

CONCEPTUALIZATION OF THE AUTHORIZED ECONOMIC OPERATOR: INTERNATIONAL EXPERIENCE AND PROSPECTS OF ITS IMPLEMENTATION IN THE CUSTOMS LEGISLATION OF UKRAINE

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Abstract

Increasing the level of economic and political instability in the world makes it necessary to reform the rules of international trade in order to enhance national security by seeking an optimal balance between the level of control at the border and trade facilitation. In particular, the increase in the terrorist threat in the world involves the need to revise the terms of engagement of all participants in the international trade supply chain, highlighting the need for maximum control over the movement of goods in the process of foreign trade activities in terms of minimum regulatory authorities' intervention in the activities of economic operators. It should be noted that the international trade supply chain includes all the stages within the cross-border movement of goods from a departure point to a final destination. The authors of the article have noted the high relevance of these issues for Ukraine, since it is evidenced by the World Bank Trading Across Borders data.

The article studies the international experience to ensure the security of international supply chain, which is possible only if all the participants of the international trade transaction follow the standards of cargoes safe handling. This resulted in the necessity to develop and introduce in the international conventions, agreements and national legislations the "authorized persons" concept, which was formalized in the World Customs Organization (further – WCO) concept as an Authorized Economic Operators (further – AEO).

The authors have pointed out that the conceptual foundations of the AEO functioning were identified by the International Convention on the Harmonization and Simplification of Customs Procedures (the Revised Kyoto Convention), which provides for the possibility of introducing special simplifications for authorized persons. In addition, it is noted that the details of the AEO implementation and operation are specified by the WCO Framework of Standards to Secure and Facilitate International Trade, which updated version includes the issue of Customs cooperation with other governmental and intergovernmental institutions (Pillar 3 – Customs to Other Government and Inter-government agencies) to promote closer cooperation between Customs authorities and other public bodies as well as ensuring an effective and efficient government response to the challenges of supply chain security.

The authors have analyzed the current European legislation governing the AEO functioning in the European Union (further – EU), namely in the introductory part of the EU Customs Code (EC Regulation 952/2013, which entered into force on 1 May 2016) it is

determined that compliant and trustworthy economic operators may have the status of “AEO” when granting them permission for swifter customs procedures or for safety and security simplifications or their combination. Depending on the type of an authorization granted, AEOs should take a maximum advantage of customs simplifications or use simplifications regarding safety and security. At the same time, they receive more favorable treatment in relation to physical and documentary customs controls. Furthermore, the authors have studied the advantages of every AEO certificate type.

In conclusion the authors have considered the discussion process of the draft Law of Ukraine “On Amendments to the Customs Code of Ukraine (concerning the authorized economic operator and the simplification of customs procedures)”, developed by the Ministry of Finance of Ukraine, the State Fiscal Service of Ukraine together with a number of experts and public organizations for the purpose of the AEO practical implementation and making the domestic customs legislation compliant with the EU standards in accordance with the Ukraine–European Union Association Agreement.

Keywords: Authorized Economic Operator, the International Convention on the Simplification and Harmonization of Customs Procedures, the WCO Framework of Standards to Secure and Facilitate International Trade, the EU Regulations, the Compendium of the AEO programs, the Customs Code of Ukraine.

Introduction

In the current circumstances Customs authorities face a challenge of both ensuring the promotion of economic operators in the international trade and complying with the necessary control standards to maintain national security. In order to achieve the optimum balance customs procedures and control methods must continuously be improved by reinforcing the cooperation between various security services, modernization of customs control tools, development and provision compliant and trustworthy economic operators with swifter customs procedures.

AEOs implementation and operation were studied by many scientists and experts in the field of customs regulation, namely: H. Schramm studied the benefits of certification depending on an enterprise size and role in the international supply chain (Schramm 2015); L. Gellert analyzed the features of the AEO certificate cancellation and suspension (Gellert 2011); O. Pavlenko with the team of authors explored innovative mechanisms and tools to create favorable conditions and ensure the safety of international trade (Pavlenko 2013). However, today it is topical to study the implementation of the European experience of the AEO into the customs legislation of Ukraine.

The relevance of these issues for Ukraine is confirmed by the World Bank Trading Across Borders data (Table 1) (<http://www.doingbusiness.org/data/exploreeconomies/ukraine#trading-across-borders>).

International practice shows that ensuring a high level of the international supply chain security can only be possible in conditions of all the international trade participants' compliance with the standards of cargoes safe handling. This determined the emergence of recommendations on the need to develop and implement the concept of “authorized persons” in a number of international conventions, agreements and national legislations, which led to the development of the WCO concept concerning the AEO.

