

Review of accredited operator schemes: an Australian study

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Abstract

Governments throughout the world have for many years been developing and implementing initiatives that are designed to secure international supply chains from terrorist and other threats while facilitating legitimate trade. A number of these initiatives involve the accreditation of members of the international trading community that meet security and other regulatory requirements.

This article summarises a research study that was commissioned by the Australian international trade and transport industry. The research study reviews the various types of ‘Accredited Operator’ (AO) schemes that are currently in use or being implemented and identifies options for their application in Australia. In doing so, it has sought the views of industry and has focused on ways to maximise the relevance of such schemes, minimise compliance costs and ensure against the possible erosion of Australian industry’s competitive position in the global marketplace.

The study identifies a potential disadvantage to Australian exporters of not having access to a scheme that meets the requirements of the *SAFE Framework of Standards to Secure and Facilitate Global Trade* (the SAFE Framework). It proposes the introduction of such a scheme with supply chain security as its principal focus, and an import scheme having trade compliance as its principal focus. It argues that participants in the export scheme would also need to demonstrate appropriate levels of trade compliance, and importers should similarly be required to meet minimum security requirements.

Background

For the past decade, government agencies throughout the world have been developing and implementing a range of initiatives that are designed to secure international supply chains from terrorist and other threats while facilitating legitimate trade. Several such initiatives focus on the concept of Accredited Operators (AO) (that is, trusted members of the international trading community that are deemed to meet security and other regulatory requirements), the two principal schemes being those relating to Customs and to air cargo security.

A contemporary method of managing compliance in these areas of regulatory responsibility is to work in collaboration or partnership with the private sector through the use of AO programs. For some border management agencies, the partnership concept is well established, and is widely acknowledged as a key foundation for trade facilitation. The effectiveness of such arrangements hinges on a working relationship between regulators and industry that reflects a mutual commitment to accountability and improving regulatory compliance.

Businesses that enter into such partnerships are generally required to demonstrate a history of providing accurate and timely information about their transactions, establish a good record of regulatory compliance, and demonstrate that their systems and procedures will ensure a continuation of their established compliance record. Generally, this requires them to open their operations to analysis by regulatory auditors and to advise the regulator of any changes to their systems or procedures that may impact on the initial assessment of their level of compliance.

On the other side of the partnership equation, regulatory authorities seek to create an environment in which companies can maximise their entitlements, and meet their obligations for trade compliance with minimal commercial impact. This necessitates providing companies with the means to achieve certainty and clarity in assessing their liabilities and entitlements and to allow them to conduct subsequent business without fear of additional regulatory burdens after the transaction is concluded and the opportunity to recover costs has passed.

Assessing the compliance levels of such entities assists regulators in determining where their resources should be directed. Put simply, such initiatives may be viewed as a way of reducing the size of the 'risk pie'. The introduction of an industry partnership concept is therefore based on the premise that companies with a good record of compliance require less regulatory scrutiny than those with a history of poor compliance. A key element of the strategy seeks to provide highly compliant companies with some form of benefit and this applies equally to those AO programs that are designed to secure international supply chains from threats of terrorism.

Provided such outcomes can be achieved for the mutual benefit of both the regulator and the regulated entity, the partnership approach is likely to succeed. However, if the anticipated benefits fail to materialise for either one of the parties, the relationship is likely to sour, particularly when would-be participants make a significant investment in the regime for no apparent return. Given that one of the parties to such a partnership is a regulatory authority, it is hardly surprising to learn that the benefits which fail to materialise are generally to the detriment of industry.²

Due to the nature of the partnership concept, the associated schemes, including Authorised Economic Operator (AEO), Known Shipper and some biosecurity-related programs, are voluntary. For those who choose not to participate, other methods of regulatory control may be applied, which inevitably involve increased levels of regulatory intervention and less scope for self-assessment. Some types of AO programs are, however, mandatory. These include certain agricultural export programs which require traders and service providers to demonstrate their compliance with regulatory standards as a prerequisite to their involvement in export activities.

The research project

The research project involved a review of the emerging 'Accredited Operator' (AO) concept which, internationally and locally, is being espoused by a number of regulatory agencies in the form of 'Regulated Shipper', 'Regulated Agent', 'Accredited Agent', 'Authorised Economic Operator', 'Approved Exporter', 'Registered Operator' and similar programs which have emerged as a result of international initiatives relating to supply chain security and trade facilitation. The research reviewed the subject from a number of perspectives, including international initiatives and responses, Australian Government responses, and implications for regulators and the business community.

The project was conducted by the Centre for Customs and Excise Studies, Charles Sturt University. It was funded through the Australian International Trade and Transport Industry Development Fund (AITTIDF), the objectives of which are to promote, support, advance and enhance projects that facilitate Australia's international trade with its trading partners, and that encourage more efficient international supply chain solutions. Project funding has been supported by the Customs Brokers and Forwarders Council of Australia Inc. (CBFCA), the Export Council of Australia (ECA), the Australian Federation

of International Forwarders (AFIF), the Conference of Asia Pacific Express Carriers (CAPEC) and Shipping Australia Limited (SAL).

