

# Analytical Report on Implementation of Pre-Arrival Processing (PAP) and the Authorized Economic Operator (AEO) Programmes in Kenya

November 2022



**giz** Deutsche Gesellschaft  
für Internationale  
Zusammenarbeit (GIZ) GmbH

In Partnership with

**Shippers  
Council of  
Eastern  
Africa**





**Published by**

Shippers Council of Eastern Africa,

Po Box 1291 - 00606

Nairobi, Kenya.

**As at**

November 2022

**Design**

[www.sixideas.co.ke](http://www.sixideas.co.ke)

Nairobi

**Photo credits**

Add in-case of any photos

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## MESSAGE FROM THE CEO



As the world trade continues to grow, we have witnessed, countries increasingly focusing on efficient trade facilitation and investment in infrastructure to support trade. Kenya and its East African Community (EAC) member states have not been left behind as evidenced in the investments they have made in port expansions, roads, and automation amongst other initiatives. These measures are aimed at enhancing trade by expediting clearance processes and reducing costs of transport and logistics. Pre-Arrival Processing (PAP) and the Authorized Economic Operator (AEO) programmes are examples of additional trade facilitation programmes currently being implemented globally.

This study on PAP and AEO programmes provides insightful information and analysis that will provide the requisite impetus to their successful implementation and uptake. Their implementation will no doubt augment and expedite the desired efficiencies as envisaged by the World Customs Organization, the Kyoto Protocols, and the World Trade Organization Trade Facilitation Agreement. With an estimated throughput of between 43 million and 45 million tonnes of cargo expected to go through the Mombasa port by 2030, measures to increase efficiency in the clearance process through appropriate risk management will be necessary. This is the reason these two programmes are important.

Shippers in Kenya paid over KShs. 2.4 billion in storage fees in 2021 down from over KShs. 3 billion in 2020. Further, due to unpredictability of supply chains, shippers pay an average of KShs.1.5 million per week for demurrage. Cognizant of the benefits of faster clearance and reduced inspections, the AEO and PAP programmes can help reduce these costs for shippers and bring greater benefits to the economy. In addition, due to the business partnerships created with customs, the two programmes can result in greater compliance, increased trade, and customs revenues.

With the PAP programme currently accounting for 29% trade transactions, this study identifies inherent challenges and recommends measures to improve the programme and enhance its utilization. The recommendations, if implemented should increase the proportion of cargo cleared using PAP to 70% as targeted by the Mombasa Port and Northern Corridor Community Charter. On the other hand, at 308 accredited businesses, the AEO programme has greater potential of saving shippers costs related to delays in the cargo clearance process. Opportunities exist to realize greater benefits by growing the number of accredited businesses and fostering greater cooperation between government agencies.

Recognizing the broader economic benefits of the PAP and the AEO programmes, Shippers Council of Eastern Africa (SCEA) undertakes to continue engaging with the Kenya Revenue Authority and all government agencies involved in trade facilitation, to ensure the recommendations contained in this report are implemented. This includes among others, working on an integrated risk management approach that will facilitate information sharing between agencies and mutually recognition of benefits, and an enabling legal and policy framework to support implementation of these two programmes.

Finally, I would like to thank the consultants Dr. Rosebella Langat, Dr. Helen Hoka Osiolo and Mr. Humphrey Kitembe for their technical input in the development of this report. My deepest gratitude goes

to the GIZ team led by Ms. Jasmin Gohl for funding this study, the Kenya Revenue Authority team led by the Commissioner of Customs and Boarder Control Ms. Lilian Nyawanda and my colleagues, Mr. Agayo Ogambi, Ms. Anne Kisemba and Ms. Pauline Nduku for their support in developing this study. Lastly but not least, I would also like to thank our members and stakeholders who provided valuable information towards the development of this report, without which this study would not have been complete.

**Gilbert Langat**

**Chief Executive Officer.**

## ACKNOWLEDGEMENT

The Analytical Report on Implementation of Pre-Arrival Processing (PAP) and the Authorized Economic Operator (AEO) Programmes in Kenya is a culmination of collaborative efforts between stakeholders in the Trade Facilitation sector. Both private sector actors and government agencies have contributed immensely to production of the final report, giving it cross cutting ownership. We as GIZ are immensely grateful to all the agencies that gave their input in one way or another to ensure conclusion of this study.

We particularly would like to thank the Shippers Council of East Africa (SCEA) for first and foremost identifying the need for an analytical study to provide empirical and qualitative analysis to the challenges faced in implementation of the PAP and AEO programmes in Kenya. We appreciate the fact that once the study was conceptualized, a roadmap crafted and executed according to the agreed timelines. We thank SCEA under the leadership of the CEO Gilbert Langat and his able team comprising Mr. Agayo Ogambi, Ms. Anne Kitemba and Ms. Pauline Nduku for steering this project well and yielding results in record time.

We would further like to express our deepest gratitude to the Kenya Revenue Authority (KRA) led by the Commissioner of Customs and Boarder Control Ms. Lilian Nyawanda for always being available as respondents, key informants and participants in validation workshops. Without KRA's input this report could not have been complete considering the critical role they play in the implementation of the PAP and AEO programmes. It is our hope that the findings from this report will be instrumental for KRA, Partner Government Agencies and the private sector in the implementation of article 7 of the World Trade Organization (WTO) Trade Facilitation Agreement (TFA), which provides for Pre-Arrival Processing and the Authorized Economic Operator system as mechanisms of expediting the release and clearance of cargo.

This report identifies the bottlenecks in effective implementation of the PAP and AEO programmes and will go a long way in developing an advocacy agenda for Business Member Organizations directly or indirectly involved in trade facilitation; review of processes for government agencies and will also contribute to the rich body of knowledge specifically on implementation of the PAP AEO programmes in Kenya .

We appreciate the splendid work from the consulting team led by Dr. Rosebella Langat, Dr. Helen Osiolo and Humphrey Kitembe. It is evident from the quality of work exhibited in the report that a lot of time and effort was spent in putting together the study and ensuring that the document reflects the realities on the ground and more importantly sentiments from the stakeholders.

May this report serve as a basis for improvement in implementation of the PAP and AEO programmes and may it further lay the groundwork for future research in the release and clearance of cargo as envisioned in the WTO TFA agreement. More importantly, it is our hope that through the findings, Kenya's private sector and government agencies view implementation of these programmes as a multi stakeholder responsibility, not just for Customs Authorities. Finally, may the lessons learnt from aspirator and comparator countries in this report serve as reference points for enhancement of these programmes in Kenya and beyond. Special thanks to all the individuals and agencies who may not be mentioned in this document, but whose contributions enabled this report to meet the expected standards.



**Jasmin Gohl, GIZ Trade Lead, GIZ Kenya**

## EXECUTIVE SUMMARY

Since the early 2000s, trade facilitation has emerged as an important tool for growing international trade and supporting the economic development of countries. By reducing government red tape and eliminating duplicating and redundant processes in national trading systems, trade facilitation can have a positive impact on competitiveness and market integration and help grow economies.

The WTO Trade Facilitation Agreement (TFA), which came into force in 2017, contains provisions for expediting the clearance and release of goods at ports and international borders. The agreement also sets out measures for effective cooperation between customs and other government agencies (OGAs) on trade facilitation and customs compliance issues. Such trade facilitation measures include the Authorized Economic Operator (AEO) and Pre-Arrival Processing (PAP) programmes, which are designed to enhance administrative efficiency, secure supply chains, reduce costs of executing trade transactions, and increase predictability of global supply chains.

In Kenya, the AEO programme was officially launched in 2010 and currently has 308 certified business entities. The PAP programme on the other hand is in its infancy stage, currently accounting for 29% of import/export transactions. Despite the potential benefits these two programmes offer, implementation challenges have stagnated utilization and prevented the full realization of their benefits. This report is the outcome of a study whose objective was to conduct an evaluation of the AEO and PAP programmes and recommend measures to improve their delivery and optimize utilization for the benefit of both government and businesses. The specific objectives of the study included the following:

- » Determine the implementation status, challenges, and industry concerns with the AEO and PAP Programmes
- » Examine and determine the relevance of the AEO and PAP programmes
- » Evaluate the economic impact of the AEO and PAP programmes
- » Review and evaluate the regulatory framework of the AEO and PAP programmes
- » Review and evaluate the suitability of services delivery methods
- » Recommend key performance indicators (KPIs) for measuring progress made in implementing the AEO and PAP programmes
- » Determine the level of consultations between government-to-government and government-to-businesses towards promotion and marketing of the PAP and AEO programmes
- » Recommendations measures to make the programmes attractive
- » Recommend policy reforms and IT system changes necessary to support implementation of the PAP and AEO Programmes.

As part of the study, information on the above objectives was collected from several stakeholders including customs agencies and government agencies involved in trade facilitation, AEO certified businesses, businesses that use the PAP programme and other industry associations including the Kenya Association of Manufacturers (KAM), the Kenya International Freight and Warehousing Association (KIFWA), the Shippers Council of Eastern Africa (SCEA) and the Federation of Eastern Africa Freight Forwarders Association (FEAFFA) among other stakeholders. The study also benefited from input from trade facilitation experts from the EU, World Bank, and the Asia Pacific Economic Corporation (APEC).

To enable the AEO programme realize its expected benefits for both government and businesses, this report recommends new measures to promote awareness, provide flexibility to the accreditation process to involve SMEs, grow inter-agency collaboration through a harmonized risk management framework,

make AEO benefits more concrete and consider embedding the programme in legislation to support implementation. For the PAP programme, the report recommends measures to streamline operations, create greater awareness, enhance stakeholder involvement, facilitate greater collaboration between agencies and harmonization of risk management systems by government agencies involved in trade facilitation. The programme could also benefit from legislative changes to support implementation.

These recommendations, if implemented, could potentially result in gains for both government and businesses. For governments, they could include enhanced tax collection, better utilization of resources, and increased compliance with trade regulations. For businesses, these measures can result in higher predictability of supply chains, speed up operations and lower transaction costs, resulting in more competitive global markets. The benefits of these two programmes could also result in greater attraction of investments and support economic growth and job creation.



## ABBREVIATIONS

AEO	Authorized Economic Operator
AFCFTA	African Continental Free Trade Area
APEC	Asia-Pacific Economic Corporation
CBSA	Canada Border Services Agency
CTB	Customs and Tariff Bureau
CTPAT	Customs Trade Partnership Against Terrorism
EAC	East African Community
EU	European Union
FEAFFA	Federation of East Africa Freight Forwarders Association
ICMS	Integrated Customs Management System
ACA	Anti-Counterfeit Authority
KAA	Kenya Airports Authority
KAM	Kenya Association of Manufacturers
KEBS	Kenya Bureau of Standards
KENTRADE	Kenya Trade Network Agency
KIFWA	Kenya International Freight and Warehousing Association
KNRA	Kenya Nuclear Regulatory Authority
KPA	Kenya Ports Authority
KPI	Key Performance Indicator
KRA	Kenya Revenue Authority
OGA	Other Government Agencies
PAP	Pre-Arrival Processing
PIP	Partnership in Protection
PPB	Pharmacy and Poisons Board
RAEO	Regional Authorized Economic Operator
RKC	Revised Kyoto Convention
SCEA	Shippers Council of Eastern African
SME	Small and Medium Enterprise
TFA	Trade Facilitation Agreement
UCC	Union Customs Code
WCO	World Customs Organization
WTO	World Trade Organization

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# 1. INTRODUCTION

In a world characterized by increasing trade flows between countries, trade facilitation helps lower overall trade costs, increase economic activity, and improve welfare of citizens, particularly in developing and emerging economies. Trade facilitation efforts, such as simplifying trade documentation, modernizing customs procedures, and standardizing product safety requirements, can slash the costs and time needed to export and import goods.

Reductions in time and costs to trade can make the difference between a country seamlessly linking up to an integrated global production chain or being left out on the benefits of global trade. Easing trade processes can therefore provide a critical boost to international trade and the global economy.

The World Trade Organization (WTO) Trade Facilitation Agreement (TFA), which came into force in 2017 sets out multilateral rules that seek to address specific procedural hurdles to facilitate greater trade between countries. The agreement represents a significant opportunity for countries to reap the economic benefits from improving the speed and efficiency of border procedures. The TFA contains provisions for expediting the movement, release, and clearance of goods, including goods in transit. It also sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues.

