs authorities as well.

2. The International Perspective on Authorised Economic Operators

2.1 World Trade Organization

Across the international organizations supporting international trade the definition of trade facilitation is nearly identical. The WTO defined trade facilitation as, “the simplification and harmonization of international trade procedures. Trade procedures are activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade.” The WTO elaborates that trade facilitation is inclusive of a wide range of activities that includes both import and export procedures, transport formalities, payments, insurance, and other financial requirements. The EU uses the language found the WTO definition to define trade facilitation.

The WTO was established to facilitate trade agreements, provide a forum for trade negotiations, handle trade disputes, monitor changes in national trade policies, provide technical assistance for developing countries, and facilitate cooperation and dialogue with other international organizations. The WTO’s Agreement on Trade Facilitation is modelled heavily on its own GATT agreement. The WTO’s Agreement on Trade Facilitation was concluded in December 2013, amended, and then the decision was adopted on 27 November 2014 to insert this Agreement into Annex 1A of the WTO Agreement. The Agreement on Trade Facilitation includes “provisions for expediting the movement, release and clearance of goods, including goods in transit. It also sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues.”

The AEO scheme is just one element under the umbrella of trade facilitation, however, as a whole the WTO’s Agreement on Trade Facilitation does not do enough to address the safety and security elements. Facilitation is often used to mean simplification, greater communication, and harmonisation across groups. Whereas safety and security are inherently protectionist in their usage, they are terms for internalising danger and threats from outside which is the opposite of what this agreement seeks to achieve.

2.2 World Customs Organization – SAFE Framework

The WCO Council adopted the SAFE Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework) in June 2005 to help deter terrorism, secure revenue collection, and promote trade facilitation. The SAFE Framework has been updated several times, include in 2007 with the addition of the conditions and requirements for Customs and Authorised Economic Operators, and most recently in 2015 to include the new Pillar III on Cooperation between Customs and other Government and Inter-Government agencies. The SAFE Framework defines an AEO as “a party involved in the international movement of

---

10 Ibid
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. AEOs include inter alia manufacturers, importers, exporters, brokers, carriers, consolidators, intermediaries, ports, airports, terminal operators, integrated operators, warehouses, and distributors.”

The WCO’s AEO program is embedded within the Authorised Supply Chain, which “is a concept under which all participants in an international trade transaction are approved by Customs as observing specified standards in the secure handling of goods and relevant information. Consignments passing from origin to destination entirely within such a chain would benefit from an integrated cross-border simplified procedure, where only one simplified declaration with minimum information would be required for both export and import purposes.” AEOs that meet the specified criteria “should reasonable expect to participate in simplified and rapid release procedures on the provision of minimum information. The criteria include having an appropriate record of compliance with Customs requirements, a demonstrated commitment to supply chain security by being a participant in a Customs-Business partnership program, a satisfactory system for managing their commercial records and financial viability. In order to enhance supply chain security and harmonization of Customs procedures, Customs administrations should seek mutual recognition of AEO status between or among programs.”

2.3 The Authorised Economic Operator
The WCO’s SAFE Framework sets out six standards and technical specifications for implementation under Pilar II (Customs-to-Business), which include:

1. Partnership – AEOs in the supply chain will complete a self-assessment to measure their existing security standards and best practices to ensure there are adequate safeguard measures in place.
2. Security – AEOs will incorporate pre-determined security best practices into their business practices.
3. Authorisation – The Customs administration and representatives from the traders community will design a validation process that incentivizes operators to gain AEO status.
4. Technology – All users will maintain cargo and container integrity through the use of modern technology.
5. Communication – Customs administrations will keep the Customs-Business partnership program up to date to promote supply chain security best practices.
6. Facilitation – Customs administrations will work together with AEOs to maximize security and the facilitation of the international supply chain.

Pillar III’s core objective is to facilitate and enhance government response to problems that arise relating to supply chain security. It is key to ensure that the relevant government agencies and departments are efficient and effective in their response in order to minimize any unnecessary disruption to the supply chain. This level of cooperation is necessary on a national level, but given the nature of global trade flows, it is also necessary that Customs

---

13 Ibid  
14 Ibid  
15 Ibid
administrations and the relevant government departments across countries have a clear line of communication.

