



**JIMMA UNIVERSITY COLLEGE OF LAW AND GOVERNANCE SCHOOL OF LAW
LLM PROGRAM COMMERCIAL AND INVESTMENT LAW**

Authorized Economic Operators' Regulation in Ethiopian Customs

**A Thesis Submitted In Partial Fulfillment of the Requirement for Master Degree of Law in
Commercial and Investment**

BY: - Badassa Lamessa

Advisers: - Yosef Alemu (Ass. Professor)

Sintayehu Demeke (Ass. Professor)

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Declaration

I declare that the research entitled with “**Authorized Economic Operators’ Regulation in Ethiopia Customs**” is my original work and has not been presented in Jimma University or any other University, and that all sources of material used for the research have been duly acknowledged.

Badassa Lamessa Signature _____ (The Researcher)
Date: _____

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Approval Sheet

The undersigned certify that they have read and hereby recommend to Jimma University to accept the thesis submitted by Badassa Lamessa and entitled **Authorized Economic Operators' Regulation in Ethiopia Customs** for fulfilment of the requirements of the award of Masters Degree of Commercial and Investment Law

Approved by Board of Examiner's

1. -----

2. -----

3. -----

Advisors: Yosef Alemu (Assistant Professor)

Sintayehu Demeke (Assistant Professor)

Letter of Certification

This is to certify that Badassa Lamessa Kebede has carried out his thesis on the topic entitled “**Authorized Economic Operators’ Regulation in Ethiopian Customs**”. This work is original in nature and is suitable for submission for the award of Masters of commercial and investment law.

Yosef Alemu (Ass. professors) and Sintayehu Demeke (Ass. professors)

(Thesis Advisors)

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.

ACRONOMYS

AEO- Authorized Economic Operator

ASEAN- Association of Southeast Asian Nations

ATF- agreement on trade facilitation

CBP- Custom business partnership

COMESA- Common Market for Eastern and Southern Africa

CSI- Container Security Initiative

C-TPAT- Customs-Trade Partnership against Terrorism

ERCA- Ethiopian Revenue and Customs Authority

ESLSE- Ethiopian Shipping and Logistics Service Enterprise

FGD- Focused Group Discussion

FTA- trade facilitation agreement

GTPI-Growth and transformation plan one

GTPII-Growth and transformation plan one

ICAO- International Civil Aviation Organization

ICC- International chambers of commerce

IMO- International maritime organization

ISCM- Integrated supply chain management

MNC- Multinational Corporation

NAFTA- North American Free Trade Agreement

OECD - Organization for Economic Cooperation and Development PCA: Post Clearance Audit

RKC- Revised Kyoto convention

SAFE- Framework of Standards to Secure and Facilitate

TRS- Time Release Study

UNESCAP- United Nations Economic and Social Commission for Asia and the Pacific

WCO- World Customs Organization

WTO- World Trade Organization

Abstract

Trade facilitation is a mechanism through which measures are taken to make trade easier, quicker and cheaper. This can be achieved by simplifying custom procedures relating to the clearance of goods with reducing bureaucracy in import, export trade process and harmonizing national laws and rules with international standardized trade regimes. Minimizing the number of laws, guidelines and regulations regarding international trade is also the other mechanism through which trade facilitation can be achieved.

Authorized Economic Operator is a program developed after 9/11 New York attack by a group of terrorist. The program has been initiated to secure the security of supply while facilitating trade. Member countries to the WCO have adopted AEO program to facilitate cross border trade and to secure the national security and supply chain in their own respective jurisdictions.

Ethiopia Revenue and Custom Authority has launched Authorized Economic Operators program as a trade facilitation scheme in 2008 as per article 14(2) and 112 (2) of the Custom proclamation number 622/2008 and Authorized Economic Operators directive No.65/2011.

This study was conducted to examine the problems in regulation of Authorized Economic Operator program implementation in Ethiopia custom. In Ethiopia companies joining the AEO program have been increasing from time to time, even if there are legal gaps and a little understanding on the overall nature and benefits of the program around operators, regulator and with other regulatory bodies.

The study has combined both doctrinal and non doctrinal legal research methodologies. The writer has extensively reviewed literatures and has also conducted focused group discussion (FGD) with selected stakeholder and distributed questionnaire to selected targets. The researcher has scientifically selected samples among the available total population.

The finding of the study indicated that the existing custom legal regimes are inefficient to regulate the AEO program and institutional structures relate to AEO was weak to organize and to take legal and administrative measure to correct problems affecting the regulation of the AEO program.

Lack of adequate legal regimes and institutional frameworks created multiple problems in regulation of AEO companies in admission, in operation and in taking measures when there is an error in the operation.

Accordingly, the study recommends amendment of the custom legal regimes and institutional framework and setting up leading agency that coordinates all regulatory body and services. In addition the writer recommends for additional employment of experience expertise to the AEO unit with competent experts.

Key words: Authorized Economic Operators, custom, world custom organization, SAFE framework, authorization, regulation and mutual recognition.

Chapter One: Introduction

1.1 Background of the Study

According to the World Customs Organization hereafter (WCO) the responsibilities of a customs administration are revenue collection, national security, community protection, trade facilitation and collection of trade statistics.¹

National customs and borders control agencies typically have a parallel mandate in which to facilitate the flows of legal trade while concurrently deterring illegal trade.²

The complexity of managing the legitimate trade, revenue collection, community protection, national security while concurrently preventing illicit trade can be extremely demanding facilitation of cross border trade.³ To this end, the member states to the WCO have agreed by revised Kyoto conventions to facilitate international trade through applying trade facilitation schemes supported by laws.

Among these schemes, trade facilitation program by simplifying customs procedure and harmonizing customs laws are of the vital method.

Authorized economic operators programs is the means through which custom procedures are simplified for the selected and qualified persons upon satisfying the criteria set by customs administration.

By Kyoto Convention⁴ as amended in its preamble the member countries to the convention committed to eliminate divergence between the customs procedures and practices among themselves that can hinder international trade, by simplifying and harmonizing customs procedures and practices.⁵

¹ Catherine Truel and Emmanuel Maganaris (2015) Breaking the code: The impact of the union customs code on international transaction, World custom journal Vol. 9, No.2, p.38-47

² Hans-Michael Wolfgang and Edward Kafeero (2014) Old wine in new skins: analysis of the Trade Facilitation Agreement vis-à-vis the Revised Kyoto Convention, World custom journal, Volume 8, Number 2 p. 15.

³ Ibid p 23

⁴ Kyoto convention is an International Convention adopted by WCO member states on the simplification and harmonization of customs procedures

⁵ Kyoto convention as amended (2006) International convention on the simplification and harmonization of customs procedures, preamble paragraph 2

Ethiopia acceded to World Custom Organization (WCO) memberships since 1973 G.C⁶ and attempted to satisfy its obligation as a member by taking legislative and administrative measures to make custom legal frameworks compatible with the convention that can facilitates international trade through customs administration.

Authorized economic operators (AEO) is a program initiated to find the common ground between customs interests in maintaining legal, secure movement of goods, ensuring revenue collection and business community's concern of fast, efficient, predictable customs services.⁷ AEO program is a wide concept as it was launched by WCO and national customs administration. Currently a majority of WCO member nations are applying and practicing the AEO program in their own view that leads the application of the program in divergent ways and in varying degree.

In Ethiopia AEO program has been launched in 2011 based on Proclamation No. 622/2009 article 14(2) and article 112(2), and by Authorized Economic Operator directive No. 65/2011. This directive has been issued by ERCA to regulate that trade facilitation is being practiced in Ethiopia customs in relation AEOs program implementation. Depending on the above customs legal regime ERCA licensed a few economic operators with special benefit and facility relatively with those non authorized economic operators.

The concept of AEO program and its practical application is new to Ethiopia custom. Therefore, it is worth to examine how ERCA is exercising its legal mandate while authorizing, suspending and revocation operator's licenses and the whole system of decision making and a right to appeal on the decision of the authority in light of custom legal regimes.

1.2 Literature Review

The concept and practice of AEOs is almost an emerging recent issue for the Ethiopian legal system and for the rest of the world at all stage of its implementation which mean pre-authorization process, operational stage and post authorization of the program.

⁶ www.wco official website lists of memberships accessed on November 09, 2016.

⁷ Tesfaye Gelan(2014) Investigating Impact of Authorized Economic Operator Program Implementation on Operational Performance of Member Companies, MA thesis p.8

To the knowledge of the researcher, there is no single domestically written literature on the topic and subject in specifically except for a publication on a related subject matter by Tilahun Esmael Kassahun, on the topic “Trade Facilitation in Ethiopia”, the Role of WTO Accession in Domestic Reform which focuses on customs law, border institutions, transport and logistics services and various issues related with investment and trade policy. In so doing, it attempts to examine how Ethiopia’s WTO accession and trade facilitation instruments can be streamlined with domestic reform in the case of custom valuation that WTO oblige trade and custom reforms.

The other literature contributed by Tesfaye Gelan on the topic ‘Investigating Impact of AEO Program Implementation on Operational Performance of Member Companies’ focusing on the impact of program implementation on the performances of AEO companies by measuring the changes after program implementation in AEO companies.

This research on the other hand focuses on the regime governing authorized economic operator’s regulation in Ethiopian customs administration. Accordingly the researcher intends to find out legal gaps with a view to provide feedback to responsible organs how implementation and regulation of AEO program would it be.

1.3 Statement of the Problem

Customs is the entrance and exit of the various agencies that intervene in international trade in goods. From the first paragraph of preamble of FDRE, Customs Proclamation No. 859/2014 we can understand that Ethiopia wants to have expedient and modern customs legal framework which encourages the development of manufacturing industries and investment which are compatible with international trade regime and practices.⁸ To this end, the country wants to have simplified custom procedure which gives the customs authority to authorize a person as AEO which are privileging them. The application of simplified custom procedures shall be allowed for selected and registered persons upon fulfilling eligibility criteria specified by the authority.⁹

⁸Customs Proclamation No. 859/2014, Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, 20th No. 82, Addis Ababa, December, preamble paragraph 1 and 2

⁹ Ibid article 84(1)

Benefits provided for authorized persons are simplified custom procedures for goods declaration¹⁰, simplified procedures for clearance of goods¹¹ and self-assessment of the customs duty and tax liabilities.¹² These simplified customs procedures give the authorized persons comparatively wider rights and opportunities in the business arena than non-authorized economic operators.

Now days, a numbers of the business operators are joining to AEO program and the economy is demanding facilitated custom procedures for licit trade, still there are misbehaves of the operators by having the programs veil and trying to benefit from the existing legal gap. So, it is necessary to evaluate whether Ethiopian custom laws are sufficient or not to control the implementation and regulation of authorized economic operators programs at every stage of its application.

1.4 Objective of the Study

1.4.1 General Objective

The general objective of this study is to evaluate/examine whether the Ethiopian custom legal framework provides sufficient control mechanism on the implementation and regulation of AEO program.

1.4.2 Specific Objectives

The specific objectives of this study are:-

- To analyze and asses legal regime related to regulating authorized economic operators implementation in Ethiopia,
- To assess how trade facilitation in Ethiopian custom administration are implemented,
- To examine the opportunities and challenges facing the regulators and the operators in the process of AEO program implementation,
- Explore the practical experience of authorized economic operators program at international and at national levels,

¹⁰ *Ibid article 85 sub article 1-3*

¹¹ *Ibid article 86*

¹² *ibid article 87*

- To critically examine the regulatory role and mandate of the regulatory body of Ethiopian revenue and customs authority.
- To identify the best practice in order to improve operators compliance with their obligation and to enhance the capacity of the regulator.

1.5 Research Questions

1.5.1 Preliminary Research Question

Are there efficient and adequate legal regimes for ERCA to regulate the implementations of the authorized economic operators program in Ethiopia?

1.5.2 Specific Questions

- How authorized economic operators program are incorporated under Ethiopian customs law/legal regime?
- Are there particular laws which clearly set the legal requirement to determine eligibility of persons as Authorized economic operators?
- Who is mandated to admit the persons as operators or is there any legally established institutional framework for this purpose?
- Are there systems to appeal on the decision of the ERCA in the case of AEO?
- What is the current status of AEO program implementation and its regulation with the performance of AEO companies in Ethiopia?

1.6 Significance of the Study

- The study provides a relevant insight on the idea of Authorized Economic Operator implementation and how the program facilitates international trade and the regulatory mandate of the authority with association authorization of AEO program.
- The study will be used as reference instrument for regulatory body of AEO program (ERCA).
- The study provides a basis for better understanding of the essence of AEO how it is applied on the international and national level.

- It provides an important feedback to legislative, regulatory organ and any concerned body in Ethiopian to make efficient laws related to the implementation of the authorized economic operators.
- The study also attempts to propose the possible ways that improve the operation AEO in Ethiopia and recommend the legal measure to be taken by government and by regulatory organ to maximize the desired benefits needed from both the ERCA and economic operators.
- It also provides an initial input for further research in this area.

1.7 The Scope of the Study

Even if trade facilitation program implemented by custom administration are to complex and wide in range which need critical examination of legal regime to determine its efficiencies, due to some reason connected to time, resource and logistic this study only focuses on the examination of the Ethiopian legal regimes regulating the implementation of authorized economic operators in customs administration.

1.8 Limitation of the Study

Time, finance and lack of adequate references on the subject matter written by domestic scholars are limitation in undertaking this research. As a result the researcher has been forced to make use of many e-resources and web materials which itself often could be difficult because of the poor internet connection.

1.9 Research Methodology

The researcher used a multiple methods that include literatures review to, documentary resources and focus group discussions with the responsible departments in Ethiopian Revenue and Customs Authority. The researcher used qualitative and quantitative method of data interpretation to identify critical problems in the area.

1.10 Sampling Techniques

The researcher used purposive sampling method in collecting data from AEO companies through questionnaire and establishing FGD with ERCA AEO unit experts. To this end the researcher select purposively 7 AEO companies that representing 46 licensed AEO companies engaged on different business sectors(importer, manufacturer and transistor) having different AEO certificate status(gold, silver and bronze) where as FGD group formed taking into consideration of seniority of the experts and working experiences on the area.

1.10. Data Sources and Methods of Data Collection, Interpretation and Analysis

This study employed fundamentally qualitative and quantitative data generated from both primary and secondary data sources. Accordingly, primary data has been collected from ERCA AEO unit via focused group discussion and from selected authorized economic operators by questionnaire. Custom laws, official reports related to the issue of AEO also analyzed.

Secondary data has been used as part of the literature review for further analyses of the basic concepts and theories involved in the study. These tasks have been accomplished via retrieving various materials on the subject matter such as: books, journal articles, magazines and internet sources.

The data obtained from the primary and secondary sources of various kinds has been transcribed and analyzed.

1.10.1. Questionnaire

Open ended questionnaire prepared in English language has been distributed to the respondents.

1.10.2. Focused Group Discussion

The researcher conducted Focused Group Discussion with ERCA AEO unit by forming one group of experts contains two senior experts.

1.11. Organizations of the Research

This thesis has been organized in the manner that would give clear, consistent and coherent understanding of the general message of the study by dividing the work in to five chapters.

Thus, the first chapter is the introductory part which is designed to give information to the reader what necessitated the commencement of study. Hence, it gives an insight about the general background, objectives aimed to be achieved, significance of the study, methodologies used, limitations and scope of the study.

