



## **Linkages (similarities and differences) between the SAFE Authorized Economic Operator (AEO) Programme and Article 7.7 of the WTO Trade Facilitation Agreement (TFA)**

### **Frequently Asked Questions**

(June 2018)

#### **Introduction**

Responding to global developments pertaining to security concerns, in June 2005 the WCO adopted the SAFE Framework of Standards (SAFE FoS) to secure and facilitate global trade through closer partnership between Customs and between Customs and Business. The SAFE FoS provides a model on how to implement certain measures and, although not directly legally binding, Members who signed a letter of intent declared their intention to implement the SAFE FoS. This unique international instrument has ushered in modern supply chain security standards and heralded the beginning of a new approach to the end-to-end management of goods moving across borders, while recognizing the significance of a closer partnership between Customs and Business.

The WTO Trade Facilitation Agreement (TFA) entered into force on 22 February 2017. It contains 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. It further contains provisions for technical assistance and capacity building in this area.

#### **WTO TFA Article 7.7 (Trade Facilitation Measures for Authorized Operators)**

Article 7.7 of the TFA comprises trade facilitation measures for Authorized Operators (AOs). AOs in this context are specific traders who comply with certain criteria and may therefore benefit from additional trade facilitation measures. The Article requires WTO Members to provide very specific additional trade facilitation measures related to import, export or transit formalities and procedures for 'Authorized Operators' who meet specified criteria that may include:

- an appropriate record of compliance with customs and other related laws and regulations,
- a system of managing records for necessary internal controls,
- financial solvency; and
- supply chain security.

The Agreement provides that these AOs should enjoy at least three of the following trade facilitation measures:

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

### **SAFE Authorized Economic Operator Programme**

Pillar 2 of the WCO SAFE FoS sets out global standards for launching and maintaining an AEO Programme. The eligibility criteria for becoming an AEO should include:

- demonstrated compliance record;
- satisfactory system for management of commercial records;
- financial viability; and
- security (cargo, transport conveyance, premises, personnel, information, and trade partner security).

The SAFE AEO Programme offers an opportunity for Customs to share its security responsibilities with private sector operators, while at the same time rewarding them with a number of facilitation benefits which include quicker movement of low-risk cargo through Customs, improved security levels, optimized supply chain costs through security efficiencies, enhanced reputation, increased business opportunities, improved understanding of Customs requirements, and better communication between the AEO and the Customs administration.

The comprehensive list of benefits has been grouped into two broad categories, namely General Benefits and Operator-Specific Benefits, as set out in Annex IV to the SAFE FoS:

- Measures to expedite cargo release, reduce transit time and lower storage costs;
- Measures to facilitate post-release processes;
- Special measures relating to periods of trade disruption or elevated threat level;
- Participation in new trade facilitation programmes/initiatives;
- Benefits provided by other government agencies;
- Benefits under mutual recognition arrangements/agreements(MRAs);
- Providing access to information of value to AEO participants; and
- Indirect benefits.

It is imperative to differentiate between AOs as stipulated in the WTO TFA and AEOs as defined in the WCO SAFE FoS.

#### **1. Does implementing the SAFE AEO Programme fulfil the obligations of Article 7.7 of the WTO TFA?**

*The SAFE AEO is a very comprehensive and all-encompassing Programme compared to the WTO TFA Article 7.7. Accordingly, implementation of the SAFE AEO Programme supports fulfilment of the obligations of Article 7.7 of the WTO TFA if at least three of the seven benefits mentioned therein are included in the SAFE AEO Programme.*

*In terms of criteria, the focus of such provisions of the TFA is on trade compliance; supply chain security may be one of the criteria, given that none of the criteria are mandatory. The SAFE AEO Programme, on the other hand, must always, but not exclusively, comply with a range of security standards to ensure supply chain security.*

*The WTO TFA Article 7.7 and the SAFE AEO Programme are different in their nature, objectives/focus, and scope. However, as the trade facilitation objectives and specific trade facilitation actions mentioned in Article 7.7 of the TFA are reflected in the WCO SAFE FoS, and the qualifying criteria in Article 7.7.2 of the TFA correspond to the AEO criteria in the WCO SAFE FoS, a Customs administration which implements the SAFE AEO Programme can be confident that it is fulfilling the obligations of Article 7.7 of the TFA.*

**2. Could programmes/schemes under the WTO TFA Article 7.7 be stepping stones towards eventual implementation of a fully-fledged SAFE AEO Programme?**

*Yes. Although the WTO TFA Article 7.7 is a standalone obligation in their own right, it may nonetheless serve as a stepping stone towards implementation of a fully-fledged SAFE AEO Programme (i.e. covering compliance as well as security and safety), by leveraging potential synergies.*

**3. What is the likely impact of Article 7.7 of the WTO TFA concerning AOs on existing AEO Programmes established by WCO Members based on the WCO SAFE FoS?**

*The WTO TFA provisions have no direct impact on existing AEO Programmes based on the WCO SAFE FoS.*

*Paragraph 7.4 of Article 7.7 of the TFA encourages WTO Members to develop AO Schemes on the basis of international standards, where such standards exist. To that end, the SAFE AEO Programme and related tools provide an effective way to support implementation of the WTO TFA AO Schemes in a standardized and harmonized manner, noting that Members have the flexibility to adopt other means to implement them. This could be an incentive for Members to adopt the SAFE AEO Programme which provides for a set of "international standards". However, some existing AEO Programmes might require potential adjustments (e.g., a minimum of three trade facilitation measures, inclusion of all economic operators) to support the fulfilment of obligations under the WTO TFA.*

**4. How would mutual recognition of AO Schemes work?**

*As is the case in the SAFE FoS, paragraph 7.5 of Article 7.7 of the WTO TFA provides for the possibility of negotiating mutual recognition of AO Schemes. It remains to be seen how MRAs will be initiated between WTO Members that have AOs in place and what benefits will be granted as a result.*

*Experiences drawn from the implementation of the SAFE FoS have proven that maximum benefits for both Customs and economic operators are obtained when requirements are standardized and aligned to form a basis for mutual recognition. Potential variations in the WTO TFA AO Schemes could pose a risk to mutual recognition.*

*The standardized approach to AEO authorization/implementation offered by the SAFE FoS and associated tools provides a solid platform for the long-term development of international systems of mutual recognition of AEO status at bilateral, sub-regional, regional and, in the future, global levels.*

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