

Trade facilitation measures for authorized operators: Article 7.7

In complex global supply chains, it is essential to prevent and contain trade risks in a way that does not reduce the speed and intensity of trade flows.

As part of the SAFE Framework, WCO established the Authorized Economic Operator (AEO) programme that allows certain economic operators to benefit from preferential measures, such as fewer physical inspections, more rapid release times and reduced documentation and data requirements, provided that these operators comply with specific requirements. Like all other instruments and tools devised by WCO, these arrangements are advisory in nature.

Operators who meet specified criteria to qualify as authorized operators are entitled to additional trade facilitation measures.

Building on this international practice, Article 7.7 binds Members to allow customs authorities to provide additional trade facilitation measures to selected operators who are deemed to be low-risk, based on specified criteria, and can be classified as authorized operators.

The measure

ARTICLE 7 RELEASE AND CLEARANCE OF GOODS

7 Trade Facilitation Measures for Authorized Operators

7.1 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 trade facilitation measures through customs procedures generally available to all operators and is not required to establish a separate scheme.

7.2 The specified criteria to qualify as an authorized operator shall be related to compliance, or the risk of non-compliance, with requirements specified in a Member's laws, regulations or procedures.

- (a) Such criteria, which shall be published, may include:
 - (i) an appropriate record of compliance with customs and other related laws and regulations;
 - (ii) a system of managing records to allow for necessary internal controls;
 - (iii) financial solvency, including, where appropriate, provision of a sufficient security or guarantee; and
 - (iv) supply chain security.
- (b) Such criteria shall not:
 - (i) be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail; and
 - (ii) to the extent possible, restrict the participation of small and medium-sized enterprises.

7.3 The trade facilitation measures provided pursuant to paragraph 7.1 shall include at least three 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.

7.4 Members are encouraged to develop authorized operator schemes on the basis of international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued.

7.5 In order to enhance the trade facilitation measures provided to operators, Members shall afford to other Members the possibility of negotiating mutual recognition of authorized operator schemes.

7.6 Members shall exchange relevant information within the WTO Committee on Trade Facilitation about authorized operator schemes in force.

Understanding the measure

What is covered?

Core obligation

WTO Members must provide additional trade facilitation measures related to import, export or transit formalities and procedures to operators – including traders and providers of logistics services such as customs agents and freight forwarders – who qualify as authorized operators according to a set of specified criteria.

WTO Members who offer these additional trade facilitation measures to all operators through customs procedures will not be required to set up a separate scheme.

Selection criteria

Prior to granting the status of authorized operator, Members are required to ensure that the beneficiaries meet some specific criteria associated with the compliance of requirements set in Members' laws, regulations or procedures.

Members may use the following selection criteria to identify authorized operators, as provided in paragraph 7.2:

- Appropriate record of compliance with customs and other related laws and regulations;
- Record management system for necessary internal controls;
- Financial solvency and, where necessary, provision of sufficient security and guarantees;
- Supply chain security.

In meeting these criteria, authorized operators are classified as low risk, as they show a track record of full compliance with laws and regulations.

Members shall publish these criteria in a non-discriminatory manner and ensure not to restrict the participation of SMEs in the scheme.

Additional facilitation benefits

WTO Members are required to ensure that the additional trade facilitation measures provided to authorized operators shall include at least three of the following seven measures:

- Reduced documentary and data requirements as appropriate;
- Fewer physical inspections and examinations as appropriate;
- Rapid release time as appropriate;
- Deferred payment of duties, taxes, fees and charges;
- Use of comprehensive or reduced guarantees;
- A single goods declaration of 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.

Members can grant more than three measures to authorized operators.

Use of international standards

Paragraph 7.4 encourages WTO Members to develop authorized operator schemes on the basis of international standards, except when such standards are inappropriate or ineffective for the fulfilment of the legitimate objectives pursued. The recourse to international standards ensures a consistent and harmonized approach in the development of authorized operator schemes and would enable Members to achieve mutual recognition based on common understandings.