The second chapter discusses the conceptual and historical issues of authorized economic operators in general. It describes and defines information used throughout the thesis to introduce the reader to the subject and give necessary background information for further understanding.

The third chapter deals with general concept of authorized economic operators under Ethiopian legal regime in authorization and regulation of authorized economic operators in Ethiopian custom administration.

Forth chapter concerned with data presentation, analysis and interpretation. The fifth and final chapter is concerned with conclusion and recommendation based on the research findings.

Chapter Two: The Conceptual Framework of Trade Facilitation and Authorized Economic Operators

2.1. Introduction

Goods move from one border to another border through national customs. Among these critical reasons subjecting a movement of good to national customs and border controlling agencies are revenue collection, national security, customer protection and controlling illegal trades.¹³ However, these critical reasons employ multiple problems which obstruct international trade like bureaucratic delays¹⁴ and “red-tape¹⁵” pose a burden for moving goods across borders for traders. These types of delay create multiple costs which dissatisfy traders to engage in international trade in goods.¹⁶

The combination of these pushing factors forced to increase a focus on trade facilitation through applying different enhanceive programs to balance the interest of traders and governments.

The meaning of trade facilitation is not limited to border procedure facilitation to make trade rules and regulations as efficient through the simplification and harmonization of documentation, procedures and information flows, it also include policies and measured aimed at easing trade costs and time by improving efficiency at each stage of engagements in international trade chain.¹⁷

Trade facilitation has been defined by international and regional organisations in their own perspectives. WTO has defined trade facilitation as a simplification and harmonization of international procedures affecting trade flows focusing on particular activities, practices and formalities involved in collecting, presenting, communicating, and processing data required for

¹³ Supra note 1

¹⁴ Lam Bing Chuen (2014) Bureaucracy And Red Tape : A Comparison Between Public And Private Construction Project Organizations In Hong Kong, Dissertation available at <https://hub.hku.hk/bitstream/10722/48848/1/b37930357.pdf?accept=1> accessed on April 12, 2017

“Bureaucracy is a professional corps of officials organized in a pyramidal hierarchy and functioning under impersonal, uniform rules and procedures. In the social sciences, the term usually does not carry the pejorative associations of popular usage”

¹⁵ <https://www.collinsdictionary.com/dictionary/english/red-tape> accessed on April 11, 2017.

Red-tape means obstructive official routine or procedures that time consuming activities and practices.

¹⁶ Ibid

¹⁷ Tilahun Esmael Kassahun(2014),Trade Facilitation in Ethiopia: The Role of WTO Accession in Domestic Reform, Mizan Law Review Vol. 8, No.1, p.150

the movement of goods and services across international borders.¹⁸ World Bank also defined trade facilitation as: the environments in which trade transaction take place, transparency and professionalism of customs and regulatory environments, as well as harmonization of standards and conformance to international or regional regulations.¹⁹

The Organization for Economic Cooperation and Development (OECD) has defined trade facilitation based on its viewpoint as the simplification and standardization of procedures and associated information flows required to move goods internationally from seller to buyer through borders and to pass payment in the other direction.²⁰ There for trade facilitation is a means of making cross border trade fast and efficient.

In general term trade facilitation is a mechanism through which measures are taken to make trade fast, easier, quicker and less costly by simplifying custom procedures related to the clearance of goods with reducing bureaucracy in import, export trade process and harmonizing national laws and rules with international standardized trade regimes²¹ by minimizing the number of laws, guidelines and regulations regarding international trade.²² Trade facilitation looks at how the procedures and controls governing the movement of goods across national borders can be improved to reduce associated costs and maximize efficiency while safeguarding legitimate regulatory objectives like economic, business, administrative and policy matters.²³

The benefits of improving trade facilitation include: the increase of trade volume and services, encouragement of competition which can prompt productivity, lowering prices and enhancing efficiency in both the state sector and the private sectors. This can be exercised by reducing administrative costs, improving business environment in encouraging foreign direct investment and increasing participation of small-and medium-sized enterprises in international trade.²⁴

¹⁸ Tora Hammar (2009), trade facilitation in Vietnam recent progress and impact P.9

¹⁹ Ibid

²⁰ Supra note 16

²¹ ibid p. 7

²² Ibid page 18

²³ Ibid p.152

²⁴ Ibid

Traders, consumers and producers benefit from trade facilitation because of lower trade transaction costs which in effect enhance trade efficiency.²⁵ To meet this objective, the World Custom Organization (WCO) has developed trade facilitation instruments and tools like Revised Kyoto Convention (RKC), SAFE Framework of Standards, WCO Data Model²⁶, Single Window Compendium, and Time Release Study (TRS) and²⁷ that make international trade efficient in custom administration of member countries. One of the concerns expressed by WCO Members countries regarding the implementation of agreement on trade facilitation (ATF) is to reduce the risk of a non-standardized approach leading to divergent practices of WCO instruments.²⁸

WCO's member state have taken the commitment to eliminate divergence between their customs procedures and practices that can hamper international trade and other international exchanges, pledged to contribute effectively to the development of trade and exchanges through simplifying their custom procedures and harmonizing custom laws.²⁹

National customs administration plays a great role to make international trade fast, efficient and predictable movement of trade in goods from one country to another by adopting the revised Kyoto convention as whole and by incorporating conventions' provisions in particular custom related legal regimes.³⁰ This needs to modernize/change trade policies, supporting legislation, adopting modern and simple procedures and shift to substantial reliance on self assessment by taxpayers, supported by post clearance controls, ensuring incentives and organizational structures conducive to integrity and effectiveness in custom administration.³¹

²⁵ Chris Milner, Oliver Morrissey and Evious Zgovu, Trade Facilitation in Developing Countries, p.5

²⁶ The WCO data model is an initiative of the World Customs Organization and developed based on G7 initiatives to simplify and standardize data requirements of Cross-border regulatory agencies including customs.(Trade facilitation implementation Guide, WCO data model(available <http://tfig.unece.org/contents/wco-data-model.htm> accessed June 2017

²⁷ <http://www.wcoomd.org/en/topics/wco-implementing-the-wto-atf/~media/44542CEBFB76401CB5E3F5794C2F134F.ashx> accessed 28 February 2017.

²⁸ Ibid

²⁹ Kyoto convention as amended (2006) International convention on the simplification and harmonization of customs procedures preamble paragraph 4

³⁰ *ibid*

³¹ <http://www.imf.org/external/pubs/nft/2003/customs/> accessed on February 28, 2017.

Authorized economic operator (AEO) is one of the way through which custom laws are harmonized and procedures are simplified for traders fulfil mandatory criteria set by custom administration. The traders expected to comply appropriate compliances records with customs and other related custom laws and regulations, managing records to allow for necessary internal controls, financial solvency, and provision of a sufficient security or guarantee before joining the program.³² AEO program includes manufacturers, importers, exporters, brokers, carriers, consolidators, intermediaries, ports, airports, terminal operators, integrated operators, warehouses, distributors.³³

The operators with AEO status or applying for the status are expect to get benefits in return for their efforts of complying with high security requirements for example, in the form of reduced controls and priority treatment and potential further advantages.³⁴ The potential benefits are prioritized cargo processing and release, reduced cargo inspections and ‘head of the line’ priority use of non-intrusive inspection techniques and such measures will decrease time cycle, increase supply chain predictability and potentially lower storage expenses while facilitating on-time deliveries and customer satisfaction.³⁵

Although this program offers multiple benefits for authorized persons it also has negative impacts on traders, particularly those small and medium size which don’t have resources to go through the authorization process there by locking them out of benefits.³⁶ Beside, Problems in implementing AEO have arisen, namely, a lack of legal frameworks, deficiencies in tangible benefits, and discrimination against small and medium-sized enterprises (SMEs), lack of expertise on security verification, and problems with mutual recognition across countries.³⁷

³² Wt/L/93 (15 July 2014), Agreement On Trade Facilitation Article 7(2)

³³ Shujie Zhang and Rob Preece (2011) Designing and implementing Customs-Business partnerships: a possible framework for collaborative governance, *World custom journal*, Vol.5, No.1, p.48.

³⁴ Susanne Aigner (2010), mutual recognition of authorized Economic Operators and security measures, *World custom journal* Vol. 4, No.1 p. 47.

³⁵ Theo Fletcher (2007), Authorized Economic Operator (AEO) Programs: IBM’s Perspective, *World custom journal* Vol. 1, No.2, p.64

³⁶ Catherine Truel and Emmanuel Maganaris (2015) Breaking the code: the impact of the union customs code on international transaction, *World custom journal* Vol. 9, No.2, page 18

³⁷ Supra note 25, p. 44

The objective of business persons including AEO is to reduce the amount of intervention by customs in the importation/exportation process, thereby reducing costs and being able to rely on the movement of goods and their availability for sale whilst customs agencies recognize their roles in administering custom operation, both business person and custom agencies seek to achieve these objectives in the most cost-effective manner.³⁸ Modern customs procedure requires limited intervention which in effect allows for cost effective border management, facilitates trade and economic growth.³⁹ The AEO concept is making a deal between government and business. Under such scheme, if business convinces customs by normally complies with customs regulation, in return the business also expects from customs an enabling environment for predictable and rapid clearance and transit process in their day to day business transactions.⁴⁰

2.2. Trade Facilitation

The roots' of trade facilitation are traceable in the preamble to the Convention Establishing a Customs Co-operation Council of December 1950 which gives emphasis on the need to secure the highest degree of harmony and uniformity in customs systems in facilitating trade in goods and protection of people through customs controls by using different mechanism.⁴¹ The main objectives of trade facilitation, according to the WTO, are to simplify formalities and procedures related to import/export and transit of goods, to harmonize applicable regulations and laws, to standardize and integrate definitions as well as requirements of information, the use of information and communication technologies to make international trade fastest, cheapest, efficient to play a vital role in economic developments.⁴²

To this end, there are two major multilateral international agreements currently existing regarding trade facilitation. This two established conventions are the United Nations Economic Commission for Europe's (UNECE) focuses on the International Transport of Goods Under

³⁸ Supra note 25, p. 50

³⁹ ibid

⁴⁰ Tesfaye Gelan(2014) Investigating Impact of Authorized Economic Operator Program Implementation on Operational Performance of Member Companies, MA thesis p.16

⁴¹ Hans-Michael Wolfgang and Edward Kafeero (2014): Legal thoughts on how to merge trade facilitation and safety & security world custom journal, Vol.8, No.1 p 7.

⁴² Pegah Sheikhan (2008), Trade Facilitation in the Multilateral Trading System - An Analysis of the Doha Round Negotiations on Trade Facilitation, LL.M program Master Thesis, p.8

Cover of TIR Carnets and the World Custom Organization's (WCO) Revised Kyoto Convention focus on customs facilitation. In addition, international chambers of commerce (ICC) play an important role in trade facilitation by closely working with the WCO, WTO with its recommendations and International Maritime Organization (IMO) is another organization, which mainly address trade facilitation and safety in the maritime field.⁴³

The WCO has continuously developed and upgraded a number of instruments with intention of facilitating global trade and to secure the supply chain. Among those instruments the Revised Kyoto Convention, Istanbul Conventions, WCO Data Model, Time Release Study, Globally Networked Customs Concept, WCO Customs Risk Management Compendium, Immediate Release Guidelines, and the Compendium on how to build a Single Window Environment are the main.⁴⁴ These instruments are developed at different times to facilitate and secure international trade and movement of good in supply chain security.

Trade facilitation, understood as the simplification, standardization and harmonization of procedures and associated information flows required to move goods from seller to buyer and to make payment, has a lot to do with security of the global trade supply chain and to improve the interface between government regulatory bodies and traders at national borders.⁴⁵

To facilitate international trade different intergovernmental and other international organizations/institutions have come up with various rules, regulations, guidelines and related instruments to enhance trade facilitation, safety and security.⁴⁶ Since trade facilitation and security of the international trade supply chain are key elements in the rapidly growing global trade, there are a number of international/supranational organizations involved, albeit at different levels, in regulating and implementing trade facilitation and security-related provisions.⁴⁷

World trade organization has a task of providing leadership, guidance and other supports for custom administrations to secure and facilitate legitimate trade, realize revenues, protect society,

⁴³ Ibid p.13

⁴⁴ Hans-Michael Wolfgang and Edward Kafeero (2014), Legal thoughts on how to merge trade facilitation and safety & security, world custom journal Vol.8, No.1 p. 7

⁴⁵ Ibid p. 3

⁴⁶ Ibid

⁴⁷ Ibid page 4

and building capacity by using trade different mechanisms.⁴⁸ In addition WTO come up with the issues of trade facilitation by trade facilitation agreement (FTA) which provide provisions for expediting movement, release and clearance of goods, including goods in transit. Custom business partnerships should be created to discharge their respective obligation in trade facilitation and supply chain security.⁴⁹

At the regional level, trade facilitation is an equally significant agenda item. For instance, the European Union has largely removed the internal borders between its 26 members, Association of South East Asian Nations (ASEAN) progressing regional integration through customs and trade procedure, the more prominent ones amongst these are the North American Free Trade Agreement (NAFTA) and Mercosur in Latin America, and the Common Market for Eastern and Southern Africa (COMESA) are progressively integrating their custom formalities.⁵⁰

In addition to both international and regional concern/agenda for trade facilitation the reduction of trade related transaction costs is an equally significant agenda item at the national level. Trade facilitation policy objectives might be pursued by national customs administrations, trade ministries or, for that matter, any other government department involved in the governance of the cross border environment.⁵¹

Now days the topic of trade facilitation get much attention at global, regional and national level to improve the efficiency, cost effectiveness and time expedient goods movement from end to end. For the reason that, the failures of one custom administration be able to harm the interest of different stockholders involved in international trade. This linkage shows that international trade facilitated if and only if custom procedures are simplified and laws are harmonized. This changed the role of custom through time from get keeper and revenue collection to its today's holistic approach of trade facilitation and protection of national security.⁵²

⁴⁸ World trade report, 2015, p.51

⁴⁹ Libing Wei (2015) China Customs' reform: approaches to improving the professionalism of customs clearing agents to enhance trade facilitation, World custom journal Vol.9, No.1 p. 71.

⁵⁰ Andrew Grainger (2008) Customs and Trade Facilitation: From Concepts to Implementation, World Custom Journal Vol.2, and No.1 P.20-21.

⁵¹ *ibid*

⁵² *Supra* note 1 and Tesfaye Gelan(2014) Investigating Impact of Authorized Economic Operator Program Implementation on Operational Performance of Member Companies, MA thesis p.7

2.3. Authorized Economic Operators

After the September 11, 2001, attacks on the United States of America (USA), nearly all air traffic over the United States was grounded, and land borders and seaports were sealed. The economic impact of these shutdowns resonated within the United States and throughout the world, demonstrating the vulnerability of international supply chains. The United States, Canada, New Zealand, Jordan, Sweden, Netherlands, Australia, and Singapore moved quickly to implement security programs (AEO).⁵³

This September 11, 2001 incident reminded the role of custom administration has to ensure security of supply chain to prevent different kinds of attack from terrorism acts, which need cooperation between custom administrations of exporter to the custom administration of importer to secure national security and safe supply chain of goods movement from customs to customs.⁵⁴

WCO had long discussed the security of international logistics flow, i.e. supply chain security, from producers to ultimate consumers. The fateful September 11 terrorist attacks on the united state of America (USA) led the implementation of a new logistics security system and regulations for trade security and began to work as a non-tariff barrier causing time delays.⁵⁵

Recognizing the need to develop a uniform set of strategies to secure yet facilitate the movement of global trade, the WCO began developing Customs Guidelines on Integrated Supply Chain Management (ISCM Guidelines) in 2002, followed by ISCM 2004 and followed by SAFE 2005.⁵⁶ In June 2005 the WCO Council adopted the SAFE Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework) that would act as a deterrent to international terrorism, secure revenue collections and promote trade facilitation worldwide. The core impression of this international framework is the Authorized Economic Operator (AEO) program implementation, whereby a party involved in the international movement of goods would be

⁵³ Robert L. Holler and Jeremy Schanck Customs Modernization Handbook Authorized Economic Operator Programs, for the USAID Worldwide Support for Trade Capacity Building project, p. 3

⁵⁴ Ibid.