2.4 Risk Assessment and Management

Modern customs administrations rely on data and IT systems to help categorize shipments, containers, persons, ports of departure, etc. into low and high risk categories, and to share all of this information with other customs administrations. This is the most effective method of managing the high volumes of international trade flows that pass through ports and Customs offices on a daily basis. The Organization for Economic Cooperation and Development (OECD) determined that the risk assessment is complicated by the following elements:

1. “There is considerable doubt about whether the load actually declared has really gone into the container at the port of departure.
2. Even when the load in a container has been determined, there is still a risk that the freight will be substituted or manipulated during long supply chains.
3. For data security reasons, it is very important to pass on the corresponding data.
4. The sensible use of the vast quantity of data not only requires collection but also systematization and interpretation which can be a source of misunderstandings and thereby lead to mistakes in risk analysis.
5. If numerous initiatives for supply chain security regard the concept of visibility in demand as offering the idea solution, the pre-condition for this is that all-encompassing logical systems are available to deliver all relevant data for the risk analysis in real time, all the time. Although large logistics and transport companies are generally able to request and make available the relevant data using pre-existing organizational structures, this is not true of small and medium sized enterprises (SMEs) which are faced with difficulties in implementing security systems. They need to devote sizable financial resources to establishing appropriate information exchange systems. The same goes for developing and (to a certain extent) emerging economies.
6. It is often argued that initiatives do not deal with the ‘potentially dangerous’ group of actors. Due to the act that there is no obligation for them to participate, it would be better to focus on those actors who do not participate and therefore do not fulfil the prerequisites as a potential source of danger.”

The risk assessment has become a key component of all customs administrations and it is also a sign of the push for more modern customs control processes. This process of scoring operators based on set criteria has moved customs administrations further from physical controls as the primary source of identifying risky shipments, to administrative and document based controls. This is both more efficient for the customs authorities and can also be more transparent for the economic operator. Knowing how the risk-assessment calculates the level of risk for particular shipments helps economic operators to identify weaknesses in their own supply chains and procedures. They can then make any necessary changes to improve their own systems and procedures and therefore decrease their risk score. This can result in many positive consequences for both the economic operator (decreases probability of physical checks) and for the customs authorities (allows them to focus on other high risk operators).

---

16 Ibid
http://worldcustomsjournal.org/Archives/Volume_5, Number_2 (Sep 2011)/00 Complete Issue WCJ_Volume_5_Number_2.pdf#page=27>
2.5 Mutual Recognition Agreements

As the SAFE Framework does not strictly outline a concrete design or structure for an AEO program, which initially confused many of the WCO member who were planning to implement such a program. Because of this, the idea of mutual recognition of AEO programs between countries is made difficult. Unless the countries are willing to take the “lowest common denominator”\(^\text{18}\) approach it is problematic to equate an AEO status based solely on security compliance (i.e., the US) in one country with that of a country requiring an AEO to show both security compliance and other general compliance (i.e., the EU). This point is highlighted by the difficulty that was experienced to conclude the mutual recognition agreement (MRA) between the US and the EU. There are fundamental differences between the two programs as C-TPAT is more import centric and the EU’s AEO concerns both imports and exports, but more fundamentally their eligibility criteria differ. Only recently has the US begun to expand C-TPAT’s focus to both imports and exports.\(^\text{19}\) But it is fundamental differences such as this that have resulted in the EU concluding only five MRAs\(^\text{20}\) since the program was established. This of course bearing in mind the time for any one country to establish its own AEO program, it is an accomplishment to have five MRAs completed thus far.