1. The AEO conceptual basis in accordance with the International Convention on the Harmonization and Simplification of Customs Procedures

The AEO conceptual foundation is identified by the Kyoto Convention, a revised version of which was approved by the WCO Council in June 1999 with the aim of improving the predictability and efficiency in the international trade (Gellert 2011). The Revised Kyoto Convention defines the basic principles of Customs activity, in particular:

Indicators of Trading Across Borders of Ukraine

Indicator	Ukraine	Europe & Central Asia	OECD high income
Time to export: Border compliance (hours)	26	28	15
Cost to export: Border compliance (USD)	75	219	160
Time to export: Documentary compliance (hours)	96	31	5
Cost to export: Documentary compliance (USD)	292	144	36
Time to import: Border compliance (hours)	52	23	9
Cost to import: Border compliance (USD)	100	202	123
Time to import: Documentary compliance (hours)	168	27	4
Cost to import: Documentary compliance (USD)	292	108	25

- implementation of programmes aimed at continuous modernization of Customs procedures and practices and thus enhancing efficiency and effectiveness;
- application of Customs procedures and practices in a predictable, consistent and transparent manner;
- provision to parties concerned with all necessary information regarding Customs laws, regulations, administrative guidelines, procedures and practices;
- adoption of modern techniques such as risk management and audit-based controls and the maximum practicable use of information technologies;
- co-operation wherever appropriate with other national authorities, other Customs administrations and trading communities;
- implementation of relevant international standards;
- provision to parties concerned with access to administrative and judicial reviews.

In Chapter 3 “Clearance and other customs formalities” of the General Annex of the Kyoto Convention the need for the introduction of special procedures for authorized persons is defined. In particular, the standard rule with the transitional period (3.32) for the authorized persons compliant with Customs authorities’ established criteria, including compliance with the Customs authorities’ demands and the use of a satisfactory system of commercial documentation, stipulates (http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv.aspx):

- release of goods under the condition of submitting minimum information necessary to identify the goods and permit the subsequent completion of the final goods declaration;
- clearance of goods at the declarant's premises or another place authorized by the Customs;
- to the extent possible, other special procedures such as:
 - a) permit for a single goods declaration covering all imports or exports operations in a given period where goods are imported or exported frequently by the same person;
 - b) use of the authorized persons’ commercial records to self-assess their duty and tax liability and, where appropriate, ensure compliance with other customs requirements;
 - c) permit for a goods declaration lodgment by means of an entry in the records of an authorized person to be supported subsequently by a supplementary goods declaration.

In addition, Specific Annex E (Transit) of the Kyoto Convention defined that the national law specifies persons responsible to the Customs authorities in case of their compliance with the obligations arising from the customs transit regime, including submission of goods to the Customs authority of destination in the same condition in accordance with the requirements (<http://www.wcoomd.org/en/topics/facilitation/instrument->

and-tools/conventions/pf_revised_kyoto_conv.aspx). That is, in this annex a clear definition of the “authorized consignee” and “authorized consignor” concepts is given, namely:

- “authorized consignee” means a person empowered by the Customs to receive goods directly at his premises without having to present them at the office of destination;
- “authorized consignor” means a person empowered by the Customs to send goods directly from his premises without having to present them at the office of departure.

At the same time, it pointed out that the Customs authorities grant the status of authorized consignors and consignees only after verification of compliance with the requirements stipulated by law.

2. The international AEO’s business model in accordance with the WCO Framework of Standards to Secure and Facilitate International Trade

Further details on the implementation and functioning of the AEO’s business model are identified by the WCO Framework of Standards to secure and facilitate international trade (further – the WCO Framework of Standards) (http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/safe_package.aspx) an updated version of which was adopted in 2015. It should be noted that the updated version included Pillar 3 – Customs to Other Government and Inter-Government Agencies – to promote closer co-operation between Customs authorities and other public bodies as well as to ensure that governments will respond effectively to the challenges of a supply chain security. In accordance with Annex 1 of the WCO Framework of Standards, AEO is a party involved in the international movement of goods, who performs in any of the functions approved by a national Customs administration or on its behalf as that compliant with the WCO chain security standards of delivery of goods or equivalent standards. AEO may include manufacturers, importers, exporters, brokers, carriers, companies that combine several shipments into one shipment, intermediaries, ports, airports, terminal operators, integrated operators, warehouses, distributors and freight forwarders.

We should underline that Standard 1 “Integrated Supply Chain Management” Pillar 1 “Customs-to-Customs” of the WCO Framework of Standards indicates the need to use an “authorized supply chain” concept, which provides that Customs authorities confirm all international trade participants’ compliance with the standards of goods safe handling and relevant information (SAFE Framework of Standards to Secure and Facilitate Global Trade 2015). Regarding shipments passing from the place of origin to the place of destination entirely within such a chain it is necessary to apply complex simplified border crossing procedures, according to which only one simplified declaration is required both for export and import containing minimum information. The main element of the “authorized supply chain” concept is an AEO, which is compliant with the criteria laid down by Customs authorities and is entitled to participate in simplified and swift release procedures by providing minimum information. These criteria include a confirmed history of compliance with customs requirements, an aspiration to enhance the security of the supply chain of goods as a participant of the partnership program “Customs-to-Business” as well as a satisfactory commercial information management system. The ultimate goal of this process is a mutual recognition of the AEO status in different countries in order to improve supply chain security and harmonize customs procedures.