⁵⁵ History of AEO (2016) available at <https://www.aeo.ae/index.php/history-of-aeo/> accessed 02 March, 2017.

⁵⁶ Supra note 33, p. 1

approved by Customs as complying with the supply chain security standards, and given benefits, as simplified Customs procedure and less Customs intervention.⁵⁷

Moreover, other international organizations have developed enhance standards, principles and practice in trade facilitation and security. International Civil Aviation Organization (ICAO) has independently developed global standards and recommended practices to ensure air cargo supply chain security. These principles and practices have been enhanced in response to the ongoing threat of terrorist attacks, including the more recent air cargo security incidents originating from Yemen in 2010.⁵⁸

The Standards and Recommended Practices, contained in Annex 17 to the Chicago Convention, include Regulated Agent and Known Shipper/Known Consignor programs. These standards 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 with aim of protecting the supply chain security before forwarding to the destination of the cargo.⁵⁹

Even if the concept and practice of the custom business partnership (CBP) is not new in the customs environment, its development are embodied in three key WCO instruments: the Revised Kyoto Convention (1999), the Framework of Standards to Secure and Facilitate Global Trade (the SAFE Framework) (2007), and the policy document 'Customs in the 21st Century' (2008).

Based on these WCO instruments several countries custom administration implemented authorized economic operators' program in diverse name for the same or similar activities. Some countries focus on importation, the other focuses on exportation and the other focuses on both export and importation including security. For example, in the United States authorized economic operators called C-TPAT Customs-Trade Partnership against Terrorism. In United Kingdom, Sweden, the Netherlands, New Zealand AEOs have the given this name - Secure Export Scheme (SES). Authorized economic operators called in Singapore (STP Secure Trade Partnership), in Brazil

⁵⁷ Ibid

⁵⁸ David Widdowson, Bryce Blegen, Mikhail Kashubsky and Andrew Grainger (2014), Review of accredited operator schemes: an Australian study World custom journal ,Vol.8, No.1 p.23

⁵⁹ ibid

(Express Customs System Blue Line), in Canada (PIP Partners in Protection) and several others.⁶⁰

2.3.1. Definition of Authorized Economic Operator

The concept of Authorized economic operators is defined under different relevant documents with its scope of application.

WCO SAFE Framework, defined an AEO as ‘*a party involved in the international movement of goods in whatever function that has been approved by or on behalf of a national Customs administration as complying with WCO or equivalent supply chain security standards including all stakeholders in the international supply chain: manufacturers, importers, exporters, brokers, carriers, consolidators, intermediaries, ports, airports, terminal operators, integrated operators, warehouses, distributors*’.⁶¹

The WCO SAFE definition extends to all operators in international trade and related trade activities specially the transportation sectors. But some AEOs programs are open to all operators in the supply chain while others are restricted to importers/ exporters. AEO concept focused on ensuring security in the international supply chain and safe and secure society, especially preventing terrorism, and at the same time, facilitating legitimate flow of goods, through providing trade facilitation measures to the operators who are well-compliant with the supply chain security standards.⁶²

Trade facilitation and security issues are the inner part of authorized economic operators program. To this end, WCO SAFE framework provided two pillars as custom to custom partnerships and custom to business partnerships in the under SAFE framework to implement AEO program.⁶³ Pillar one Customs-to-Customs partnership is one of the ways through which cross border trade be secured by customs administrations working co-operatively with common and accepted standards to maximize the security and facilitation of the international trade supply chain as cargo and container shipments move along the nodes of the global trading system.⁶⁴

⁶⁰ Leonardo Correia Lima Macedo (2011) Large Traders’ Customs Units, world custom journal Vol.5, No.1, p. 67

⁶¹ Safe Framework of Standards, 2014 Annex I/p.1

⁶² Customs & Tariff Bureau Ministry of Finance of Japan (2016), AEO program p.2

⁶³ *ibid*

⁶⁴ WCO SAFE Framework of Standards (2007) section 3 p.7

Pillar two custom to business partnership has six standards⁶⁵ are outlined to establish the international accredited trader regime based on WCO SAFE Framework (2007) and the WCO AEO Guidelines (2009) that the guidelines are serving as model for national AEO programs. And the key notion of the AEO regime is to adopt integrated international supply chain management and control to secure trade security and facilitation.⁶⁶

Mutual recognition refers to the recognition of accredited AEOs in different countries thereby contributing to the establishment of secure supply chains as protecting products, facilities, equipment, information, and personnel from theft, damage, or terrorism, and preventing the introduction into the supply chain of unauthorized people, contraband, or weapons of mass destruction.⁶⁷

The main objective of world custom organization is for securing and facilitating global trade with mutual cooperation between customs, business community and government regulatory organ.⁶⁸ To maintain principal objective of the WCO SAFE framework, members to the WCO also defined authorized economic operators concept in their custom regimes deriving from definition given by SAFE framework with the scope of its application to make uniform legal frameworks for member's country to facilitate and harmonizing international trade.⁶⁹

⁶⁵ These six SAFE standards are Partnership (a self-assessment process measured against predetermined security standards and best practices to ensure adequate safeguards against the compromise of their shipments and containers until they are released from Customs control at destination), security(AEO will incorporate pre-determined security best practices into their existing business practice) , authorization (The Customs administration, and the trade community, will design validation processes or quality accreditation procedures that offer incentives to businesses through their status as AEO). Technology(All parties will maintain cargo and container integrity by facilitating the use of modern technology), communication(The Customs administration will regularly update Customs-Business partnership programs to promote minimum security standards and supply chain security minimum security standards and supply chain security best practices) and facilitation(The Customs administration will work co-operatively with AEO to maximize security and facilitation of the international trade supply chain originating in or moving through its Customs territory)

⁶⁶ Shujie Zhang and Rob Preece (2011) Designing and implementing Customs-Business partnerships: a possible framework for collaborative governance world custom journal Vo.5, No.1 p.48

⁶⁷ Theo Fletcher (2007) Authorized Economic Operator (AEO) Programs: Ibm's Perspective world custom journal Vol.1, No.2 p 61.

⁶⁸ WCO SAFE Framework (2009): Avoiding Excess in global supply chain security policy, WCO research paper 3 p.9

⁶⁹ Ibid

2.3.2. Eligibility Criteria for Authorized Economic Operator's

Traders who intend to apply for the AEO certificate and want to receive operational benefits from simplified customs procedures, preferential treatment and lesser physical inspections should comply with mandatory requirements set under revised Kyoto convention, safe framework and national customs laws.⁷⁰ Those mandatory legal and regulatory requirements includes a) having an appropriate record of compliance with Customs requirements, b) a demonstrated commitment to supply chain security by being a participant in a Customs-Business partnership program, c) a satisfactory system for managing their commercial records and financial viability.⁷¹

The requirements provided under WCO are⁷²:-

A. Demonstrated Compliance with Customs Requirements

In the authorization process customs shall take into account the demonstrated compliance history of a prospective AEO applicant when considering the request for AEO status that; The AEO⁷³

A. Not have committed, over a period determined by the national AEO programme, an infringement/offence as defined in national legislation, which would preclude designation as an AEO;

B. If established for less than the period mentioned in “a”, be judged on the basis of available records and information during the application process;

C. Or its designee have a demonstrated record of compliance within the same time period, mentioned in “a”.

B. Satisfactory System for Management of Commercial Records

⁷⁰ WCO (2010)The Authorized Economic Operator and the Small and Medium Enterprise p.4

⁷¹ Hans-Michael Wolfgang and Edward Kafeero (2014) Legal thoughts on how to merge trade facilitation and safety & security, World custom journal ,Vo. 8 No.1, p.7

⁷² WCO SAFE Framework of Standards(2007), p.37-48 and Customs Modernization Handbook Authorized Economic Operator Programs(2010) p. 11-15

⁷³ Ibid p.37 and EU Authorized Economic Operators Guidelines (2016) section I p.31

The AEO shall maintain timely, accurate, complete and verifiable records relating to import and export business.

Maintenance of verifiable commercial records is an essential element in the security of the international trade supply chain that AEO maintain records which permit customs to conduct any required audit of cargo movements relating both to import and export.⁷⁴

Although, the applicant has to show internal records access and control systems which are satisfactory to the approving customs administration.

The powers of attorney and licences relevant to the importation or exportation of merchandises properly archive records for later production to customs; employ adequate information technology security measures which will protect against access by unauthorized persons is another requirement.⁷⁵

C. Financial Viability

Financial viability of the AEO is an important indicator of an ability to maintain and improve upon measures to secure the supply chain that the AEO have a good financial standing which is sufficient to fulfil its commitments with due regard to the characteristics of the type of business activity.⁷⁶ The applicant satisfies the above mandatory requirements can be admitted to the AEO program, if one of the requirements is missed denial decision given by competent authority on the application.

2.3.3. The Process of Authorization of Economic Operators

There are five steps in the process of authorizing economic operators to be involved in the national and international import export and similar business activities. These authorization process would be a) presenting application, b) application review, c) review meeting, d) approval or denial of application and e) application on decision denial are the five steps that an applicant should pass through.⁷⁷

⁷⁴ Ibid

⁷⁵ Ibid p.38 and EU Authorized Economic Operators Guidelines (2016) section I p.36

⁷⁶ Ibid

⁷⁷ Customs Modernization Handbook Authorized Economic Operator Programs (2010) p. 19.

WCO provided standards how member states should allow economic operators in their territory what should an applicant demonstrate in his/her or its application, from what point of view application should be reviewed and within what time should it be made, and how and by whom the decision of approval or denial should made.⁷⁸

These are minimum standards that state members should apply through adoption of national laws and ratifying Kyoto conventions regarding AEO. No state member can deviate from these minimum standards. However, these minimum standards can be elaborated positively by national laws of member states.

The applicant would demonstrate in his/her or its application standard accounting practices, prepares sound financial statements, and maintains a complete record of contracts, purchase orders, shipping documents, import duties, and taxes paid. In addition, the applicant would have to show the internal control system of the companies that creates an audit trail from accounting records, payments to customs entry records, documentation to ensure that accurate values are reported to customs.⁷⁹ The applicant would have to agree to allow customs officers to review all company documents related to imports, exports, and other customs activity and to periodically inspect company premises on request.⁸⁰

Compliance with customs requirements, maintain and cooperate with customs to ensure that the company's procedures and practices result in a high level of compliance. The applicant also has to commits to continue meeting all program requirements, acknowledging that failure to do so may result in suspension or removal from the program and provide annual notification to customs confirming the name, title, e-mail address, and postal address of the company contact for the AEO program and asserting that the company continues to meet the requirements of the AEO program.⁸¹

The second step application review committee reviews application to determine the applicant's readiness to assume the required responsibilities.

⁷⁸ Ibid

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Ibid

Customs considers the company's history of trade compliance, including compliance measurement data, previous penalty or other enforcement action, and the company's standing with tax and other government agencies. In addition, information about the company's risk exposure, such as volume of import/export activity, imports from suspect manufacturers or suppliers, imports from countries known as transshipment points also targets to be considered. Besides, large volumes of imports under special duty provisions or trade programs and large volumes of imports under complex tariff classifications and verification of security measures.⁸²

After the application has been reviewed the custom review committee provides the applicant with written notification of the application review meeting at least 10 days before the start of the meeting and includes a request for supporting documentation or material. If needed contact the applicant's primary point of contacts to answer preliminary questions and explains the application review meeting process⁸³.

The company by itself present company relation and its organizational structure. At the end, the team identify significant weaknesses, it recommends an action plan to address the weaknesses and specifies a deadline by which the company must complete the plan.⁸⁴

After review committee completed its duty the process of application approval or denial follows. To ensure that the AEO program is managed in a fair and impartial manner, the approval authority is separate from the review process.

The officers who perform the review make their recommendations in writing to a chief executive or senior manager in Customs who has approval authority. If the applicant has met the requirements for acceptance into the AEO program, customs signs the partnership agreement memorandum of understanding and advises the applicant that its application has been approved or if the applicant does not meet the value or volume requirements for participation or has committed a serious infringement or repeated infringements of Customs rules, the approval authority communicate to the applicant that the application is denied.

⁸²Ibid

⁸³ Ibid

⁸⁴ *ibid*

Then if the applicant dissatisfied with the decision of the custom, s/he or it can use its rights to file a written appeal to the next authority.⁸⁵ The applicants who have passed through these Authorization process by the national custom administration can join to the program and benefited from the program status and applicant can take appeal on the decision denial to the decision maker to avert the denial decision.

2.3.4. The Benefit of Being an Authorized Economic Operator

The traders/companies granted the AEO status allowed to be benefited from the program. The kinds of benefit attached to the AEO status are clearly specified under the WCO safe framework. Faster cargos release, shorter transit time and lower costs of storage which highly help to reduce cost of transaction, access to valuable information, priority in the event of trade disruption and elevated threat level, facilitation of cargo processing initiatives⁸⁶, minimum inspection and simplified procedures, low documentary and data requirements as appropriate are the most benefits attached to the program.⁸⁷

Low rate of physical inspections and examinations as appropriate, deferred payment of duties, taxes, fees and charges, use of comprehensive guarantees or reduced guarantees, a single customs declaration for all imports or exports in a given period, and clearance of goods at the premises of the authorized operator or another place are also other special benefit attached to AEO.⁸⁸ In addition to these directly granted trade facilitation benefits, AEO certification also offers economic advantages, which may be due to reduced costs and streamlined processes in daily export/import operations and also AEO status can give a competitive advantage over non-certified competitors.⁸⁹

⁸⁵ Ibid p. 20

⁸⁶ Shujie Zhang and Rob Preece (2011) Designing and implementing Customs-Business partnerships: a possible framework for collaborative governance, World custom journal Vo.5, No.1 p. 56, and Lothar Gellert (2011) world custom journal, Withdrawal, revocation and suspension of AEO certification Vo.5, No.1, p.3.