The purpose of the project was to develop an Australian international trade and transport industry position for presentation to the Australian Government on the various forms of AO schemes that are in place, under development, or being considered by Australian and overseas regulatory agencies. This includes recommendations on how such schemes should be progressed in order to guard against any possible erosion of the industry's competitive position in the global marketplace. In particular, the research seeks to identify options for maximising the relevance of such schemes, minimising compliance costs and ensuring that the Australian international trade and transport industry is able to compete on an equal footing with its overseas competitors, particularly when exporting to countries that have similar arrangements in place. In doing so, the project focused on whole-of-government solutions for a whole-of-industry outcome.

Methodology

The project was comprised of three principal components. The first was a review of the AO landscape with a particular focus on AEO, including an examination of the broader international context and initiatives that have been or are being progressed in Australia. The second component was an examination of Australian business perspectives on the AO concept, including preferred options for Australian implementation. The third was an analysis of the first two components, with focus on current issues and future directions.

The research approach was iterative, drawing on multiple types of data. The initial step was to conduct a desk-based study of the relevant literature and supporting documents. These include primary documents such as the SAFE Framework developed by the World Customs Organization (WCO), the International Ship and Port Facility Security Code (ISPS Code) developed by the International Maritime Organization (IMO) and Annex 17 to the *Convention on International Civil Aviation 1944* (Chicago Convention), amongst others, as well as academic papers and commentaries published in academic journals or by relevant international and national organisations.

The initial desk-based review was followed by open and targeted focus groups, survey and interview-based research, the findings of which were used to further inform the initial review as well as provide the basis for the study's analysis and recommendations. Participants in the focus group sessions and interviews were provided with background material that was designed to inform them of international trends, Australian initiatives and general implications for the industry.

The general focus group sessions, which were held with interested parties from the Australian business community, were conducted in Brisbane, Sydney, Perth, Adelaide, Melbourne and Canberra. A total of 62 participated in the sessions, the majority of which represented customs brokers, freight forwarders and large to medium importers and exporters. Invitations to the focus group sessions were sent to members of CBFCA, ECA, AFIF, CAPEC and SAL by the relevant industry associations.³

In addition, targeted focus groups included members of CBFCA, who were consulted during their annual conference,⁴ members of the Customs Trade Advisory Group (CTAG), consulted during their November 2013 consultative meeting with the Australian Customs and Border Protection Service (ACBPS),⁵ and members of the ECA Agribusiness Working Group who were consulted at their September 2013 meeting.⁶ Interviews were also conducted with representatives of CBFCA, AFIF, ECA and the Australian Chamber of Commerce and Industry (ACCI).

In total, consultations were held with 212 interested parties. Findings have been captured in summary documents, interview transcripts and in feedback survey responses for those who did not provide the researchers with feedback at the time of the consultations.

Also, an interview series was conducted with representatives of relevant Australian Government agencies, including ACBPS, the Office of Transport Security (OTS), the Department of Agriculture (DAg), and the Department of Foreign Affairs and Trade (DFAT). The purpose of this series was to establish the respective agencies' position with regard to AO schemes, including existing programs and plans for the future.

Two significant events impacted on the research project during the period of the study. First, the release of the ACBPS 'Blueprint for Reform 2013-2018' in June 2013 and subsequent announcements by the ACBPS executive that signalled the proposed introduction of some form of 'Trusted Trader' program in Australia. Second, a momentous Trade Facilitation Agreement, which includes specific reference to trade facilitation measures for 'Authorized Operators', was settled by the World Trade Organization (WTO) members at its Ninth Ministerial Conference in December 2013.

The former resulted in the need to revisit the line of enquiry with industry in relation to the customs-related issues, as the question of whether an AEO-type arrangement should be introduced by Customs was no longer of relevance. Consequently, the focus of the study shifted to an identification of the preferred features of such a scheme from an industry perspective.

9/11 and the focus on supply chain security

The 11 September 2001 terrorist attacks in the United States (US) have had a dramatic impact on the policy governing security in international logistics and supply chain management. Following the attacks, the US Government took immediate measures to stop all inbound air traffic into the US, and instituted very strict inspection procedures for both individuals and cargo at all land and sea entry points.⁷ These measures had the almost immediate effect of bringing commercial international trade with the US to a virtual standstill. Over time, land, sea and air traffic resumed, but only in the face of strong pressure from many quarters, most notably the US Congress, to greatly increase inbound security into the US.

The US proceeded to introduce a series of legislative amendments aimed at ensuring that the inbound supply chain, in all modes, was as secure as possible. One of the first mandatory requirements imposed on supply chain operators was the advance reporting obligation for inbound cargo in all modes, the so-called 'Advance Manifest' reporting regime, requiring carriers to pre-notify US Customs and Border Protection (USCBP) about their cargo within prescribed timeframes prior to its arrival at a US port of entry. These requirements were later supplemented for maritime traffic by the Importer Security Filing (ISF) initiative, which is required to be undertaken at least 24 hours before loading a vessel destined for a US port.