Standard 1 “Partnership” Pillar 2 “Customs-to-Business” of the WCO Framework of Standards specifies that the AEOs involved in the international supply chain conduct a self-assessment based on the established security standards and best practices so that their own procedures provide adequate guarantees for the part of the supply chain of goods they are responsible for up to the moment these goods are released from customs control at the place of destination.

The partnership program “Customs-to-Business” is to provide flexibility and

customization of security plans based on the AEO business model. Customs authorities and AEOs should jointly determine and document the appropriate partnership measures to improve security to be implemented and carried out by AEOs. A jointly prepared document on the partnership between the Customs and an economic operator should contain clearly stated and controlled processes to the extent possible and in accordance with the AEO business model to ensure that the AEO business partners, including manufacturers, suppliers and sellers, declared their intention to adhere to the safety standards stipulated by the WCO Framework of Standards. In addition, it is recommended to periodically review the AEO working methods and taken measures to improve safety (risk-based), provided that these surveys must comply with the procedures stipulated in the relevant agreement on the security of business.

Standard 2 “Security” Pillar 2 “Customs-to-Business” of the WCO Framework of Standards provides that AEOs will use in their work the most effective methods of security, namely the implementation of measures to ensure the safety of buildings, arrangement of monitoring and control of internal and external areas of an enterprise, establishment of an appropriate access mode to prevent an unauthorized access to facilities, vehicles, truck docks and stowage areas. An access mode to facilities in the secure supply chain should incorporate a managerial control over the issuance and an adequate control of identification badges (“employee”, “visitor”, “vendor”, etc.) and other access devices, including keys, access cards, and other devices that allow for unhindered access to company property and assets.

The WCO Framework of Standards clearly defines group of requirements, under which economic operators will be able to obtain AEO status: demonstrated compliance with customs requirements; satisfactory system for management of commercial records; financial viability; consultation, co-operation and communication; education, training and awareness; information exchange, access and confidentiality; cargo security; conveyance security; premises security; personnel security; trading partner security; crisis management and incident recovery; measurement, analysis and improvement.

Thus, the WCO Framework of Standards provides for a process of certain benefits granting to AEOs in order to accelerate customs clearance of goods by reducing the share of customs inspections, which, in turn, will save time and reduce costs of economic operators. This creates favorable conditions under which it is profitable for AEOs to invest in the efficient safety systems and measures, including targeting and low-risk goods screening as well as an expedited processing of their goods. At the same time, the WCO Framework of Standards stipulates the AEO implementation with account of the national law features.

In order to achieve the ultimate goals of the WCO Framework of Standards, Customs administrations should ensure a transparent approach to balancing customs facilitation and security in the global supply chain. As of March 2016 the information on AEO programmes was updated in the Compendium of AEO Programmes (<http://bit.ly/1TBVA9>), which was developed in accordance with the WCO Framework of Standards. In addition, some Customs administrations have implemented different AEO programmes in accordance with the World Trade Organization (further – the WTO) Trade Facilitation Agreement. As a result, the Compendium of AEO Programmes was expanded and now it includes 5 main parts: WCO SAFE Framework of Standards to Secure and Facilitate Global Trade (Part I), Customs Compliance Programmes Implemented by Customs Administrations (Part II), Cooperation With Other Agencies At National And International Level (Part III), Authorized Operator Scheme of the WTO TFA (Part IV) and Mutual Recognition Agreements / Arrangements (further – MRAs) of AEO Schemes (Part V). According to the Compendium of AEO Programmes a number of simplifications are granted for the different types of economic operators in most developed countries (table 2) (<http://bit.ly/1TBVA9>).