Mutual recognition

Paragraph 7.5 contains an obligation that Members shall agree to negotiate when approached for mutual recognition of authorized operator schemes to enhance the effect of these schemes. Previously, the non-binding WCO SAFE Framework only encouraged customs administrations to agree on mutual recognition of authorized operator schemes – on a voluntary basis. With the entry into force of the TFA, WTO Members are instead required to use mechanisms that recognize another Member's authorized operator scheme.

Exchange of information

WTO members are obliged to share the full details of authorized operator schemes in force with the WTO Committee on Trade Facilitation to ensure effective coordination and transparency.

What is not covered?

The measure does not restrict a Member's discretion to select authorized operators solely on the basis of the published criteria. Members are free to select authorized operators according to their unique national capacity and strategic priorities.

Moreover, the measure does not provide specific details on the degree of procedural simplification that should be achieved by Members, leaving to their discretion, for example, to decide to what extent customs documentation is to be reduced.

Benefits and opportunities for stakeholders

Fewer documents and controls, less time taken to clear goods and significant decrease in the overall cost of trade are the biggest benefits. The recognition of authorized economic operators as secure and safe business partners will also improve relations with customs authorities and other government agencies. Enhanced levels of transparency and predictability of the regulatory regime will also improve operators' compliance, enhancing the efficiency of their performance in supply chains. Increased supply chain security

will also enable customs authorities and border agencies to better allocate their time and resources on risky shipment inspections and more complex procedures.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- The legislation authorizing customs to provide authorized operators with additional trade facilitation is enacted.
- The selection criteria to qualify as authorized operators are published and are ideally aligned to international best practices.
- The legislation is inclusive and does not facilitate unjustifiable discrimination based on nationality, size or volume of trade (i.e. the programme should be accessible to SMEs).
- The conditions and procedures for granting, modifying or terminating authorized trader status are defined and published.
- Procedures to extend specified facilities to authorized operators are established.
- The legislation allows Members to negotiate mutual recognition of authorized operator schemes with other Members.
- Information about authorised operator schemes has been shared with the WTO Committee on Trade Facilitation.

Preparing a national implementation plan

The following template may be used as a basis for a national implementation plan for this measure:

| | |
|--|---|
| Implementation sequence | Actions suggested |
| | Preparatory phase |
| | Nominate a lead agency that will coordinate implementation of the measure. Identify relevant agencies, ministries and private sector representatives; and form a project team with representation from each agency. |
| | Review existing procedures and business processes to identify bottlenecks and devise new processes using enhanced cooperation and coordination between agencies. |
| | Identify shortcomings in legal, regulatory and institutional frameworks that may hinder implementation of the measure. Also, determine changes required to the organizational and ICT structures of different agencies to enable successful deployment. |
| | Set-up phase |
| | Ensure implementation of identified changes to legal, regulatory and institutional frameworks. |
| | Design and implement an authorized operator programme, which specifies the criteria by which an operator can be certified as safe. |
| | Implement changes required to organizational and ICT structures and train staff. |
| | Management and follow-up phase |
| | Periodically monitor and evaluate implementation of mechanism which grants authorized status to trade operators, as well as the effective provision of benefits. |
| | Regularly review and audit business processes to seek continuous improvement. |
| | Invite feedback from private sector to include traders' experiences and perspectives. |
| Raise awareness in the private sector. | |
| Average time for implementation | Two and half years for LDCs and less than two years for non-LDCs. |

| | |
|--|---|
| Implementation sequence | Actions suggested |
| | Preparatory phase |
| | Nominate a lead agency that will coordinate implementation of the measure. Identify relevant agencies, ministries and private sector representatives; and form a project team with representation from each agency. |
| | Review existing procedures and business processes to identify bottlenecks and devise new processes using enhanced cooperation and coordination between agencies. |
| | Identify shortcomings in legal, regulatory and institutional frameworks that may hinder implementation of the measure. Also, determine changes required to the organizational and ICT structures of different agencies to enable successful deployment. |
| | Set-up phase |
| | Ensure implementation of identified changes to legal, regulatory and institutional frameworks. |
| | Design and implement an authorized operator programme, which specifies the criteria by which an operator can be certified as safe. |
| | Implement changes required to organizational and ICT structures and train staff. |
| | Management and follow-up phase |
| | Periodically monitor and evaluate implementation of mechanism which grants authorized status to trade operators, as well as the effective provision of benefits. |
| | Regularly review and audit business processes to seek continuous improvement. |
| | Invite feedback from private sector to include traders' experiences and perspectives. |
| Raise awareness in the private sector. | |
| Leading implementation agency | Customs is most commonly chosen as the leading implementation agency. |