Given that the US and the EU have some of the larger AEO programs many countries have modelled their own national AEO programs on these two examples. While MRAs can be particularly advantageous for AEO certified entities, there remain issues of systems and standards compatibility. The MRA expands the benefits of an AEO certified economic operator, especially for those with wide reaching trade flows. MRAs with the EU could be particularly advantageous as a bilateral agreement with the EU provides one access to 28 member states. These issues must be addressed and harmonzed (to an acceptable and achievable degree) in order for the MRA to be functional.\(^\text{21}\)

So far, a total of 69 AEO programs have been established across 79 countries and there are 16 programs in the development stage. As of May 2016, in total 40 bilateral MRAs had been concluded with an additional 30 in the negotiation process.\(^\text{22}\) Looking at these figures and understanding it took the EU approximately 1.6 years to conclude each of the EU MRAs it would take approximately 100 years for the EU to conclude MRAs with all of the current established AEO programs. In the future as these programs develop there is likely to be greater levels of harmonisation amongst the AEO programs, however only time will determine the extent of that harmonisation and its impact on MRAs and future trade flows.

\(^{18}\) In mathematical terms, the lowest common denominator refers to the lowest common multiple in a set of fractions allowing fractions of different measures to be made equal to one another. In AEO terms, this would refer to a prescribed list of criteria and qualities that all AEOs must have in common in order to conclude a mutual recognition agreement. Ideally, this would be solidified in hard law by the WCO or WTO, however given that the frameworks and criteria set out so far are not hard law this is not likely to happen unless there is a strong push from the international community to do so.


3. European Union Perspective on Authorised Economic Operators

The EU defines trade facilitation in the same language as the WTO and does elevate trade facilitation as a major factor to the development and application of operational policy issues. Trade facilitation in the EU is well supported by policy and legal framework. This framework was first set out in Council Regulation (EEC) No 2913/92\(^{23}\), commonly known as the Community Customs Code (CCC). Amendments were made to the CCC in Regulation (EU) No 450/2008\(^{24}\), commonly called the Modernized Customs Code (MCC), however this was repealed and replaced on 9 October 2013 by Regulation (EU) No 952/2013\(^{25}\) of the European Parliament and of the Council and is called the Union Customs Code (UCC). The UCC entered into force on 30 October 2013, however its substantive provisions only became applicable on 1 May 2016 when the UCC-related Commission acts, Commission Delegated Regulation (EU) No 952/2013\(^{26}\) and the Commission Implementing Regulation (EU) 2015/2447\(^{27}\) herein referred to as the Delegated Act and Implementing Act respectively, were adopted and enforceable.\(^{28}\)

There is a high level of standardization and harmonization at the EU level. Significantly for the AEO program, the EU includes in the legislation IT advances which will only serve to provide additional support to the facilitation and simplification of trade. At a high level, the EU system and AEO program does offer an enticing benefits package to traders. Although member states, as described later, are given a degree of independence to add to the standard EU AEO material in the form of national centric questions for the self-assessment and national AEO guidelines. This adds a layer of complexity for the economic operators applying for AEO status, particularly in countries where there are currently few AEO authorisations from which to look to as case studies.

As of 10 June 2016, according to the European Commission’s Directorate General for Taxation and Custom Union (DGTAXUD), 16 791 AEO authorisations had been issued from the 19 512 applications. During this period only 1 775 applications had been rejected. The EU has concluded MRAS with most of the major trading partners, with additional MRAs in the process of being negotiated.\(^{29}\)

3.1 AEO under the Union Customs Code

The benefits of being party to the AEO program in the EU are similar to that of other countries, which include priority: easier admittance to customs simplifications, prior notification, fewer physical and document-based controls, priority treatment of consignments if selected for control, choice of the place for controls to take place, as well as indirect benefits.\(^{30}\)

\(^{23}\) Council Regulation (EEC) No 2913/92, 1992 O.J. L 302/1
\(^{26}\) Commission Delegated Regulation (EU) 2015/2446
\(^{27}\) Commission Implementing Regulation (EU) 2015/2447
In the UCC the authorised economic operator is addressed Articles 38-41\textsuperscript{31}; Articles 24-35 of the Implementing Act\textsuperscript{32}, and Articles 23-30 of the Delegated Act\textsuperscript{33}.