Table 2
Features of the AEO Programmes developed in accordance with the SAFE Framework of Standards in individual countries

Programme title	Date launched	Scope	Type of AEO	Number of AEOs	Further plans (deadlines)
1	2	3	4	5	6
Canada					
Partners in Protection (PIP)	1995, revision in 2002 and 2008	Import/export	Importers, exporters, carriers (rail, sea, air, road), customs brokers, warehouse operators, freight forwarders, shipping agents	1535 approved members (as of January 30, 2015)	To simplify the application process through automation and streamlining of processes. To develop a web-based application processing system (web portal) to simplify program application, administration, and information exchange. Phase 1: Portal launched in 2014. Phase 2: scheduled for 2016 – to develop further benefits in consultation with private sector. To continue providing AEO assistance and cooperation. Plan additional MRAs with compatible AEO programs.
USA					
Customs-Trade Partnership against Terrorism	11.2001	Import/Export	Whole supply chain, excluding warehouse operators, but including seaports and foreign manufacturers from Canada and Mexico	11000 (as of January 2016)	No information
China					
AEO Programme	April 1, 2008	Import/export	Importers, exporters, manufacturers, customs brokers, warehouses, freight forwarders, carriers	General Certified Enterprises:36551 (as of December 31, 2015)	No information

Continued table 2

1	2	3	4	5	6
Hong Kong, China					
Hong Kong AEO Programme	April 2, 2012	Import/export	All local operators engaging in the international supply chain activities	29 AEOs (including two small and medium enterprises) (as of January 2016)	To develop MRAs with other Customs administrations
Japan					
AEO	2006 – exporters; 2007 – importers; subsequent expansion of the scope of the AEO programme	Import/export	Importers, exporters, warehouse operators, customs brokers, logistic operators (carriers, forwarders, shipping companies, airlines), manufacturers	Importers: 89, exporters: 238, customs brokers: 90, warehouse operators: 117, logistic operators: 8. Total number: 542 operators (as of February 9, 2015)	No information
Korea					
AEO	April 15, 2009	Import/export	9 stakeholders: exporters, customs brokers, freight forwarders, transporters (bonded transporters), sea/air carriers, ground handlers, warehouse operators (bonded area operators, port terminals)	292 authorized companies: 78 exporters, 80 importers, 60 freight forwarders, 11 warehouse operators, 9 transporters, 5 sea carriers, 49 customs brokers	<ol style="list-style-type: none"> 1. Expanding AEOs continuously. 2. Supporting small and medium enterprises to obtain AEO status. 3. Developing further benefits for AEOs and measuring effect of the AEO program & MRAs. 4. Strengthening AEOs post monitoring and management. 5. Expanding MRAs.

Continued table 2

1	2	3	4	5	6
EU					
AEO	January 1, 2008	Import/export	Whole supply chain	17,402 applications, 15,116 certificates (as of February 12, 2015)	As a result of more than 5 years of practical implementation of the programme, applications are admitted and the status is granted in all 28 member-states, experience is gained in mutual recognition negotiations with third countries, the new EU AEO Guidelines are in use (as of April 17, 2012)
Israel					
AEO	2011	Export	Exporters, customs brokers, international freight forwarders, warehouses, air cargo terminals, seaports, airlines	Exporters: 31, customs brokers, international freight forwarders: 20, warehouses: 7, air cargo terminals: 2, seaports: 2	To expand the program to additional links of the supply chain, to enlarge the number of operators, to act towards the signing of MRAs
Norway					
AEO	March 3, 2009	Import/export	All operators involved in international movement of goods	29	No information
Switzerland					
AEO	June 1, 2011	Import/export	Whole supply chain	65 certificates, 140 applications (as of January 2015)	No information
Turkey					
AEO (in Turkish, YY: Yetkilendirilmiş Yükümlü)	January 10, 2013	Import and Export	Exporters, importers, international freight carriers	20 certificates (as of January 2015)	Expansion of the scope of the programme to the rest of the supply chain, including import facilitations and development of MRAs with other Customs administrations.

Table 3

Features of the AEO programs developed in accordance with the WTO Trade Facilitation Agreement in individual countries

Programme title	Date launched	Scope	Type of operator	Number of operators	Further plans (deadlines)
1	2	3	4	5	6
Canada					
Customs Self Assessment (CSA)	2001	Import	Importers and carriers	98 Approved CSA Importers, 930 Approved CSA Carriers (as of February 17, 2015)	To establish cooperative agreements with other compatible programs. To expand CSA eligibility to other modes and partners. To enhance benefits and expedited clearance at ports of entry. To collaborate with Other Government Departments and Agencies to expand the CSA service options and enhance benefits for expedited/simplified customs clearance.
United Arab Emirates					
Golden list programme (Abu Dhabi)	2007	The programme was designed to give the trusted companies a golden list status through which the party can import and export its goods into or out of the country with a minimum paper work requirements and with the shortest amount of time	Trusted companies that have a certain threshold of trade volume in imports and exports and have a minimum number of contravention or discrepancies in dealing with Customs	currently 26 operators joined the programme	It is anticipated that the total number of beneficiaries of this programme is going to reach 200 companies by the end of 2014.
India					
Accredited Client Programme (ACP)	November 24, 2005	Facilitation to importers who have demonstrated a capacity and willingness to comply with the laws	Importers	362 (as of February 1, 2016)	No information