Those members of the US business community dependent on international trade moved quickly to ensure that the political pressure for tighter control did not needlessly impair their international competitiveness. They worked closely with USCBP to demonstrate that the risk of terrorist activity in the international supply chain could be controlled – and in fact was being minimised – by a variety of existing security standards already in use by major importing companies. The dialogue between the US business community and USCBP led to the creation of a new voluntary partnership program, the Customs-Trade Partnership Against Terrorism (C-TPAT).⁸ Under C-TPAT, companies whose internal policies, systems and procedures met strict standards designed to prevent terrorist tampering in the inbound supply chain were given a provisional low-risk status, which served to minimise regulatory impediments to their international trading activities.

Similar initiatives were established in other countries, generally motivated by the need to assure the US authorities that their shippers and supply chains were secure, thereby safeguarding continued access to the US market without extensive delays at US ports, airports and border crossings.

The WCO identified the need to develop international guidelines, based on the C-TPAT initiative, to provide its members with uniform strategies to secure and facilitate global trade. The resultant SAFE Framework was first published in 2005, with revisions in 2007, 2010 and 2012.⁹ The SAFE Framework includes recommendations for advance cargo reporting and provides the international basis for the concepts of AEO and Mutual Recognition Agreements (MRAs). This is discussed further below.

In the European Union (EU) security was added as a fast-track item to an ongoing policy program to radically overhaul the EU's customs environment – the so-called Paperless Trade and Customs Environment.¹⁰ The resulting Security Amendment to the Customs Code¹¹ and its Implementing Provisions¹² introduced, among other things, requirements for pre-notification¹³ and the AEO concept.¹⁴ While the former requires EU carriers to pre-notify Customs – in the case of maritime cargo, 24 hours before loading – in the form of an Entry Summary Declaration, the latter seeks to accredit traders that comply with minimal security management criteria.

In a wider multilateral setting, in 2004 the ISPS Code¹⁵ entered into force, which places an obligation on all signatories to the *International Convention for the Safety of Life at Sea 1974* (SOLAS Convention)¹⁶ to implement minimum security measures in order to address assessed risks facing particular ships or port facilities, including the implementation of port and vessel security management systems.

Following the 2010 security incidents involving air cargo originating from Yemen, further measures were introduced to enhance the global aviation security framework, through amendments to the Chicago Convention and its annexes.¹⁷ The new measures included a requirement for contracting states to establish a supply chain security process that includes the approval of 'regulated agents' and/or 'known consignors', if such entities are involved in implementing screening or other security controls of cargo and mail.¹⁸

Most recently, the WTO reached consensus, in early December 2013, on a text for a new Agreement on Trade Facilitation.¹⁹ The agreement, which will need to be ratified by the WTO member states, but which may come into effect as early as mid-2014, would be binding on all WTO members. Paragraph 7 of Article 7, of the Agreement reads as follows:

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

7.2. The specified criteria shall be related to compliance, or the risk of non-compliance, with requirements specified in a Member's laws, regulations or procedures. The specified criteria, which shall be published, may include:

- a. an appropriate record of compliance with customs and other related laws and regulations;
- b. a system of managing records to allow for necessary internal controls;
- c. financial solvency, including, where appropriate, provision of a sufficient security/guarantee; and
- d. supply chain security.

The implication of the text of these provisions is that if a country elects to introduce an 'Authorized Operator' program, it has a level of flexibility in terms of the criteria that may be applied. Note also that the criteria identified by the WTO are consistent with those contained in the WCO SAFE Framework. In the event that a WTO member state elects to establish such a program, the Agreement would obligate the WTO member state to provide Authorized Operators with a minimum of three of the following benefits:

7.3. The trade facilitation measures provided pursuant to paragraph 7.1 shall include at least 3 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.

Although Article 7 proceeds to encourage members to develop Authorized Operator programs on the basis of ‘international standards’ (without any specific mention of such standards), and to allow for mutual recognition arrangements, the provision is notable for the absence of any binding or formal adoption of related principles as set out in the SAFE Framework.

As the new Trade Facilitation Agreement establishes a Committee of Members as the relevant governance body, it appears to institute yet another parallel regime in the realm of supply-chain security and compliance-based trade partnership programs.

Figure 1 summarises the principal supply chain security activities that have been introduced since 9/11.