The full implementation of the TFA is estimated to reduce global trade costs by an average of 14.3%, with African countries and least-developed countries (LDCs) forecast to enjoy the highest average reduction in trade costs<sup>1</sup>. It is also expected to cut export lead times, grow exports and enable developing countries to enjoy larger gains than the global average. Overall, approximately two thirds of all benefits from full implementation if the TFA are predicted to go to the developing and least-developed world. The Pre-Arrival Processing (PAP) and Authorized Economic Operator (AEO) programmes are examples of trade facilitation measures aimed at expediting the movement, release, and clearance of goods at ports and border stations.

Pre-arrival processing programmes are designed to enable the submission of trade documentation and/or data to the relevant authorities prior to the actual arrival of imports or prior to departure of exports. The advance submission of trade data enables authorities to conduct risk assessment and to process the declaration and prepare a release decision prior to the goods arriving at the port of entry/port of exit, effectively enabling the release of the goods immediately upon arrival. Authorized Economic Operator (AEO) programs create customs-to-business partnerships aimed at securing the supply chain through establishment of mutual trust and facilitating legitimate low-risk trade. An AEO is a party involved in international trade, in whatever function, as approved by a national Customs administration to be compliant with WCO supply chain security standards. AEOs include manufacturers, importers, exporters, brokers, carriers, consolidators, intermediaries, ports, airports, terminal operators, integrated operators, warehouses, and distributors among other business entities. Business entities designated as AEOs are examined at the border significantly less than regular cross-border traders.

As a member of the WTO and signatory to the Revised Kyoto Protocol and WTO TFA, Kenya is obligated to follow up on its commitments to implement the PAP and AEO programmes as part of its trade facilitation measures. Since inception, these two programmes have experienced implementation challenges that have limited participation by businesses and prevented realization of their full benefits. Overall, there are 308 business entities certified under the AEO programme and approximately 29 percent of imports/exports are cleared using the PAP programme.

This report is the outcome of an analysis conducted on the PAP and AEO programmes to inform and advice on the best way to optimize utilization of these programmes to result in full realization of their

intended benefits. The report further highlights the challenges faced by the AEO and PAP programmes and proposes measures to improve these programmes and optimize utilization in a way that will benefit shippers and enhance trade and economic integration. The study is being supported by GIZ Alliance for Trade Facilitation Programme in collaboration with the Shippers Council of Eastern Africa (SCEA). GIZ supports government institutions and the private sector with implementation of trade facilitation reforms within the WTO Trade Facilitation Agreement and the African Continental Free Trade Area (AFCFTA) frameworks. The Shippers Council of Eastern Africa (SCEA) is the umbrella body representing cargo owners in Eastern Africa. SCEA advocates for a reliable logistics environment that will translate into reduced cost of doing business to improve the competitiveness of business entities in Eastern Africa.

## 2. STUDY OBJECTIVES AND METHODOLOGY

The overall objective of the study was to conduct an analysis of the AEO and PAP programmes, identify implementation challenges and develop an analytical report with recommendations to optimize the utilization. The specific objectives included the following:

- » Determine the challenges for implementation of the PAP and AEO Programmes
- » Examine and determine the need for the PAP and AEO Programme to support and deliver on the proposed benefits
- » Evaluate the economic impact of the PAP and AEO Programme to Shippers and the broader private sector
- » Review and evaluate the Implementation status of the PAP and AEO Programme.
- » Review and evaluate the Regulatory framework of PAP and AEO Programme
- » Review and evaluate the suitability of proposed services delivery modes and methods
- » Propose and recommend Key Performance Indicators (KPIs) for related stakeholders
- » Explore and develop possible partnership and collaboration between Key Players
- » Determine the level of consultations between Government to Government and Government to Private sector towards the promotion and marketing PAP and AEO Programme
- » Draw, review and evaluate industry concerns and make recommendations to address them.
- » Recommendations on possible incentives and services that would make the programmes attractive
- » Policy reforms and IT system changes that may be necessary to support PAP and AEO Programme.

To deliver the above objectives, the study adopted a methodology that included conducting an evaluation, review of existing literature and research on AEO and PAP programme utilization, conducting jurisdictional scans and learning from best practices, and collecting primary data from a variety of stakeholders that included government agencies and businesses involved in or have interacted with the AEO and PAP programmes.

The evaluation of the AEO and PAP programmes adopted the following approach:

- » A goals-based evaluation which sought to determine whether these two programmes are realizing their intended objectives. This includes determination of the continued relevance and impact of these programmes.
- » A process-based evaluation which sought to shed greater understanding of how these two programmes work, their strengths, weaknesses, and implementation challenges.

The primary method of data collection for the above two approaches included the following:

- » **Surveys** – multiple survey tools were developed and administered to a select sample of stakeholders using online survey platforms.
- » **Key informant Interviews** – including expert interviews designed to collect information and insights from stakeholder regarding their experiences using these two programmes.
- » **Focus group discussions** – were used to explore topical issues in detail through group discussions and shed light on the experiences of stakeholders who use these programmes.
- » **Case studies** – case studies were reviewed to learn from other jurisdiction on their experiences implementing these two programmes and obtain some lessons on best practices.

A jurisdictional scan was conducted on the delivery of PAP and AEO programmes. The focus was to understand how these programmes are designed and implemented in countries that have demonstrated success and learn some important best practices.

The primary data was collected from a variety of sources that included the following:

- » AEO certified businesses
- » Businesses that are not AEO certified
- » Businesses that have experience using the PAP programme.
- » AEO implementing authorities including customs i.e., Kenya Revenue Authority Customs Department.
- » Government agencies involved in trade facilitation
- » Freight forwarders
- » Leading industry associations such as KAM, SCEA, KIFWA

The information collected from these sources was analysed and consolidated to produce this report.

### 3. BACKGROUND AND CONTEXT

Bureaucratic delays and government red tape pose a significant barrier to the movement of goods across borders for traders. Trade facilitation, which implies the simplification, modernization and harmonization of export and import processes is increasingly gaining traction in world trading systems. In 2017, the World Trade Organization (WTO) Trade Facilitation Agreement (TFA) came into force after receiving ratification by two-thirds of member states. The TFA contains provisions for expediting the movement, release, and clearance of goods, including goods in transit. It also sets out measures for effective cooperation between customs and other regulatory authorities on trade facilitation and customs compliance issues. It further contains provisions for technical assistance and capacity building to enable implementation of the agreement.

Pre-Arrival Processing (PAP) and the Authorized Economic Operator (AEO) are examples of programmes that are designed to enhance trade facilitation by enabling faster and efficient cargo clearance processes. Pre-arrival processing involves the (electronic) submission of cargo declaration data to the relevant authorities prior to the actual arrival (for import) or prior to departure (for export) of goods, to enable authorities to conduct a risk assessment and prepare a release decision prior to the goods arriving at the port of entry or exit, thus enabling release of the goods immediately upon arrival. PAP is one of the core trade facilitation measures outlined in article 7.1 of the TFA and Standard 3.25 of the Revised Kyoto Convention. PAP is also supported by legislation in some individual member states.

The AEO program on the other hand creates customs-to-business partnerships based on mutual trust and responsibility, aimed at securing the supply chain and facilitating legitimate trade. AEO certified businesses experience faster cargo clearance due to the significantly fewer inspections they encounter at the border relative to other regular cross-border traders. These two programs are designed to eliminate delays in cargo clearance at ports and enhance efficiencies, increase the volume of trade, and grow economies. The programmes are implemented through cooperation between customs authorities, other regulators involved in trade and private sector players.

The benefits of the AEO and PAP programmes are known to accrue both to government and businesses. Through faster clearance timelines and fewer inspections, AEO and PAP programmes are known to reduce the costs of trade transactions for businesses largely due to reduced storage and demurrage costs. For governments, greater efficiency in cargo processing and increased compliance with trade regulations would promote trade, grow the economy, and expand national revenues among other economic benefits.

#### i. Global AEO Programmes

WCOs Compendium of Authorized Economic Operator Programmes<sup>2</sup> has become an important source of information for customs, individuals and organizations interested in the latest developments concerning AEO programmes around the world. The Compendium contains updated information on current AEO programmes and MRAs implemented by WCO Members, as well as the programmes and initiatives under development. In addition to the provision of basic information on AEO and Customs compliance programmes, the Compendium also includes a short overview of the respective AEO programmes criteria, accreditation procedures and benefits. Information is not only confined to the current situation as it also includes members planned future developments/initiatives.

Based on the information provided by members for 2020, the updated edition of the AEO Compendium provides the following as the status of global AEO programmes:

- » 97 operational AEO programmes and 20 AEO programmes under development.

- » 33 operational Customs Compliance programmes and 4 Customs Compliance programmes due to be launched.
- » 87 bi-lateral and 4 plurilateral/regional MRAs concluded and 78 MRAs under negotiation.

Of the 97 operational AEO programmes, the Americas and Caribbean has 19 programmes, Middle East – 10, East and Southern Africa – 8, Asia Pacific – 17, Europe – 42, and western and Central Africa – 1. In East Africa, the operational AEO programmes are in Burundi, Kenya, Rwanda, and Uganda. Twenty (20) AEO programmes are currently under development including 1 in the Americas and Caribbean, 6 in West and Central Africa, 6 in East and Southern Africa, 5 in Asia Pacific and 2 in Europe.

## ii. Overview of the AEO Program in Kenya and the EAC

The AEO program in Kenya is voluntary and businesses willing to participate are required to meet a set of criteria established by customs authorities and maintain a customs-to-business relationship that is based on mutual transparency, trust, fairness, and responsibility among other principles. The eligibility criteria require interested business to satisfy the AEO Compliance Procedure which includes the following:

- » Demonstrate compliance with customs regulations
- » Have adequate traceable documentation that follows due standard operation procedures
- » Proven financial solvency
- » Appropriate security standards including IT security and good security for premises
- » Have qualified staff that are appropriately trained in logistics and customs clearance

In return, AEO certified businesses will receive benefits that include good security systems and practices, reduced inspections, and expedited processing of their goods leading to reduced and costs of cargo clearance. The AEO programme was first piloted in Kenya between 2007 and 2009 and formally rolled out in 2010. There are currently 308 business entities certified under the AEO programme.

At regional level, the Regional Authorized Economic Operator (RAEO) programme was deployed in two stages. Phase 1, which ran from 2008 to 2013 with a pilot conducted in 2011 with 13 accredited businesses. The benefits from this pilot were clear, with businesses reporting cost savings ranging from USD 100 to 400 per consignment. Phase 2, which began in 2014 (with official roll-out in 2015) focused on expanding the number of AEOs across the region. There are currently 147 business entities certified under the EAC AEO programme, 19 of which are based in Kenya.

### a. Regulatory Framework Governing the AEO Programme

The Constitution of Kenya, 2010, provides clarity on the relationship between the country's legal system and international laws, treaties, and conventions. By and large, it steps up the incorporation of international law into the national legal system by the specific provisions of Article 2(5) and 2(6) which affirm the position of international law as part of Kenyan law. It is on this basis that Kenya is a member of the WTO and has also ratified the WTO TFA and Kyoto Protocols.

As a member of World Customs Organization (WCO), Kenya has also adopted the SAFE Framework of Standards adopted by the WCO Council in 2005 which provides the basis for the establishment of the Authorized Economic Operator (AEO). The programme is also anchored on Article 7.7 of the WTO Trade Facilitation Agreement, which establishes trade facilitation measures for authorized operators and the Revised Kyoto Convention Standard 3.32 which establishes special procedures for clearance and other customs procedures for authorized persons.

As an East African Community (EAC) partner state and signatory to the EAC protocol, Kenya has also adopted the EAC Customs Regulations under the East African Community Customs Management Act,



2012. Among other provisions, the Act provides for individual member states to establish and implement AEO programmes. It also includes specific clauses on requirements for admission, management of commercial records, consultation, cooperation and communication, education, training and awareness, security measures, crisis management and incident recovery and measurement, analysis, and improvement.