⁸⁷ Md Almas Uzzaman and Mohammad Abu Yusuf (2011): The role of Customs and other agencies in trade facilitation in Bangladesh: hindrances and ways forward , World custom journal, Vo.5, No.1 p.37

⁸⁸ David Widdowson, Bryce Blegen, Mikhail Kashubsky and Andrew Grainger (2014) Review of accredited operator schemes: an Australian study , World custom journal Vo.8, No.1 p.22 and Hans-Michael Wolfgang and Edward Kafeero (2014) Legal thoughts on how to merge trade facilitation and safety & security world custom journal, Vo.8, No.1 p. 7

⁸⁹ Hans-Joachim Schramm (2015), who benefits most from AEO certification? An Austrian perspective, World custom journals Vo.9, No.1 p.59-60

Whenever there is a need to select between different suppliers or service providers, AEO certified companies might prefer an already AEO certified partner, as Customs regard them as a lower risk if all members of their supply chain have AEO status. This is especially true when we think about mutual recognition of AEO status like the US-American C-TPAT program⁹⁰ and mutual recognition in which economic operator granted AEO status in one country AEO status and benefits in another country without having to repeat the validation procedure yet again.⁹¹

2.3.5. Mutual Recognition of Authorized Economic Operators

Mutual recognition is one of the benefits designed for the AEO certificate holder in which they are entitled to similar advantages in third country where there is mutual recognition agreement signed in reciprocal basis. This process of mutual recognition gives the economic operator having AEO status in one country to be treated as AEO in another country without having to repeat the validation procedure yet again.⁹²

For several years, customs administrations and international organizations like the World Customs Organization have considered and promoted the idea and objective of achieving mutual recognition of Authorized Economic Operators and security measures. The SAFE Framework also provides for the mutual recognition of controls under certain circumstances that the Customs-to-Customs network arrangements will strengthen co-operation between Customs administrations and enable administrations to carry out controls earlier in the supply chain, e.g. where the administration of an importing country requests the administration of the exporting country to undertake an examination on its behalf.⁹³

The application of safe framework will enable Customs administrations to adopt a broader and more comprehensive view of the global supply chain and create the opportunity to eliminate duplication and multiple reporting requirements⁹⁴. To enable such mutual recognition of controls, customs should agree on consistent control and risk management standards, the sharing of intelligence and risk profiles as well as the exchange of customs data, taking into account the

⁹⁰ Ibid

⁹¹ WCO SAFE Framework of Standards: Fifth Special Meeting Of The Counter-Terrorism Committee With International, Regional And Sub-Regional Organizations (2007) Nairobi, Kenya p. 5

⁹² Ibid

⁹³ WCO safe framework (2007), page 5.

⁹⁴ Ibid page 6

work which has been carried out within the context of the WCO Global Information and Intelligence Strategy.⁹⁵

The standardized approach to AEO authorization provides a solid platform for development of international systems of mutual recognition of AEO status at bilateral, sub-regional, regional and, in the future, global levels. Such systems will involve a WCO member Customs administration recognizing the AEO authorization system in another WCO member with an operational AEO program as being equivalent to its own. This will afford the AEO the same benefits and therefore improve predictability and efficiency of operation in all countries applying the AEO standards.⁹⁶

For the implementation of mutual recognition of the authorized economic operator there must be an agreed set of common standards that include sufficiently robust “action” provisions for both customs and AEOs. Standards are applied in a uniform manner that one customs administration may have confidence in the authorization of other countries and there shall be an agreed upon mechanism and standards for the authority and legislation to enable the implementation of a mutual recognition system is in place.⁹⁷

In the context of the SAFE Framework, mutual recognition relates to three distinct areas:⁹⁸

1. Authorization: Customs should agree on mutual recognition of Authorized Economic Operator status.
2. Advance Electronic Information: Economic operators should also benefit from mutual recognition of digital certificates, allowing the economic operator to submit all electronic messages to those Customs administrations have agreed to recognize this certificate.
3. Targeting and Communication: Customs should provide for joint targeting and screening, the use of standardized sets of targeting criteria, and compatible communication and/or information exchange mechanisms; these elements will assist in the future development of a system of mutual recognition of controls.

⁹⁵ Ibid page 10

⁹⁶ Ibid p.52

⁹⁷ Ibid

⁹⁸ Ibid p.55

Generally with the WCO approach, mutual recognition of AEO is perceived as an arrangement or agreement between two or more customs administrations (or governments) that recognize each other's audits, controls and authorizations as equivalent and therefore provide reciprocal benefits to AEOs. AEOs certified by one partner country are recognized as secure and reliable as AEOs authorized in other partner country customs administration and will, receive benefits such as a reduced risk score and reduced controls when importing into the customs territory.⁹⁹

One of the main features of agreements on mutual recognition is that 'mutual recognition' is based on the trust between the parties in agreeing to mutually recognize AEO and/or security measures.¹⁰⁰

In general terms, the only administrations/governments that have confidence in the control mechanisms of another administration will enter into negotiations on mutual recognition because once governments make it publicly known that they have confidence in the control mechanisms of another government. However, if any event that would provide evidence that this confidence is not justified (such as a terrorist attack linked to the import of goods from the partner country or linked to a company that was authorized as AEO by the partner country) would have a disastrous effect on the credibility of that government or authority.¹⁰¹

This trust factor also makes it very difficult to move from bilateral to multilateral or global mutual recognition because mutual recognition necessitates that all parties have the same level of trust in each other's programs, controls, audits and authorization procedure. While bilateral agreements can at some stage certainly be merged to produce a trilateral agreement, it seems very difficult to agree mutual recognition on a more global scale.¹⁰²

Customs administrations that wish to agree mutual recognition of AEO and/or security measures will not want to trust 'blindly' but will insist on comparing legislation and rules and on verifying whether the practical implementation is equivalent. Usually, this will require audit and risk management methods ('joint audit/monitoring visits') to be compared, which might also include a visit to a company that has been authorized or is being audited in view of attaining AEO status

⁹⁹ Supra note 81, p.48

¹⁰⁰ Ibid

¹⁰¹ ibid

¹⁰² Ibid. p. 49

that do not need to be exactly the same but they have to achieve equivalent levels of security and control.¹⁰³

From the very begging the main objective of agreements on the mutual recognition of AEO and security measures is to increase security and trade facilitation with close cooperation with third countries custom administration.¹⁰⁴ The benefits gained from mutual recognition of AEOs will primarily be import/export related and usually reciprocal. In many cases, the benefits will initially be limited to reduced risk scores and thus reduced controls on and priority treatment of AEOs.¹⁰⁵

One of the biggest challenges of mutual recognition is the need for interested countries to develop equivalent measures, which does not mean that the legislation/rules have to be identical but must lead to equivalent control and security levels. To assess the equivalency it is important to consider different angles, because different administrations/governments may take different political and/or economic considerations into account like specific risks, specific threats, geographical and geopolitical aspects as well as specific interests will be taken into consideration.¹⁰⁶

The other challenge of mutual recognition of AEO is the exchange of relevant data to ensure the timely exchange of relevant data between administrations that have agreed the mutual recognition of AEO. This is necessary to ensure that Customs has the relevant data so that the risk analysis on both sides can take the AEO status into account with a view to granting AEOs the agreed benefits of reduced risk scores and thus reduced controls.¹⁰⁷

The WCO SAFE also describes the challenges of mutual recognition and points, in particular, to the challenges linked to negotiating mutual recognition of controls as this makes the routine sharing of information and control results necessary.¹⁰⁸ This challenge made countries to hesitate to enter into mutual recognition of authorized economic operator agreement that in turn make AEO only benefit from where they accredited to the status.

¹⁰³ Ibid.

¹⁰⁴ Ibid p.50

¹⁰⁵ Ibid

¹⁰⁶ Ibid.

¹⁰⁷ *ibid.*

¹⁰⁸ Susanne Aigner (2010) World custom journal: Mutual recognition of Authorized Economic Operators and security measures Vol.4, No.1 p.48

2.3.6. Challenges in Authorized Economic Operators Program

Even if authorized economic operators are accredited up on fulfilling all mandatory requirement set by countries custom laws and revised Kyoto convention which have binding nature and WCO safe framework principles to benefit from the program, however, there are also challenges that retreat the program in different mechanisms. Most of these challenges can be associated with conflicting interests, corruption, competition issues with small and medium size enterprises institutional limitations and lack of knowledge.¹⁰⁹

The conflicting interest can be created between government and business stockholders that can hamper successful implementation of trade facilitation initiatives in custom administration due to customs supervisors, policy priorities and protectionist trade policy tendencies. These kinds of conflicting interest are the challenges obstructing the implementation of trade facilitation through the authorized economic operator program.¹¹⁰

2.4. The Principles in WCO for National Customs

There are certain principles set under world custom organization SAFE framework and Kyoto convention that should followed by national custom administration while providing custom regimes to facilitating trade through taking series of regulatory and administrative measures. This makes national Customs procedures and practices effective, predictable, consistent and transparent.¹¹¹ Parties to the convention should apply these principles leading to the high degree of simplification and harmonization of Customs procedures and practices which is an essential aim of the Customs Co-operation Council, and so make a major contribution to facilitation of international trade.¹¹²

In addition to the principle incorporated under revised Kyoto convention there are also a number of standards are set under WCO SAFE framework. These standards are integrated control procedures and supply chain management, inspect of cargo, and use of modern technology in

¹⁰⁹ Andrew Grainger (2008) Customs And Trade Facilitation: From Concepts To Implementation World custom journal : Vol.2,No.1 p. 18

¹¹⁰ Ibid p.25

Kyoto convention as amended (2006) International convention on the simplification and harmonization of customs procedures preamble paragraph 4

¹¹² Ibid

order to identify high risk shipment, container and cargo, use of advanced electronic information and joint targeting and screening potentially high risk consignment.¹¹³

All principles under RKC have a binding nature to its member state countries while WCO SAFE framework principles are used as a guide and model without having binding nature on member countries.

¹¹³ <http://tfig.unece.org/contents/wco-safe.htm> viewed on March 7, 2017

Chapter Three: Authorization and Regulation of Economic Operators in Ethiopia

3. Introduction

This chapter deal with the issues of authorized economic operator schemes for the purpose of trade facilitation and modernization under Ethiopia custom laws¹¹⁴ and the process through which relationships created between custom and business person/entity based on the fulfilment of mandatory requirement laid down under those laws.

The preamble of FDRE Customs Proclamation, No.859/2014 paragraph 1-3, discloses that Ethiopia wants to have expedient and modern customs legal framework which encourages the development of manufacturing industries and investments which are compatible with the level of international trade practices and make sure a compatible contemporary customs laws and procedures with international custom regimes.

Under this proclamation¹¹⁵ the ERCA has given mandate to facilitate trade through custom administration by applying different custom regimes. To this end, the government¹¹⁶ has merged Ministry of Revenue, the Ethiopian Customs Authority and the Federal Inland Revenue Authority and established ERCA for one window services to encourage investors and industries.¹¹⁷

The establishment of ERCA benefiting a traders/investors who has engaged and wants to engage in export and import trade activities and enhance economic development by reducing time and financial costs¹¹⁸ and specially attention was given to improve service delivering, facilitating trade, enforcing a tax and custom laws and thereby enhancing mobilization of government revenue in sustainable manner.¹¹⁹

¹¹⁴ Ethiopian Customs Law Means any Existing Proclamation and Directives Which Regulate Customs Laws and Procedures in Ethiopia.

¹¹⁵ Federal Democratic Republic of Ethiopia (2014), custom proclamation No. 859/2014, Federal Negarit Gazeta, Addis Ababa, Ethiopia

¹¹⁶ Federal Democratic Republic of Ethiopian Constitution(1995) Proclamation No.1/1995, Federal Negarit Gazeta, Addis Ababa, Ethiopia, art 1

¹¹⁷ <http://www.erca.gov.et/index.php/about-us#background> accessed on April 7, 2017

¹¹⁸ Zizela Mawete (2011), world custom organization: Customs Reform and Trade Facilitation in Ethiopia p.2

¹¹⁹ supra note 4

A trade can be facilitated through custom administration by applying a simplified custom procedure and by harmonizing custom laws under different trade facilitation schemes for example, a selected and registered person upon fulfilling criteria specified by the authority.¹²⁰

Authorized economic operator program is one of the model through which a trade facilitation measures implemented by custom administration that both the custom administration and authorized business operators benefited through having competitive advantage like simplified procedures for goods declarations¹²¹, simplified procedures for clearances of goods¹²² and self-assessments of the custom duty and tax liabilities and law risk of security for the supply chain.¹²³

3.1. Trade Facilitation under Ethiopia Custom

Like other countries the principal role of custom administrations are revenue collection from imported and exported goods to finance government expenditure and other developmental agendas, protecting domestic and infant industries by prohibiting importation, protecting consumers and environment by total banning of harm full goods importation and protecting national security by scanning and inspecting importing goods in light of national security (emphases has added).¹²⁴

Customs administration and administrative entry barriers appear to be the major non tariff barriers(NTB) affecting Ethiopia's trade with COMESA member states, reported within this area with the greatest frequency include import licensing, customs valuation and formalities, and to a lesser extent, classifications.¹²⁵

There are also complaints pertaining to pre-shipment inspection as well as consular formalities and documentation, in terms of customs systems, the identified problems range from customs

¹²⁰ Federal Democratic Republic of Ethiopia (2014), custom proclamation No. 859/2014, Federal Negarit Gazette, Addis Ababa, Ethiopia, article 84(1)

¹²¹ Ibid article 85 sub article 1-3

¹²² ibid article 86

¹²³ ibid article 87

¹²⁴ <http://www.erca.gov.et/index.php/about-us#introduction> accessed on April 7, 2017

¹²⁵ Imani Development International Ltd (2007), Non-Tariff Barriers (NTB): Ethiopia, final report, p.1

valuation to bureaucratic, and non-transparent manual systems that lead to considerable delays in the clearing of goods.¹²⁶

The Ethiopia government tried to solve problem related to trade facilitation in the case of customs administration by different developmental project and plans for a decade. Under GDPI Ethiopia has invested in modernizing its custom and domestic tax systems with resultant improvements in its tax information and significant improvement has been seen in utilising resultant tax information system in the administration of custom duties and domestic tax.¹²⁷ However, the reforms still leave much to be designed in terms of modernizing further its custom and tax administration system in order to utilising the available tax information systems to administer custom and taxation to strong a weakened custom and trade services facilitations, regulations, administrative and logistic support and monitoring system.¹²⁸

In order to accelerate the growth of manufacturing industries, import, export, and transit it is essential to address a bottlenecks related to the provision of well developed working conditions, provision of infrastructures and energy, custom and trade facilitation, transport and logistics which are currently impeding the expansion of manufacturing industries¹²⁹ and highly venerable custom to rent seeking practices.¹³⁰ To this end, attention has been given to improve the efficiency of custom administration under GTPII to promote the exporting capacity of the economy including pursuing an exchange rate policy that promote exports, providing more efficient trade logistics and transport services, energy supply, trade and custom facilitation¹³¹ and strengthening custom institutional capacity¹³² has been given priority.