A transitional period following the implementation of the UCC on 1 May 2016 has been set to allow operators time to prepare for reassessment and to be reassessed by 1 May 2019.\textsuperscript{34}

3.2.1 The Union Customs Code

The articles in the main text of the UCC establish the types of AEO authorisations and the criteria that must be met to be granted the status of AEO. There are three types of AEO authorisations identified in Article 38(2):

a. “that of an authorised economic operator for customs simplifications, which shall enable the holder to benefit from certain simplifications in accordance with the customs legislation; or

b. that of an authorised economic operator for security and safety that shall entitle the holder to facilitations relating to security and safety.” \textsuperscript{35}

Authorisation “a” above is commonly called AEOC and authorisation “b” is commonly called AEOS. Both authorisations may be held at the same time by one operator, resulting in an AEO-Full authorisation. The WCO’s AEO scheme is designed to address issues of safety and security through greater risk detection and prevention, however the EU first identifies the AEO status for simplified customs procedures.

The benefits offered to an EU AEO are identified in Article 38(5-6) and include: “more favourable treatment than other economic operators in respect of customs controls according to the type of authorisation granted, including fewer physical and document based controls.”\textsuperscript{36}

Article 38(7) allows for Mutual Recognition Agreements and their ensuing benefits.

Article 39 lays out the criteria for being granted AEO status in the EU, which includes:

a. the absence of any serious infringement or repeated infringements of customs legislation and taxation rules, including no record of serious criminal offences relating to the economic activity of the applicant;

b. 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;

c. 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;

d. with regard to the authorisation referred to in point a of Article 38(2), practical standards of competence or professional qualifications directly related to the activity carried out; and

e. with regard to the authorisation referred to in point b of Article 38(2), appropriate security and safety standards, which shall be considered as fulfilled where the applicant demonstrates that he or she maintains appropriate measures to ensure the

\textsuperscript{31} European Parliament and Council Regulation (EU) No 952/2013
\textsuperscript{32} Commission Implementing Regulation (EU) 2015/2447
\textsuperscript{33} Commission Delegated Regulation (EU) 2015/2446
\textsuperscript{34} HM Revenue & Customs, ‘The Union Customs Code’ (United Kingdom, 31 May 2016) <http://www.gov.uk/guidance/introduction-of-the-union-customs-code-ucc>
\textsuperscript{35} European Parliament and Council Regulation (EU) No 952/2013
\textsuperscript{36} European Parliament and Council Regulation (EU) No 952/2013
security and safety of the international supply chain including in the areas of physical integrity and access controls, logistical processes, and handling of specific types of goods, personnel and identification of his or her business partners.  

### 3.2.2 The Delegated Act

The Delegated Act provides a detailed breakdown of the facilitations, benefits, and application procedure. In particular, Article 24\(^{38}\) (relating to Article 38(6) of the Code) outlines the more favourable treatment regarding risk assessment and control, with specific details for the AEO status operators.

1. An authorised economic operator (AEO) shall be subject to fewer physical and document-based controls than other economic operators.
2. Where an AEO has lodged an entry summary declaration or, in the case referred to in Article 130 of the Code, a customs declaration or a temporary storage declaration or where an AEO has lodged a notification and given access to the particulars related to his entry summary declaration in his computer system as referred to in Article 127(8) of the Code, the customs office of first entry referred to in the first subparagraph of Article 127(3) of the Code shall, where the consignment has been selected for physical control, notify that AEO of that fact. That notification shall take place before the arrival of the goods in the customs territory of the Union. That notification shall be made available to also to the carrier if different from the AEO referred to in the first subparagraph, provided that the carrier is an AEO and is connected to the electronic systems relating to the declarations referred to in the first subparagraph.
3. When AEO lodges a temporary storage declaration or a customs declaration in accordance with Article 171 of the Code, the customs office competent to receive that temporary storage declaration or that customs declaration shall, where the consignment has been selected for customs control, notify the AEO of that fact. That notification shall take place before the presentation of the goods to customs. That notification shall not be provided where it may jeopardize the controls to be carried out or the results thereof.
4. Where consignments declared by an AEO have been selected for physical or document—based control, those controls shall be carried out as a matter of priority.\(^{39}\) On request from an AEO the controls may be carried out at a place other than the place where the goods have to be presented to customs.
5. The notifications referred to in paragraphs 2 and 3 shall not concern the customs controls decided on the basis of the temporary storage declaration or the customs declaration after the presentation of the goods.\(^{40}\)

Article 25 does allow for instances where more favourable treatment is not applicable due to increased threat levels or control obligations set out in other Union legislation.