Figure 1: Key government-driven supply chain security initiatives

Year	Key Driver	Supply Chain Security Initiative
2001	USA	Customs and Trade Partnership Against Terrorism (C-TPAT): a voluntary partnership program open to US-based businesses and invited businesses located in Mexico and Canada which trade with the USA, focused on ensuring the security of commercial supply chains in exchange for preferential treatment at the border.
2002	IMO	International Ship and Port Facility Security (ISPS) Code places obligations on port and ship operators to implement minimum security measures and maintain a security management system. The ISPS Code applies to all signatories to the SOLAS Convention.
2005 (revised in 2007, 2010 and 2012)	WCO	SAFE Framework of Standards (SAFE) aims to establish globally applicable customs control standards to increase supply chain security while facilitating legitimate trade and promoting certainty and predictability. Apart from requirements for advance cargo reporting and measures to help collaboration between customs administrations, much of its focus is on the AEO partnership model with the private sector.
2005-06	EU	Safety and Security Amendment to the Customs Code (EC Regulation 648/2005) and its Implementing provisions (Regulation 1875/2006) introduced pre-arrival/pre-departure reporting requirements for shippers/transport companies to the EU; the AEO concept; and a framework for the electronic sharing of customs data between EU customs authorities.

2011	ICAO	Annex 17 to the Chicago Convention: Security ‘Safeguarding International Civil Aviation Against Acts of Unlawful Interference’ incorporates the Regulated Agent and Known Consignee concepts among its Standards and Recommended Practices for international aviation security.
2013 (expected to commence in 2014)	WTO	Draft Ministerial Decision – Agreement on Trade Facilitation: establishes a new ‘Authorized Operator’ concept for WTO members. Such schemes are required to meet certain prescribed criteria and offer trade facilitation measures selected from a menu of benefits. AO is not cross-referenced to IMO, ICAO or WCO efforts.

Source: Widdowson, Blegen, Kashubsky & Grainger 2014.

International initiatives

The SAFE Framework which was introduced in 2005 by the WCO, identifies standards and principles for adoption by all WCO members. More than 160 countries have implemented, or have indicated their intention to implement the SAFE Framework, key elements of which are the concepts of AEO and Mutual Recognition.

An AEO is a member of the international trading community that is deemed to represent a low customs risk and for whom greater levels of facilitation should be accorded. Where two countries have an MRA in place, an entity’s AEO status is to be recognised by the customs administrations of both economies.

The International Civil Aviation Organization (ICAO) has independently developed global standards and recommended practices to ensure air cargo supply chain security. These have been enhanced in response to the ongoing threat of terrorist attacks, including the more recent air cargo security incidents originating from Yemen in 2010.

The ICAO Standards and Recommended Practices, contained in Annex 17 to the Chicago Convention, include Regulated Agent and Known Shipper/Known Consignor programs. These programs are designed to prevent unlawful interference with aviation and include measures that require air cargo to be security cleared before it can be loaded on an aircraft.

In addition, international trade in food and food products is heavily regulated in terms of quality assurance in order to protect trade and market access, and for the purposes of biosecurity. Inspection, verification and certification programs are commonplace, as is the accreditation of entities involved in the supply chain, including importers, exporters and service providers.

The AO concept is also emerging as a component of Free Trade Agreement (FTA) negotiations, with many countries seeking to establish a framework within their FTAs to facilitate the negotiation of mutual recognition arrangements.

Lastly, the recent WTO Agreement on Trade Facilitation includes specific reference to AO schemes in the context of facilitating trade for those who meet specified criteria.

Australian initiatives

In 2005 Australia committed to implement the principles of the SAFE Framework,²⁰ but the ACBPS subsequently announced that it would not be introducing an AEO program.²¹ In June 2013, however (and following the commencement of the current study), ACBPS announced details of a Service-wide reform program that includes a focus on MRAs with trading partners to acknowledge AEO and trusted trader schemes,²² and the ACBPS executive has since signalled the proposed introduction of a Trusted Trader program.²³

The OTS already has in place measures that require air cargo to be security cleared before it can be loaded on an aircraft. These measures apply to businesses that security-clear, handle or make arrangements for the transport of air cargo, and are administered through the current Regulated Air Cargo Agent (RACA) and Accredited Air Cargo Agent (AACCA) schemes. OTS was planning to introduce new export air cargo security requirements in 2014 that include the introduction of a Regulated Shipper Scheme (RSS) and Enhanced Air Cargo Examination (EACE), as well as changes to the rules governing RACAs.²⁴ These initiatives have, however, been held in abeyance pending the development of further policy options.

DAG ensures that exported food and food products meet Australian standards and overseas requirements by way of its export certification procedures, which include the registration of relevant entities in the supply chain.²⁵ These arrangements are product- or sector-specific, with the inspection, verification and certification arrangements associated with the Export Meat Program being particularly stringent.²⁶

DFAT has also noted that concepts such as ‘approved exporter’, ‘registered exporter’ and ‘registered operator’ are impacting on discussions relating to the customs aspects of the Trans Pacific Partnership (TPP) and Regional Comprehensive Economic Partnership (RCEP).