Key challenges

Lack of an appropriate national legal framework which can regulate the implementation of a two-tier system of clearance – one tier for authorized operators and the second tier for all other traders – may represent a challenge. Government staff may not have capacity to carry out identification of authorized operators against selection criteria established. Appropriate staff training will be needed to effectively implement the authorized operator scheme.

Operationalization of authorized operator schemes often excludes SMEs. In fact, obtaining authorized operator status is a burdensome process for SMEs and they often do not succeed in being accredited. It is crucial to design a mechanism which encourages SMEs participation in authorized operator schemes.

A system of regular review of authorized operators is also necessary to ensure the measure is not misused or abused. It can happen that – once an operator is recognized as authorized – they may abuse their status to lessen compliance with security measures in place.

Key factors for success

A legal framework that enables the identification of authorized operators and a two-tier implementation process is vital to ensure the effective and successful implementation of the measure. Innovative and regular staff training on correct identification of authorized operators will ensure that relevant authorities are effectively able to put the scheme in practice.

A public campaign is required to raise awareness of the scheme's benefits in the business community including documents required, processes involved and selection criteria.

Box 3: International best practices for authorized operator schemes

Hong Kong and the Dominican Republic offer two examples of international best practices for AEO schemes.



Hong Kong Customs and Excise Department initiated an AEO programme in 2012, after completion of a satisfactory pilot experiment. Implemented without requiring legislative amendments or changes in existing business practices, the programme is a free accreditation scheme for local companies that satisfy certain pre-determined security requirements. A company accredited by Hong Kong Customs as an AEO enjoys additional trade facilitation benefits, such as:

- Less cargo inspections;
- Prioritized customs clearance if their goods are selected for inspection;
- Reduced stock loss and theft as a result of improved security and safety of their supply chains; and
- Benefits granted by other customs administrations under mutual recognition arrangements, such as reduced customs inspections, expedited clearance, deferred payment or priority treatment.

The major success factor is the flexibility demonstrated by customs administration in the accreditation process. As the majority of local industries are SMEs, Hong Kong Customs has a free and voluntary two-tier accreditation programme, whose criteria are designed to apply to local companies. To date, recognized AEOs (including SMEs) have met accreditation criteria without requiring changes.

A dedicated team implements the programme and works closely with applicants throughout the accreditation process to review their security profiles. Officers responsible for accrediting AEO applicants are trained on International Organization for Standardization security management concepts and audit inspection. To ensure a wide coverage, Hong Kong Customs conducted a series of briefing sessions to different trade associations and outreach visits to potential applicants.



Similarly, the Dominican Republic introduced its AEO Programme (OEA in Spanish) in 2012 as part of a government general reform initiative. The programme was introduced as a completely new measure through a presidential decree and later included in the customs law. The preparation of an internal AEO procedure manual was also conceived to guide end users through the implementation of the scheme.

The government established a dedicated AEO department with a team of experts. It also established a part-time team of experts from other bodies that regulate foreign trade (Ministry of Public Health, Ministry of Agriculture, Ministry of the Environment, National Drug Control Directorate, Special Port Security Unit, Special Airport Security Unit, etc.). The coordination of public sector agencies was the key success factor in implementation. The government has appointed staff from each institution, provided them with training, and signed an inter-institutional agreement on the operation of the AEO Programme.

Awareness raising and empowerment of the private sector through participation in the preparation of requirements, legislation, documents and issues relating to the programme, as well as constant interaction and training with customs administrations have contributed to a successful and meaningful implementation of the AEO Programme.

Source: UNECE Trade Facilitation Implementation Guide. <http://fig.unece.org/contents/case-studies.htm>