### 3.2.3 The Implementing Act

These articles provide further detail on the qualifying criteria for AEO.

Article 24 lays out the criteria for the qualifying individual’s compliance as related to Article 39(a) of the Code. Record keeping requirements are addressed in Article 25 and financial

\(^{37}\) Ibid
\(^{38}\) Commission Delegated Regulation (EU) 2015/2446
\(^{39}\) Ibid
\(^{40}\) Ibid
3.3 Impact of the Union Customs Code

Under the UCC, as opposed to the CCC, certain simplifications will be reserved exclusively for AEOC operators for customs simplifications or AEO-Full operators. The AEO Guidance published when the AEO scheme was established in the CCC explicitly states that “economic operators do not need to have AEO status in order to get an authorisation for a simplification provided for under the customs rules.”

This raises an intriguing tension as AEO is a voluntary program, however now that access to customs simplifications is limited to AEOC or AEO-Full operators the legislation is effectively punishing non-AEO and AEOS operators even when they meet compliance standards. Thus, in order to access these simplifications the legislation forces economic operators to make the decision to remain non-AEO or AEOS (but just as compliant) or take on the costs and administration required to achieve AEOC or AEO-Full certification. In this sense, there appears to be a shift in the purpose of the legislation to formalise the industry of economic operators over bettering the quality of economic operators. As one Dutch brewery claimed “we are already a compliant company with a good reputation, and our current procedure is simpler than that of others anyways, why should we invest more to get the AEO certificate?”

To look at an example, the centralized clearance authorisation allows operators to submit the customs declaration at the local customs office where they are established, allowing goods to be physically imported through different customs offices. Additionally, Customs authorities may upon application, permit operators to lodge customs declarations, including the simplified declaration, in the form of an entry in their records. This would also allow customs authorities to waive the obligation for the goods to be presented. This is a time and money saver for the responsible economic operator and would allow a centralised team with the appropriate knowledge of the goods and legal requirements to complete customs clearance and record keeping requirements.

From the customs administration perspective, the same idea holds true. Having AEO authorised operators importing and exporting allows the customs office to more efficiently allocate their time and personnel to shipments of high risk. However, leaving already compliant non-AEO operators without access to customs simplifications could also create more work, or at least not help to decrease the world load, on the customs authorities. The Dutch Tax and Customs Authorities described it simple as: “If companies are already in good

---

41 Commission Implementing Regulation (EU) 2015/2447
control themselves, why should we waste our resources to exert extra control over them?"\textsuperscript{46}

Forcing economic operators to become AEO certified in order to continue to have access to the simplifications they previously enjoyed appears to be more a show of strength of customs and not less a push to harmonise and enhance trade operations in and out of the EU.

4. Benefits and Challenges of the EU’s AEO program

This thesis focuses solely on the benefits and costs associated with the economic operators and not the customs authorities. However, it is important to note that the customs authorities will encounter many of the same challenges that the economic operator does. For instance, having the appropriate IT programs and capacity to handle the data flows. This is being addressed at the EU level, but it is important to think about how (when the system is complete) this will be deployed across all the member states. It may take longer for member states that are entrenched in older or more paper based customs contact systems to fully implement and utilize this system. For example, the Netherlands may be able to implement the new IT system very quickly and with fewer obstacles, whereas it may take Slovenia a longer period of time to adjust. Additionally, customs authorities may need to hire and train more personnel as the AEO program expands.