Continued table 3

1	2	3	4	5	6
Georgia					
“Golden List”. Previous title in use during July 15, 2008 to December 31, 2010: “Customs-Trade Cooperation”	July 15, 2008	Import/export	Importers, exporters	156	Implementation of Periodical Declaration
Kazakhstan					
AEO	2013	Foreign economic activities	Importer, exporter, manufacturer	The register of Authorized Economic Operators includes 111 companies, of them: 63 acting companies; 35 suspended companies; 13 withdrawn companies	Developing of the AEO in compliance with international requirements and the criteria of international standards. Creating a framework partnership for developing and supporting the partnership relations between state revenues authorities and AEOs
Russia					
AEO	September 14, 2011	Russian Federation	1. Legal entities carrying out production activity. 2. Legal entities not carrying out production activity	145	Currently the development of the new chapter “Authorized Economic Operator” of the Draft Customs Code of the Eurasian Economic Union is being carried out

Herewith the WCO Framework of Standards provide for the security based on risk analysis and AEO business models. Using the WCO Framework of Standards countries impose their own AEO programmes, namely: Brazil – Blue Line (Express customs clearance), Canada – Customs Self Assessment, El Salvador – PACE (Programa Aduanero de Cumplimiento Empresarial; Customs programme on business compliance), Algeria – AEO, United Arab Emirates – United Arab Emirates, Golden list programme (Abu Dhabi), Cameroon – Contrat de Performance Opérateurs (Performance Operators' Contracts), Senegal – Privileged Partnerships Programme, Madagascar – Programme Accélérée de dédouanement (Accelerated Clearance Programme), Mauritius – AEO, Mozambique – AEO, Rwanda – Compliant Trader schemes of two types: 1. Gold Card Scheme; 2. Pre-clearance, South Africa – Preferred Trader (Accreditation Level 2), Tanzania – Compliant Traders' Scheme, Zambia – Customs Accredited Clients Programme, Cambodia – High Compliant Trader Incentive Mechanism, Fuji – Gold Card Service, India – Accredited Client Programme Indonesia – MITA (Mitra Utama; Facilitation Service for Priority Importers), Sri Lanka – Compliant Traders Facilitation Programme, Georgia – “Golden List”, Kazakhstan – AOE, Russia – AOE, Serbia – Simplified customs clearance procedure, Angola – Preferred Operators Programme, Mongolia – Compliance Programme, Timor Timur – Secure Economic Operator Program. Basic programs are designed in accordance with the WTO Trade Facilitation Agreement and are summarized in Table 3 (<http://bit.ly/1TBVAb9>).

Thus, the main difference between the programmes developed in accordance with the WCO Framework of Standards and programmes developed in accordance with the WTO Trade Facilitation Agreement lies in the fulfillment of the safety requirements set out in Annex III of the WCO Framework of Standards. Therefore, the AEO concept is an international customs model supported by the WTO and the WCO, which is aimed at improving the quality of customs formalities, including increased confidence and transparency as well as the reduction of trade restrictions and delays. It has already been implemented or is going to be implemented by the vast majority of Customs administrations around the world.

3. The European legislation regulating the AEO concept

The introductory part of (Paragraphs 24-25) of the Customs Code of the European Union (EU Regulation 952/2013, which entered into force on January 5, 2016) [9] determines that economic operators may have an “AEO” status when they are granted with permits for simplified customs procedures or security and reliability or a combination thereof. Depending on the type of an authorization granted, AEO should have an opportunity to use the benefits of customs simplifications as fully as possible or enjoy simplifications regarding the reliability and security. At the same time they receive more favorable treatment in relation to the physical and documentary customs control. In addition, the economic operators should benefit from international mutual recognition of the AEO status. Section 4 “Authorized Economic Operator”, EU Regulation 952/2013 identifies the types of certificates, the criteria for granting the status, the granting procedure, suspension and revocation of AEO.

Article 38 of EU Regulation 952/2013 defines the following types of AEO certificates:

- AEO C provides for customs and legal simplifications and is granted for economic operators who seek to gain access to simplified procedures of customs clearance;
- AEO S according to the reliability and safety is granted for economic operators who want to alleviate the conditions of providing security for payment of customs duties imposed on imported / exported and transit goods.

At the same time Article 33 of the Implementation of the EU Regulation 2015/2447 (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R2447>) provides for a combination of certificates AEO C and AEO S and Articles 24-28 give details of the conditions for the fulfillment of criteria to obtain the AEO status. The advantages of AEO depending on the certificate types are summarized in Table 4 (http://ec.europa.eu/taxation_customs/resources/documents/customs/policy_issues/customs_security/aeo_guidelines_en.pdf).

