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AEO: A PLURILATERAL APPROACH TO MUTUAL RECOGNITION

David Widdowson¹

Abstract

This paper examines progress in establishing mutual recognition arrangements for Authorised Economic Operator (AEO) programs under the World Customs Organization's SAFE Framework of Standards to Secure and Facilitate Global Trade. In particular, it considers the likely impact on industry and customs administrations of the current bilateral approach to establishing mutual recognition agreements, and recommends a plurilateral approach that will minimise the proliferation of such agreements and, in doing so, reduce the regulatory burden on both administrators and the trading community.²

Keywords: AEO, Mutual Recognition, Framework of Standards, Supply Chain Security

JEL Classification: F10, F15, F33

The concept of 'Authorised Economic Operator'

The World Customs Organization's (WCO) *SAFE Framework of Standards to Secure and Facilitate Global Trade* (WCO 2012a), or the SAFE Framework as it is commonly known, is widely recognised as an international standard. At the time of writing, some 167 countries had either commenced implementation of the SAFE Framework or expressed their intention to do so.

The initial focus of the SAFE Framework, as its name implies, was to secure the international supply chain in a manner that also facilitates trade. The first iteration of the instrument drew heavily on the US Customs-Trade Partnership Against Terrorism (C-TPAT) program which has a clear anti-terrorism focus, and is designed to provide US Customs and Border Protection (CBP) with a method of identifying and focusing resources on potentially high-risk consignments, that is, those that do not form part of a supply chain that is assessed to be 'secure'. According to CBP, the C-TPAT initiative seeks the cooperation of businesses 'to protect the supply chain, identify security gaps, and implement specific security measures and best practices' (CBP 2012).

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² This paper is broadly based on and represents an update of the author's earlier article: David Widdowson 2012, 'Mutual recognition of AEO programs: a regional solution', paper presented to the Customs Academic Conference on National Security – Globally Networked Customs, Ulaanbaatar, Mongolia, October 2012. It also draws on David Widdowson, Bryce Blegen, Mikhail Kashubsky and Andrew Grainger 2014, 'Review of accredited operator schemes', CCES, Canberra

The US approach to C-TPAT and indeed the WCO's initial approach to the SAFE Framework, appear to be perfectly logical from a risk management perspective. In the context of a partnership against terrorism or an instrument designed to secure the international supply chain, a *high risk* consignment is logically one that represents a risk to supply chain safety and security. Having identified the potential risk, the next step is to determine appropriate ways of mitigating the risk. This is where the concept of the Authorised Economic Operator (AEO) or 'trusted trader' comes into play. An AEO, which is at the heart of both C-TPAT and the SAFE Framework, is essentially a member of the international trading community that is deemed to comply with the relevant supply chain security standards.³

The AEO concept represents a partnership arrangement between Customs and Industry that is designed to provide incentives for businesses that meet defined supply chain security standards. According to the WCO, 'AEOs will reap benefits, such as faster processing of goods by Customs, e.g. through reduced examination rates... 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'.⁴

Broader focus

When the SAFE Framework was first released in June 2005, there was an apparent conflict between the criteria required to become an AEO as specified in Annex 2 of the document and the prose contained in its Annex 1 which purported to summarise those provisions. Annex 1, Paragraph 1.4.1 of the 2005 document states:

Authorised Economic Operators who meet criteria specified by the Customs (see Annex 2) should be entitled 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* [emphasis added], a demonstrated commitment to supply chain security by being a participant in a Customs-Business partnership programme, and a satisfactory system for managing their commercial records (WCO 2005).

The statement 'the criteria include having an appropriate record of compliance with Customs requirements' was an apparent anomaly as the criteria specified in Annex 2 made no reference to any requirements other than those relating to supply chain safety and security.

This raised the question of whether the proposed AEO arrangements were designed to have a specific focus on the safety and security of the international trade supply chain, or whether a broader focus on overall regulatory compliance was in fact intended. If the former was the case, it would be appropriate to remove the phrase in question from paragraph 1.4.1. If, however, the latter interpretation was correct, it would be appropriate to expand the criteria in Annex 2 accordingly.