4.1 Benefits to the AEO

There are of course many benefits to having any the EU’s AEO authorisations: the customs simplifications, prior notification, fewer physical checks, priority treatment if selected for customs control, choice of location for customs control, as well as the many indirect benefits that can arise.\textsuperscript{47} However, the cost-benefit balance between being an AEO versus not being an AEO in the EU before the UCC may not have been significant enough to drive operators to apply for AEO status, particularly if they already had a high level of compliance and system oversight. For instance, being AEO can reduce the number of physical checks by 50%. However, given that under the UCC customs controls are risk driven having AEO status is not the only method of reducing the risk score. Non-AEO operators can reduce their risk score through many other methods and by merely being compliant with the Customs authorities. Therefore prior to the UCC, an operator could be as compliant as an AEO, which would in and of itself result in a lower risk score and fewer physical checks.\textsuperscript{48}

Given that customs simplifications are now reserved for AEOC operators this may encourage those economic operators already considering applying for an AEO authorisation to direct their efforts towards the general compliance criteria, instead of the safety and security compliance criteria if it was a choice between one or the other. Or it may even encourage those who were undecided on applying for AEO to not apply in the near future.

Thus far the EU has concluded MRAs with China, Japan, Norway, Switzerland, and the US. However, to have full access to the benefits of these MRAs the economic operator must be an AEO-Full with both customs simplifications and safety and security authorisations. An AEO-Full would have access to the following MRA benefits:

- “Easier admittance to customs simplifications;
- Fewer physical and document-based controls for both safety and security and related to other customs legislation;

\textsuperscript{46} Ibid
\textsuperscript{48} Johan Stoopen, ‘Trade Facilities and Developments’ (Lecture, EFS Post-Master in EU Customs Law 2016, Rotterdam, November 2016)
Prior notification in case of selection for physical controls related to safety and security;
Prior notification in case of selection for customs controls related to other customs legislation;
Possibility to request a specific place for customs controls;
Indirect benefits, and
Mutual recognition with third countries.49

However, not all of the above mentioned benefits are afforded to AEOC and AEOS holders. AEOC holders do not benefit from fewer physical and administrative controls or prior notification in case of selection for customs control relating to security and safety measures, but more significantly they do not have access to the MRAs with third countries. The AEOS authorised operators do not have access to the customs simplifications, or benefit from fewer physical and administrative controls or prior notification in case of selection for customs controls related to other customs legislation. These two authorisations represent the mismatch between trade facilitation measures and safety and security measures, as identified earlier. Having a trade facilitation authorisation, a safety and security authorisation, and a combination authorisation does not seem to be the most efficient way of managing either of these trade issues. There has even been speculation that the AEO-Full authorisation would be phase out within the next few years50, and depending on how the remaining two authorisations were managed this could lead to greater burdens for the economic operators.

4.2 Associated Costs and Challenges for the Economic Operator

4.2.1 Costs

The implementation of such a program, much like any other trade compliance review or remediation plan, inevitably has a cost for assessing the status quo, determining the remediation, implementation, monitoring, and the training of responsible individuals. A 2003 study estimated that security related supply chain modifications could cost companies approximately $65 billion to implement. In order to identify areas of improvement and implement changes, companies would need to work closely with government and the elements of the supply chain.51 It was estimated that it would cost a freight forwarder about 5 000 to 10 000 Euro to be AEO certified.52

In the short term, the costs incurred in the process of applying for AEO certification and to monitor and maintain the certification may seem too high a price to pay to have access to the given simplifications. A company in the position to go through the self-assessment and remediation process for AEO certification, may see it more fit to run their own trade compliance review and remediation program designed to achieve a lower risk assessment from the customs authority. Decreasing one’s risk score decreases the probability of the container being stopped for physical inspections.

50 HM Revenue & Customs, ‘The Union Customs Code’ (United Kingdom, 31 May 2016) <http://www.gov.uk/guidance/introduction-of-the-union-customs-code-ucc>
There are also technology costs associated with becoming an AEO in the forms of databases and connectivity to the relevant Customs authorities. In particular, given that the EU customs IT system is not live yet and that each EU member state operates on a different system that economic operators have to be able to work with. However, when the new EU IT system is deployed, after an adjustment and learning period, this cost should decrease.