Customs institutional capacity building plan including all around integrated activities such as building human resource development and management, expanding modern information system , improving consumer relations and public awareness, consumer services and support to improve

¹²⁶ Ibid

¹²⁷ Federal Democratic Republic of Ethiopia Growth and Transformation Plan II (GTP II)(2016) (2015/16-2019/20) Main Text National Planning Commission Volume I, Addis Ababa, Ethiopia, p.10

¹²⁸ ibid

¹²⁹ Ibid p.31

¹³⁰ Ibid p.48

¹³¹ Ibid page106

¹³² Ibid page 108

the delivery system, improving legal system planned to be under taken during GTPII to enhance the implementation capacity of ERCA.¹³³

Problems related to logistics and customs services that are highly linked with the export sector, which in turn influencing the foreign direct investment and trade sectors negatively, though efforts made to implement the civil service reform program are massive and huge, the capacity problems of institutions are not yet addressed.¹³⁴ Therefore, efforts made to build the civil services with capable, motivated and skill full, efficient human power has to be strengthen *to deliver speedy, efficient and predictable custom service and to implement all necessary custom law (emphasis added in italics)*.¹³⁵

To this end, a series custom proclamation, regulations and directives has been issued by competent authority of Ethiopia government. Still for different reason the trade facilitation in the custom is not facilitated. Ethiopia is a land locked country and most trading is done through Djibouti and airport at Addis Ababa.¹³⁶

According to 2016 World Banks Logistics Performance Index (LPI) which measures trade logistics efficiency, Ethiopia was ranked 126th out of 160 countries and all scores are below the averages of the Sub-Saharan Africa region¹³⁷ and a recent World Bank study assesses that Ethiopia's ease of doing business rank indicate that Ethiopia ranked 159th out of 183 countries.¹³⁸ This rank reveals that still there are problems related to trade facilitation that are hampering international trade, and needs more trade facilitation by taking all necessary measures on such trade barriers. There are bottleneck of trade facilitations identified as custom valuation¹³⁹, custom

¹³³ Ibid page 114

¹³⁴ Ibid p.67

¹³⁵ ibid

¹³⁶ Country Report Ethiopia(2014) :international trade canter, p.19

¹³⁷ World banks logistics performance in index (2016) Global Rankings available at <http://lpi.worldbank.org/international/global> accessed March 31, 2017

¹³⁸ World Bank groups (2016) measuring business regulation available at <http://www.doingbusiness.org/rankings> accessed March 31, 2017

¹³⁹ Tilahun Esmael Kassahun(2014),Trade Facilitation in Ethiopia: The Role of WTO Accession in Domestic Reform, Mizan Law Review Vol. 8, No.1, p.154

clearance and inland transportation, frequent and highly susceptible to rent seeking¹⁴⁰ and risk management related problems.¹⁴¹

The improvement of Ethiopia's trade facilitation is at a slower pace; one of its major steps is the introduction of the Multimodal Transport System which has been introduced the usage of multiple modes of transportation for the delivery of goods in a single contract with a carrier for it to assume all responsibilities for the transportation of cargo between two countries.¹⁴² However, challenges remain, such as monopolistic privileges by the Ethiopian Shipping and Logistics Services Enterprise, which slow down market-oriented implementation.¹⁴³

Generally trade facilitation extends to administrative hurdles like, numerous customs procedures, tax procedures, clearances and cargo inspections often before the containers reach the port.¹⁴⁴ So that, trade facilitation initiative aimed at lowering trade transactions costs, can enhance trade competitiveness, and expand trade flows, while at the same time playing an important role in supporting a positive business climate¹⁴⁵.

Ethiopia has introduced several trade facilitation related measures. The proactive strategy adopted by the ERCA has introduced several policy measures which have smoothed the role of the customs department and enhanced the economy in a major way without compromising the collection of essential government revenues.¹⁴⁶

Since the early 2000's, the Government of Ethiopia decided to gradually eliminate the systematic problems in the field of customs valuation (CV) via modernization of its customs practice and recently ERCA has initiated efforts to introduce voluntary compliance of the customs and tax payers by implementing Authorized Economic Operators program even if there are obstacle that

¹⁴⁰ Supra note 107, p.20

¹⁴¹ WCO, AID-FOR-TRADE: case study (2011): Customs reform and trade facilitation in Ethiopia, p.4

¹⁴² Federal Democratic Republic of Ethiopia (2007), multimodal transport of goods proclamation No. 548/2007 Federal Negarit Gazette, Addis Ababa, Ethiopia

¹⁴³ Ibid supra note 29

¹⁴⁴ Tilahun Esmael Kassahun(2014),Trade Facilitation in Ethiopia: The Role of WTO Accession in Domestic Reform, Mizan Law Review Vol. 8, No.1, p.147

¹⁴⁵ Ibid p.152

¹⁴⁶ Ibid p.154

hinder the effective operation of the program in Ethiopia like the absence of political will and sufficient legal framework and the like.¹⁴⁷

3.2. Ethiopia Customs Legal Regimes Related to Modernizing Customs Administration

The government of Ethiopia advanced the role of its custom from revenue collection and get keeper to play a role in securing national security and trade facilitation in supply chain of goods by taking series of legislations measure¹⁴⁸.

To this end, the ERCA has been established by merging the three predecessor institutions (the Ministry of Revenue, the Ethiopian Customs Authority and the Federal Inland Revenue Authority) which were engaged on similar activities in order to modernize tax and customs administration system, to make expeditious and effective resource utilization and improving its service rendering by one window services.¹⁴⁹

Recently ERCA introduced voluntary compliance of customs and taxpayers to have an expedient and modern customs legal frame work which is compatible with the need of international trade and investment as well as satisfying contemporary customs law and procedures to which the country is a party to trade agreements¹⁵⁰ of simplifying custom formalities. Custom facilities like simplified custom declaration referred under sub-article (1) of Article 13 of this Proclamation,¹⁵¹ commercial or administrative documents accompanied by a request for goods to be placed under customs procedure is not required to be complied by the AEOs.¹⁵²

ERCA has issued authorized economic operators directive which govern and regulate the application of authorized economic operator program generally and the process to be followed

¹⁴⁷ Ibid p.156 and Federal Democratic Republic of Ethiopia (2008), revenue and custom authority establishment proclamation No. 587/2008 Federal Negarit Gazette, Addis Ababa, Ethiopia, preamble paragraph 1

¹⁴⁸ Democratic Republic of Ethiopia (2008), revenue and custom authority establishment proclamation No. 587/2008 Federal Negarit Gazeta, Addis Ababa, Ethiopia, preamble paragraph 1

¹⁴⁹ Ibid

¹⁵⁰ Federal Democratic Republic of Ethiopia (2008), custom proclamation No. 622/2008 Federal Negarit Gazette, Addis Ababa, Ethiopia, preamble paragraph one and two

¹⁵¹ Ibid article 13

¹⁵² Ibid

by ERCA while considering the application of the applicant and the procedures to be followed by applicant while trying to join to the program.¹⁵³

Similar position has been followed by new custom proclamation in the case of simplified custom declarations but come with extending scope of the program to exporters and manufacturing industries.¹⁵⁴ The only difference emerged under the new proclamation is that the issues of authorized economic operator sited namely with certain criteria for the applicant wants to join to the program.¹⁵⁵ The authority empowered to issue directive to implement the application and regulation of the authorized economic operators program.¹⁵⁶

The directive announced custom procedures applicable to authorized economic operators to increase trade in import with improved facilitation services on the basis of reliability and level of compliance. And the ERCA established a special customs facilitation scheme in which certain categories of importers selected and classified as Authorized Economic Operators entitled for a privilege to take advantage of such special customs facilitation procedures with the necessary precaution and sanction where there are instances of abuse of the privileges granted.¹⁵⁷

The directive defines simplified customs facilitations as controlling less at clearance level and in depth, when necessary, after the release of goods, allowing self assessment privileges to Authorized Economic Operators with corresponding responsibilities to which they are put answerable in time of miss assessment and non compliance, clearing and promptly releasing of the goods of AEO in priority to other non AEO importers with regular follow up of their compliance.¹⁵⁸

This definition is about simplified custom facilitation which the authorized economic operator would have to benefit upon acquiring the AEO status.

¹⁵³ Ethiopia Revenue and Customs Authority (2011) authorized economic operator Directive No.65/2011, Addis Ababa, Ethiopia

¹⁵⁴ Federal Democratic Republic of Ethiopia (2014), custom proclamation No. 859/2014, Federal Negarit Gazeta, Addis Ababa, Ethiopia, preamble paragraph 1-3 and article 84-88

¹⁵⁵ Ibid article 84

¹⁵⁶ Ibid article 180(2)

¹⁵⁷ supra note 40 preamble

¹⁵⁸ Supra note 140 article 4

However, the directive do not provided a definition for AEO. But literal meaning can be derived from definition given for simplified custom declaration as authorized economic operator is an importers engaged on some specified chain of imports. Companies having AEO status by complying certain requirement set by authority and secure some benefits like facilitated and simplified customs procedures, controlling less at clearance level and in depth or after the release of goods, allowed self assessment privileges with corresponding responsibilities to which they are put answerable in time of miss assessment and non compliance, clearing and benefiting from promptly releasing of the goods in priority to other non AEO importers with regular follow up of their compliance.

Concerning the scope of the directive it applied only to some specified supply chain of imports of companies having the status of Authorized Economic Operators¹⁵⁹ which target only importer by excluding other operators like exporter, clearing agents, logistic forwarder, brokers, transistors.

No Company or importer shall be allowed to take advantage of the simplified customs facilitation schemes unless the level of its compliance is found to be above satisfactory by fulfilling formal requirements to be accredited as AEO.¹⁶⁰

¹⁵⁹ ibid article 3.

¹⁶⁰ Ibid article 5

Chapter Four: Challenges in Regulation of Authorized Economic Operator's in Ethiopia Customs

4.1. Introduction

This chapter analyses data collected through questionnaire from persons in selected authorized economic operators and focused group discussion (FGD) made with personnel from ERCA authorized economic operators unit.

Depending on the designed research methodology, the questionnaire was distributed to 21 respondents in 7 purposively selected companies which were awarded the AEO status by ERCA and FGD was also conducted with AEO unit experts at ERCA.

From the total 21 questioners distributed to companies 19 questionnaires were collected back and one team of AEO unit senior experts was used for FGD for the final analysis.

Under this chapter, Ethiopian custom legal framework concerning AEO and trade facilitation discussed under chapter three of this study, data collected by FGD and questionnaire have been analyzed by using tests good regulation developed by Baldwin and Cave¹⁶¹ as follows to critically examine the regulation of AEO in Ethiopian customs.

To test the effectiveness of good regulation five points are used as measurements. These are: Is the action or regime supported by legislative authority? Is there an appropriate scheme of accountability? Are the procedures fair, accessible and open? Does the regulator have sufficient expertise? Are the actions or the regime of the regulation efficient?

Based on these points, the data collected is analyzed to examine whether ERCA AEO legal regime is efficient to regulate the implementations of the AEO program or not.

As data collected from the AEO companies and FGD shows, the AEO program has been launched in 2011. Accordingly, 46 companies have joined the program. The business sectors in which they are involved are import, manufacturing and transit services having gold, silver and

¹⁶¹Jasmontaitè L. April (2010), referring to Baldwin and Caves work titled "Understanding Regulation: Theory, Strategy, and Practice" established five tests which are directly relevant to test of good regulation, Analysis of Children's Online Safety in the European Union and Evaluation of The Safer Social Networking Principles in the Context of Good Regulation, LLM Thesis for the Research Master in Law University of Tilburg p.30

bronze certificates. There is no exporter having AEO status even though the custom proclamation No.859/2014 has provided special treatment for exporters.

The following challenges are identified as critical problems in regulating AEO program implementation in Ethiopia customs.

4.2. Legal gaps

As mentioned above one of the test to prove the existence of efficient regulation of AEO is the existence of ample and efficient legal frame work. At this time the only effective law regarding the regulation of AEO program in Ethiopia is proclamation number 859/2014.

The proclamation recognizes the AEO program but does not provide detailed rules on how the program functions. Among 183 articles only five provisions (articles 84-88) are directly relevant to AEO program. Even then, the articles themselves are too general and provide no specific procedural matters.

The proclamation has not even provided the definition for Authorized Economic Operators, rather it simple says “authorized person” under article 84. What is to mean by authorized person itself is not clearly defined in any part of the proclamation.

Simplified procedure for goods declaration, simplified procedures for clearance of good, self-assessment of customs duty and tax liability and audit based custom control are the only issues incorporated under the proclamation concerning AEO. Even if the proclamation gives mandate to issues regulation to council of ministers regarding the AEO program, there is no regulation enacted to implement the proclamation yet.

There is also no regulation issued before the coming in to force of this proclamation to implement the former custom proclamation No. 622/2008. Due to this the implementation of AEO program recognized under the new proclamation has not been realized. Besides, even if ERCA issued directives, the directive has not address the criteria issues regarding eligibility for AEO and level of certification of gold, silver and bronze. It also has no provision that provides

special benefit attached to each level of certificate in detail and clarifying the difference between the three levels of certificate mentioned above¹⁶².

Most importantly, the directive limits the sectors of business in which AEO can participate. Accordingly, authorized economic operators can only have such status and benefit attached to them if they are involved as an importer.

According to article 3 of the directive which provide the scope of application of the directive, manufacturer, transistors and exporters are not eligible to have the status of AEO and exclude them automatically. But ERCA have awarded AEO certificate for manufacturers and transistors with different level certificate which is contrary to article 3 of the directive.

Even if the directive mentioned the benefit attached to AEOs, it does not provide means of enforcements. So that, AEOs have no possible means of claiming priority and other benefit of being AEO from institution involved in import export trade activities with the exception on ERCA as there is no legal framework provided to these ends.

Since the directive and any other effective law regulating custom does not imposes obligations on institutions other than ERCA, to practically enforce what has been recognized as benefit of AEO's status, there is no legal base for AEO to claim special treatment and priority from other governmental and private institution involved in providing services which have relation with AEO companies. Besides, there are no legal mandates to ERCA to cooperate and coordinate with such institutions. Due to this ERCA cannot oblige these institutions to cooperate to enforce the provision of the directive.¹⁶³

With these legal gaps the authority has been functioning and trying to enforce the legal provisions regarding AEO program. The authority uses different formats¹⁶⁴ and working systems to accept and reject application for AEO status. Since the criteria to select and decide on the

¹⁶²FGD conducted at ERCA AEO unit with Mr. Gebregzaber G/kidan and Mr. Fayisa Jiru 23 April, 2017, Addis Ababa, Ethiopia

¹⁶³ Ibid

¹⁶⁴ Application and self assessment formats prepared by ERCA AEO unit available on <http://www.erca.org.et>.

application for AEO status is not specified, the decision depends on the discretion of experts and officials of ERCA.¹⁶⁵

The format developed to fill personal details of the applicant and self- assessment has no legal authority. The non-compliance with these formalities has no legal consequence. The procedures AEO unit at ERCA is using in the determination of the application are not public¹⁶⁶. Which means that the procedures used by ERCA's AEO units to decide on the application have no legal bases, rather the units simply uses subjective means of determination.

Since there is no law that clearly provides objective criteria and procedure of recruiting eligible company, the procedures and criteria used by AEO units have no legal authority.

Since the procedures limited to the knowledge of experts of ERCA, potential applicants to the program are not aware of the formalities that they should fulfil to be eligible as AEO before applying to join the program. This is because there is no law which clearly establishes the criteria, procedures and forms regarding AEOs.

In case of infringement committed by AEOs, there is almost perfect means of ensuring their accountability. Whereas, in case of ERCA infringement of rules and procedures there is no legally established means of ensuring accountability, rather ERCA uses to handle grievance submitted to it in informal ways. These facts have been an impediment for ERCA efficiency and proper regulation and implementation of AEO program.

4.3. Lack of Awareness and Proper Attention

There is lack of awareness within ERCA, custom officers, regulatory inspectors and other related officers about AEO status and related benefits.

