

Brexit Monograph 11: Authorised Economic Operators (AEOs)

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Introduction:

9/11 caused enormous disruption to trade. Security measures were tightened immediately and stacks of lorries mounted up on the Mexican and Canadian borders of the USA. Movement of goods across borders to provide cover for smuggling weapons and other materials into target countries was now seen as dangerous, while trade in services afforded the opportunity of moving money and financing **terrorist operations**.

For **a few months of lockdown**, there were demands for 100 percent X-ray scanning of shipping containers and a massively increased rate of border inspections. Such measures threatened to impose long-term costs on the world economy both in terms of a decline in productivity growth and, possibly, greater impediments to the free movement of goods.

In effect, one event – albeit of huge importance – had negated the effects of years of negotiation, reversing a significant step in the liberalisation of trade. Traditional customs systems were already under stress. **The events of 9/11 were to prove the catalyst for a fundamental review of the global customs system.**

The US took rapid action. It came up with a trade facilitation scheme within months of the collapse of the Twin Towers to reconcile the apparently conflicting demands of border security and the free movement of goods.

The European Union version of this world wide system is the Authorised Economic Operator (AEO) programme, in which the United Kingdom participates. Japan, for example, specifically asked for the current AEO to be maintained after Brexit.

Historical background: the world.

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A key player in the response to 9/11 was the World Customs Organisation (WCO). It is headquartered in Brussels, representing 174 members. Its work before 9/11 was based on the Kyoto Convention on the Simplification and Harmonization of Customs procedures, done at Kyoto in 1973 and amended in 1999. Some 56 WCO Members are signatories.

After 9/11, the focus of the organisation switched to security. In this, it was responding in part to the UN Security Council Resolution 1373 of September 2001, which called upon states to prevent the movement of terrorists or terrorist groups by means of effective border controls.

In November 2001 – only two months after 9/11 - the Customs-Trade Partnership Against Terrorism **(C-TPAT) was a "voluntary" programme led by US Customs and Border Protection (CBP)**, focused on improving the security of private companies' supply chains. Privileges for participants included pre-clearance of goods, reduced paperwork, deferral of fees and fast-tracking of consignments through border posts.

It expanded fast: as of 1 December 2014, the programme had 10,854 members, including 4,315 importers which accounted for approximately 54 percent of the value of all merchandise imported into the US.

On 26 June 2002. A G8 Summit held in Kananaskis, Canada, produced a declaration on



"Cooperative G8 Action on Transport Security". The Customs Cooperation Council of the WCO **started identifying "trusted traders"** and eliminating them from the routine screening processes, so that customs officials and other surveillance agencies could concentrate resources on higher risk consignments.

The SAFE Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework) was adopted by the WCO in 2005. Customs-to-customs networks began using **automated techniques to screen high risk cargo**; and to build customs-to-business partnerships with procedures to pre-certify shippers through what was known as an **Authorised Economic Operator (AEO)** programme.

The **advance cargo information** requirements were **harmonised**; **risk management techniques** set up; **the inspection of outbound cargo** upon the request of an importing country; and the establishment of new programmes to **expedite customs processing** for commercial shippers.

Other organisations eagerly joined the schemes. The International Maritime Organisation (**IMO**) produced its International Ship and Port Facility Security (ISPS) Code. The International Labour Organization (**ILO**) works closely with the IMO to oversee the Seafarer's Identity Documents and a Code of Practice for the security of all port areas.

Air transport took slightly longer. Not until 2011 were there changes to the ICAO "Security" Annex 17 to the Chicago Convention on: "Safeguarding International Civil Aviation Against Acts of Unlawful Interference". In 2013, the WTO Agreement on Trade Facilitation established a new **"Authorized Operator"** concept for WTO members. There is no specific cross-reference to IMO, ICAO or WCO efforts but **any scheme must conform to international standards**, "where such standards exist".

The European Union Dimension:

The EU was the first to integrate the trade facilitation matters set out in the revised SAFE Guidelines, as opposed to an exclusive security agenda.