Table 4

Advantages of AEO depending on the certificate types

Benefit	AEO C	AEO S
Easier admittance to customs simplifications	x	
Fewer physical and document-based controls: – related to security & safety – related to other customs legislation	x	x
Prior notification in case of selection for physical control (related to safety and security)		x
Prior notification in case of selection for customs control – related to security & safety – related to other customs legislation	x	x
Priority treatment if selected for control	x	x
Possibility to request a specific place for customs controls	x	x
Indirect benefits (recognition as a safe and reliable business partner, improvement of relations with Customs authorities and other government agencies, reducing the likelihood of theft and loss, reducing the number of overdue goods, better planning, improving the quality of customer service, increasing loyalty to customers, lower inspection costs and enhanced cooperation, etc.)	x	x
Mutual recognition with third countries		x

Thus, the AEO concept includes a number of benefits for both economic operators and Customs administrations. Economic operators being granted with the AEO certificate enjoy the following benefits:

- AEO criteria come into force when the application for customs-legal facilitations is submitted (Article 38, Paragraph 5 of EU Regulation 952/2013);
- possibility of a scheduled monitoring (Article 38, Paragraph 6 of EU Regulation 952/2013 and Article 24, Paragraph 2 of Delegated EU Regulation 2015/2446) (<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1460964615220&uri=CELEX:32015R2446>), which does not exclude future checks for risks;
- simplified checks (Article 38, Paragraph 6 of Regulation 952/2013 and Article 24, Paragraph 1 of Regulation 2015/2446), which does not exclude future checks for risks;
- AEO S certificate gives the advantage of priority control Article 25 of Regulation 2015/2447);
- possibility of a scheduled monitoring (article 24, Paragraphs 2, 4 Of Regulation 2015/2447), which does not exclude future checks for risks;
- simplified checks (Article 24, Paragraph 1 of Regulation 2015/2447), which does not exclude future checks for risks;

- benefits for AEO of countries that are not EU members, but have concluded a bilateral agreement (Article 38, Paragraph 7 of Regulation 952/2013);

- competitive advantage (reliability and safety approved by Customs authorities).

At the same time, the AEO concept offers the following advantages for Customs administrations:

- low risk assessment, reducing the number of inspections, and, accordingly, smaller customs staff;

- up-to-date information on the dynamics of economic indicators;

- better planning of customs control, in particular, customs inspection and documentary checks etc.).

4. Implementation of the EU AEO standards in the customs legislation of Ukraine

During the reforming of the Ukrainian state system of customs regulation it is necessary to adopt the European experience, which provides for a simplified customs control and customs cooperation with foreign trade entities. Such optimization is successfully implemented through the introduction of the AEO concept in many countries around the world.

The Verkhovna Rada of Ukraine adopted the Law of Ukraine “On ratification of the Protocol on Amendments to the Marrakesh Agreement Establishing the World Trade Organization” on April 11, 2015 (<http://zakon2.rada.gov.ua/laws/show/745-19>). This Protocol provides for the WCO Trade Facilitation Agreement inclusion in Annex 1A of the Marrakesh Agreement Establishing the World Trade Organization, the text of which was approved during the Ninth WTO Ministerial Conference (Bali, December 2013). Ratification of the Protocol provides for Ukraine’s accession to the WCO Trade Facilitation Agreement, followed by a phased implementation of its provisions. The main provisions of the agreement include: the use of electronic payments; guarantees of rapid release of goods in free circulation; the system of authorized economic operators; procedures of accelerated dispatch of goods; harmonization of border procedures; temporary import regime; simplification of transit procedures; provision for cooperation and coordination of Customs administrations activities.

Article 7.7 of this Agreement stipulates measures of trade facilitation for the AEO. They include the development of the necessary regulations for the AEO programmes implementation; the development of the AEO pilot programmes; raising private sector awareness of the AEO programmes in Ukraine. On November 19, 2015 in Kiev under the auspices of the United Nations European Economic Commission for Europe (UNECE), the Ministry of Economic Development and Trade (MEDT) of the Ukrainian National Committee of International Chamber of Commerce (UNC ICC) and in collaboration with the United Nations Conference on Trade and Development (UNCTAD), the Program of Development of the Commercial Law of the US Department of Commerce (CLDP), the US Agency for International Development (the USAID), the Interdepartmental Working Group on Trade and Logistics Processes in Ukraine (IWG), Kyiv National University of Trade and Economics (KNTEU) and the Association of Freight Forwarding and Logistics Companies of Ukraine “Ukrvneshtans” the international final seminar “Implementation of the provisions of the WCO Trade Facilitation Agreement: challenges, opportunities and needs” (<http://singlewindow.org/events/37?lang=ukr>) was held. It led to conclusions based on Article 7.7. They show that the AEO model is specified in the Customs Code of Ukraine, but real steps to grant special simplifications to importers/exporters were still not made, as confirmed by lack of issued AEO certificates on the Ukrainian territory. Therefore, more

actions should be done to achieve compliance with the functional AEO system. The experts suggested focusing on the implementation of the AEO model in three stages:

1. Development of a procedure to select the AEO in accordance with the provisions of Article 7.7 of the Agreement and grant the AEO with benefits that meet the requirements described in the Agreement.