Emerging trends

Clear trends are emerging from the evolution of the SAFE Framework and the national initiatives which have been implemented under it. More and more countries are implementing AEO programs, with a broadening scope, and it appears that advance data filing requirements and mutual recognition arrangements are beginning to have real impact on traders. From an exporter’s perspective, having a consignment deemed low-risk at destination implies a more rapid and predictable customs clearance. At the same time, increased air cargo security requirements (for example, known consignor or regulated shipper) and destination countries which require electronic pre-departure data make it more difficult for the export to leave the country of departure without meeting international requirements.

In the world contemplated under the SAFE Framework, where a high-risk consignment is one ‘for which there is inadequate information or reason to deem it as low risk’,²⁷ the exporter is more likely to face delays and costs associated with inspections if its exports are not recognised as low risk by the destination country.

Japan, the EU and the US all have introduced mandatory electronic pre-arrival notification requirements in recent years, and they continue to expand their coverage across different transport modes, and are moving to strict enforcement. They have also introduced voluntary programs under the SAFE Framework AEO standards and have seen them widely adopted among both traders and service providers alike. Mutual recognition among the three programs has been established, and implementation of differentiated risk targeting between the consignments of qualified AEOs and non-AEOs is in its early stages.

The concept of the ‘Authorised Supply Chain’ is therefore becoming a reality – so much so that these economies are making it a part of ongoing negotiations for new trade agreements, including the TPP. China and India already have AEO programs, the North America Free Trade Agreement (NAFTA) countries are actively working on regionally integrated supply chain security concepts, and Brazil, Russia, Turkey and many others are well advanced in developing their own AEO programs under the SAFE Framework.

With regard to air freight security, a similar evolution is underway. As individual countries strengthen their security programs, exporters in other countries wishing to send cargo to them are faced with having to comply with often onerous requirements as a prerequisite to utilising the air mode of transport. In addition, under the auspices of the ICAO and the WCO, an international effort to harmonise and standardise requirements is moving forward, again led by the Europeans and the Americans, with active input from Japan, China and others. The outcome of these discussions will almost certainly be a new

global standard for accessing the international air cargo network – and any business wishing to use it is likely to have no choice but to adhere to that standard, including any associated regulated agent and known consignor certification requirements.

While Australia is well advanced in relation to air cargo security standards, without an AEO (or equivalent) program in place, Australia cannot enter into mutual recognition discussions with its trading partners in the context of the SAFE Framework. Further, apart from the initiatives being undertaken by OTS and DA_g, there is no process in place for Australia’s exporters to demonstrate that they have had their security practices validated by government and certified as meeting AEO-equivalent standards.

Consequently, even if Australian exporters have operations which, in fact, meet or exceed international standards, without a national AEO-type program and certification under that program, they cannot be seen as links in an Authorised Supply Chain under the SAFE Framework. Taking international trends into account, it therefore seems ever more likely that their trading partners will deem their consignments to be high risk, and subject to the associated controls and targeting.

The way in which the commercial world is viewing the secure supply chain is also evolving. Those companies that have attained accreditation under AEO-type programs, including C-TPAT, are often reluctant to introduce new suppliers or service providers into their supply chain unless they have themselves obtained AEO status under their own national programs. The principal reason for this is their concern that introducing ‘unknown entities’ (from a regulatory perspective) into their supply chain may either jeopardise their AEO status, or impose additional costs in terms of the need to satisfy authorities that their third party operators meet the standards required under the particular scheme in which they have achieved accreditation.

Implications for Australia

Feedback from industry reflects a clear expectation that some form of AEO-type scheme (referred to by ACBPS as a Trusted Trader program) will be introduced, based on statements made by ACBPS in its ‘Blueprint for Reform 2013-2018’ and in subsequent speeches by the ACBPS executive.

The feedback also indicates an assumption that various product- and sector-specific arrangements will continue to be required by DA_g; and that air cargo security reforms will be progressed by OTS in consultation with industry.

In this context, the focus of industry’s attention is the likely scope, focus and detail of the Trusted Trader program, and the way it will be introduced and administered. There is also a keen interest in the likely relationship between the new program and the programs administered by OTS and DA_g, and opportunities for adopting a whole-of-government approach, particularly in relation to assessments of compliance with the respective membership criteria.

Note: For the purposes of this discussion, a member of the proposed Trusted Trader program is referred to as an AO.

Scope and focus of a Trusted Trader program

It is apparent that Australian exporters may be disadvantaged at some point in the future unless the Trusted Trader program includes export cargo, and is sufficiently robust to enable the establishment of MRAs with Australia’s trading partners. Indeed, the potential disadvantage to exporters of not having access to a national AEO-type scheme is seen to be a clear driver to include exports in any arrangement.

The principal criteria for mutual recognition established under the current version of the SAFE Framework are those related to security, as evidenced, for example, by the New Zealand arrangements

with the US. In fact the sole focus of New Zealand's Secure Export Scheme (SES) is the security of exported cargo. Furthermore, the New Zealand Customs assessment of supply chain security does not extend beyond outbound shipments from New Zealand. Consequently, if an Australian scheme did not extend to imports, it would most likely be sufficient to focus solely on security criteria in order to be eligible for mutual recognition.