In April 2005 the EU passed Regulation (EC) No 648/2005 adding "security amendments" to the Community (now Union) Customs Code (UCC). The EU integrated it into a radical overhaul of its "customs environment", creating the so-called **Paperless Trade and Customs Environment**, with provision for centralised customs clearance by 2020.

The EU arrangements are much more complex than the SAFE framework. The programme covers **economic operators authorised for customs simplification (AEOC)** and those for **security and safety (AEOS)**. Economic operators may apply to take part in either programme or both together.

AEO status bestows considerable advantages on the holder: in particular, authorised economic operators enjoy fast and efficient customs clearance and are exempt from the obligation to provide surety. The specific trade-related benefits granted in return for implementing European security requirements mean that holders of AEO status clearly enjoy a clear competitive advantage over their non-AEO competitors.

Mutual Recognition:

A key element of the system is **mutual recognition between countries and trading blocs**, the eventual aim being to create **a global network** of compatible programmes, facilitating the more efficient and speedy trade in goods, while maintaining **a high level of security**.

As of July 2016, **the United States has signed eleven mutual recognition agreements** (or

"arrangements").¹ **The EU has concluded and implemented MRAs** with Norway, Switzerland, Japan, Andorra, the US and China. In addition, the EU is providing technical assistance to a number of countries to prepare them to set up AEO programmes. Turkey is amongst those countries with which MRA negotiations are current. As regards China, **the EU was the first trading partner to enter into such an agreement with China**, with the deal having been signed in May 2014.

A Dynamic System:

Areas of concern are: a **dirty bomb** in a shipping container; **“trusted traders”** could provide loopholes. A key part of the system, as respects mutual recognition, is the requirement that partners **notify US authorities of consignment details 24 hours in advance** of loading on ships destined for US ports, to afford the US authorities to the option to request inspections of specific consignments and individual shipping containers. But this is very often impossible because of tight loading and departure schedules.

The balance between security needs and trade facilitation can be expected to be in constant flux.

Implications for Brexit:

Although **the AEO programme** is a **global** initiative, primarily directed by the WCO, it is **implemented at national or regional level**. In the case of the European Union, the programme is managed as an EU-wide operation in which the Member States participate by virtue of their membership of the EU. Similarly, mutual recognition agreements are concluded at EU level. **EU AEOs** thus rely on their participation in the EU-wide scheme in order to benefit from mutual recognition provisions.

In the event of a "hard Brexit", it follows that the UK would no longer be able to participate in the EU's AEO programme. Abrupt termination only becomes a problem in the event of the UK's unilateral adoption of the WTO option, because no alternative arrangements will be in place.

There is the longer-term problem of ensuring harmonisation with a dynamic system, ensuring that any changes made match those made by the EU in scale and timing.

Conclusions:

Non tariff barriers to trade are important.

The AEO system itself underlines the importance of trade facilitation in underwriting the global trading system, contributing potentially to significant increases in import and export volumes. But, with that system in the UK currently integrated with EU membership, and potentially lapsing with our withdrawal, it becomes **an active part of the Brexit agenda**.

To ensure continuity in current arrangements, **the UK can either** re-establish its current arrangements **as part of an independent system**, or seek to **work with the EEA provisions**. Only if the UK chooses to withdraw from the EU without entertaining negotiations (the WTO option) and making alternative arrangements, would the termination of the EU's scheme create serious problems.

Future operation of the scheme, however, will require **close coordination** of the dynamic systems with our closest trading partners.

The AEO programme is itself a complication which cannot be ignored – yet another example of the underlying complexity of the Brexit process.

¹The countries comprise: New Zealand (June 2007); Canada (June 2008); Jordan (June 2008); Japan (June 2009); Korea (June 2010); European Union (May 2012); Taiwan (November 2012); Israel (June 2014); Mexico (October 2014); Singapore (December 2014); and the Dominican Republic (December 2015).