On the other hand, only few number of regulatory bodies working with ERCA are aware of AEO program and privileges attached to it and provide them priority and other privileges. Due to this sometimes AEO companies are subjected to formal and ordinary procedures similar to those

¹⁶⁵ Supra note 150

¹⁶⁶ Ibid

non-authorized economic operators that in effect violate the privilege and benefit granted to them.¹⁶⁷

4.4. Lack of Political Commitment

As far as the researcher's knowledge concerned and the data collected shows there is no policy regarding AEO program at national level. Even the high officials of ERCA have no clue about the program. When we see the experience of European countries in this respect, the certificate of AEO is issued at European Union (EU) level in addition to national level. This shows that European countries have given due attention to the program. But when we come to our country, the certificate is not even issued at institution level. Rather it is issued by one of the units in the ERCA.¹⁶⁸

The awareness about the program is limited to the experts. These indicate that the country has given less attention to the program and the leaders have no political commitment at least to implement the existing laws.

The other problem which affects the effectiveness of the program is frequent removal of officials which hampers the continuous improvement of the program as reforms which are implemented by one are not followed because when a new official takes the post she/he starts the process afresh.

4.4. Lack of Man Power

During the field data collection the researcher has confirmed that ERCA AEO unit has only four experts and one unit coordinator. From the very nature the AEO program is wide and the participants in the program are giant business runner, which require high level of commitment and vast and qualified experts in the area. However, what practically exists is far from this expectation.

¹⁶⁷ Inferred from data collected through questionnaire from AEO companies and FGD

¹⁶⁸ Supra note 150

There is work load on the four experts and it hinders the provision of efficient service for AEOs. So that, there is insufficient number of experts to properly regulate AEO program at the current existing situation.¹⁶⁹

4.5. Poor Coordination

The implementation of the AEO program needs coordination and collaboration of ERCA's departments, other government regulatory organs and private institutions. This coordination and cooperation also needs a legal base. However, no single law has been enacted to this end. This in effect created poor horizontal and vertical coordination between ERCA's departments and other regulatory bodies.¹⁷⁰

Even if AEO companies are entitled to privileges to get priority and others benefits attached to their AEO status in different procedural matters, due to the absence of coordination between different governmental and private institutions AEO operators have been facing limitation on their efficiency.¹⁷¹ Even if there is coordination through negotiation, there is no law that imposes obligation on governmental institution other than ERCA and private institution like custom warehouse holders, logistic operators and the like to give priority and enforce the benefit attached to AEO status.¹⁷²

4.6. Unsecured Supply Chain Security

One of the reasons behind the AEO program is to secure supply chain aimed at protecting national security from trade source security problem like terrorism, trafficking of outdated and dangerous products though creating custom business partnerships. The other reason is trade facilitation.

When we come to Ethiopian case, ERCA officials perceives and has been practicing AEO program from the perspective of trade facilitation and pay no attention to security issues because

¹⁶⁹ Supra note 150

¹⁷⁰ *ibid*

¹⁷¹ Inferred from data collected through questionnaire from AEO companies

¹⁷² Supra note 150

security concern is not cost effective and requires high level of technology that the country cannot afford as well, there is no law that confers security mandate to ERCA.¹⁷³

4.7. Poor Administrative Services

The administrative services provided by ERCA in the case of AEO program implementation are very poor. This poor administrative services exist due to lack of series of training and regular consultation, information gap between ERCA and AEO companies, lack of adequate monitoring and assistance to AEO companies in order to improve their performance and level of compliance in progressive manner in implementation of AEO program.¹⁷⁴ Besides, there is no leading institution that coordinate ERCA and other concerned institution in trade of goods.

All these critical reason reveals that all ERCA's administrative services and measure are too poor and needs attention to realize the implementation of AEO program. Therefore, action taken by ERCA to realize trade facilitation is very weak and inefficient.¹⁷⁵.

4.8. Lack of Mutual Recognition Agreements

The group of experts participated in the FGD expressed in a single word that there is no mutual recognition arrangement idea with ERCA and government.

Lack of mutual recognition agreement with countries having trade partnership especially with import and export highly endangered the AEO companies benefit by subjecting them equal to those non AEO companies out of Ethiopia territorial jurisdiction. This clearly shows that the AEOs of Ethiopia are getting only half of the benefits AEO program as there is no mutual recognition made by the country with foreign custom administration. This has subjected Ethiopian AEOs to ordinary custom procedures and formalities in foreign countries.

¹⁷³ Ibid

¹⁷⁴ ¹⁷⁴ FGD and data collected through questionnaire from AEO companies

¹⁷⁵ Supra note 150

5. Chapter Five: Conclusions and Recommendations

5.1. Conclusion

Authorized economic operator's program has been launched by Ethiopian custom and revenue authority since 2011 based on Custom Proclamation No. 622/2008 and Authorized Economic Operator's Directive No. 65/2011 by focusing on import trade to reduce applicable custom formality through simplifying custom procedures for selected and registered companies upon fulfilling all necessary criteria provided by authority voluntarily. Till this day, 46 companies are awarded AEO status.

The program is initiated to facilitate international trade through simplifying custom procedure and harmonizing custom legal regime by adopting these compatible with world custom organization legal regimes. Depending on Ethiopia custom legal regimes discussed under chapter three of this study, data collected through questionnaires from AEO companies and FGD held with ERCA AEO unit experts have been presented, interpreted and analyzed by using test of good regulation measurement. The following are the findings from the data collected and analysed in this work.

Companies who have been given AEO status are benefiting from ERCA's:

Special window service, priority in submitting few copy of documents for clearance at customs entry point, in release of declaration immediately after and before clearance, total abolition of physical inspections and release of cargo because ERCA has simplified some custom procedures. Albeit the above advantages of the program, the thesis also found out the following drawbacks in AEO program regulation. These are:-

Even if ERCA has provided special treatments for AEO companies in its custom administration and other its facility, some of AEO companies are still subjected to post arrival and pre audit services. There is insufficiency and inefficiency of the legal and institutional frameworks to regulate AEO program implementation under Ethiopia customs system. The only effective laws regarding the regulation of AEO program in Ethiopia are customs proclamation No. 859/2014 and AEO directive No.65/2011.

The proclamation neither defines AEO nor sufficiently explains their advantages. It does not also provide the criteria of acquiring AEO status lacks further details regarding the program.

The finding of the thesis further shows that, there are no legal bases to AEO companies to claim special treatment and priority from other governmental and private institutions and no mandate is given for ERCA by law to coordinate other government and private institutions to facilitate AEO interests nor there is leading institution established by law to coordinate ERCA and other concerned institution in implementing AEO program.

The proclamation gives mandate to council of ministers to issue regulation but there are no regulation enacted to implement the proclamation so far which particularly addresses the implementation of AEO program.

Furthermore, the AEO directive issued by ERCA does not provide specific criteria regarding eligibility for AEO and level of certification of gold, silver and bronze and related benefit. As a result, what is being done practically by AEO unit at ERCA is open to subjectivity as it is not bound by the provisions of the directive.

Besides, lack of adequate legal framework, man power and political commitment on the part of ERCA, there is less monitoring and assistance offered to AEO companies. This would open door for companies to participate in illegal trade by having the AEO status veil. The thesis also reveals that, there is not enough assistance provided for AEO companies by ERCA through training and consultation to improve their performances.

There is also no coordination within ERCA for instance post audit clearance, large taxpayer's office, and within the ERCA itself and other external institutions.

Other than what has been discussed so far, the following have been identified as detailed challenges in the regulation of AEO program on the part of ERCA

- No grievances committees have been established pursuant to AEO directive No. 65/2011 to hear AEO complain.
- There are shortages of awareness about AEO program within both ERCA and AEO companies as well as within other government regulatory bodies.

- The accessibility of information is subjective and based on the exposure and attachments of AEO to ERCA.
- There are inadequacies of experts, high rate of turnover and lack of appropriate technology to regulate AEO program.
- There is also lack of political commitment of ERCA officials; there is no policy regarding AEO program at national level and the awareness about AEO program as it is limited to the experts.

In general, AEO program is implemented to create partnerships between business and custom administration which will bring about trust and coordination for better facilitation of trade and ensure supply chain security. However, because the attention given to the program is very weak and its implementation is less coordinated, the intended purposes of the program are not sufficiently met.

5.2. Recommendations

Based on the careful analysis of the data and legal analysis, the researcher suggests the following recommendations:

- The legislator should amend the existing provisions of the Customs proclamation, concerning the AEO program in light of world custom organization legal regimes. The amendment specifically must address the following:-
 - The legislator should also provide a comprehensive legal definition of AEO
 - The legislator should incorporate the issues of security of supply chain and mutual recognition of AEO companies in custom proclamation.
- Council of Ministers should issue regulation that elaborates particular of provisions of the Customs Proclamation concerning the implementation of AEO program in Ethiopia.
- The legislator should enact laws that create relationship between AEOs and ERCA with other government and private institutions. It should also impose mandatory obligation on government and private organizations to coordinate ERCA with regard to implementation of AEO program and its benefit.
- The government should establish leading institutions that coordinate the relation between ERCA and AEO, with other government and private institution.
- ERCA should revise the AEO directive; it should specifically introduce efficient eligibility criteria, working procedures and manuals.
- ERCA should establish grievance committees as provided by AEO directive 65/2011.
- ERCA should monitor, assist AEO company's performances and take a measure against non compliance companies to the custom laws.
- ERCA should create awareness for his employees, for other regulatory body, for AEO company's managers and their employees and for other taxpayers as a general to make accessible the program to all.
- Academicians and practitioners should give attention and conduct further research on AEO area.

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D. List of AEO Companies

Annex One

JIMMA UNIVERSITY COLLEGE OF LAW AND GOVERNANCE GRADUATE STUDIES DEPARTMENT OF COMMERCIAL AND INVESTMENT LAW

Dear respondents:

I'm a graduate student at Jimma University College of law and governance, law school Department of commercial and investment law, Currently; I'm conducting a research entitled a critical examination of Authorized Economic Operator's regulation in Ethiopia custom, as a partial requirement of Master of law in commercial and investment law.

The purpose of this questionnaire is to gather data for the proposed study, and hence you are kindly requested to assist the successful completion of the study by providing the necessary information. Your participation is entirely voluntary and the questionnaire is completely anonymous. I confirm you that the information you share will stay confidential and only used for the above mentioned academic purpose, thus not affects you in any way. So your genuine, frank and timely response is vital for the success of the study.

I want to thank you in advance for your kind cooperation and dedication of your precious time to fill this questionnaire.

Sincerely yours,

Badassa Lamessa

Questions for authorized economic operators

Note

1. No need of writing your name.
2. Indicate your answer with a check mark (x) on the appropriate block/cell both for multiple choices and open ended question in your own words.

Section I: Respondents profile:

1. Age: 18-25 years 26-35 years 36-45 years above 45 years
2. Education Qualification:
Below College Diploma College Diploma First Degree (BSc, BA)
Second Degree (MSC, MA) PHD and above
3. Current Position in the Company
Managerial Expert/Senior officer
4. Year of service in the current position:
1 to 3 years 4 to 7 years 8 to 10 years above 10 years
5. Which Year did your company join the AEO -----
6. Type of your business sector
Import Export Manufacturing Transport /Logistics
7. What is your business certificate level?
Gold silver bromine other

Section II: Main Questionnaire please indicates your choices by putting the x mark on your appropriate answers.

1. Have you benefited from special window service priority in submitting documents for clearance at entry point, in release of declaration immediately after clearance, inspection and release of cargo for being AEO? Yes No
2. Are you privileged from facilities like little or no physical inspection of your shipment and reduced formalities for clearance as an AEO? Yes No
3. Are there facilities of clearance by a fewer copy documents with no deposit or further guarantee other than AEO status? Yes No
4. Have you been benefiting from pre arrival clearance facility and post clearance audit services? Yes No

5. Have you been benefiting cargo inspection and release service at your premise or priority at customs warehouses or elsewhere possible? Yes No
6. Are there special area and priority treatment at land transportation, airport cargo and dry port terminals to AEO? Yes No
7. Are there special priority treatments from other regulatory bodies working with ERCA by being aware of your AEO status special privilege? Yes No
8. Is there special Priority in multimodal shipment particularly in transport of your cargo from Djibouti and dry ports? Yes No
9. Do you think that customs officers, regulatory inspectors and related bodies have awareness about AEOs and their privileges? Yes No
10. Are there regular training consultations between AEOs and ERCA on matters of mutual interest and to find solutions for problems that may arise? Yes No
11. Do you have access to valuable information on a regular basis by circular or otherwise to update your company with the new customs rules and regulations provided by ERCA? Yes No
12. Are there measures taken by ERCA in the case of error in custom duties assessments and disclosure of information? Yes No if your answer is yes list types of such measures

13. Are there regular monitoring and assistance from ERCA concerning performances of your company? Yes No
14. Are services provided by ERCA for AEO program efficient and enough? Yes No if your answer is no state your reasons-----

15. What are the major obstacles for the success of AEO in Ethiopia? Prioritize the following choices or avoid unrelated to obstacle.
 - i) Regulatory restrictions ii) Lack of commitment on part of ERCA
 - iii) Lack of coordination between ERCA and Regulatory and service providing agencies
 - IV) Lack of commitment on the part of AEO companies

List your priority problems

16. In your opinion, what needs to be resolved to improve the application of AEO in Ethiopia so that the program resolves the existing challenges _____
17. If there is any _____

The end
Thank you!

Question for focused group discussion

1. What are the procedures of application to join AEO program?
2. How much operator has been authorized still now?
3. What are criteria to gold, silver and bromine certificates issued by ERCA and benefits attached to each?
4. Are existing custom laws enough and sufficient to regulate authorized economic operators program from starting point to the performances of the AEO companies?
5. Are information shared from AEO reliable and accurate? How is the information checked by AEO unit at ERCA?
6. Are there measure taken on operator because of non compliance of custom laws and procedure?
7. How many AEOs have been discharged from the program? Why?
8. What do you think are the main problems/challenges in the current AEO program regulation (in relation to working system, man power, laws or may be problems raised by operator)?
9. Is there regular monitoring and assistance of AEO Companies to improve their compliance?
10. How about training, consultation With AEO
11. Have AEO benefiting from AEO status? Custom control, custom clearance, post auditing and transportation
12. Are the AEO companies live up to their custom duties and tax liabilities voluntary?
13. Is there cooperation with other government regulatory body for AEO companies' benefits?
14. Is there a possibility of mutual recognition with third countries AEO by arrangements?
15. Security issues in custom Vs terrorism?
16. What are bottlenecks of AEO program at ERCA?
17. What is ERCA's progress in AEO program implementation?

Annex Two

Section one: data collected from AEO companies through questionnaire

4.2. Respondents' Demographic Information

Coming across in to the demographic information of the respondents, the study used diverse parameters as age, educational qualification, respondents current position in the company, year of services in their position, year of AEO implementation in their respective companies and the type of business sectors the AEO engaged.

4.2.1. Age of the Respondents

No	Age Ranges	Frequency	%
2	26-35	12	63
3	36-45	4	21
4	Above 46	3	16

Table 4.1.1 Source: Own survey data April, 2017

As shown on the table 4.1.1, out of 19 respondents 12 of them (63%) are in the age category between 18 and 35, 4 of them (21%) are within the category of 36-45 years while the rest 3(16%) are above 46 years.