However, members of the trade and transport industry that are involved in importing have indicated that a Trusted Trader program should also include imports, in which case there would doubtless be a need to include trade compliance as a prerequisite for accreditation. The benefit to importers is questionable if the focus is simply on ACBPS clearance procedures, as these are already considered to be quite efficient, and it was a perceived lack of benefits that caused the Accredited Client Program to fail.²⁸ Industry has, however, identified a number of possible incentives to join an import-focused scheme that look beyond the efficiency of clearance procedures. These include:²⁹

- 1. Reduced levels of intervention**

An AO should be subject to measurably lower levels of intervention than other members of the trading community. This includes physical cargo inspections, documentary queries and post entry audits.

- 2. Simplified procedures**

AOs should have access to deferred duty payment arrangements, for example, the ability to account for duty payments in their monthly or quarterly Business Activity Statement (BAS). The option of using periodic reporting arrangements should also be made available to AOs. Simplified procedures should also be introduced for obtaining permits, claiming duty drawback and similar arrangements where such activities form a regular part of an AO's operations.

- 3. Priority treatment**

A single point of reference such as an account manager should be provided to assist AOs in their dealings with ACBPS.

In the event of a physical inspection or documentary query, AOs should be given 'head of queue' treatment. In other words, the matter should be dealt with ahead of any similar matters relating to non-AOs.

Where possible, AOs may elect to have physical cargo examinations undertaken at premises nominated by them.

AOs should receive priority processing of applications for advices and rulings, such as tariff advices, Tariff Concession Orders (TCOs) and valuation rulings.

Priority processing should be provided to AOs in the event of trade disruption and/or elevated threat levels.

- 4. Reduced fees and charges**

Differential rates should be set for import processing charges and other fees where the regulatory activities on which such fees and charges are based are less frequently applied to members of the Trusted Trader program.

- 5. Mutual recognition**

Mutual recognition arrangements should be negotiated with Australia's major trading partners to ensure that AOs receive the benefits of facilitated clearance arrangements and any other benefits that may be available under the relevant country's AEO program. In this regard, Australia should seek to secure specific outcomes for its AOs under MRAs, as is the case with New Zealand and the US.

Membership of a Trusted Trader program

As service providers such as customs brokers, freight forwarders, express carriers and carriers all form part of the supply chain, those who see merit in a Trusted Trader program generally consider that it should be open to service providers as well as traders.

It should be noted that, in the export environment, service providers are already included in the arrangements operated by OTS (in the form of AACAs and RACAs) and by DA_g (for example, export abattoirs and boning rooms), as both agencies are focused on the security of the entire domestic supply chain from exporter to carrier.

In this context, the point has been made that, whatever costs may be involved in achieving AO status, a small or indeed medium-sized trader may not consider it to be worthwhile. However, accrediting service providers may provide an opportunity to include small and medium-sized enterprises (SMEs) in the Trusted Trader program. For example, in the export context, a service provider with AO status should, where sufficient safeguards have been shown to be in place, be able to provide an SME with a conduit into a recognised secure supply chain.

As such, an SME whose standard procedure is to export via an accredited entity should in concept be eligible to attain AO status for export activity adhering to such standard procedures. This concept is clearly reflected in the OTS model whereby goods exported by an entity that is not a Regulated Shipper are able to enter a secure supply chain by way of an RACA or AACA.

Whole-of-government approach

A key issue that has arisen during the course of the research is the degree of commonality between the DA_g and OTS export arrangements in terms of the criteria for accreditation under the two schemes, both of which aim to provide assurances about the security of the supply chain. Similarly, the security-related criteria that are expected to be attached to the Trusted Trader program will most likely reflect those applied by DA_g and OTS, to some extent.

Consequently, there appears to be scope for inter-agency recognition of an entity's status, at least to some degree. For example, a DA_g-registered exporter of meat that is seeking OTS accreditation as a Regulated Shipper could be expected to have already satisfied a number of the OTS requirements by virtue of their DA_g registration.

Similarly, ACBPS, when assessing the systems and procedures of an exporter that is seeking AO status, should take into account the exporter's existing accreditation with other agencies. In cases where the exporter holds DA_g registration and/or is an OTS Regulated Shipper, the need to (re)assess the security of the exporter's supply chain should be significantly reduced.

Further, if the Trusted Trader criteria were to recognise existing authorisations, accreditations and licences in part or in full, uptake of the AO program is likely to be significantly greater. Likewise, if AO membership were to provide exemption or easier access to OTS and DA_g authorisations, the Trusted Trader program would be providing a significant 'value add' for industry.

