ICC input: SAFE FoS Review 2021

The SAFE Framework of Standards to Secure and Facilitate Global Trade (SAFE FoS) was first adopted in 2005 by Members of the World Customs Organization (WCO) and has since been regularly updated to address emerging developments. It has become an important instrument for modern supply chain security standards and takes into account the significance of a closer relationship between Customs and business.

Most recently, the 2021 version of the SAFE FoS was adopted last June, which means that a new review cycle was commenced to guide the development of the next iteration of the SAFE FoS to be adopted in 2024.

As observers to the WCO, ICC is delighted to provide business views for the review of the SAFE FoS 2021.

Elements of SAFE FoS with room for improvement:

— Benefits of Authorized Economic Operator (AEO) programmes should become much clearer and tangible for businesses and authorities; meaningful facilitation benefits expected;

— Harmonisation of interpretation and application of the SAFE FoS within and between countries;

— Mutual Recognition Agreements (MRAs) could be enhanced in particular between developed and less developed countries;

— Early involvement of AEO enterprises before introducing new AEO policies: it is recommended for the customs authorities to consult and inform AEO enterprises in advance.

— Harmonisation of supply chain security control measures and security programme requirements: mutual cooperation between customs;

— Future SAFE FoS should also consider the rise of e-commerce and promote AEO plans that increase security and efficiency for this sector.

Issues and benefits of AEO programmes for companies

For more companies to become part or to continue their participation in AEO programmes, it would be beneficial to see the return on the investment become clearer and tangible through meaningful facilitation benefits and significant simplifications in customs procedures. In particular, in Europe, the programme was advertised as having a high return of “investment” even though this has been difficult to measure and, in many areas, AEO enterprises do not see any benefits.

One example is the reduction of controls and expedited clearances. In many countries, there is no reduction in post-clearance audits or any change in the numbers for AEOs, even though AEO enterprises are generally considered to be trustworthy operators. The period and scope of audits are the same and can even be shorter for businesses without the certification. In some countries, authorities agreed to do less inspections and audits,
but they actually only postponed them, resulting in the same numbers of inspections and audits for certified and non-certified companies.

The idea for companies to be part of the AEO programme is to get an advantage from their membership since their internal processes and operations have to be adapted to become certified. Advantages could include for example rulings in shorter timeframes or less inspections.

Renewal

Many members reported that there is generally an interest in getting and renewing the AEO certification, but the status needs to provide clear benefits, making the costs of obtaining and regularly renewing the certification worthwhile. Within the organization of companies, it requires considerable effort and investment to maintain the certification. Additionally, the bureaucratic burden for obtaining and keeping the AEO status is also quite high.

While most benefits are not visible or tangible for businesses, the renewal fees as well as the extensive renewal process make it even more difficult for businesses to justify the maintenance of the certification. After 3-6 years, it is rare to see any real benefits of the AEO status in operations. The difficulty of measuring the savings and benefits that come with being an AEO poses a risk for companies to restructure their operations necessary for obtaining the certification. It is an open secret that many companies are considering letting their AEO status expire.

In addition, large companies are often restructured or go through mergers. In Europe, customs authorities do not show much flexibility when such a change in the company structure occurs. In these cases, businesses have to go through the extensive process of certification again.

Unintended negative consequences of certification

One of the major benefits of the certification is the “status” or reputation of a company that is certified. It became a minimum to have for a business to be recognised as AEO. However, this had the unintended consequence that some courts seem to hold the certified companies to higher standards when it comes to litigation.

There is a fear that AEOs might receive higher penalties because it is implied that “they should know better”. There have already been cases of more severe sanctions for AEO certified businesses. While many companies are not concerned being held to higher standards, the issue is that the higher standard does not match the return of investment to become AEO certified. So, the status seems to demand duties and obligations, but does not grant the benefits and rights that justify the higher standards.

Many customs authorities have recognised that this issue presents a clear disincentive for becoming an AEO. It is important to monitor this situation further and react accordingly.

Harmonisation of customs offices

While the SAFE FoS is a framework, the guidelines for implementation and application can differ substantially not just from country to country but even within one country. The different application and monitoring of the SAFE FoS means that companies have to fulfil differing requirements. The necessity to provide information and documents can create significant additional bureaucratic burdens for AEOs. In consequence, this means that it can be easier not being certified rather than holding AEO status.

One practical way of facilitating and harmonising cross-border trade for companies that are part of AEO programmes is the establishment of Mutual Recognition Agreements (MRAs). The partnership between countries enables the recognition of AEO validations
and authorizations and helps to reduce a duplication of efforts, while also streamlining processes for companies.

While many countries have MRAs in place on a political level, companies often find that processes and operations on the practical level do not reflect the mutual recognition of their AEO status and crossing borders can involve burdensome processes for companies.

The WCO has already published a Strategy Guide for AEO Mutual Recognition and should consider and enhance its potential in the upcoming review of the SAFE FoS.

Overall, it is crucial that customs offices within and also between countries harmonise their application of the SAFE FoS. As one important mission of the WCO, it could be beneficial to encourage countries and assist them with the uniform application as well as interpretation of the SAFE FoS through clear guidelines that aim to harmonise processes.

Consultation with AEO enterprises

While the channels and levels of participation of companies in legislative processes vary from country to country, it is useful to note that there are many countries that could improve the involvement of AEOs in the design of their AEO policies or requirements. When new policies are issued and required for AEOs, the necessary internal changes to comply can signify high administrative and financial costs for companies.

For policies to have the intended effect and for companies to prepare better, it would be beneficial for customs authorities to consult the AEO enterprises before issuing new policies. It can provide the AEOs with the opportunity to provide reasonable suggestions to the customs authorities from the perspective of the practical operators (“managed entities”). Further, instead of a direct release of customs policies, it can help avoid a sudden negative impact on the import and export business of the AEO enterprises.

Data as opportunity

As important actors in cross-border transactions, customs authorities collect a large amount of data that can be extremely valuable for companies.

Internally, for many companies, it is a challenge to collect the relevant data with different business units being involved using different tools and with some parts of their work outsourced, for example through customs brokers or freight forwarders, who each deliver the data in different forms.

Externally, many local customs offices in a single country have to be approached separately. In many federally structured countries, for example, for a company to receive data about their transactions, each (regional) customs office has to be approached individually through requests (that also differ from one local office to another) and the data received is also in different formats.

Positive examples include Spain where you can receive the data and the United Kingdom as well as Saudi Arabia where it is possible to acquire the data or do a monthly subscription to receive it.

If companies could access their data digitally (for instance by providing their identification numbers), it would be much easier to be compliant and it would present a clear benefit to pursue the AEO certification.

Foster the potential of e-commerce

With the rise of e-commerce, there is the opportunity to expand the concept of AEO programmes (and MRAs) to cross-border e-commerce, as the WCO has already recognised in its publication of Cross-Border E-Commerce Framework of Standards in 2018. With the review of the SAFE FoS, there is the opportunity to improve the
efficiency and safety through the inclusion in the new version. With the inclusion in AEO programmes and MRAs, it would also better enable Micro, Small and Medium-sized Enterprises (MSMEs) to participate and benefit from opportunities of cross-border e-commerce.

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