³ The WCO definition of an Authorised Economic Operator 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. AEOs may include manufacturers, importers, exporters, brokers, carriers, consolidators, intermediaries, ports, airports, terminal operators, integrated operators, warehouses, distributors and freight forwarders' (WCO 2012a)

⁴ WCO 2012a, p. 6

These concerns were brought to the attention of the then Secretary General of the WCO, whose position on the matter was clear: ‘... from a Customs perspective, a participant’s reliability history and consistent adherence to basic Customs requirements, even outside of the security context, is so fundamental as to form the foundation for all special programme participation. This is especially true when considering programmes with a security emphasis, such as SAFE’.⁵

The AEO guidelines that were subsequently issued by the WCO went to great lengths to emphasise this point (WCO 2006), and the second iteration of the SAFE Framework, issued in 2007, states that, since its introduction in 2005, ‘work has progressed on modernizing and improving the document, principally by incorporating into its text detailed provisions concerning Authorized Economic Operators’ (WCO 2007, p. i).

There appears, however, to have been some re-writing of history on the part of the WCO, and its website now states, ‘In June 2005 the WCO Council adopted the SAFE Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework) that would act as a deterrent to international terrorism, *secure revenue collections* [emphasis added] and promote trade facilitation worldwide’ (WCO 2012b). That was certainly not the stated intention at the time the SAFE Framework was introduced in 2005.

The European Union (EU) was the first to adopt the broader definition espoused by the WCO by requiring an AEO to demonstrate:

- an appropriate record of compliance with customs requirements
- a satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls
- where appropriate, proven financial solvency
- where applicable, appropriate security and safety standards (EC 2007).

Such criteria go well beyond the security agenda which originally triggered the development of the SAFE Framework, and introduce a layer of complexity which results in a coupling of two quite different concepts – that of a compliant trader and that of a secure supply chain.

Through its so-called ‘SAFE Package’, the WCO has provided a great deal of information to assist countries in building internationally consistent AEO programs. Of special note is Annex III to the 2012 edition of the SAFE Framework, ‘AEO Conditions, Requirements and Benefits’. The Annex provides some very clear guidelines for governments that are seeking to establish AEO programs, as well as minimum standards for economic operators wishing to become certified under a national program. These guidelines, for practical purposes, are considered to represent the baseline for any new AEO program, as they also constitute the minimum criteria for mutual recognition with the established programs of the EU, Japan, and the United States.⁶

The World Trade Organization (WTO) has been supportive of the AEO concept through its trade facilitation agenda. At its Ninth Ministerial Conference, the WTO finally reached consensus on a text for a new Agreement on Trade Facilitation.⁷ The agreement, which will need to be ratified by the members but which may come into effect as early as mid-2014,

⁵ Letter to the author from the then Secretary General of the WCO, dated 13 June 2006

⁶ Widdowson, Blegen, Kashubsky & Grainger 2014, pp. 18, 19

⁷ WTO 2013

would be binding on all WTO members. Its scope is extensive, but of particular relevance to the current subject is the following:

Trade facilitation measures for authorized operators

Each Member shall provide additional trade facilitation measures related to import, export or transit formalities and procedures, pursuant to paragraph 7.3, to operators who meet specified criteria, hereinafter called authorized operators. Alternatively, a Member may offer such facilitation measures through customs procedures generally available to all operators and not be required to establish a separate scheme.

The specified criteria shall be related to compliance, or the risk of non-compliance, with requirements specified in a Member's laws, regulations or procedures. The specified criteria, which shall be published, may include:

- a. an appropriate record of compliance with customs and other related laws and regulations;
- b. a system of managing records to allow for necessary internal controls;
- c. financial solvency, including, where appropriate, provision of a sufficient security/guarantee; and
- d. supply chain security.⁸

The implication of the text of these provisions is that if a country elects to introduce an 'Authorized Operator' program, it has a level of flexibility in terms of the criteria that may be applied. Note also that the criteria identified by the WTO are consistent with those contained in the SAFE Framework. In the event that a WTO member state elects to establish such a program, the Agreement would obligate the WTO member state to provide Authorized Operators with a minimum of three of the following benefits:

The trade facilitation measures provided pursuant to paragraph 7.1 shall include at least 3 of the following measures:

- a. low documentary and data requirements as appropriate;
- b. low rate of physical inspections and examinations as appropriate;
- c. rapid release time as appropriate;
- d. deferred payment of duties, taxes, fees and charges;
- e. use of comprehensive guarantees or reduced guarantees;
- f. a single customs declaration for all imports or exports in a given period; and
- g. clearance of goods at the premises of the authorized operator or another place authorized by customs.