Given these costs, and the challenge discussed below, it would seem very difficult for a small-medium sized enterprise (SME) to have access to AEO given the costs of preparing and applying for AEO, as well as the future maintenance costs. While the AEO guidance does indicate that many of the criteria and conditions necessary for any of the authorisations are adjusted for SMEs, it may still be difficult for an SME to build and justify a business case for AEO. In the same sense, an SME could allocate time and resources to improving their own internal controls in order to decrease their risk assessment score, which would not grant them access to the simplifications, but would decrease the chances of physical inspections and supply chain disruptions at the customs point.

4.2.2 Challenges

4.2.2.1 The Self-Assessment

An economic operator applying for AEO must complete a self-assessment questionnaire, which differs between the EU member states, regarding their internal control procedures and supporting IT systems. The EU established a standard self-assessment which member states can adapt the questionnaire and their own national guidance to assist applications through the process. The differences between questionnaires for each member state mean that there is not one EU sample of AEOs for new applicants to look to for advice or to draw experience from. The relevant customs authority then performs further investigations, and if no red flags are raised, the application progresses. However, if issues do arise, it is up to the applicant to make the necessary changes or improvements (costing them time and money) in order to move forward. This entire process is likely to differ between member states as well given the manner in which a member state’s customs authorities operate. For instance, the Italian customs authorities operate on a system of physical controls, whereas many other member states have moved to an administrative controls system. Therefore, even within the EU the types of internal controls for an applicant may differ depending on the country of application. This idea can also be extended to the procedures and auditing habits of that country, all of which could lead potential applicants to shop around the member states for a more favourable country to apply in.

AEO entities will also be required to complete a self-reassessment periodically to validate their compliance and to report any significant changes made that affect the entity and the way in which it functions. If Customs determines that these changes imply that the entity no longer meets the AEO criteria then Customs will temporarily suspend the certification while

---


the company makes the necessary changes to fill in the gaps. This runs the risk of an undetermined amount of time where the entity must act as non-AEO, which would lead to changes in processing times and removal the simplifications and benefits they had previously use. This could result in significant disruptions across the supply chain as the non-AEO status has to be communicated and adjusted for throughout the complex supply chain.

Unlike the C-TPAT, the EU’s AEO program incorporates general compliance requirements. Thus, the self-assessment not only checks for the quality and robustness of the internal control procedures, it also assess an entity on past criminal offenses related to its economic activity and evidence of financial solvency. Another addition found in the UCC requires applicants “to provide evidence of their ability to keep record of compliance with Customs legislation and taxation rules, together with proven practical standards of competence or professional qualifications in the domain of Customs and duties (which may not always be easy to prove), and eventually the existence of appropriate security and safety measures.”

4.2.2.2 Operational Management
Just as differences between member states self-assessment creates advantages and disadvantages for applying in said country, the infrastructure and layout of the customs check points can also have a significant impact on the ability of the AEO and the customs administration to process the AEOs. A study performed in Slovenia found that while ownership of an AEO certificate did have a positive administrative effect on the economic operators, however, if the infrastructure at the customs border point does not allow the complete utilization of all the benefits granted to an AEO then there is a clear disconnect between the goal of the scheme and the real benefits an economic operator can expect to realise. The study looked at the Obreze road border crossing which operates a single-channel queuing system for traffic to enter the EU. This type of system did not allow for AEO and non-AEO traffic to be separated or distinguished, thus, the faster border crossing that should be available to the AEO is not.

5. Conclusion
Striking the balance between promoting trade facilitation and ensuring a high level of safety and security amongst economic operators is no small task. The EU’s Authorised Economic Operator program seeks to accommodate both elements and to unite them in one authorisation. This stretches the parameters of the AEO scheme as set forth in the SAFE Framework by incorporating existing customs simplifications into a program originally designed to specifically address the heightened security threat of the 21st century. To look strictly at the AEOS authorisation, this meets many of the goals of the SAFE Framework, thus making it more likely to be compatible with other AEO programs from around the world. However, the inclusion of the AEOC authorisation and customs simplifications sets the EU’s program out from others currently established, which will hinder the conclusion of future MRAs given the extra set of qualifying criteria present.