### **iii. Overview of the PAP Program**

The PAP program is a customs program that allows for advance lodging and processing of trade information by border agencies before the actual arrival of cargo, to enable release of goods with little or no delay upon arrival at the port or border station. Measure 7.1 of the WTO Trade Facilitation Agreement provides that member states shall adopt procedures that allow for the advance electronic submission of import documentation in order to begin processing goods prior to the arrival with a view to expediting the release of goods upon arrival. By enabling advanced submission of import documentation, the PAP program allows for electronic processing of information resulting in reduced delays at border crossings, reduced cargo clearance times, and reduced cost of goods clearance due to savings on storage costs.

The WCO, with the support of the WCO-Finland ESA Project II and the GIZ Alliance for Trade Facilitation conducted a pre-arrival clearance diagnostic mission in August 2019. The objective of this mission was to assist Kenya in the establishment and implementation of requisite legislative and operational measures for expediting the release of goods through pre-arrival processing, which is one of core trade facilitation measures as detailed in Article 7.1 of the WTO Trade Facilitation Agreement (TFA) and Standard 3.25 of the Revised Kyoto Convention (RKC).

As part of the mission, an in-depth analysis of the current national situation regarding pre-arrival processing vis-a-vis relevant international standards and global best practices was conducted. Several gaps were identified, and recommendations proposed on legal, procedural, technical, and human resources required to address the gaps. A multi-agency committee on pre-arrival processing was established with representatives from various government agencies and private sector partners. Two sub-committees – the ICT and Risk Sub-Committee and the Trade Facilitation Sub-committee were established and have developed workplans and terms of reference to come up with successful implementation of the PAP programme.

The KRA, in collaboration with other government agencies and the private sector, is committed to moving forward with the implementation of a pre-arrival processing system. The WCO and GIZ Alliance for Trade Facilitation continues to provide support to KRA as may be required, to support this initiative going forward. Based on responses from customs authorities, the PAP program currently accounts for 29 percent of import transactions.

#### **a. Regulatory Framework for the PAP Programme**

Pre-Arrival Processing is one of the core trade facilitation measures stipulated in Article 7.1.2 of the WTO Trade Facilitation Agreement (TFA), Standard 3.25 of the Revised Kyoto Convention (RKC) and the SAFE Framework of Standards and East African Community Customs Management Act (2004).

Article 7.1.1 of the WTO's Trade Facilitation Agreement requires that "each member shall adopt or maintain procedures allowing for the submission of import documentation and other required information, including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.

Article 7.1.2 of the WTO's Trade Facilitation Agreement requires that "each member shall, as appropriate, provide for advance lodging of documents in electronic format for pre-arrival processing

of such documents.” Standard 3.25 of the Revised Kyoto Convention (RKC) requires that “National legislation shall make provision for the lodging and registering or checking of the Goods declaration and supporting documents prior to the arrival of the goods”.

The East African Community Customs Management Act (2004) section 24 (1) (a) and (b), and section 34 (3).

*Section 24 (1) “The master or agent of every aircraft or vessel, whether laden or in*

*ballast, shall, except where otherwise provided in any regulations, make a report on the prescribed form to a proper officer at any port or other place especially allowed by the proper officer, of its cargo and stores, and of any package for which there is no bill of lading, as follows*

- » In the case of a vessel, not less than twenty-four hours before arrival from a foreign port,
- » In the case of an aircraft, immediately after take-off from foreign port destined for a port in a Partner State.
- » Section 34 (3) “Entries for goods to be unloaded may be delivered to the proper officer for checking before the arrival at the port of discharge of the aircraft or vessel in which such goods are imported; and in such case the Commissioner may in his or her discretion permit any goods to be entered before the arrival of such aircraft or vessel or vehicle”.

Unlike the AEO programme which spells out eligibility criteria and certification requirements for businesses, the PAP programme is available to all traders.

## 4. KEY FINDINGS

The key findings of the evaluation of the AEO and PAP programmes are grouped into the following seven (7) themes that align with the objectives of the study:

- » Industry concerns and implementation challenges
- » Partnership and collaboration
- » Relevance and suitability of delivery models
- » Implementation status and economic impact of the PAP and AEO programmes
- » Sufficiency of regulatory frameworks and IT systems
- » Awareness, marketing, and promotion
- » Other findings

Each theme contains information that was collected using the methods outlined in section 2 of this report and are discussed in detail in section 4.1, for the case of the AEO and section 4.2 for the case of PAP.

### i. Key Findings from Evaluation of the AEO Programme

Rolling out a successful AEO programme involves some complexities and appropriate planning and execution. Overall, the evaluation established that the AEO programme in Kenya is still at infancy stage with just about 308 certified businesses. To enable the AEO programme realize its expected benefits to both government and businesses, a number of issues identified in this findings section will need to be addressed to enhance participation by businesses and in particular SMEs. We explore some of these findings in the following section.

#### a. *Theme 1. Industry Concerns and Implementation Challenges of the AEO Programme*

The major concerns industry players have with the AEO programme, which also form the main challenges related to implementation of the programme include lack of clarity in programme design and purpose, lack of flexibility in eligibility requirements, inadequate stakeholder involvement, inconsistencies in the application of benefits, barriers to certification, and participation by SMEs. These concerns and challenges are discussed in greater detail below.

##### **Programme Design and Purpose**

The success of any public project depends on the overall design and clarity of objectives and/or purpose of the project. While AEO programmes are generally designed to facilitate legitimate trade and enhance supply chain security, the evaluation established that several other purposes exist behind the establishment of the AEO programme in Kenya. These include among others, tax revenue maximization, which often competes with the trade facilitation and security objectives of the AEO programme. These competing interests are evident in rigidity of the eligibility requirements and a punitive regulatory enforcement and compliance regime.

##### **Lack of Flexibility in Eligibility and Certification Requirements**

The WCO has established AEO eligibility criteria which include among others legal compliance, financial solvency, premises and procedural security and competency of staff. The evaluation established that some of the eligibility requirements may be too onerous for businesses to fulfil, particularly SMEs which make up majority of import and export businesses. It was also observed that the AEO programme in Kenya adopted the WCO eligibility requirements without customizing them to the unique circumstances of the country's economy and business models. In addition to the lack of

flexibility in eligibility requirements, the evaluation also established that the certification process is complex, lengthy, and burdensome with significant back-and-forth between businesses and customs. Some businesses reported waiting over a year after application to receive a decision on certification, with little or no communication in between.

Interviews with businesses established that KRA customs has included non-WCO eligibility requirements such as compliance with domestic taxes as an additional eligibility requirement for AEO certification. This lack of flexibility in eligibility requirements and the additional requirements for compliance with domestic taxes have often acted as an entry barrier for businesses including SMEs. The result has been low levels of participation by businesses and in particular SMEs.

### **Stakeholder Involvement in AEO Programme Design and Benefits**

Due to their voluntary and collaborative nature, AEO programs require strong partnerships between customs authorities, other government agencies and the private sector. Based on the feedback from key informant interviews, there were several examples that were provided where businesses are not satisfied with the benefits of the program. These concerns were amplified by the belief that the costs for AEO certification outweigh the benefits. Some of the common concerns expressed by businesses include.

- » “I would rather meet my business obligations with customs upfront than risk a post-clearance audit encounter with customs authorities “.
- » There is little or no return on investment for participating, especially for SMEs, and
- » The benefits of AEO certification are not worthwhile and do not offset costs.

The above concerns highlight the need for governments to fully engage with the private sector during all phases of the program, as exemplified throughout Pillar 2 of the SAFE Framework.

### **Inconsistencies in the Application of AEO Benefits**

The evaluation established that the AEO programme has the support of the senior leadership team at KRA Customs. However, this support is not evident amongst the customs officials charged with enforcement responsibility at ports and border stations. Interviews with AEO certified operators revealed that some businesses had their clearance processes expedited while others had their consignments subjected to physical verification, despite their AEO status. In cases where consignments for AEO certified businesses were subjected to inspection, businesses indicated that there was no valid reason offered by customs authorities for these additional measures. However, expert interviews pointed out two major reasons for this occurrence:

- » The pressure to meet revenue targets, and
- » Inability by businesses to meet the paired operator requirements.

The paired operator requirements created by customs stipulate that a transaction will be treated as an AEO transaction if all the players on the logistics chain are AEO certified. For example, if for a specific import transaction, the importer/exporter, clearing agent and transporter are all AEO certified, then the import/export transaction will be treated as an AEO transaction and will receive the full benefits. On the contrary, if one of the players on the logistics chain is not AEO certified, the transaction will be treated as a regular import/export transaction and will be subjected to the regular clearance processes.

In addition, a pattern was identified from the responses that indicated that Customs has included as part of the certification process, requirements related to compliance with domestic taxes. This additional requirement on domestic tax compliance is not part of the AEO certification requirements listed under the WTO Safe Framework and its inclusion presents an additional certification for willing businesses.

## **Participation by Small and Medium Enterprises (SMEs)**

Despite the SAFE Framework promoting flexibility in AEO eligibility and requirements for certification, majority of interviewed businesses revealed that the AEO application process is complex and burdensome with inflexible compliance and security requirements. In addition, respondent businesses reported that customs authorities have put in place additional and onerous eligibility requirements over and above those required under the WCO provisions. This includes requirements for a clean compliance record for domestic taxes, in addition to compliance with customs duties and other requirements such as minimum amounts of turnover per year, state-of-the-art cargo tracking systems and have 24-hour security guards on premises among other requirements. The requirement for compliance with domestic taxes appears contrary to the requirements established in the SAFE Framework of standards and this has clearly disincentivized SMEs to participate in the AEO programme.

In addition, with most enterprises in Kenya classified as SMEs, the evaluation established that AEO programs in general, impose a greater burden on SMEs relative to larger businesses. In particular, the proportionate cost impact of investments needed by SMEs to receive AEO certification is greater than in larger and more established businesses. Customs authorities should therefore consider these unique challenges faced by SMEs and design approaches to make the AEO programme more attractive to SMEs.

### ***b. Theme 2. Partnership and Collaboration***

Two major issues are at the heart of partnership and collaboration, when it comes to implementation of the AEO programme:

- » Risk Management Integration, Inter-Agency Cooperation, and Information Sharing, and
- » Mutual Recognition of benefits by agencies involved in trade facilitation.

#### **Risk Management Integration, Inter-Agency Cooperation, and Information Sharing**

Two elements are critical to successful implementation of AEO programmes within an environment characterized by multiple agencies involved in trade facilitation. They include:

- » A comprehensive risk management framework that includes risk factors identified by other government agencies involved in trade facilitation, and
- » Effective coordination and information sharing between government agencies involved in trade facilitation.

The evaluation established that the risk management framework developed by customs is designed unilaterally as a customs framework to support decision-making based on risk factors relevant to customs authorities only. The framework does not include risk factors relevant to the mandates of other government agencies involved in trade facilitation. In addition, respondents from key informant interviews demonstrate that there was little or no consultations between customs and other government agencies during the design stage of the risk management framework. As a result, it is a common observation that goods cleared by customs under the AEO programme would be withheld by another government agency for inspection and/or verification.

The Kenya Trade Network Agency (KENTRADE) has an ongoing initiative to address this issue. Interviews with KENTRADE officials indicated that the agency is upgrading its system from the current “TradeNet” to “Trade Facilitation System” to include a risk management module that can onboard other government agencies and facilitate information sharing between agencies. With support from GIZ, 22 government agencies are already on board and each agency will provide a matrix of risk factors which will be used to develop an integrated risk management framework. This framework is expected

to support a coordinated approach to clearing goods based on risk and appropriate information sharing between agencies involved in trade facilitation. As a result, it is expected to eliminate duplication of process, facilitate faster clearance timelines, and reduce delays.

This report therefore recognizes the importance of inter-agency corporation in the development of risk frameworks that support implementation of AEO programmes, as well as the importance of sharing information between agencies, generated from risk assessments during the actual implementation of the AEO programme.