Such an approach has been pursued by other countries in the context of their AO programs. For example, in Singapore a Secure Trade Partnership (STP) member is recognised as a Known Consignor under the country's Regulated Air Cargo Agent Regime (RCAR).³⁰ Further, while cargo agents must apply for Regulated Cargo Agent status irrespective of their STP certification and vice versa, the Singaporean authorities will leverage the cargo agent's existing security certification(s) as far as possible in that the cargo agent will require minimal additional effort to meet the STP or RCAR program requirements. The authorities have future plans to harmonise and streamline both the STP and RCAR processes in that

cargo agents applying for, or who are part of, both the STP and RCAR will only need to undergo a single audit and an integrated application process.³¹ This will eliminate the need for cargo agents to submit duplicate documents and to undergo multiple audits by different authorities.

Implementing a Trusted Trader program

It is evident from the findings of the research that one country's solution for implementing the SAFE Framework may be inappropriate for another, due to political, economic, cultural and other variances. Each country therefore needs to identify the model that best suits its particular requirements, provided:

- the program complies with the provisions of the SAFE Framework
- the export-related elements of the program are sufficiently robust to enable the negotiation of mutual recognition arrangements.

In this regard, it would be acceptable to establish different criteria for export- and import-related elements of the program. An export program must, however, have security as its principal focus, for the purposes of achieving mutual recognition with trading partners. On the other hand, the type of benefits being sought by industry in the import environment should only be granted on the basis of demonstrating a high level of trade compliance. A logical approach may therefore be to establish:

1. an export scheme having supply chain security as its principal focus
2. an import scheme having trade compliance as its principal focus.

Both could be open to traders and service providers, and membership of both should be voluntary. The export scheme would also need to ensure that participants demonstrate appropriate levels of export compliance, including accuracy of declarations and procurement of relevant permits. Similarly, ACBPS would need to ensure that importers adhered to basic security requirements.

The development of two schemes also provides an opportunity to phase in the Trusted Trader program. The more immediate requirement is considered to be the need to mitigate the risk of erosion of Australian exporters' competitive position in the global marketplace. Consequently, it would be logical to introduce an export scheme as early as possible, and an import scheme shortly afterwards. This would also allow for further industry consultation on the detail of the import arrangements, and particularly the scope of benefits that may be provided to those members of the Trusted Trader program involved in imports.

An export scheme having supply chain security as its primary focus should be relatively easy to implement if the concepts discussed above are adopted. The work already undertaken by OTS could be used as a model for developing such a scheme, and New Zealand's SES program should also provide another useful template, and one which should redress any AEO-related market access concerns. Further, due to the advanced state of development of the OTS air cargo security arrangements, it may be prudent to firstly implement the new arrangements for air cargo, and to subsequently expand the scheme to include sea cargo.

Summary of research findings

The number of countries that are implementing AEO programs is increasing, and mutual recognition arrangements have triggered the introduction of customs risk targeting that differentiates between consignments of AEOs and those of non-AEOs. However, apart from the initiatives being undertaken by OTS and DAG, no process is in place for Australia's exporters to demonstrate that they have had their security practices validated by government and certified as meeting AEO-equivalent standards.

Consequently, while Australia is well advanced in its application of AO schemes in the air cargo and biosecurity environments, its failure to progress such an initiative in the customs context has the potential

to disadvantage Australian exporters who are more likely to face delays and costs associated with inspections if their consignments are not recognised as low risk by the destination country. Similarly, opportunities to ease the regulatory compliance burden of trusted and compliant importers and service providers are less likely to be realised in the absence of customs-focused AO arrangements.

There is a clear expectation on the part of industry that product- and sector-specific AO arrangements will continue to be required by DAG; and that air cargo security reforms will be progressed by OTS in consultation with industry. There is also an expectation that some form of AEO scheme will be introduced, based on the statements made by ACBPS, both in its 'Blueprint for Reform 2013-2018' and in subsequent announcements.

The potential disadvantage to exporters of not having access to an AEO-type scheme is seen to be a clear driver to include exports in any customs-related AO arrangement, the focus of which should be supply chain security, which is a prerequisite to concluding any mutual recognition arrangement under the SAFE Framework. Equally, however, industry has indicated that such arrangements should extend to imports, with trade compliance being the principal criterion for accreditation. Recognising that ACBPS clearance procedures are generally efficient, the range of potential benefits identified by industry include measures designed to improve cash flow, facilitate the resolution of queries and fast-track applications for formal rulings and decisions.

Those who see merit in an AEO-type scheme generally consider that it should be open to service providers as well as traders, noting that customs brokers, freight forwarders and other service providers are already included in the arrangements operated by OTS and by DAG. It has also been suggested that an 'authorised' service provider should be able to provide SMEs with a conduit into a recognised secure supply chain.

A key issue that has arisen during the course of the research is the scope for intra-agency recognition of an entity's AO status. For example, an agency's assessment of a trader that is seeking AO status should take into account the trader's existing accreditation with other agencies.