Although Article 7 proceeds to encourage members to develop Authorized Operator programs on the basis of 'international standards' (without any specific mention of such standards), and to allow for mutual recognition arrangements, the provision is notable for the absence of any binding or formal adoption of related principles as set out in the SAFE Framework.⁹

⁸ WTO 2013, Article 7, Section 7

⁹ Widdowson, Blegen, Kashubsky & Grainger 2014, p. 11

Mutual recognition

The fact that non-security related considerations have been incorporated into the SAFE Framework, or may be included in the WTO's concept of 'Authorized Operator' is not of particular concern. What is of concern is the way in which the SAFE Framework considerations were originally introduced, leading to confusion among WCO Members as they set out to implement their national AEO programs. As a result, some went the way of the EU and others approached the issue from a purely security perspective. Singapore's AEO program,¹⁰ for example, was launched with a specific focus on supply chain safety and security. That does not suggest that Singapore has no interest in general compliance issues but rather that they are not regarded as relevant factors when determining whether a consignment may or may not pose a security risk.

An unfortunate casualty of this failure to agree on basic AEO criteria is the concept of mutual recognition. If one administration requires a company to demonstrate levels of both general compliance and security compliance before being granted AEO status, and another grants AEO status solely on the basis of security compliance, the achievement of mutual recognition becomes problematic. This is, of course, unless the parties are prepared to adopt a 'lowest common denominator' approach (Widdowson & Holloway 2009).

The need for consistency and clarity was recognised in the original version of the SAFE Framework which states, 'One of the main tenets of the Framework is to create one set of international standards and this establishes uniformity and predictability. It also reduces multiple and complex reporting requirements' (WCO 2005, p. 10). The need for clarity is further identified in the current version of the Framework: 'In order to garner and keep private sector support, it is necessary that there be a clear statement concerning what is entailed in being an AEO. There must be a common understanding of the conditions and requirements of AEO status, which should be specifically enumerated in detail in national AEO programmes' (WCO 2012a, p. III/1).

Further, the WCO states that, 'In order for a system of mutual recognition to work it is essential that ... there be an agreed set of common standards' (WCO 2012a, p. 33). The reference to an agreed set of common standards is of particular significance, given the fact that the SAFE Framework itself has ostensibly been promulgated with the intention of setting such standards. However, the establishment of standards only goes part of the way to achieving international consistency. Of equal importance is the need for consistent interpretation of the standards, which is where the strategy is in danger of failing.

The United Nations Conference on Trade and Development (UNCTAD) further highlights the importance of achieving mutual recognition from the perspective of developing economies:

In the longer term, mutual recognition of AEO status will be critical to ensure that operators who comply with the criteria set out in the SAFE Framework and have obtained AEO status in their own country are in fact able to enjoy the benefits outlined in the SAFE Framework and may participate in international trade on equal terms. In the absence of a system for global mutual recognition of AEO status, traders from some countries, particularly developing economies, may find themselves at a serious competitive disadvantage (UNCTAD 2008, p. 111).

¹⁰ The Singapore program, launched in May 2007, is referred to as the Secure Trade Partnership (STP)

A similar view is expressed by the International Chamber of Commerce (ICC) which 'has maintained that achievement of a mutual recognition process for companies implementing the Framework procedures is a top priority. Mutual recognition is necessary to capture the trade benefit of a world standard for security and trade facilitation' (ICC 2009).

The use of inconsistent criteria has, to this point, been a stumbling block in mutual recognition negotiations, the most prominent being those between the US and EU. There are some fundamental differences between the US C-TPAT and EU AEO schemes. Not only do they differ in terms of eligibility criteria (the focus of C-TPAT being security, not general regulatory compliance) but also in their application, as C-TPAT does not currently have an export focus. In this regard, the ICC comments:

The scope of the EU's AEO Program includes both import and export processes, while C-TPAT focuses solely on the security of goods imported into the US. To the extent that AEO is concerned with the export security of goods originating in the territory of the EU as well as those arriving in its territory, it may in this regard provide relatively more protection to its trading partners that have programs like C-TPAT than it receives in return from such partners (ICC 2009, p. 3).