### **Mutual Recognition of Benefits and Tangibility of Benefits**

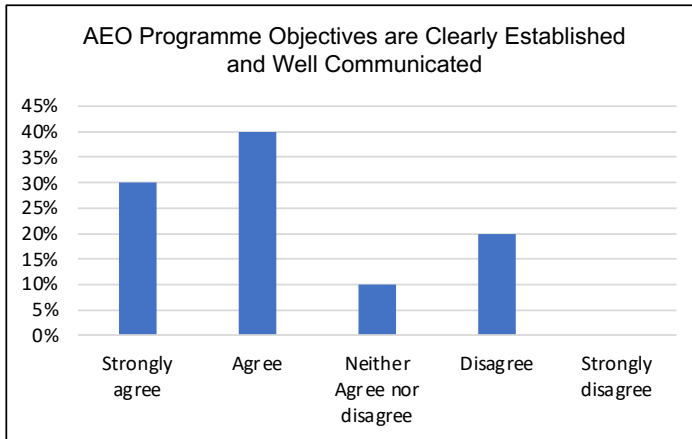
Majority of surveyed businesses indicated that the AEO benefits as currently constituted are not tangible given the time and cost investments required to obtain certification. Businesses reported AEO certification turnaround times of between 3 months and one year plus, and additional investments in premises and process security requirements. In addition to tangibility of benefits, majority of respondents indicated that there is very little or no mutual recognition of benefits between customs and other government agencies involved in trade facilitation. As a result, goods cleared by customs under the AEO programme are occasionally flagged for inspection and verification by other government agencies involved in trade facilitation, citing the need to execute their legislative mandate

The survey found that there is no formal mechanism for recognizing AEO operator benefits between customs and other government agencies. An initiative is currently being spearheaded by KRA Customs to develop mutual recognition agreements for AEO benefits by other government agencies (OGAs). The initiative has identified approximately 59 agencies involved in trade facilitation and held a first meeting that brought together an initial 14 agencies that included among others the Kenya Bureau of Standards (KEBS), Kenya Nuclear Regulatory Authority (KNRA), Anti-Counterfeit Agency (ACA), Port Health, Pharmacy and Poisons Board (PPB), Kenya Railways, Kenya Airports Authority (KAA), Kenya Ports Authority (KPA), National Trade Facilitation Committee. The initiative will look at the mandates and workflows these agencies and recommend measures to embed AEO benefits in their processes using formalized mutual recognition agreements.

### **c. Theme 3. Relevance and Suitability of Delivery Model of AEO Programme**

AEO certified businesses are issued with a unique identifier making it easy for AEO transactions to be identified within the Integrated Customs Management System (ICMS). The survey established that approximately 70 percent of surveyed businesses agree that the AEO programme objectives are clearly established by Customs, are well communicated to businesses, and align with the needs of their businesses – see Figure 1. An overwhelming 90 percent of respondents believe the AEO programme is relevant and should continue operating with a focus on addressing the ongoing challenges that present barriers to participation by businesses.

Despite this positive feedback, the evaluation established through interviews with customs, that there is no formal national strategy in place for implementing the AEO programme and sharing data on AEOs. This lack of a formal strategy points to the relegation of the AEO programme in the government's hierarchy of priorities and presents a challenge towards measuring the progress made in AEO implementation and to hold government accountable to its WTO commitments. In addition, the inability to share data on AEO certified businesses by customs has impeded utilization of the programme since without this information, businesses are unable to fulfil the paired operator requirements and reap the full benefits of the programme.

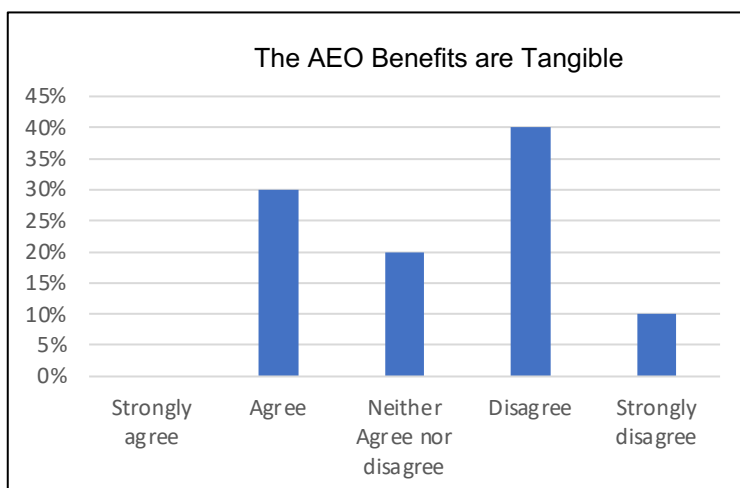


**Figure 1. Perception of Businesses Towards the AEO Programme Objectives**

The delivery model of the AEO programme is embedded in the ICMS such that to receive the full AEO benefits, businesses must fulfil the paired transaction requirements which state that a transaction will be considered an AEO transaction if the importer/exporter and all the service providers involved are AEO certified. An example of how the ICMS determines whether an entry is an AEO transaction or not is depicted below:

- » AEO Importer/Exporter + AEO Clearing agent = AEO transaction
- » AEO Importer/Exporter + Non-AEO Clearing agent = Non – AEO transaction
- » Non-AEO Importer/Exporter + AEO Clearing agent = non – AEO transaction

Interviews with businesses indicated that this delivery model is a barrier given the low number of clearing agents certified as AEOs, and the lack a publicly available list of AEO certified businesses. This explains why some AEO certified importers and exporters had cases where their cargos are flagged for inspection because they are using a service provider who is not AEO certified. This model makes it difficult to deliver all the expected benefits of the AEO programme due to the inability by most businesses, particularly SMEs to fulfil the paired requirements of the AEO programme. It also reinforces the observation from businesses regarding the benefits, where approximately 50 percent of surveyed businesses believe the AEO programme benefits are not tangible – see figure 2.



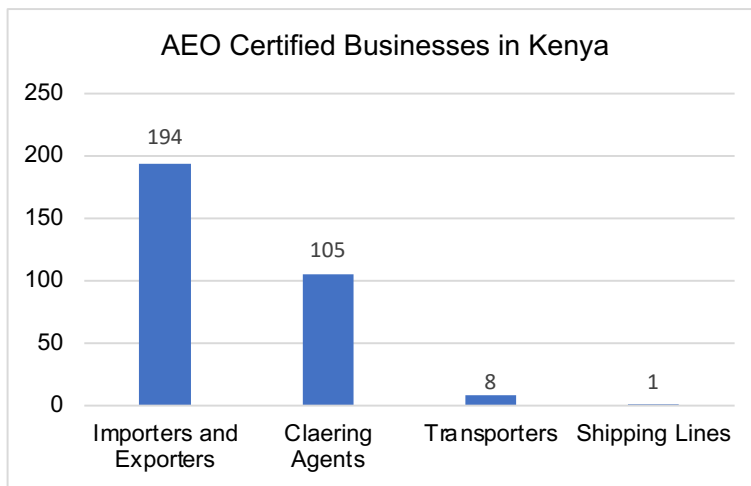
**Figure 2. Business Perceptions about the AEO Benefits**

#### d. Theme 4. Implementation Status and Economic Impact of the AEO Programme

The AEO programme in Kenya was launched in 2010 with the following major objectives:

- » Facilitate legitimate trade through faster clearance of cargo.
- » Ensure compliance to laws and regulations governing cross-border trade.
- » Improve cargo security, secure the supply chain and protect society.
- » Increase revenue collection.
- » Embrace modern best practices, procedures and techniques by both government and businesses.

Figure 3 presents a summary of the status of implementation of the AEO programme in Kenya. Overall, there are 308 business entities certified under the AEO programme. These include 194 importers and exporters, 105 clearing agents, 8 transporters and one shipping line.



**Figure 3. AEO Programme Implementation Status. Source: Kenya Revenue Authority Customs**

The economic impact of trade facilitation programmes has been well documented. A Shippers Council of Eastern Africa (SCEA) study estimates that shippers paid over KShs. 2.4 billion in storage fees in 2021 compared to over KShs. 3 billion in 2020. The study also estimates that due to unpredictability of supply chains, shippers pay an average of KShs.1.5 million per week in demurrage charges. Removing unnecessary and/or overly burdensome administrative barriers through trade facilitation programmes such as the AEO and PAP programmes could save shippers a great deal of these additional costs in storage and demurrage fees and result positive economic outcomes in lower trade logistics costs, greater investments, and increased trade.

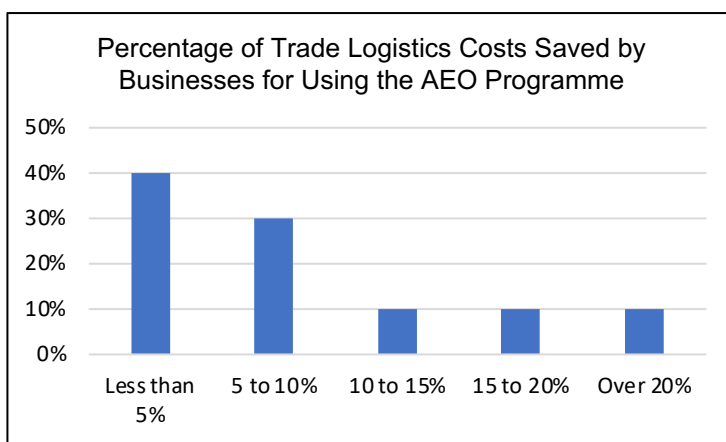
Most notable are the economic benefits that come with the reduction in trade logistics costs, occasioned by faster clearance timelines and fewer inspections. These benefits can result in added export potential and reduced consumers prices, especially for imported products. Below is a summary of the economic impact of AEO programmes:

- » Better Planning – resulting from reduced delays and inspections at the border which leads to creation of business opportunities through increased efficiency in doing business, lean inventories and improved overall manufacturing capacity and planning.
- » Enhanced Safety and security of the supply chain, where businesses are at the forefront providing solution to protect the people, the cargo including facilities but at the same time collaborating with the Customs to ensures our borders are safe and protected.



- » Reduction in frequency of cargo inspection required to import goods, saves time and
- » costs which can rather be used by business for engaging in productive activities that can spur business growth.
- » Improved trade and business climate, which can be attributed to increased international and regional trade as well increased SMEs participating at the international trade.
- » High compliance levels for customs regulations due to the customs-business partnerships.
- » Increased revenue collection due to greater throughput of imports/exports through ports and border stations.
- » Better allocation of inspection resources by customs authorities by deploying inspections to high-risk cargo only.

The economic impact statements highlighted above are reinforced by the survey results which indicated that 40 percent of business anticipate a less than 5 percent savings in logistics costs if they received the full array of benefits that come with AEO accreditation.



**Figure 4. Percentage Savings in Logistics Costs for AEO Businesses.**

#### **e. Theme 5. Sufficiency of Regulatory Frameworks and IT Systems**

The review of the regulatory framework established that the AEO programme in Kenya is not anchored in law and differentials in the applicability of international law and conventions by agencies is impacting the full implementation of mutual recognition of benefits. For example, agencies such as the Kenya Bureau of Standards (KEBS) would contend that international law and conventions are secondary to domestic law including the Standards Act Cap 496, which establishes and mandates the agency to ensure consumers are protected from harmful import products, and that the agency risks legal liability if it cleared goods under the AEO programme which later became harmful to the public. In addition, the evaluation also established that there is no provision in the EACCMA 2004 that requires EAC Partner States to establish and embed the AEO programme in legislation. As a result, the policies, and procedures (or lack of) that govern the development and implementation of national AEO programmes are subject to interpretation and discretion by customs administrators.

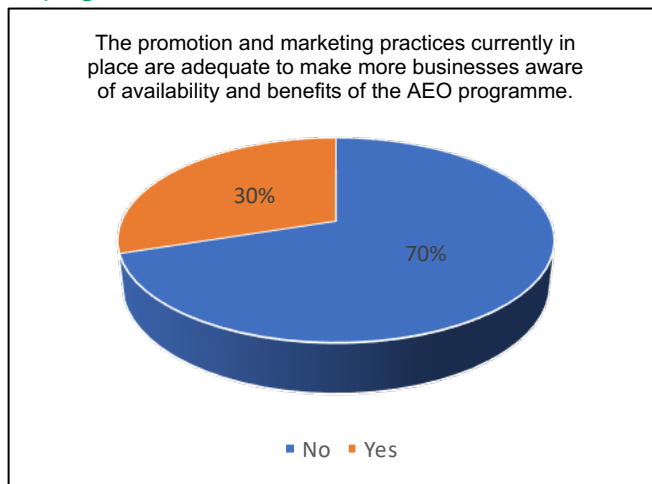
A more formal approach to embedding the AEO programme in legislation could significantly contribute to realization of the objectives of the programme and intended benefits. Some elements of the AEO programme that could benefit from legislation include clarity of eligibility and reporting requirements, clarity of AEO benefits, procedures for clearing goods using the AEO programme and the treatment of cases of non-compliance by AEO certified businesses. This practice would align with international best practices implemented by other countries such as India and the European Union.