4.2.2. Educational Qualification

No	Educational level	Frequency	%
3	First degree	11	58
4	MA, MBSC	8	42
5	PHD and above	-	-

Table 4.1.2 Source: Own survey data April, 2017

Regarding the educational qualification as presented by table 4.1.2, out of the total 19 respondents, 11 of them (58%) have a first degree whereas 8 of them (42%) have the second degree but none of the respondents have above second degree. From this educational qualification we can understand expertise responses can be given during the collection of data that be used in interpretation and analysis.

4.2.3. Current Position in the Company.

No	Current Position	Frequency	%
1	Managerial	6	31.6
2	(Senior) Experts	13	68.4

Table 4.1.3 Source: Own survey data April, 2017

Concerning the position of the respondents as shown under table 4.1.3 from the total 19 respondents, 6 (31.6%) of them are in the managerial position while the rest 13 (68.4%) are in the expert /senior officers positions which (reveal) reality and accuracy of being that both of

them are near and react with different government and other institutions for the benefit of their companies.

4.2.4. Respondents Year of Service in their Current Position

No	Range of service years	Frequency	%
1	1-3	7	36
2	4-7	6	32
3	8-10	3	16
4	Above	3	16

Table 4.1.4 Source: own survey data April, 2017

Looking into respondents year of services in their current position, as we can see from table Table 4.1.4 from the total of 19 respondents, 7 of them (36%) respondents have 1-3 years, 6 of them (32%) 4-7, 3 of them (16%) 8-10, and the remaining 3(16%) of the participants have above 10 years of service in their current position.

From this ranges of services year one can infer that all respondents have more than a year services in AEO companies which leverage them to all necessary information they provide for this research.

4.3.5. Year of AEO Implementation in the Companies

No	years ranges	Frequency	%
1	2016	2	10.5
2	2015	-	-
3	2014	6	32
4	2013	3	16
5	2012	5	26.3
6	2011	3	16

Table 4.1.5 Source Own survey data April, 2017

A year of AEO implementation is another subject of demographic information for the assessment of this study. As shown on table 4.1.5, out 19 respondents, 3 (16%) said their company have AEO joined the AEO program in 2011, 5 (26.3%) joined the AEO program in 2012, 5 respondents (16%) said AEO joined the AEO program in 2013, 6(32%) companies have joined AEO the program in 2014 and 2(10.5%) responded as they joined the AEO program in 2016.

From this every one can infer that the companies selected for this research is experienced with AEO implementation from one year to 8 years experiences and give deep and reliable information that justify the realty.

4.3.6. Type of Business Sector

No	Business sectors	Frequency	%
1	Import	13	68.4
2	Export	-	-
3	Manufacture	3	15.8
4	Transit/logistic	3	15.8

Table 4.1.6 Source Own survey data April, 2017

Participants also requested to identify their business sector, as table 4.1.6. Shows out of 19 respondents 13(68.4%) are importers, 3 (15.8%) are manufacturers and 3(15.8%) are identified as logistic operators.

This reveals that except exporter the other business sector participated and contributed their effort to this research in their business perspective.

4.1.7. AEO certificate level

No	types and level of certificates	Frequency	%
1	Gold	11	58
2	Silver	4	21
3	Bronze	4	21

Table 4.17

Participants were asked to identify their certificate level, as observed from table 4.1.7 out of 19 respondents 11(58%) gold, 4(21.%) silver and 4(21.%) were bronze. From his level of certificate AEO companies with different level of certificate have been participated to give necessary information in their own perspective that be used in this research.

4.2 presentations of data collected by questionnaires' provided to AEOs

Based on the questionnaires purposively distributed to the managers and senior experts of the selected AEO status companies, the researcher identified some important points related to the regulation of authorized economic operator in Ethiopia custom administration.

Under this section the researcher will present and interpret data collected from the targets.

Table 4.2.1

Item No	Item	responses			
		yes		no	
		Freq uen cy	%	Fre que ncy	%
1	Have you benefited from special window service priority in submitting documents for clearance at entry point, in release of declaration immediately after clearance, inspection and release of cargo for being AEO?	14	73.7	5	26.3

The researcher distributed the questionnaire to 19 respondents of 7 AEO companies whether or not they are beneficiary of special window service, priority in submitting documents for clearance at entry point, in release of declaration immediately after clearance, inspection and release of cargo for being AEO status. As shown in table 4.2.1, out of 19 respondents 14 of them (73.7 %) responded that they are benefiting from and 5 (26.3%) responded react negatively.

From the above table one can understand that the participants'/respondents' insight that by being AEO status, they are benefited from ERCA special window service, priority in submitting documents for clearance at customs entry point, in release of declaration immediately after clearance, inspection and release of cargo. This is evidence that ERCA simplified its custom procedures and harmonized its customs law to facilitate trade for AEO status companies.

Table 4.2.2

Item No	Item	Responses			
		yes		no	
		Frequency	%	Frequency	%
2	Are you privileged from facilities like little or no physical inspection of your shipment and reduced formalities for clearance as an AEO?	19	100	-	-

Among 19 respondents of 7 AEO companies as it is provided in table 4.2.2 all respondents 100% respond positively as they are benefiting from facilities of little or no physical inspection of their goods which in turn save their time and financial costs.

From this we can infer that ERCA has reduced or totally avoided physical inspection of imported, manufactured and transited goods through providing and implementing special custom procedures to AEO companies.

Table 4.2.3

Item No	Item	Responses			
		yes		no	
		Frequency	%	Frequency	%
3	Are there facilities of clearance by a fewer copy documents with no deposit or further guarantee other than AEO status?	14	73.7	5	26.3

Among 19 respondents as to whether or not they were benefited facilities in the case clearance by few copy with no deposit or further guarantee, as shown in table 4.2.3 above, 14(73.7) responded as they are benefited by fewer copy with no deposit/ further guarantee while 5(26.3) of the respondent reacted negatively.

From this most AEO companies are benefiting in processing their custom clearance without need of original documents and without need of further guarantee/deposit even if there is an error. Some AEO companies still subjected to original documents and further guarantee/deposit in processing their custom clearance.

This reveals that even if some AEO companies were subjected to all necessary original documents and guarantee in processing their custom clearance most of the AEO companies were benefiting from this facility and this indicates to us that ERCA has been simplifying its customs procedure to promote and facilitate international trade in goods as much as possible.

Table 4.2.4

Item No	Item	responses			
		yes		no	
		Frequency	%	Frequency	%
4	Have you been benefiting from pre arrival clearance facility and post clearance audit services?	10	52.6	9	47.4

As table 4.2.4 shows us, among 19 respondents 10(52.6%) answered that they are benefiting pre arrival clearance facility and post audit services while 9(47.4%) are not benefiting the same.

From this everybody can understand that some AEO companies are more benefited from the facilities some of them are subjected to post arrival clearance and pre auditing of the imported, manufactured and transited goods as non AEO.

Table 4.2.5

Item No	Item	responses			
		yes		no	
		Frequency	%	Frequency	%
5	Have you been benefiting cargo inspection and release service at your premise or priority at customs warehouses or elsewhere possible?	13	68.4	6	31.6

As table 4.2.5 shows, among 19 respondents, 13(68.4 %) of them responds that they are benefiting from cargo inspection at their premises or priorities at custom warehouse while 6(31.6) of the respondents responded negatively.

From this respondents insight one can understand that most of the operator are benefiting from cargo inspection priority at custom administration warehouses or inspected at their own premises.

This reveals that ERCA had achieved better improvement in reducing the time consuming cargo inspection. However, some respondents indicated that there is no distinction between AEO companies and non-AEOs in the case of cargo inspection and release permit.

Table 4.2.6

Item No	Item	Responses			
		yes		No	
		Frequency	%	Frequency	%
6	Are there special area and priority treatment at land transportation, airport cargo and dry port terminals to AEO?	10	52.6	9	47.4

As can be seen from table 4.2.6 above among 19 respondents 10(52.6%) of them indicated there were special area and priority treatments at land transportation, air port cargo and at dry port terminals for AEO companies while 9(47.4%) of them indicated in their responses that there is no special area and treatment at land transportation, air port cargo and at dry port terminals for AEO companies. This implies that there was some priority treatment for some AEO companies.

Table 4.2.7

Item No	Item	Responses	
		Yes	No

		Frequency	%	Frequency	%
7	Are there special priority treatments from other regulatory bodies working with ERCA by being aware of your AEO status special privilege?	5	26.3	14	73.7

As can be seen from table 4.2.7 above among 19 respondents 5(26.3%) of them responded that there are special priority treatments from other regulatory bodies working with ERCA by being aware of their AEO status privilege while 14(73.7%) respondents indicated that there is no awareness on behalf regulatory bodies of their AEO status and privilege attached to it.

Everyone can infer that only few number of regulatory bodies working with ERCA are aware of AEO program and privileges attached to it and provide them priority and other privileges.

Table 4.2.8

Item No	Item	Responses			
		yes		No	
		Frequency	%	Frequency	%
8	Is there special Priority in multimodal shipment particularly in transport of your cargo from Djibouti and dry ports?	3	15.8	16	84.2

As can be seen from table 4.2.8 above among 19 respondents 3(15.8%) of them replied that there are special priorities given to them in multimodal shipment particularly in transport of cargo from Djibouti and dry ports, while 16(84.2) of them react in the contrary.

This shows that there is no or minimum priority treatments provided for the AEO companies by multimodal shipment and dry ports.

Table 4.2.9

Item No	Item	Responses			
		yes		no	
		Frequency	%	Frequency	%
9	Do you think that customs officers, regulatory inspectors and related bodies have awareness about AEOs and their privileges?	5	26.3	14	74.7

As can be seen from table 4.2.9 above among 19 respondents 5(26.3%) of them replied that ERCA custom officers, regulatory inspectors and other related bodies were aware of about AEO and its privileges while 14(73.7%) of the respondent indicated that neither of them aware of about AEO status and its privileges.

From this one can infer that there is lack of awareness within ERCA; with custom officers, regulatory inspectors and other related officers about AEO status and related benefits.

Table 4.2.10

Item No	Item	Responses			
		yes		no	
		Frequency	%	Frequency	%
10	Is there regular training and consultation program arranged for AEOs to improve AEO program implementation?	2	10.5	17	89.5

As can be seen from table 4.2.10 above among 19 respondents 2(10.5%) of them replied that there was regular training program arranged for AEO companies by ERCA while 17(89.5%) of the respondents indicated in their response as there was no regular training provided and consultation between ERCA and AEO companies. This show that ERCA is not committed to provide a series of training and arranging regular consultation with AEO companies.

Table 4.2.11

Item No	Item	Responses			
		Yes		No	
		Frequency	%	Frequency	%
11	Do you have access to valuable information on a regular basis by circular or otherwise to update your company with the new customs rules and regulations provided by ERCA?	9	48	10	52

As can be seen from table 4.2.11 above among 19 respondents 9(48%) of them replied that they have accessed to valuable information from ERCA to update their companies with new custom rules and regulations provided by ERCA while 10(52%) of respondents indicated in their response as they have no access to ERCA valuable custom rules and regulations.

From this we can infer that still there is information gap between ERCA and AEO companies in sharing valuable information.

Table 4.2.12

Item No	Item	Responses			
		Yes		No	
		Frequency	%	Frequency	%
12	Are there measures taken by ERCA in the case of error in custom duties assessments and disclosure of information?	5	26.3	14	74.7

As can be seen from table 4.2.12 above among 19 respondents 5(26.3%) of them confirm that when errors in custom duties assessments and breach of information disclosure committed, ERCA has been taking corrective measures like ordering the payments of customs duties which resulted from harmonized systems code differences of goods and warning from committing

similar errors in the future operation. However, despite the fact that there are error in custom duties assessment and disclosure of wrong information committed by AEOs, as 14(74.7%) of the respondent replied, ERCA takes no measures against such non-compliance.

Therefore, we can infer that only few of AEO companies are subject to measures for committing certain error in custom duties assessment and information disclosure obligation and the vast left neglected due to ERCA's inefficiency in this regard.

Table 4.2.13

Item No	Item	Responses			
		Yes		No	
		Frequency	%	Frequency	%
13	Are there regular monitoring and assistance from ERCA concerning performances of your company?	5	26.3	14	74.7

As can be seen from table 4.2.13 above among 19 respondents 5(26.3%) of them replied that there is regular monitoring and assistance from ERCA concerning their companies compliance with its custom duties and 14(74.7) of respondents react to the contrary.

From this we can infer that ERCA is not committed to monitor and provide assistance to AEO companies in order to improve their performance and level of compliance in progressive manner.

Table 4.2.14

Item No	Item	Responses			
		Yes		No	
		Frequency	%	Frequency	%
14	Are services provided by ERCA for AEO program efficient and enough?	4	21	15	79

As can be seen from table 4.2.14 above among 19 respondents 4(21%) of them replied that the services provided by ERCA for AEO is efficient and enough while 15(79%) of respondents revealed that ERCA's services for AEO were not efficient and enough because currently AEO program is not fully implemented by ERCA. Even its' employees did not know what are benefits that each AEO companies should enjoy, for instance most inspectors did not know the provided privileges to the AEO companies.

In addition, there are no similar and constantly provided services by ERCA for all AEO companies. Besides, there is little monitoring and no assistance given by ERCA to AEO companies. Therefore, we can conclude from these responses that ERCA is providing poor and inefficient services for AEO companies.

Table 4.2.15

Item No	Item	Choices for prioritization of problems	Responses	
			Frequency	%

15	What are the major obstacles for the success of AEO in Ethiopia? Prioritize the following obstacles.	I. Regulatory restriction	2	10.5
		II. Lack of commitment on part of ERCA	4	21
		iii. Lack of coordination between ERCA and Regulatory and service providing agencies	10	52.5
		iv. Lack of commitment on the part of AEO companies	3	15.8

Participants are also asked to prioritize the major obstacles for the success of AEO in Ethiopia. As indicated by their responses on the table 4.215 above, lack of coordination between ERCA and regulatory organs is indicated as the first problem followed by lack of commitment on the part of ERCA. Lack of commitment on the side of AEO companies and regulatory restrictions are also prioritized as bottleneck and problems in implementation of the AEO program respectively, next to the former two problems.

Section two

4.3. Presentation and interpretation of data collected from ERCA AEO unit through FGD

This section deals with the presentation of the data collected through focused group discussion with ERCA authorized economic operator's unit experts and program coordinator.

Depending on the designed research methodology, focused group discussion was conducted with AEO unit at ERCA and each question discussed below.

1. The group of experts¹⁷⁶ participated in FGD discussed procedure to be followed by applicant wants to join AEO program and by ERCA AEO unit whether or not to admit the applicant to the program. First of all, if a company wants to join the AEO program, it can voluntarily apply its application to ERCA by filling all necessary information about its company on the format prepared by ERCA AEO unit to this purpose.

As soon as the application submitted to the AEO unit by the applicant, the unit will begin; first, identify company's risk level depending on the information provided by the company in application format. If the risk level of a company determined as a red one the application automatically rejected. But if the risk level of the company were identified as green and yellow the process will proceed to the next procedure. So the next step is the applicant obliged to present its company profile in holistic manner by filling on self assessment format prepared by AEO unit for this purpose.