Nevertheless, considerable progress has been made on the mutual recognition front, despite these basic differences. Firstly, on 4 May 2012 agreement was reached by the US-EU Joint Customs Cooperation Committee (JCCC) on a form of mutual recognition of the respective programs (see EC 2012). Application of the agreement is by necessity restricted to security elements, and 'to the extent practicable and possible and consistent with applicable law and policy',¹¹ but at least a start has been made. Secondly, CBP is now furthering the adoption of a more expansive model in the interests of achieving a greater degree of mutual recognition between C-TPAT and other AEO programs:

Expanding C-TPAT will also require intensified efforts to harmonize the program with similar authorized economic operator (AEO) programs in other countries so that overseas companies certified by other national authorities as having secure supply chain practices can be granted equivalent treatment as C-TPAT importers ... To achieve so-called mutual recognition, however, CBP has to assess the other program's rules for reviewing corporate security and how they are implemented.

The broader approach being heralded by CBP signals a shift to expand C-TPAT beyond security to also be a quality-assurance program for trade compliance, more in line with the WCO standards that require AEOs to also demonstrate compliance with general customs requirements and to show financial viability (Kulisch 2011).

Progress towards this broader approach was made in June 2014, when CBP announced its proposal to proceed with a 'Trusted Trader Program Test' that would adopt a whole-of-government approach to trader assessment that encompasses both supply chain security and trade compliance:

CBP seeks to encourage entities through incentives not currently available to members participating in both Customs-Trade Partnership Against Terrorism (C-TPAT) and Importer Self-Assessment (ISA) to secure their supply chains and strengthen their

¹¹ Section III, clause 1 of the JCCC Decision

internal controls for compliance with the existing laws and regulations administered or enforced by CBP.¹²

Considerable progress in furthering mutual recognition agreements under the SAFE Framework has also been made in other parts of the world, with many countries having already implemented mutual recognition agreements. These agreements have two primary features: cooperation between the customs administrations of the two countries, and collaboration in providing defined benefits to AEOs certified under one country's program when their consignments are processed at the border of the other. The current status of mutual recognition programs is shown in Table 1.¹³

In addition, the following countries are expected to commence negotiations within the next two years:

- Korea-Indonesia
- Canada – EU
- EU – Korea
- EU – New Zealand
- EU – Singapore
- Hong Kong, China – Japan
- Hong Kong, China – Malaysia
- Hong Kong, China – New Zealand
- Hong Kong, China – Taiwan
- Hong Kong, China – Thailand
- Rwanda – other East African Community (EAC) countries¹⁴
- Japan – Vietnam

Further, reference to mutual recognition agreements has formed part of the Trans-Pacific Partnership (TPP) treaty negotiations, which will cover all of the major Pacific Rim economies except China and Russia, and this trend of anchoring mutual recognition arrangements into trade agreements and treaties is almost certain to continue in the US-EU Transatlantic Trade and Investment Partnership discussions.

Table 1. Mutual Recognition Programs

Operational		Under negotiation
Date	Countries	Countries
June 2007	New Zealand-USA	China-EU (pilot since 2009)
May 2008	Japan-New Zealand	China-Japan
June 2008	Canada-USA	Japan-Malaysia
June 2008	Jordan-USA	China-Korea
June 2009	Japan-USA	India-Korea
July 2009	EU-Norway ¹	Israel-Korea
July 2009	EU-Switzerland ²	Norway-Switzerland
June 2010	Canada-Japan	Singapore-USA

12 www.federalregister.gov/articles/2014/06/16/2014-13992/announcement-of-trusted-trader-program-test

13 Widdowson, Blegen, Kashubsky & Grainger 2014, p. 23

14 The East African Community (EAC) is the regional intergovernmental organisation of the Republics of Burundi, Kenya, Rwanda, the United Republic of Tanzania, and the Republic of Uganda