2. Development of a complementary legislation (regulations and instructions) to support this process.

3. Defining penalties for AEOs who do not adhere to the relevant requirements.

With a view to the AEO practical implementation and harmonization of domestic customs legislation to the EU standards in the framework of the EU-Ukraine Association Agreement, the Ministry of Finance, the State Fiscal Service of Ukraine together with a number of experts and civil society organizations drafted the Law of Ukraine “On amendments to the Customs Code of Ukraine (concerning the authorized economic operator and the simplification of customs formalities)”, which was approved at the meeting of the Cabinet of Ministers of Ukraine on April 6, 2016. Presenting the law, the Minister of Finance of Ukraine N. Yaresko noted that the AEO introduction and granting to Ukrainian enterprises the AEO status on the basis of the criteria adopted in the international practice would be an effective tool in the fight against corruption and administrative pressure on business by the Customs authorities. In addition, AEO is the highest degree of confidence given by Customs authorities to an enterprise and, as a consequence, the list of the greatest benefits and simplifications of customs procedures, provided to an enterprise by a government. According to the Minister of Finance of Ukraine, the introduction of AEO will help improve the economic and administrative conditions for the customs clearance of goods and will be an incentive for European businesses to enter the Ukrainian market, which will lead to a significant increase in goods traffic.

The AEO involves a maximum balance of trade and government interests connected with international trade facilitation by establishing partnerships with companies that meet the criteria of legality, transparency, professionalism, reliability and security.

The requirements of the current Customs Code of Ukraine to obtain AEO status are not clear and certain requirements are excessive and do not comply with the EU legislation. In particular, in contrast to the existing Customs Code of Ukraine, the draft law “On amendments to the Customs Code of Ukraine (concerning the authorized economic operator and the simplification of customs formalities)” (<http://bit.ly/223Lt54>) specifies: clarification of terminology, in particular, “presentation of goods, vehicles for commercial use to revenue authorities”, “an ultimate beneficial owner (controller)”, “a brief entry declaration”, “an authorized economic operator”, “a silence procedure”; AEO status; special simplifications that may be granted to AEOs; permission to use the special simplifications; conditions of criteria compliance for AEO; granting the AEO status; monitoring compliance with the criteria for the AEO enterprise; suspension of the AEO certificate; revocation of the AEO certificate; the status of an authorized consignee; the status of an authorized consignor; a brief entry declaration; deadlines for the brief entry declaration submission; release of the goods at the place of destination; simplified customs declaration; an independent imposition of seals of a special type; documentary checks after the release of goods (post-customs control).

The draft law specifies that the revenue authority should grant an enterprise-resident with one or two kinds of certificates to obtain the AEO status. The certificate “On the simplification of customs procedures” is granted to AEOs to simplify and expedite customs formalities for the release of goods under a certain customs regime and allows the company to take advantage of the following special simplifications:

1. Application of the general guarantee or exemption from the guarantee.
2. Using the procedure of simplified declaration.

3. Self-imposing seals of a special type.
4. Exemption from the need to comply with the requirements for mandatory travel route.
5. Use of the authorized consignor status.
6. Use of the authorized consignee status.
7. Using the procedure for release of goods at the location.

The certificate “On reliability and security” provides an opportunity for the company to minimize the customs control of goods and reduce border crossing times. At the same time, the draft law introduces the preliminary informing of revenue authorities, namely the need to provide a brief entry declaration as well as describes details of the procedure for checking the documents after release of goods (post-customs control). Submission of a brief entry declaration by a carrier prior to the import of goods to Ukraine, according to the international practice, gives the opportunity to compare the data provided by a declarant and by a carrier. This is a risk assessment tool before the arrival of goods and a significant acceleration of cargo clearance procedures.

The draft law specifies the conditions for the fulfillment of criteria for the AEO, which correspond to the current EU legislation, as well as their monitoring by revenue authorities, including:

- compliance with the legislation of Ukraine, including in the area of state customs affairs (AEO owners and staff should have an impeccable business reputation);
- a satisfactory system of conducting the commercial and transport documentation (AEO should ensure the maintenance of the reporting system, effective management and control of operations);
- solvency (an AEO financial stability and positive history of compliant obligations must be indisputable);
- providing competencies and professional qualification standards (an AEO determines the professional in charge of internal control and monitoring);
- compliance with reliability and safety standards (an AEO provides the reliability of facilities catering international trade operations and business partners).

In addition, the AEOs, who may be authorized consignors and authorized consignees, are identified.