Depending on the information presented to the AEO unit by application and self assessment format the AEO unit two expert's teams goes to the applicant company. One team which is

¹⁷⁶ERCA AEO unit experts participated in focused group discussion conducted April 28/2014 at ERCA with Mr. Gebregzaber Gebramikael and Mr. Fayisa Jirtu

called AEO's working system and development team¹⁷⁷ examine company's internal working system and the other team called legal compliance audit team¹⁷⁸ examines the company's level of legal compliance with the custom regimes in detail manner.

After necessary investigation of the company's profile, internal working system and legal compliance the teams of the unit will pass its decision on the application as to whether the company is competent to join AEO program or not. If the two teams declare that the applicant is competent, they admit the applicant company to the program by certifying that the company had joined the program with gold, silver or bronze level.

From the above FGD the experts have identified that voluntary company freely apply to join the AEO program using two formats developed by ERCA AEO unit, the AEO unit also follow some mandatory procedures to identify the risk level, level of legal compliance and auditing the internal working system of the applicant company before admitting the applicant to the program.

From this FGD one can understand that there are some procedures to be followed by applicant before joining the program and by AEO unit whether or not to admit applicant Company to the program. The unit admit the applicant only if applicants risk level is yellow or green and passed through other necessary criteria.

2. The group of experts¹⁷⁹ participated in FGD identified as the AEO program has been launched in 2011 by ERCA based on directive No.65/2011, still now 46 companies has been authorized as economic operators with different level of
From this discussion one can conclude that 46 companies with different level of certificate have been awarded AEO status starting from 2011-2017.
3. The group of experts¹⁸⁰ participated in FGD expressed that there were no criteria cited under custom proclamation No.622/2006, No.859/2014 and under directive No.65/2011 to identify each level of certificate and any related benefit to each. This is what missed under these custom proclamations and directive.

The experts at the AEO unit determine the level of certificate after evaluating the internal process and legal compliance of the company. Due to this it is so difficult to properly determine who should get gold, silver and bronze level certificate. Since experts decide the level of the company on their discretion the system is venerable to corruption.

4. The group of experts participated in FGD responded to that those laws that we have concerning the regulation and operation of AEO are not enough and efficient, because we have only one enforceable proclamation No. 859/2014 which replace proclamation No. 622/2006. And the proclamation also did not incorporate key and crucial provision governing the operation of the AEO program.

If the proclamation did not incorporate key and crucial provision regulating AEO's operation, the gap should be filled by regulation specifically adopted by council of minister. Otherwise the ERCA can also provide directive based on proclamation and regulation to implement and exercise the legitimate responsibility given to the institution.

However, the directive doesn't incorporate what should be included in the directive to regulate AEO's operation and implement the program. While the proclamation has to incorporate

¹⁷⁷ Who has been organized and mandated by AEO unit to investigate the risk level of applicant by following AEO procedure manual adopted by unit.

¹⁷⁸ Who has been organized and mandated by ERCA AEO unit to investigate and determine level of companies' legal compliance in the past three years following the AEO procedural manual adopted by the unit.

¹⁷⁹ Supra note 135

¹⁸⁰ ibid

particular issues concerning the program, when we look the case at hand the proclamation did not incorporate particular issues of authorized economic operators program and the council of minister has issue no regulation yet.

On the other hand, the implantation of the AEO program needs coordination and cooperation of different government regulatory organ and private institution in addition to ERCA. This coordination and cooperation also need legal base to create relationship between ERCA, other regulatory body, service providing governmental and private institutions and AEO companies. However no single law has been adapted to this end. This is one of the series problems in the implementation of the program.

One of the problems that AEO operators face is that while they have privilege to get priority and others benefits attached to the status of AEO in different procedural matters, due to the absence of coordination between different governmental and private institutions AEO operators have been facing limitation on their efficiency.

The other problem is that even if there was coordination, there is no law that imposes obligation on governmental institution other than ERCA and private institution like custom warehouse holders, logistic operators and the like to give priority, respect and enforce the benefit attached to AEO status.

From the above FGD infer that that from the begging of AEO program recognition in our country, we have no enough laws to regulate and govern the AEO program and the existing laws themselves also not efficient to regulate the operation of the program.

5. The group of experts participated in FGD revealed that the information shared from AEO companies not always reliable and accurate, the ERCA AEO unit checks that information by using different mechanism.

Sometimes there might be difference between the self assessments made by the AEO and the ERCA AEO units examination conducted based on the company self assessments. In this case ERCA will order the AEO to update its information based on the finding of the units.

In some cases there is also variation of information provided by the AEO and post clearance audit (PCA) unit, particularly in case of tax and custom duty assessment. When the variation realized PCA will recommend the AEO to pay the difference tax and custom duty.

In addition to the ordering the AEO to updates information regarding its company and recommend to pay the tax difference, ERCA takes correctional measures on those AEO who commits wrong deed. Writing warning letter is the only measures which have been taken against those AEO who misbehave ERCA by providing false information.

From this group discussion we understand that there was a little measure taken by ERCA AEO unit in the case of non-compliance AEO companies with custom legal regimes. But the measure taken at this point is enough because the AEO program needs a good care, legal regimes, strong regulatory organ and series measures.

6. The group of experts participated in FGD revealed that among those companies have joined the AEO program, Holland Car and Ara Shoes companies expelled from the program due to different reasons.

Holland Car Company disqualified due to bankruptcy while Ara Shoes Company disqualified due to transferring ownership to third party.

This shows that there are possibilities of discharging AEO companies for persuasive and justifiable reasons.

7. The group of experts participated in FGD identified the main challenges of AEO program regulation as;
- Lack of man power in ERCA AEO unit; there is high rate of turnover of employee due to fear of the consequence of their decision on eligibility of company to be AEO and implementation of legal provisions regarding the process. Even if there is sufficient training provided by ERCA to its employees due to the turnover new recruitments is mandatory. These new employee have not taken the necessary training regarding the program at all and the privilege provided to AEO. For this reason the service expected from AEO is not efficient.
 - Lack of political commitment of ERCA officials; there is no policy regarding AEO program at national level. Besides even the high officials of ERCA have no clue about the program. When we see the experience of European countries in these respect, the certificate of AEO issued at European Union (EU) level not at national level. These show us that European countries have give due attention to the program. When we come to our country, the certificate issued not by at least institution level. Rather it is issued by one of the unit in the ERCA. The awareness about the program is limited to the experts. These indicate that the country has given no attention to the program and the leaders have no political commitment at least implement the existing laws. The other big difficulties that faces is that since high officials changed frequently it is difficult to continue the commitment that started by former officials. Because, the new officials will start over the institutional system and have no awareness about AEO so he/she is new to the AEO program.
 - Insufficient legal frame work; currently it is one proclamation that is effective which is very general and need detail regulation and directives specifically elaborating the functioning of AEO. The non-enactment of detail laws regarding how AEO status acquired and what AEO should fulfill in order to benefit from being AEO status entail problems on the efficiency of the program.
 - Unsecured supply chain security ; one of the reason for the emerging of AEO program is to secured supply chain which is aimed at protecting national security from trade source security problem like terrorism, trafficking of outdated and dangerous products. The other reason is trade facilitation. When we come to Ethiopian case, ERCA officials perceives and has been practicing AEO program from the perspective of trade facilitation and ignore security issue for two reasons. One, try to ensure secured supply chain it is not cost wise. It also requires high level of technology that the country cannot afford. Besides, there is no law that confers security mandate to ERCA. It is the mandate of national security.
 - Poor horizontal and vertical coordination in ERCA, lack of appropriate technology and refusing physical inspection of imported product by AEO claiming that they are awarded an AEO status are also problems mentioned in addition to the above problems.

By FGD the main challenges endangering the regulation and implementation of AEO program has been identified as: lack of man power in ERCA AEO unit,high rate of turnover of employee due to fear of the consequence of their decision on eligibility of company to be AEO, lack of political commitment of ERCA officials and policy regarding AEO program at national level, lack of awareness about AEO by ERCA high officials, insufficient legal frame workunsecured supply chain security, poor horizontal and vertical coordination in ERCA, lack of appropriate technology.

8. The group of experts participated in FGD explained that even if there is no law that clearly provide the interval of monitoring time, in our internal working procedure we conduct monitoring of AEO once each of two years to ensure whether AEO sustain or not in their legal compliance and internal working system. This is conducted by one of the ERCA unit, post clearance audit. However, the monitoring we conduct is not enough to the extent that enable us to determine the problems and come up with the solution.

Regarding assistance expected from ERCA to AEO improvement; by conducting frequent conferences with AEOs to create awareness and to share best experience among AEOs themselves.

From this discussion one can understand that there are no laws provide the interval time to monitor the AEO companies' performances to take necessary measures and to expand best practices between AEO companies.

9. The group of experts participated in FGD responded that companies having AEO status haven been benefiting from their status comparing with those companies which have no AEO status. However, the benefit that AEO may get from acquiring this status will be in question in case of institutions other than ERCA. This is because unless ERCA meet and discuss for this purpose with institution like Ethiopian multimodal transportation institution, Ethiopian shipping line, ministry of trade and investment commission AEO may not get priority and other possible privileges. Because, there is no leading agency which facilitate AEO programs by coordinating these governmental institutions and between governmental and private sector.

From this discussion one can conclude that AEO status companies are benefiting from AEO program in the side of AERCA but they are not benefited from other government and other private institution have connection with the operation of AEO program and no leading agency/ institution was empowered to facilitate to this ends.

10. The group of experts participated in FGD indicated while discussion that most of AEO comply with their tax and custom duty. However, sometimes when post clearance audit find out difference, AEO reject it and file compliant. In this case their compliant will be seen and may be admitted or rejected. Non-compliance with their tax and custom duty by AEO happens not with intention to evade tax rather this is happened due to ERCA capacity to enforce laws and create awareness to develop voluntary compliance. There is also limitation on behalf of AEOs with regard to capacity to pay taxes and custom duties.

From this expert's accretion one infers most of AEO companies are live up their custom and tax liability, however, there are also in the contrary.

11. The group of experts participated in the discussion expressed in a single word that there is no mutual recognition arrangement idea with ERCA. The AEO companies can benefit from mutual recognition agreement if the country negotiate and made arrangements to this effect.

From this discussion one can infer that lack of mutual recognition agreement with countries having trade partnership especially with import and export can highly endanger the AEO companies benefit by subjecting them equal to non AEO companies out of Ethiopia territorial jurisdiction. This clearly shows that the footing of ERCA in realization and promotion AEO program is very law, its progress in facilitation of international trade.

S/ N	No.	Name of AEO Company	Facilitation Type Given so far		TIN	Agree /Licens No.
			status	CSSA certificate		
1st Phase						

1	1	The Motor & Engineering Company S.C. (MOENCO)	GOLD	NO CSSA certified	0000021807	001/20	
2	2	Dire Industries P.L.C.	SILVER	CSSA certified	0000007324	003/20	
3	3	Maritime & Transit Services Enterprise (MTSE)	BRONZE	NO CSSA certified	0000030616	004/20	
4	4	AYKA Addis Textile and Investment	GOLD	CSSA certified	0003243569	005/20	
	5	Ethio-Lather Industry P.L.C. (ELICO)	GOLD	CSSA certified	0000017382	006/20	
5	6	Ethiopia Tannery Share Company	GOLD	CSSA certified	0000109613	007/20	
6	7	Otto Kessler Gloves Ethiopia P.L.C.	BRONZE	CSSA certified	0005738877	009/20	
7	8	Kadisco Paint and Adhesive Industry S.C	GOLD	CSSA certified	0000015683	010/20	
8	9	Maranque Plants PLC.	GOLD	CSSA certified	0000700210	011/20	
9	10	Selete Hulling PLC	GOLD	CSSA certified	0004251366	012/20	
10	11	Hua Jian International	GOLD	CSSA certified	0023902432	013/20	
11	12	Ambassel Trading House	GOLD	CSSA certified	0000018284	014/20	
12	13	Nidopia PLC	SILVER	NO CSSA certified	0006880030	015/20	
13	14	Zenith GebesEshet	GOLD	CSSA certified	0000017221	016/20	
	2nd Phase						
14	15	Nyala Motors S.C	GOLD	NO CSSA certified	0000008624	001/20	
15	16	Equatorial Business Group	GOLD	NO CSSA certified	0000022765	002/20	
16	17	National Tobacco Enterprise	SILVER	NO CSSA certified	0000025381	003/20	
17	18	Melak Trading PLC	SILVER	NO CSSA certified	0000014582	004/20	
	19	Ethiopian Trading Enterprise/ ALLE	GOLD	NO CSSA certified	0038530285	005/20	
	20	Horizon Addis Tyre Share Company	GOLD	CSSA certified	0000059446	006/20	
	21	East African Tiger Brands Industries PLC	GOLD	CSSA certified	0016838870	007/20	
	22	BMET Energy, Telecom, Industry and Trade LLC	GOLD	CSSA certified	0016777636	008/20	
	23	Trans Ethiopia PLC	Transit Service	BRONZE	NO CSSA certified	0000060188	009/20
	24		Import Service	SILVER	NO CSSA certified	0000060188	010/20
	25		Transport Service	BRONZE	NO CSSA certified	0000060188	011/20

No.	Name of AEO Company	Facilitation Type Given so far		TIN	Agreement /License No.
		Import	Export		
26	Mesfin Industrial Engineering PLC	GOLD	CSSA certified	0000044986	012/20
27	Kanoria Africa Textile PLC	SILVER	CSSA certified	0029189429	013/20
28	Addis Pharmaceutical Factory PLC	SILVER	NO CSSA certified	0000242703	014/20
29	Burayu Development PLC	SILVER	CSSA certified	0000016159	015/20
30	Nile Source PLC	SILVER	NO CSSA certified	0000034320	016/20
31	East Africa Bottling Share Company	GOLD	NO CSSA certified	0000015706	017/20
32	Oil Libiya Ethiopia	GOLD	NO CSSA certified	0005149221	018/20
33	Guna Trading House PLC	SILVER	NO CSSA certified	0000020272	019/20
34	National Motors Corporation	SILVER	NO CSSA certified	0000011491	001/20
35	Techno Style PLC	GOLD	NO CSSA certified	0000017977	002/20
36	Adama Development PLC	GOLD	CSSA certified	0003003849	003/20
37	Red Fox Ethiopia PLC	SILVER	CSSA certified	0000213201	004/20
38	Hagbes PLC	SILVER	NO CSSA certified	0000025458	005/20
39	BELAY-AB MOTORS	SILVER	CSSA certified	0003228128	006/20
40	BGI ETHIOPIA PLC	GOLD	CSSA certified	0000022474	007/20
41	METALS AND ENGINEERING CORPORATION	GOLD	NO CSSA certified	0012814908	008/20
42	MEDPHARM HOLDING AFRICA LTD	SILVER	NO CSSA certified	0000057111	009/20

.B:-1. 002/2010 Holland Car PLC and 008/2011 ARA Shoe AG (Ethiopian Branch) are terminated.

N 2. በCSSA certified የነበሩ ድርጅቶች በAEO የታቀሩ አባላት ብዛት21 ድርጅቶች ሲሆኑ

3. AEO ሁኔታው CSSA certified ያልሆኑ ድርጅቶች ብዛት.....21 ድርጅቶች ናቸው

Where by “CSSAC” means customs special service authorization certificate.