The review of the IT systems established that customs authorities have in place a modern Integrated Customs Management System (ICMS). However, the risk management modules in ICMS do not interface with the risk management frameworks of other government agencies involved in trade facilitation, resulting in differentials in the application of AEO benefits. Customs officials indicated that an initiative is currently underway to address this issue to eliminate potential redundancies in risk assessments and result in greater benefits for AEO certified businesses.

**f. Theme 6. Awareness, Marketing and Promotion**

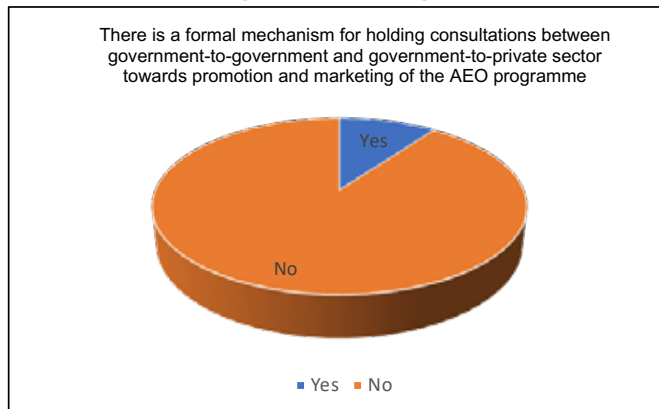
The success of AEO programmes is dependent on the creation of dedicated and targeted marketing and promotion activities and availability of resources to support these activities to ensure a wider reach to the trading community. The evaluation sought to establish among others, the adequacy of marketing and promotion activities, and the involvement of the private sector and other government agencies in the marketing of the AEO programme. The results are summarized below.

*Approximately 70 percent of respondents believe the promotion and marketing practices currently in place are not adequate to make more businesses aware of availability and benefits of the AEO programme.*



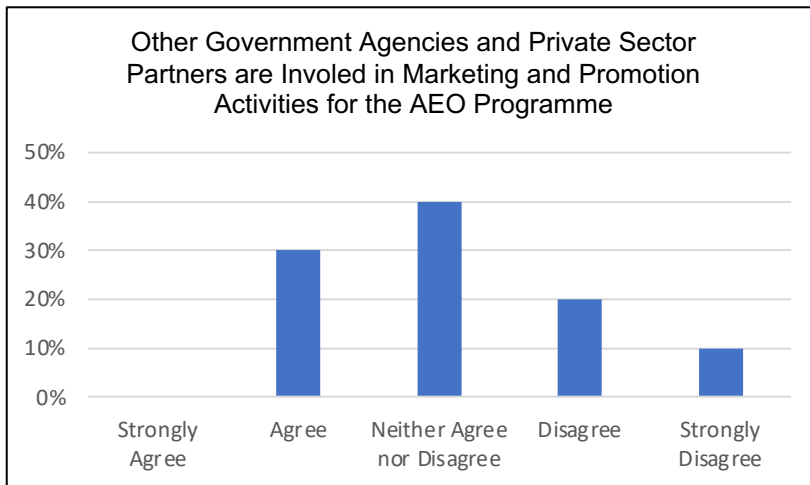
**Figure 5. Adequacy of Promotion and Marketing Practices**

*Approximately 90 percent of respondents say there is no formal mechanism for holding consultations between government-to-government and government-to-private sector towards the promotion and marketing of the AEO programme.*



**Figure 6. Availability of A Formal Mechanism for Government-to-Government and Government-to-Private Sector for Promotion and Marketing of The AEO Programme**

When asked whether other government agencies and the private sector are involved in marketing and promotion activities, there's a 30% split amongst respondent businesses – those who agree and disagree, but majority neither agree nor disagree. This observation points to the need for greater involvement of the private sector and other government agencies in the marketing and promotion of the AEO programme.



**Figure 7. Participation by Private Sector and Other Government Agencies in Marketing and Promotion of the AEO Programme.**

#### **g. Other Findings Related to Implementation of the AEO Programme**

Compliance assistance and complains management – The study established that while there is a dedicated unit within customs charged with the responsibility to implement the AEO programme, there is no mechanism for handling complains from AEO certified businesses and assisting businesses with guidance on the certification process and how to clear goods using the AEO programme.

#### **ii. Key Findings from Evaluation of the PAP Programme**

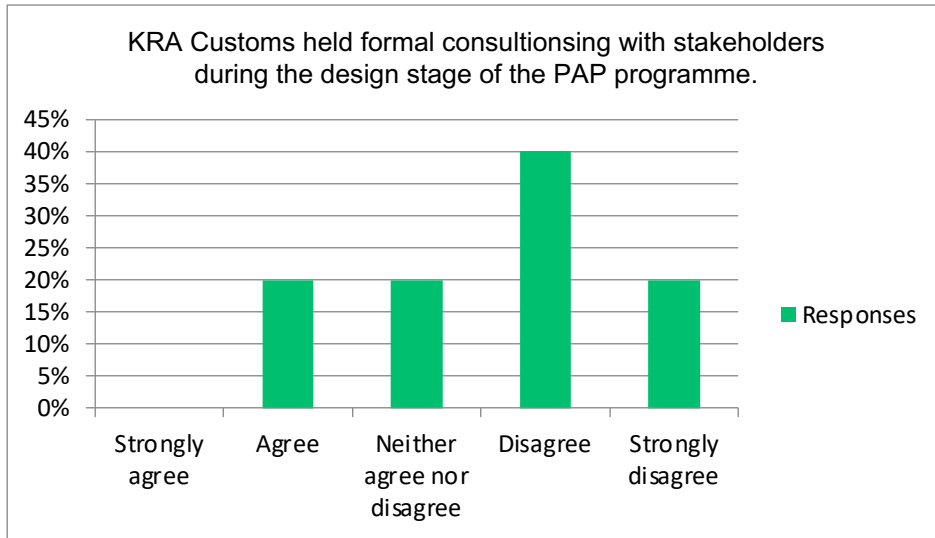
To enhance participation by businesses in the PAP programme and maximize economic impact, several measures need to be put in place including greater stakeholder engagement, operational and IT changes to support delivery, greater collaboration between agencies, more marketing and awareness for the programme, and amendments to the regulatory framework to support implementation. We explore some of these findings in the following section using the seven (7) themes identified in the findings section.

##### **a. Theme 1. Industry Concerns and Implementation Challenges of the PAP Programme**

The major concerns raised by stakeholders with respect to implementation of the PAP programme include lack of appropriate stakeholder engagement, low levels of inter-agency corporation, operational support and IT related challenges and low levels of programme awareness.

##### **Stakeholder Engagement**

A commonly identified barrier to successful implementation of the pre-arrival programme is the lack of cooperation and coordination between government and private sector stakeholders in the design and implementation of the programme. This was evident through the evaluation exercise where almost 60 percent of respondent businesses observed that there was no formal mechanism in place for consultations with stakeholders during the design stage of the PAP programme.



**Figure 8. Perceptions of Businesses About the Level of Consultations held During the Design Stage of the PAP Programme**

Recognizing that trade facilitation programmes are driven by the evolving needs of businesses, continued engagement of private sector partners is critical for successful design and delivery of these programmes. While several measures already exist such as the National Trade Facilitation Committee, these measures need to be strengthened to include the engagement of leading industry associations such as KAM, KIFWA, SCEA, and KNCCI among others.

### **Operational Support and IT Related Challenges**

Operational efficiency and system compatibility are strong foundations for successful implementation of PAP programmes. The evaluation established that there is little or no guidance for businesses, on how to clear goods using the PAP programme. Government agencies are a great source of expertise due to their knowledge of laws regulations and policies governing the clearance process, but they have not leveraged this expertise to consistently support businesses to increase their use of the PAP programme. Approximately 80 percent of respondent businesses indicate that they do not have access to guidance documents for using the PAP programme and do not receive assistance on how to clear goods using this programme.

In addition to operational support for businesses, the evaluation established that while the Integrated Customs Management System (ICMS) currently well serves the clearance process, the system is not well designed to support clearance using the PAP programme. Interviews with both customs and experts revealed that the requirement for the manifest as the primary to initiate the clearance processes is proving to be an impediment since most businesses are unable to receive this document from shipping lines within the time specified by Customs Authorities.

To overcome this barrier, there is need for Customs to consider other trade documents (such as the bill of lading or commercial invoice, and not just the manifest) that would provide information necessary for conducting risk assessments. This would require a system upgrade since the ICMS is currently configured only to accept the manifest as the primary document to imitate the clearance process. It may also require legislative and/or regulatory amendments to allow government agencies to accept other documents other than the traditional practice of using the manifest.

### **b. Theme 2. Partnership and Collaboration**

A recurring theme during interviews with stakeholders was the low levels of inter-agency collaboration occasioned by the lack of an information sharing mechanism between agencies.

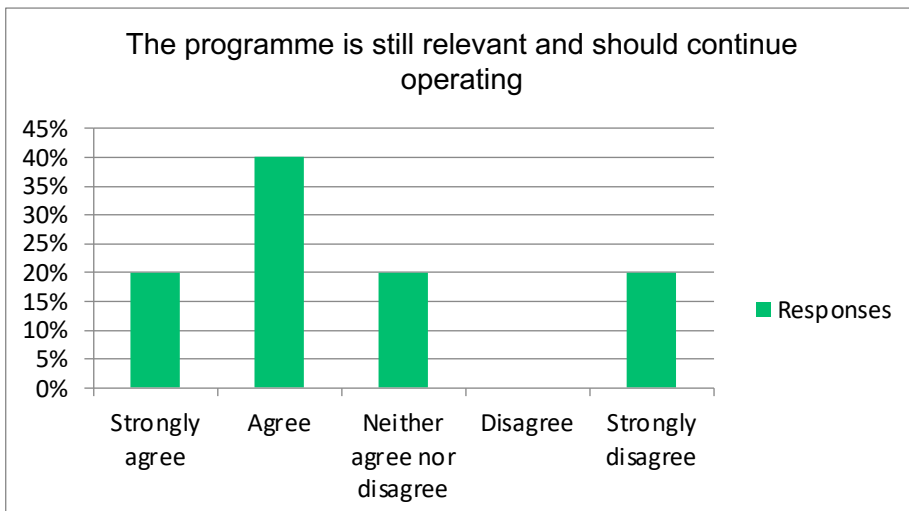
Successful implementation of a pre-arrival processing programme depends on availability of a well-designed and coordinated risk management framework. By allowing the advance submission of import data and documents, the PAP programme enables Customs Authorities to conduct appropriate risk assessments prior to the arrival of cargo, enabling expedited release.

The evaluation found that while Customs has in place a risk management framework to support implementation of the PAP programme, this framework is designed to suit the mandate of Customs Authorities and do not consider risk elements that are relevant to the mandates of other government agencies involved in trade facilitation. As a result, interviewed businesses observed that other government agencies would occasionally flag for inspection, cargo that has already been cleared by Customs, effectively eliminating the benefit of expedited clearance, which is the main cornerstone of the PAP programme.

This observation is reinforced by the evaluation findings which indicated that approximately 60 percent of surveyed businesses believe that the PAP programme has not resulted in greater collaboration and information sharing between agencies.

### **c. Theme 3. Relevance and Suitability of Delivery Model of PAP Programme**

The evaluation sought to establish whether the objectives of the PAP programme are clearly established and well communicated by customs authorities. Approximately 20 percent of interviewed businesses agree that the PAP programme objectives are clearly established and well communicated by customs authorities. Another 40 percent of interviewed businesses say the PAP programme objectives align with their business needs and 60 percent believe the PAP programme is relevant and should continue to operate. See figure 9.