Conclusions

The research findings indicate a need for an AEO-type program in Australia, which is likely to be represented by the proposed ACBPS Trusted Trader program. The study concluded that the proposed program should be comprised of two elements – an export scheme having supply chain security as its principal focus, and an import scheme having trade compliance as its principal focus. Both could be open to traders and service providers, and membership of both should be voluntary. Participants in the export scheme would also need to demonstrate appropriate levels of trade compliance including accuracy of declarations and procurement of relevant permits, and ACBPS should similarly require importers to adhere to basic security requirements.

The development of two schemes provides an opportunity to phase in the Trusted Trader program, the more immediate requirement being the need to mitigate the risk of erosion of Australian exporters' competitive position in the global marketplace. Introducing an import scheme at a later date will also allow for further industry consultation on the detail of the import arrangements, and particularly the scope of benefits that may be provided to compliant members of the importing community.

The work already undertaken by OTS and DAG could be used as a model for developing the export scheme, and due to the advanced state of development of the air cargo security arrangements, it may be prudent to firstly implement the new arrangements for air cargo, and to subsequently expand the scheme to include sea cargo.

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Notes

- 1 This article summarises a research study conducted by the Centre for Customs and Excise Studies, Charles Sturt University, Australia, which was funded through the Australian International Trade and Transport Industry Development Fund.
- 2 See, for example, Widdowson 2005.
- 3 Invitations were also disseminated to a wider community/audience in the form of online newsletters and announcements, in one case by way of a 'Letter to Editor' of *Australian Maritime Digest* published by the Australian Association for Maritime Affairs, and in another instance as a news item in the *Air Cargo Security e-Newsletter* published by OTS.
- 4 CBFCA National Conference, Canberra, 24 to 26 October 2013.
- 5 CTAG meeting with ACBPS, Melbourne, 29 October 2013.
- 6 ECA Agribusiness Working Group Meeting, Brisbane, 17 September 2013.
- 7 At the time much reference was made to Tom Clancy's book *The Sum of All Fears* (1991) in which terrorists managed to smuggle a nuclear device onto US soil. Hawks and vendors of security solutions at industry gatherings also started talking about the 'poor-man's guided missile' – a parcel containing an explosive or pathogenic device, delivered by express courier to the designated victim, who signs for receipt and notifies the sender via track-and-trace. Public debate in response to 9/11 was also fuelled by Flynn in Flynn 2000, highlighting the perceived vulnerabilities within the modern shipping and logistics systems, the limits to physical inspections at the border, and urging for creative thinking on the part of the private sector, states, and international bodies. See Flynn 2002.
- 8 See, for example, US Customs and Border Protection (USCBP) n.d.; Laden 2007.
- 9 See WCO 2012a.
- 10 European Commission 2003, Resolution 2003/C 305/01.
- 11 European Commission 2005, Regulation (EC) No 648/2005.
- 12 European Commission 2006, Regulation (EC) No 1875/2006.
- 13 These were phased in during 2011.
- 14 AEO arrangements have been available to EU traders since 2008.
- 15 See IMO 2003, *Amendments to the Annex to the International Convention for the Safety of Life at Sea*.
- 16 IMO 1974, *International Convention for the Safety of Life at Sea 1974*.
- 17 For a current summary, see ICAO November 2013, pp. 55-75.
- 18 ICAO 2011b, *Annex 17 to the Convention on International Civil Aviation*, Section 4.6.2.
- 19 WTO 2013a, 2013b.
- 20 As of March 2013, there were a total of 167 WCO members who have agreed to implement the SAFE Framework; see WCO 2012c.
- 21 ACBPS 2011b, Minutes of Meeting, p. 5; 2012.
- 22 ACBPS 2013b, p. 36.
- 23 See Pezzullo 2013a, 2013b, 2013c, 2013d, 2013e.
- 24 Department of Infrastructure and Transport 2013.
- 25 Department of Agriculture 2013b.
- 26 See Department of Agriculture 2008. The Export Meat Program is governed by the *Export Control Act 1982*, Export Control (Prescribed Goods-General) Order 2005, Export Control (Meat and Meat Products) Orders 2005, Export Control (Wild Game Meat and Wild Game Meat Products) Orders 2010, Export Control (Poultry Meat and Poultry Meat Products) Orders 2010, Export Control (Rabbit and Ratite Meat) Orders 1985, and other legislation relating to export fees.
- 27 WCO 2012a, Annex I, p. 1.
- 28 See Widdowson 2006; ACBPS 2011a, p. 9; Australian Customs Service 2001, 2002.
- 29 Feedback from focus group participants, survey respondents and interviewees.
- 30 See Singapore Customs 2011; Singapore Customs n.d., *Factsheet for mutual recognition*; Singapore Customs n.d., *Secure trade partnership: STP-Plus companies*; Singapore Police Force n.d.
- 31 See Singapore Customs 2011; Singapore Customs n.d., *Factsheet for mutual recognition*; Singapore Customs n.d., *Secure trade partnership: STP-Plus companies*; Singapore Police Force n.d.

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