



Brussels, 7 March 2018.

SAFE AUTHORIZED ECONOMIC OPERATORS AND TFA ARTICLE 7.7

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

(Item VII on the Agenda)

I. Introduction

1. With the growing thrust on trade facilitation, Customs administrations have been developing programmes/schemes that allow certain authorized traders who meet specified criteria to benefit from additional trade facilitation measures, such as simplifications from Customs procedures, rapid release, reduced documentation and data requirements, and fewer physical inspections. Such programmes are beneficial for both Customs and the trade. They facilitate the movement of goods, provide authorized traders easy access to simplification benefits, encourage compliance with Customs rules, improve risk management, enable more effective use of Customs resources and help securing trade supply chains through partnerships between Customs and businesses.
2. The AEO Programme based on the SAFE Framework of Standards provides a global standard for developing a trust-based partnership with economic operators who demonstrate high level of compliance and put in place robust systems for meeting the criteria (including security) specified by Customs in lieu of identified tangible benefits.
3. Several Members have already made good progress with the implementation of the AEO Programme. To date, 77 Members have launched AEO programmes and 17 Members are at various stages of the development of AEO programmes. Based on the SAFE AEO programmes, 56 mutual recognition arrangements/agreements (MRAs) have been concluded and 38 MRAs are being negotiated in addition to 4 multilateral MRAs that are also under negotiation.
4. The WTO TFA that came into force on 22 February 2017 has set out, among others, an obligation for its members to implement the provisions of Article 7.7. Since the conclusion of the WTO TFA, there have been some discussions and questions on the similarities and differences between the SAFE AEO Programme and the WTO TFA Article 7.7 with a view to gain more clarity on them. There have also been concerns whether Members will be required to implement two programmes/schemes – one under

the SAFE Framework of Standards, having submitted a 'letter of intent' to implement the SAFE and another one under the TFA to fulfill the obligations of Article 7.7, having ratified the same.

5. The issue of similarities and differences between the SAFE AEO Programme and the WTO TFA Article 7.7 had been discussed at the SAFE Working Group (SWG) Meetings. While noting a number of similarities and a few differences between the two programmes/schemes, the discussions also reflected on whether and how these two provisions could complement and supplement each other, leveraging synergies between them.
6. Following a detailed discussion, the October 2017 SWG had decided to develop a short paper, primarily providing answers to the questions/issues identified in the March 2017 SWG working document (LF0149E).

II. Development of a Frequently Asked Questions (FAQ)

7. Following the SWG's decision, a document in the form of a 'Frequently Asked Questions' concerning linkages (similarities and differences) between the SAFE AEO Programme and the WTO TFA Article 7.7 was developed. This draft document was discussed and further refined at the SAFE Sub-Group meeting held from 18 to 20 December 2017.
8. Subsequently, the draft FAQ, outlining relevant questions and corresponding answers, clarifying some of issues mentioned in the foregoing paras, was discussed at the February 2018 SWG meeting.
9. In a wide ranging discussed, several delegates supported the FAQ, recognizing its value in clarifying some underlying concepts. Noting that Article 7.7 of the WTO TFA does not stipulate an Authorized Operator (AO) scheme but lays down a policy direction for providing additional trade facilitation measures to Authorized Operators, certain amendments were suggested.
10. One delegation was of the opinion that the SWG did not have sufficient mandate to adopt official documents related to the interpretation of the instruments of other international organizations including the WTO, as well as relations and impact between the instruments of the WCO and the WTO. As it is a policy matter and the need for institutional cooperation between the WCO and the WTO remains on the agenda of the Policy Commission, the delegation requested that the document be approved by the policy bodies of the WCO.
11. In conclusion, the SWG examined and endorsed the FAQ on the linkages between the SAFE AEO Programme and the WTO TFA Article 7.7 with the suggested changes, and recommended its submission to the PTC, the Policy Commission, and the Council for their respective consideration and its adoption, as appropriate.
12. The updated FAQ as approved by the SWG is appended as an Annex to this document.

III. Action Required

13. The PTC is requested to consider and, if appropriate, approve the FAQ set out at Annex to this document and provide further guidance.

*
* *
*

**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

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.