**Figure 9. Respondents who indicate that the PAP Programme is Relevant and Should continue operating**

The PAP implementation model includes the following major components:

- » Information – advance submission of trade documentation e.g., manifest, bill of lading, packing invoice, import permits, etc.
- » Processing – verification of trade documents and assessment of risk

- » Release Decision – Action by customs to permit (or not to permit) goods to be released upon arrival
- » Clearance - Final determination and satisfaction of Customs duties, taxes, fees and charges. Can be accomplished pre-arrival.

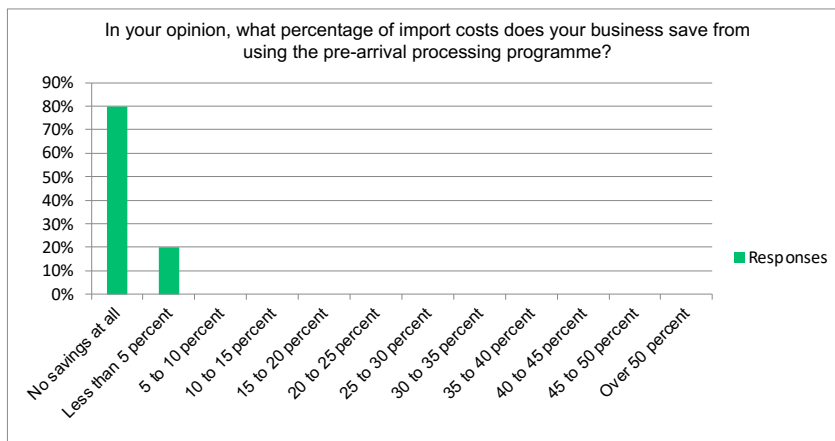
The seamless execution of this delivery model requires a customs automation system that can receive and process the advance declarations and a risk management system that can identify and clear low risk cargo without additional processes. In addition, a coordinated approach to information sharing between customs and other partner government agencies is a key factor in the success of PAP programmes.

While customs authorities have in place a modern ICMS, the evaluation established that there is no mechanism within the ICMS for identifying import/export transactions that are processed using the pre-arrival programme. This is contrary to best practices in countries such as Canada where a shipper is provided with a PAP sticker/label which has a unique cargo control number. Shippers are required to affix this label to the trade documents to flag to the border agencies that the consignment is being cleared in advance using the PAP programme. The system is also rigid since it can only initiate processing of advance declarations using the one document – the manifest, which majority of businesses indicated that they have challenges accessing within the 24-hour timeline provided by customs.

In addition to the inability to uniquely identify PAP transactions, the programme does not provide sufficient time to shippers and their clearing agents to lodge the documents and pay tax in advance of arrival of the vessel. Majority of respondents indicated that the current 24-hour timeline provided by law is not sufficient to complete the advance submission of documents. The PAP programme does not allow for the payment of duties after release of consignments, which is a best practice feature in PAP programmes in the EU. These delivery model vulnerabilities have presented barriers to greater utilization of the programme, and this is evident in the survey results which indicated that 60 percent of surveyed businesses believe the PAP programme benefits are not tangible.

**d. Theme 4. Implementation Status and Economic Impact of the PAP Programme**

According to customs authorities, approximately 29 percent of imports/exports are cleared using the PAP programme as of August 2022. Data was not readily available on the economic impact of the PAP programme in Kenya. The study interviewed several businesses with approximately 80 percent of respondents indicating that they their business realized no cost savings at all, when using the PAP programme. A further 20 percent of respondents stated that their business realized a 5 to 10 percent cost savings while using the programme. See figure 10.



**Figure 10. Percentage Cost Savings Reported by Users of the PAP Programme**

These findings indicate that the PAP programme is still far off from realizing the economic impact anticipated by WTO estimates. WTO estimates that full implementation of trade facilitation programmes such as the PAP could reduce trade costs by an average of 14.3% and boost global trade by up to \$1 trillion per year, with developing countries expected to gain the biggest average reduction in trade costs and significant increases in exports<sup>3</sup>.

#### ***e. Theme 5. Sufficiency of Regulatory Framework***

We reviewed the regulatory framework governing the pre-arrival processing programme. The most relevant regulatory framework that applies to the pre-arrival processing programme is the East African Community Customs Management Act, 2004 and the East African Community Customs Management Regulations, 2010. The review concluded that there are rigidities in the regulatory framework that pose an impediment to the implementation of elements of the PAP programme. Specifically, the requirement for a manifest as the primary document to kickstart the clearance process is challenging since most businesses are unable to obtain this document from shipping lines in times within the 48-hour timeline specified by Customs Authorities.

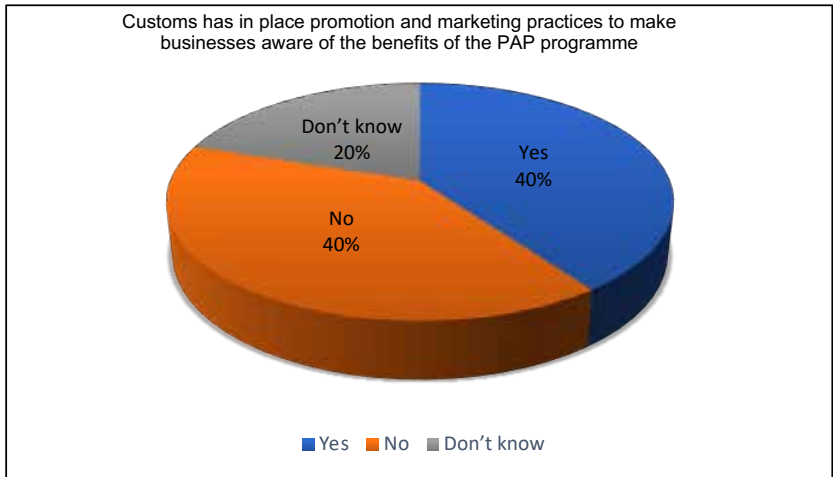
This requirement is understandable since vessels call at multiple ports in one voyage and as a result, manifests keep changing. By the time the vessel calls at the last port and shippers obtain the manifest, the window for processing documents in advanced has essentially narrowed, effectively making this a normal clearance process. As a result of this observation, there is need to review and amend some elements of the legislation to enable businesses use the manifest provided at the port of departure – which would effectively make it a partial manifest that would be subject to change as the vessel voyages across multiple ports, or alternatively, allow businesses to use alternative documents such as the bill of lading or commercial invoice.

Other procedures that may typically require changes to legislation include allowing declarations to be filed before the goods arrive (pre-arrival declaration), allowing goods to be released before duties have been paid (separation of release from final determination of customs duties, taxes, fees, and charges), allowing government agencies to accept copies of documents, and requiring laws to be published for comment in advance. In addition, amendments to the laws may be required to embed controls based on risk management principles and greater coordination among government agencies involved in trade facilitation.

#### ***f. Theme 6. Low Levels of Awareness, Marketing and Promotion***

The evaluation established from interviews with customs officials, that approximately 29 percent of import transactions are processed using the PAP programme. While this is encouraging, it may not be sufficient to deliver the intended economics benefits of the programme. Perhaps the low levels of participation by businesses in the PAP programme is demonstration of low awareness levels and the perceptions businesses have about the benefits of the programme.

The survey established that 40 percent of respondents are aware of marketing and promotion activities related to the PAP programme; another 40 percent are unaware, and the remaining 20 percent don't know. All the surveyed businesses indicated that they are open participating in the programme in future. Events and workshops are the most common means that customs authorities use for marketing and promotion of the PAP programme as demonstrated by 75 percent of the respondents. Majority of respondents agreed that other government agencies and private sector partners could play a greater marketing and promotion role for the PAP programme.

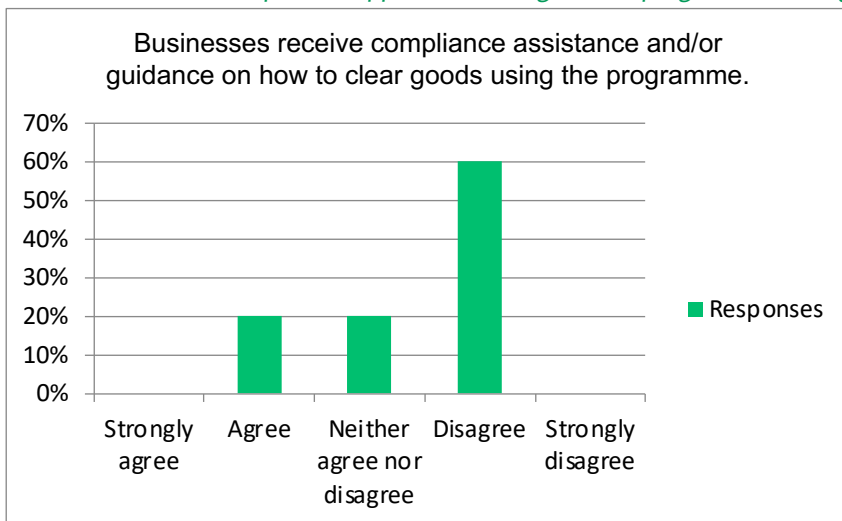


**Figure 11. Business Perception on Promotion and Marketing of the PAP Programme**

A review of the programme benefits as posted on the Kenya Revenue Authority (KRA) website revealed that these are minimum benefits that should accrue to all users of the customs clearance process regardless of whether they are using the PAP programme or not. As such, any measures to improve participation in the PAP programme must focus on increasing awareness and making the benefits more tangible for businesses.

**Other Findings Related to Implementation of the PAP Programme**

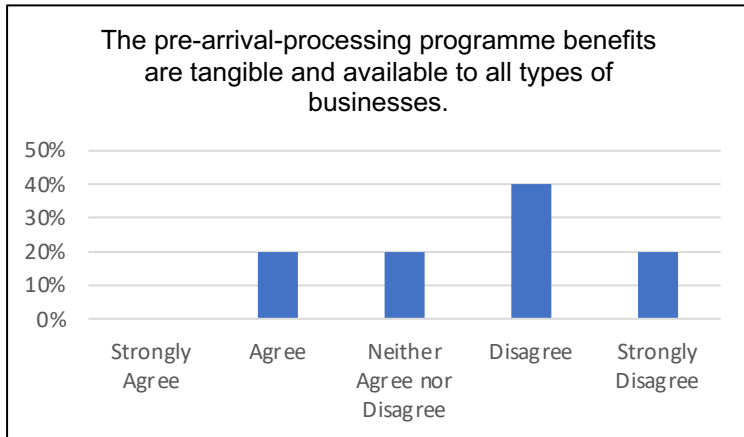
*Compliance Support – When asked about compliance support and access to guidance documents, approximately 20 percent of interviewed businesses agree that they have access to guidance documents and compliance support while using the PAP programme. See Figure 12.*



**Figure 12. Percentage of Businesses Who Receive Guidance Support for Using the PAP Programme.**

*Benefits – When asked about the benefits, approximately 60 percent of business indicated that the benefits that come with the PAP programme are not tangible.*





**Figure 13. Business Perceptions on the Tangibility of PAP Programme Benefits**

## 5. JURISDICTION SCAN AND BEST PRACTICES

Globally, some countries and regions have made significant progress implementing and realizing the economic benefits that come with the AEO and PAP programmes. Australia and New Zealand provide great examples of the role of integrated risk management in a successful PAP regime, while India and Japan offer some lessons on the need for supportive legislation and clarity of processes to ensure successful delivery of PAP programmes. Nigeria on the other hand is a good example of how automation is critical to successful implementation of the PAP programme.

India also offers a great example of why standard operating procedures (SOPs) are critical to efficient implementation of the AEO programme. In Japan and the European Union (EU), the AEO programme is embedded in legislation while the Asia-Pacific Economic Corporation (APEC) countries have a continuous improvement programme that informs changes to the AEO programme using information collected from users and implementors. Canada and the USA, through their Partners in Protection (PIP) and Customs Trade Partnership Against Terrorism (CTPAT) programmes offer good examples of the importance of involving businesses in the design and implementation of trade facilitation programmes. These countries have a formal mechanism for collaboration and consultation with businesses. The following section of the report provides highlights of the jurisdictional scan in greater detail.