57 Ibid
Marrying the trade facilitation and safety and security under one program has come with many challenges especially given the new UCC legislation with access to the customs simplifications is being limited to those with AEOC or AEO-Full authorisations. This legislative change discriminates against other compliant non-AEO economic operators having the opposite effect of trade facilitation. If the EU’s goal is to formalize the economic operators the process should not alienate those operators who already maintain a high level of compliance or effectively force the decision to apply for AEO on the operators.

6. Future Research Opportunities
There are extensive opportunities for further research in the area of AEO authorisations not only to fully assess perceived benefits and challenges with those actually experienced by the operators utilising AEO, but also to develop an understanding of the national influences of self-assessments and guidelines on the AEOs. It would also be imperative to perform a detailed assessment and analysis of operators utilising each of the three authorisations so that if in the future changes to the authorisations themselves are made there will be a strong narrative to either dispute or refute proposed amendments.
Annex 1 – C-TPAT

In the US, there are two customs accredited programs, both of which are voluntary from the importer. First, C-TPAT is a joint initiative between USCBP and business to build cooperative relationships that strengthen the security of the entire supply chain and thus enhance border security. USCBP recognizes that improved border security can only be accomplished through close cooperation with the companies that own the supply chain. The C-TPAT initiative requires companies to ensure the integrity of their supply chain by implementing security procedures and communicating security guidelines to their suppliers and partners within the supply chain.\(^\text{59}\)

The second program, the Importer Self-Assessment Program (ISA), provides a company the opportunity to demonstrate to USCBP that it monitors its internal controls over customs compliance in return for major related benefits. It is based on the premise that importers with strong internal controls and oversight will achieve the highest level of compliance with USCBP law and regulations, and therefore require the least amount of USCBP intervention. ISA allows USCBP to recognize these importers with special benefits, and thereby permits USCBP more time to concentrate on companies lacking controls over customs compliance.\(^\text{60}\)

Together these programs focus on safety and security measures, any customs simplifications that are awarded are a result of being compliant and being certified.


\(^{60}\) Ibid.
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>AEO</td>
<td>Authorised Economic Operator</td>
</tr>
<tr>
<td>AEOC</td>
<td>Authorised Economic Operator for Custom Simplifications</td>
</tr>
<tr>
<td>AEOS</td>
<td>Authorised Economic Operator for Safety and Security</td>
</tr>
<tr>
<td>AEO-Full</td>
<td>Authorised Economic Operator for Customs Simplifications and Safety and Security</td>
</tr>
<tr>
<td>CCC</td>
<td>Community Customs Code</td>
</tr>
<tr>
<td>C-TPAT</td>
<td>Customs-Trade Partnership Against Terrorism</td>
</tr>
<tr>
<td>DA</td>
<td>Delegated Act UCC</td>
</tr>
<tr>
<td>DGTAXUD</td>
<td>Directorate General Taxation and Customs</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
</tr>
<tr>
<td>IA</td>
<td>Implementing Act UCC</td>
</tr>
<tr>
<td>ISA</td>
<td>Importer Self-Assessment Program</td>
</tr>
<tr>
<td>MCC</td>
<td>Modernised Customs Code</td>
</tr>
<tr>
<td>MRA</td>
<td>Mutual Recognition Agreement</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
</tr>
<tr>
<td>SAFE Framework</td>
<td>WCO SAFE Framework of Standards to Secure and Facilitate Global Trade</td>
</tr>
<tr>
<td>SME</td>
<td>Small-Medium size enterprise</td>
</tr>
<tr>
<td>UCC</td>
<td>Union Customs Code</td>
</tr>
<tr>
<td>USCBP</td>
<td>United States’ Customs and Border Protection</td>
</tr>
<tr>
<td>WCO</td>
<td>World Customs Organization</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organization</td>
</tr>
</tbody>
</table>
Literature list


Commission Delegated Regulation (EU) 2015/2446, 2015 O.J. L343/1

Commission Regulation (EEC) No 2454/93, 1993 O.J. L253/1

Council Regulation (EEC) No 2913/92, 1992 O.J. L 302/1