June 2010	Canada-Korea	Switzerland-USA
June 2010	Canada-Singapore	Israel-USA
June 2010	EU-Japan	Mexico-USA
June 2010	Korea-Singapore	China-USA
June 2010	Korea-USA	Hong Kong, China-Singapore
January 2011	Andorra-EU	Israel-Taiwan
May 2011	Japan-Korea	India-Taiwan
June 2011	Korea-New Zealand	Singapore-Taiwan
June 2011	Japan-Singapore	China-Taiwan
May 2012	EU-USA	New Zealand-Singapore
June 2012	China-Singapore	Japan-Switzerland
November 2012	Taiwan-USA	
July 2013	Singapore-Taiwan (pilot)	
October 2013	China-Hong Kong, China	
November 2013	India, Hong Kong, China	
February 2014	Hong Kong, China-Korea	
March 2014	Korea-Mexico	

Source: based on Widdowson et al. (2014)

Plurilateral approach

While the EU features fairly prominently in this list (see Figure 1), something that is often overlooked is the particularly significant achievement of the EU in providing its trading partners with a facilitated mechanism to establish agreements with its Member States. It has accomplished this by reaching internal agreement among its 28 Member States on the way in which the SAFE Framework should be interpreted and applied, resulting in a single EU AEO scheme, albeit with some national variations in practice. This has eliminated the need for its trading partners to engage in bilateral negotiations with individual EU Member States, effectively reducing the number of negotiations by a factor of 28.

Furthermore, as there is no requirement for arrangements to be established between the EU Member States, each mutual recognition agreement between a country and the EU essentially represents the equivalent of 406 bilateral negotiations, based on the formula:

$$\frac{n!}{(n-r)!(r!)}$$

Where: n = total number of countries (in this case 29); and r = number of countries involved in each agreement (two in the case of bilateral agreements).

From this we can see that mutual recognition arrangements have been significantly simplified by virtue of the fact that the 28 Member States of the EU have established a single AEO program.

Globally, mutual recognition is currently being furthered on a bilateral basis, and in each case

there are some limitations, restrictions and disparate practices and procedures. Consider for a moment what it would mean for the 179 WCO Members if each had an AEO program in place, and mutual recognition was to be achieved across all such programs. Taking into account the fact that the EU initiative has effectively reduced the potential number of 'national' programs from 179 to 152, the number of bilateral agreements that would need to be struck in order to achieve this ambition is 11,476, with each country being involved in the negotiation of 151 individual agreements.

Such a scenario would not only place a burden on the administrators charged with negotiating and maintaining the agreements, but also the international trading community faced with such a proliferation of administrative procedures.

One way to overcome this emerging problem is to seek to adopt a plurilateral approach, as has effectively been adopted by the EU, by encouraging economies to collaborate in establishing common AEO programs. For example, those countries that form part of, or are negotiating Free Trade Agreements, such as the Member States of ASEAN,¹⁵ the GCC,¹⁶ SADC,¹⁷ and APEC,¹⁸ and those currently negotiating the RCEP¹⁹ TPP²⁰. This would not only reduce the number of mutual recognition agreements required but also introduce a greater degree of uniformity in the application of the AEO concept and associated SAFE Framework initiatives.

In suggesting such an approach, it is recognised that the EU has achieved a particularly sophisticated level of regional economic integration, managed by way of enforceable directives and regulation in order to achieve a high degree of regional consistency. While such a level of economic integration is well beyond the reach and/or objectives of other regional initiatives, all of which lack the regulatory rigour of the EU, there still exists an opportunity for parties to such agreements to enhance their cooperation on customs policy and procedure, including greater harmonisation of their AEO and related initiatives.

Conclusions

The SAFE Framework, including the AEO concept, now provides sound standards on which to base an internationally consistent approach to the identification and recognition of trusted members of the trading community. The establishment of mutual recognition arrangements, upon which the success of the AEO initiative is dependent, is being inhibited, partly by inconsistent interpretation of the AEO criteria but also by the size of the task due to the bilateral nature of negotiations. The adoption of a plurilateral approach to the issue, possibly based on regionally-agreed AEO programs will not only facilitate and simplify mutual recognition negotiations and program administration but will also serve to reduce the regulatory burden of the international trading community.

15 Association of Southeast Asian Nations

16 Gulf Cooperation Council

17 South African Development Community

18 Asia-Pacific Economic Cooperation

19 Regional Comprehensive Economic Partnership

20 Regional Comprehensive Economic Partnership

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