### i. Jurisdictional Scan and Best Practices in AEO Programmes

#### a. European Union (EU)

The legal framework for the EU AEO programme is contained in the Union Customs Code (UCC) and its implementing provisions – the UCC Regulation No. 952/2013, the UCC Implementing Act: Commission Implementing Regulation 2015/2447 and the Commission Delegated Regulation No. 2015/2446.

In addition to the legal provisions regulating the AEO programme, the EU has drawn up AEO Guidelines to ensure systematic application of the programme and to guarantee transparency and equal treatment of economic operators. The EU regularly updates these guidelines to guarantee and facilitate the correct application of new legal provisions, to react to global developments relevant for the AEO Programme and to share best practices. The guidelines cover and provide information on the following elements of the AEO programme:

- » General information on what an AEO is, who can become AEO and on the different categories of AEO
- » A description of the AEO benefits, including a specific section on mutual recognition
- » A detailed description of the AEO criteria
- » A detailed explanation of the application and authorization process
- » A specific section dedicated to Small and Medium sized Enterprises (SME) with guidance on how to examine the AEO requirements if the applicant is an SME
- » A section giving information on the factors that help customs authorities to speed up the authorization process
- » Guidance for both customs authorities and economic operators on how to facilitate the procedure for parent/subsidiary companies
- » A specific section on how Member States cooperate in exchanging information
- » Guidance on how to perform monitoring after an AEO authorization has been issued
- » A complete explanation on the concept of “business partners’ security”, including their identification and possible measures for securing business enterprises
- » A section on Mutual Recognition of AEO Programmes

## **b. Asia Pacific Economic Corporation (APEC)**

Some APEC countries have implemented a survey to gauge trader satisfaction of their AEO programs. Surveying traders and users of the AEO program is important to ensuring that customs authorities receive objective feedback how traders view the program. While formal sector committees and public-private sector consultations allow for some discussion and feedback, there is always the concern that these instruments do not accurately convey the private sector's true thoughts. This is especially true if the private sector views the AEO program as nothing more than an extra auditing tool for the customs authority to wield. In addition, smaller businesses may not have the clout or ability to attend these sessions, and their thoughts and feedback are left out.

## **c. North America**

The study reviewed AEO programmes in North America (Canada, USA and Mexico) and their benefits. In Canada, the program operates under the name Partners in Protection (PIP), in the United States it is known as Customs Trade Partnership Against Terrorism (CTPAT), and in Mexico the program is called Authorized Economic Operator (AEO). Canada provides best practices on the use of constant communication, collaboration, and dedicated subcommittees for their AEO program.

Canada has comprehensive formal and informal consultations throughout the design and the implementation stages of the PIP program. Prior to the implementation of the PIP program, there was some pushback from sections of the private sector and concerns from the public sector regarding whether PIP certified businesses could be trusted with compliance with minimum oversight.

To overcome this, Canada adopted an approach that constantly communicates with stakeholders and fosters high-level collaboration among the Canada Border Services Agency (CBSA), other government agencies (OGAs), and businesses to ensure buy-in during the development stage. Currently, CBSA and industry communicate through a formal mechanism called the Border Commercial Consultative Committee. There are several sub-committees dedicated to specific topics, including one for the AEO program. The success of the AEO programs also relied on the support of executive leadership within the customs and key industry stakeholders. Collaboration between the CBSA and industry remains important in promoting compliance with Customs regulations and to ensure the safety and security of cross border trade.

## **d. Japan**

Japan is a great example of AEO programmes embedded in legislation. The Japanese Customs Act stipulates the benefits to an AEO, requirement (eligibility) to be an AEO, issuance of administrative order for improvement to an AEO, and revocation of the status as an AEO. In addition to the Customs Act, Japan has in place several legal tools to assist with implementation of the programme. These include.

- » the Cabinet Order for the enforcement of the customs Act, which stipulates specific customs procedures for AEOs and the authorization process,
- » the Ministerial Ordinance for the enforcement of the Customs Act, which stipulates details for the implementation of specific procedures including particulars to be set forth in the compliance program, and
- » the Order of the Director General of the Customs and Tariff Bureau (CTB) and the Minister of Finance, which sets out specific customs clearance, exemplification on the particulars of Compliance Program, and guidelines for reviewing the authorization process.

## **e. India**

India's AEO programme exemplifies the importance of using guidelines to support implementation of trade facilitation programmes. The country has published and regularly updates the following guidance documents to support implementation of the AEO programme:

- » A complete guide to eligibility criteria for AEO certification
- » A complete guide for documents required for AEO certification
- » A complete guide for AEO registration procedure
- » A complete guide on how to maintain AEO status and avoid cancellation

## **i. Jurisdictional Scan and Best Practices for PAP Programmes**

Nigeria, Japan and India offer three excellent examples of how advance processing and sharing of import documents can be carried out in a timely and efficient manner without investing too many resources<sup>4</sup>.

### **a. Nigeria PAP Programme**

The Nigeria Customs Service allows the advance processing of clearance documents through a tripod software system – the Nigeria Integrated Customs Information System – introduced by legislation in October 2010. It includes:

- » E-manifest – where shipping companies are required to send manifests to the Nigeria Customs Service server electronically before arrival of ship or aircraft.
- » E-declaration – which allows traders to make a self-declaration of imports through Direct Trader Input, an automated facility that interfaces with the Nigeria Customs Service server. This platform works 24 hours, 7 days a week.
- » E-payment – electronic payment of custom duties which includes an electronic remittance to the Central Bank of Nigeria and electronic reconciliation of payments to the Federation Accounts (Nigerian government financial system). Confirmation of e-payment allows the trader to make an electronic request for release of goods from customs control.

Expanded facilities such as cyber cafés support the electronic transmission of documents by traders. In addition, training courses for the trading community and clearing agents on automation, e-procedures and improved documentation facilitates fast issuance of risk assessment reports.

### **b. Japan PAP Programme**

Japan has implemented the pre-arrival examination of trade documents since 1991 using existing facilities with minimal costs for legislation and training. The pre-arrival processing can be applied to all types of imported cargo and usually consists of the following steps:

- » Importers can submit a pre-arrival declaration to customs, using the same form as a general import declaration form.
- » Importers can submit a pre-arrival declaration at any time after the bill of lading (or airway bill for air cargo) is issued, and after the foreign exchange rate for the scheduled date of import declaration is announced.
- » When the cargo arrives and all requirements are met for the import declaration under customs law, importers inform customs of their intention for a formal import declaration, together with all the necessary items or documents with a deferred submission at the time of pre-arrival declaration.
- » After confirmation, customs treat the pre-arrival declaration as a formal import declaration and provide an immediate import permit as provided a physical examination is not required.

### **c. Pre-Arrival Processing in India**

India's Central Board of Indirect Taxes and Customs announced a new rule in 2021 requiring all air cargo arriving in India to be Customs cleared no later than the day of arrival and preferably before arrival. Through this announcement, importers must ensure that their shipment documents are complete, accurate, and ready for filing with Customs no later than the day of arrival. Any shipments cleared after the day of arrival would be subject to an administrative monetary penalty and likely significant clearance delays.

Amendments made to Section 46 of India's Customs Act, 1962 now require importers to file an import declaration before the end of the day (including holidays) preceding the day of arrival at a port or border station where imported goods are to be cleared. Shipments may be cleared as early as 30 days before arrival. The goal of the new rule is to decrease Customs clearance times at the border. It is part of an ongoing effort by the Indian government to increase transparency and oversight of goods entering the country.

Each year, India also conducts a National Time Release Study<sup>5</sup> across all seaports, air cargo terminals and inland container depots, which includes studying import release time for goods cleared via the pre-arrival processing and AEO programmes. For pre-arrival processing, the study compares the average release time for advance and normal bills of entry during the sample period. For AEO, the study compares the average release time for AEO certified businesses and non-AEO certified businesses. This information is published annually and assist stakeholders in making a broad array of decisions. SCEA and its partners can adopt this best practice approach as well.

### **d. Australia New Zealand's Standard Risk Management Methodology**

The government of New Zealand's has adopted a standard methodology for identifying and assessing risk in all government entities<sup>6</sup>. The methodology is a joint standard with Australia, prepared by Standards Australia and Standards New Zealand and subjected to frequent reviews by both countries. Having one standard ensures consistency in the government's approach to risk management. The standard contains an extensive list of precise definitions for terminology to provide a common language for practitioners. Many businesses use the same standard.

The standard provides a generic guide for establishing and implementing risk management. It is a cyclic, recurring methodology of seven well-defined steps that support better decision-making by providing insight into risks and their impacts. The standard also requires that government agencies review their risks regularly.

The risk management methodology is flexible, adaptable, and considers changes in the operating environment, including in processes and legislation. It can be applied to any situation where an undesired or unexpected outcome could have a significant impact or where opportunities are identified. Applying the methodology informs decision-makers of possible outcomes and enables them to control their impacts. The standard has also been adopted by the World Customs Organization as part of its guidelines to the Revised Kyoto Convention.

## 6. RECOMMENDATIONS

The AEO programme in Kenya has the support of the senior leadership in customs, as demonstrated by the creation and resourcing of a dedicated AEO unit within customs. The programme is making good progress but will need to overcome some implementation bottlenecks to attract greater participation to enable realization of its intended objectives. Most notably, new measures are needed to promote awareness, provide flexibility to the accreditation process, grow inter-agency collaboration through a harmonized risk management framework, and new amendments to the legislation to support implementation.

The PAP programme on the other hand is still in its infancy stage with opportunities for greater participation by businesses. Some of the measures that need to be addressed to increase utilization include streamlining operations, creating greater awareness, enhancing stakeholder involvement, greater collaboration between agencies and harmonization of risk management systems by government agencies involved in trade facilitation. The programme could also benefit from legislative changes to support implementation. The following section discusses these recommendations in detail, starting with the AEO programme.

### **i. Recommendations to Improve Delivery of the AEO Programme and Enhance Utilization**

#### **a. Enhance Stakeholder Involvement**

Open communication between customs authorities and the private sector is essential towards ensuring successful implementation of AEO programs. It is recommended that formal framework for stakeholder engagement be developed and implemented for the AEO programme. The WCO Customs-Business partnership guidance<sup>7</sup> (2015) offers some best practices and case studies, as well as general guiding principles on how to create a beneficial engagement with the private sector.

#### **b. Pursue Greater Awareness, Marketing and Promotion Activities**

To increase awareness, it is recommended that customs expand marketing and promotion activities for the AEO programme to include involvement by other government agencies and the private sector. Specifically, customs authorities could leverage custom brokers, clearing and forwarding agents and freight forwarders since they regularly interact during the process of clearing goods through ports and border stations. In addition, it is recommended that customs consider the use of digital communication techniques in the marketing and promotion activities due to their ability to reach a wider network of stakeholders.

In addition, to ease and meet the operator requirements, it is recommended the full list of AEO certified businesses be publicly available on the customs website.

#### **c. Involve SMEs through Flexible Approaches to Certification**

To attract greater participation in the AEO programme and help them contribute to supply chain security, customs authorities should work with stakeholders such as the Micro and small Enterprise Authority (MSEA) and industry associations to promote the AEO programme and have targeted programmes to help SMEs improve their compliance record and meet the certification requirements.

Measures to increase SME participation should allow customs authorities to offer flexible approaches to certification through customized certification requirements that recognize the business models commonly used by SMEs. As such, customs authorities should take a flexible approach to security standards rather than a prescriptive one. This approach would involve acknowledging the limitations of SMEs during the certification process, enabling customs authorities to take this into account in their decision making.

#### **d. Promote Inter-Agency Collaboration in Risk Management and Information Sharing**

AEO programmes work best when measures are in place to strengthen co-operation between customs and other government agencies. This can be achieved through an integrated risk management framework that facilitates the exchange of information between agencies, mutual recognition of controls and mutual recognition of AEO benefits in accordance with Standard 4 and Standard 7 of the SAFE Framework.

The SAFE Framework of Standard 7 – Targeting and Communication provides that Customs administrations should provide for joint targeting and screening, the use of standardized sets of targeting criteria, and compatible communication and/or information exchange mechanisms to enable future development of a system of mutual recognition of controls. The SAFE Framework of Standard 4 provides that governments should harmonize the supply chain security national control measures of government agencies, including risk management and risk mitigation, to limit any negative impact of those measures on legitimate trade and international movement.