Summary and concluding remarks

It should be pointed out that in 2015 within the Department of Customs Control of the State Fiscal Service of Ukraine the Department for Business with AEOs was established to intensify the processes of granting the AEO status to importers/exporters, as planned process of continuous improvement of special simplifications. The main objective of these activities is to ensure the balance of business and government interests by establishing partnership relations with business.

Today unresolved issues remain within the debates around the given draft law on the effective AEO mechanism in accordance with the WCO requirements and similar to that operating in the EU, namely: the features of granting the AEO status to foreign economic activity objects – participants of the international supply chain; mutual recognition of the AEO status by the Customs administrations of various countries; peculiarities of obtaining the AEO status by small and medium enterprises etc. These questions will be studied during the execution of the research and development work “Development of the authorized economic operator in the context of the implementation of the WCO Framework of Standards to Secure and Facilitate International Trade” made by the Research Centre for Customs Affairs. It should be noted that some representatives of the creative team, within the execution of this research work during implementation of TWINNING UA 45 ENP

project “Support of the State Fiscal Service of Ukraine in reinforcing integrated border management elements in the customs matters”, took part in a seminar on the introduction of AEO status and simplification of customs procedures. In addition, proposals to the draft law “On amendments to the Customs Code of Ukraine (concerning the authorized economic operator and the simplification of customs formalities)” were prepared.

The final adoption of this draft law and its practical implementation requires the development of a number of regulations. In particular, one of them, in accordance with Paragraph 7, Article 194 (http://ec.europa.eu/taxation_customs/resources/documents/customs/policy_issues/customs_security/aeo_guidelines_en.pdf) provides for the development of brief entry declaration in accordance with the requirements of the EU legislation (Regulation (EU) No 952/2013 Of The European Parliament and of The Council of 9 October 2013; Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015; Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015). There is a hope that the proposed changes to the Customs Code of Ukraine will be supported by both the executive and legislative branches, which significantly bring the domestic customs legislation closer to the European model.

Endnotes

1. Zakliuchnyi seminar “Implementatsiia polozhen Uhody SOT pro sproshchennia protsedur torhivli: vyklyky, mozhlyvosti ta potreby” [The final seminar "Implementation of the provisions of the WTO Agreement on Trade Facilitation: challenges, opportunities and needs"] [Elektronnyi resurs]. – [Rezhym dostupu]: <http://singlewindow.org/events/37?lang=ukr> [in Ukrainian]

2. Pro vnesennia zmin do Mytnoho kodeksu Ukrainy (shchodo upovnovazhenoho ekonomichnogo operatora ta sproshchen mytnykh formalnostei) [On amendments to the Customs Code of Ukraine (concerning the authorized economic operator and simplified customs formalities)] [Elektronnyi resurs]. – [Rezhym dostupu]: <http://bit.ly/223Lt54> [in Ukrainian]

3. Pro ratyfikatsiiu Protokolu pro vnesennia zmin do Marrakeskoi uhody pro zasnuvannia Svitovoi orhanizatsii torhivli [On ratification of Protocol on amendments to the Marrakesh Agreement Establishing the World Trade Organization] [Elektronnyi resurs]. – [Rezhym dostupu]: <http://zakon2.rada.gov.ua/laws/show/745-19> [in Ukrainian]

4. Authorised Economic Operators [Guidelines, Approved by the CCC-GEN (AEO subsection) on 11 March 2016], viewed 23 March 2016, http://ec.europa.eu/taxation_customs/resources/documents/customs/policy_issues/customs_security/aeo_guidelines_en.pdf

5. Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015, viewed 25 March 2016, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1460964615220&uri=CELEX:32015R2446>

6. Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015, viewed 25 March 2016, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R2447>

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9. Gellert, L. 2011, Withdrawal, revocation and suspension of AEO certification, *World Customs Journal*, Volume 5, Number 1, pp. 3-16

10. International Convention on the Simplification and Harmonization of Customs Procedures (as amended), World Customs Organization, viewed 15 March 2016, <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/>

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11. Pavlenko, O., Triakina, O., Garmash, E., Bogdanova, E., Jeifets, V., Babayev, I., & Zafeiropoulos, P. 2013, 'Facilitation and security of international trade: innovative mechanisms and instruments', Customs Scientific Journal CUSTOMS, Volume 3, Number 1, pp. 15-45

12. Regulation (EU) No 952/2013 Of The European Parliament And Of The Council of 9 October 2013 laying down the Union Customs Code, viewed 15 March 2016, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:269:0001:0101:EN:PDF>

13. SAFE Framework of Standards to Secure and Facilitate Global Trade, World Customs Organization, 2015, viewed 17 March 2016, http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/safe_package.aspx.

14. Schramm, S. 2015, 'Who benefits most from AEO certification? An Austrian perspective', World Customs Journal, Volume 9, Number 1, pp. 59-67