The full implementation of these instruments, together with making risk management a part of the culture, policy, and operational practice, will enable customs to adopt a broader and more comprehensive view of the global supply chain and create opportunities to eliminate duplication and multiple reporting requirements through inter-agency cooperation and collaboration. As part of this co-operation, customs administrations should agree on mutual recognition of controls supported by an integrated approach to risk management and strong intelligence sharing including the exchange of customs data and other inspection results between government agencies involved in trade facilitation. Existing compliance programmes such as the Kenya Bureau of Standards (KEBS) Pre-export Verification of Conformity (PVOC) and the Diamond Mark Certification Scheme, could be incorporated as part of the integrated risk management framework agreed upon by customs and other government agencies.

#### **e. Streamline the AEO Certification Process**

To improve transparency, accountability, and predictability in the AEO certification process, it is recommended that customs authorities create, maintain, and publish a service delivery standard specific to AEO approvals. The customs authorities would be held accountable to this standard which should establish approval timeframes disaggregated by the type of applicant. SCEA and its private sector partners can regularly compile the actual time taken for AEO approvals and compare this to the standards set by customs and regularly publish the information. The publication of this information would encourage customs to attain the benchmarks set in the service standards. In addition, the composition of the AEO Examination Committee, which is charged with review and approval of applications, should be more inclusive to include private sector participation. Currently, the committee is made up of government representatives only. Finally, the inclusion of compliance with domestic taxes as a requirement for AEO certification would likely continue to present a barrier for participation. We recommend that customs authorities maintain the AEO certification requirements recommended by WCO's AEO implementation and validation guidance<sup>8</sup>.

#### **f. Create More Concrete AEO Benefits for Businesses**

The WCO SAFE Framework of Standards<sup>9</sup> recommends that customs authorities provide benefits to businesses that meet minimum supply chain security standards and best practices. The benefits are divided into two categories namely.

- » general benefits, and
- » operator-specific benefits.

The general benefits include among others, measures to expedite cargo release, reduce transit time and lower storage costs, measures to facilitate post-release processes, special measures relating to periods of trade disruption or elevated threat level, participation in new trade facilitation programs, benefits provided by other government agencies, benefits under mutual recognition agreements (MRAs), providing access to information of value to AEO operators, and indirect benefits. Operator-specific benefits include specific benefits for specific types of AEO certified businesses.

The evaluation found that Customs Authorities still have room for improvement when it comes to benefits provided to AEO certified businesses. Most of the AEO benefits currently listed on the KRA website are benefits that accrue to all importers and exporters and not necessarily to AEO certified businesses only. As a result, customs must take actions to attract more enterprises in the supply chain to participate in AEO certification. One way to achieve this is to provide benefits specific to AEO certified businesses so that businesses are willing invest in new measures that help them participate in AEO certification.

Customs Authorities can implement the following measures to provide AEO certified businesses with more benefits:

- » Implement the general benefits and the operator-specific benefits contained in the WCO “Annex IV of the “SAFE Framework of Standards”.
- » Improve cooperation with other government agencies involved in trade facilitation and involve them in creating benefits for AEO certified businesses. This can be done through signing MOUs or Mutual Recognition of Benefits Agreements (MRBA) with other government agencies involved in the goods clearance process.
- » Create more AEO certification types to open up opportunities for small and medium enterprises (SMEs). It is understood that this is an initiative that is currently underway at EAC level, and this report therefore recommends that the process be fast tracked.
- » Extend AEO benefits to other customs procedures that are known to be complex and time consuming. For example, expedited processes for AEOs for amendments to form C11, which currently take up to 3 weeks to approve, and the creation of dedicated lanes for AEO certified businesses at border stations.
- » Fast-track the development of a formal mutual recognition of benefits framework for recognizing AEO benefits among and between customs and other government agencies.

#### ***g. Re-Examine the AEO Programme Design, Purpose, and Regulatory Enforcement Regime***

To increase participation in the AEO programme, customs should ensure standards and regulatory requirements do not impose overly burdensome and bureaucratic requirements on businesses. Considerations should be made for a flexible approach to regulatory compliance and security standards related to the AEO program. A good starting point would be to review the compliance and security procedures and analyze whether they are all-inclusive and flexible based on the current operating environment.

One notable observation from customs around regulatory compliance is the concern around illegitimate trade and potential tax evasion amongst other unethical practices by businesses. However, a regulatory system should encourage and support ethical behaviour by all businesses and stakeholders. It should adopt the right culture, incentives and actions that support, and do not hinder, efforts by individuals and businesses to behave ethically. For example, the enforcement strategies and practices should promote and recognize compliant business while proportionately penalize non-compliant businesses. Imposing a punitive response to non-compliance which has no little or no consequence to public safety or tax collection would be counter-productive<sup>10</sup>.



## ***h. Training and Change Management***

The AEO programme is a complete paradigm shift away from the usual customs processes that have been around for over time, to a new way of clearing goods based on risk and customs-to-business partnership that is based on trust. While interviews with stakeholders indicated that the AEO programme has the support of the executive leadership team at KRA customs, differentials exist in the application of benefits by customs officers who are charged with the responsibilities of enforcing the law.

To address these differentials in the application of benefits, it is recommended that customs establish and widely share with business the procedures and processes of clearing goods using the AEO programme. These new procedures should be accompanied with an appropriate and relevant change management programme targeting all players in the clearance process – private and public.

### ***i. Establish an AEO Helpdesk***

To provide a mechanism where customs authorities could collect real-time information on issues relating to implementation of the AEO programme, it is recommended that an AEO helpdesk be established within customs to provide real-time guidance and support to AEO certified businesses regarding the practical application of the elements of the AEO program. This helpdesk can also be used to receive, and track complains lodged by AEO certified businesses, done through the secure online web portal.

### ***j. Consider Supportive Legislation, Policies and Standard Operating Procedures (SOPs)***

The differential in the interpretation and applicability of international law and the application of AEO benefits by some agencies and customs officials, and the lack of clarity of AEO procedures and processes points to the need for a standardized approach to delivering the AEO programme. This may be achieved through imbedding some elements of the AEO programme in legislation and developing standardized policies and procedures to guide users on registration and how to clear goods using the AEO programme.

Some of the elements of the of the AEO programme that could benefit from legislation and policies include requirements for applying and maintaining certification status, requirements regarding minimum benefits to the provided to AEO certified businesses, eligibility criteria, programme-specific requirements, supply chain security requirements, validation timelines, compliance standards, suspension, denial, and cancellation criteria.

To make it easier for businesses to navigate the certification process, it is recommended that customs establish clear standard operating procedures (SOPs) and guidelines for certification. These include standard operating procedures and complete guides to AEO eligibility, requirements for certification, benefits policies, and guides to how businesses can maintain AEO status. These guidelines and standard operating procedures should be accessible by all parties involved in international trade to enable greater understanding of their individual roles, responsibilities, and obligations.

### ***k. The AEO Programme as a Strategic Priority***

To promote greater accountability to Kenya's WTO commitments on trade facilitation, a formal mechanism needs to be put in place for monitoring and measuring implementation of the AEO programme. This mechanism may include a stand-alone strategy for implementing the AEO programme with clear objectives and targets, or an AEO implementation strategy embedded in the KRA corporate strategic plan. To enable impact to the assessed, the strategy should be accompanied with a monitoring and reporting framework that enables greater analysis and sharing of data on elements of the AEO programme. The reporting framework should consider the KPIs referenced in section 8 of this report.

## **ii. Recommendations to Improve Delivery of the PAP Programme and Enhance Utilization**

### **a. Enhance Stakeholder Involvement**

Stakeholder engagement helps customs organizations to proactively consider the needs of persons, groups and/or organizations that have a stake in or may be impacted by the PAP programme. If well executed, it can foster greater connections, build trust and confidence, and facilitate buy-in and support for the PAP programme and eventually increase utilization. To strengthen stakeholder involvement, customs should consider the development and implementation of a formal mechanism of engaging business in the design and delivery of pre-arrival processing programme. This may include strengthening the National Trade Facilitation Committee to include leading industry associations to tackle issues that are specific to the PAP program.

### **b. Streamline Operational and IT Procedures**

The requirement by ICMS that the manifest is the only primary document to be used to initiate clearance processes is limiting and not supportive of the PAP programme. To provide flexibility for businesses to use alternative documents to kickstart the PAP clearance processes, it is recommended that upgrades be made in ICMS to enable the use of alternative documents, provided that these documents contain sufficient information to enable agencies to conduct risk assessments and make release decisions. The alternative documents can be agreed upon through a consultative process between customs and businesses, and the appropriate legislative amendments made to support this. In addition, to ensure that PAP transactions are visible to all agencies in the goods clearance process and their benefits duly accorded, a new module in ICMS is necessary to identify import/export transactions under the PAP programme. This should be complemented by implementing measures to improve clarity of procedures including developing guidelines for clearing goods using the PAP programme.

### **c. Regulatory Amendments**

Certain aspects of the legislation may require amendment to support implementation of the PAP programme. For example, amendments may be required in the East African Community Customs Management Regulations, to increase the forty-eight hours timeline currently required to lodge declarations and pay duties. This amendment would provide flexible timelines for importers and clearing agents to obtain manifests from carriers and related trade documents, lodge these documents and pay taxes before the actual arrival of goods.

In addition, changes to the sections 11(1), 12(2), and 20(1) of the East Africa Community Customs Management Regulations may be required to provide greater flexibility for importers to provide alternative documents (not necessarily the manifest) for the release of goods, provided these alternate documents contain information that accurately describes the goods being imported/exported in a manner that will enable customs to conduct risk assessments and make release decisions under the PAP programme.

In the long run, it may be worthwhile to consider mandating the PAP program by law for certain types of cargos and modes of transportation. This change could result in greater utilization of the programme by businesses. For example, the USA Trade Act of 2002 mandated the advance electronic transmission of information for all cargo shipments entering and leaving the United States and different systems were developed to address each mode of transportation. In India, the Central Board of Indirect Taxes and Customs announced a new rule requiring all air cargo arriving in India to be cleared no later than the day of arrival and preferably before arrival. Shipments may be cleared as early as 30 days before arrival.

#### **d. Marketing and Awareness**

Increase awareness of the PAP programme through involvement of private sector partners in marketing and promotion activities. Clearing agents for example, who interact with a vast majority of importers and exporters are well placed to implement a marketing and awareness programme in collaboration with customs authorities.

#### **e. Harmonize Risk Management Standards for Customs and Other Government Agencies Involved in Trade Facilitation**

In conducting their responsibilities for managing borders and collecting revenue, customs administrations operate in environments characterized by uncertainty and constant change. It is not easy to predict, for example, how many consignments crossing the border will break the law or try to evade or mis-declare import duties. Moreover, it is not feasible to manually inspect all goods entering or leaving the country. As such, countries must develop methods that identify cross-border transactions with potential public safety risk and find the right balance between customs control and trade facilitation.

Integrated risk management frameworks and inter-agency collaboration and information sharing play leading role in achieving the balance between customs control and trade facilitation. With their experience managing borders, customs authorities are uniquely positioned to conduct risk assessments – enabling them to make effective interventions in the supply chain without constraining legitimate trade. To avoid unnecessary duplication of controls and to foster mutual recognition of controls and collaboration between customs and other government agencies, it is recommended that customs and other government agencies agree on an integrated risk management framework that considers risk factors identified by all agencies involved in trade facilitation. The framework should also facilitate the sharing of intelligence and risk profiles as well as the exchange of customs data between agencies. decision-making. The framework could leverage the work already done by WCO in its Global Information and Intelligence Strategy (GIIS)<sup>11</sup> and could possibly adopt joint risk assessments, supported by a strong governance and intelligence framework involving all agencies involved in trade facilitation.

## 7. PROPOSED KPIS FOR THE AEO AND PAP PROGRAMMES

To help SCEA, GIZ and their partners in government and private sector to work towards realizing better outcomes for the AEO and PAP programmes, this report proposes a set of key performance indicators (KPIs) against which progress can be measured for these two programmes. A regular reporting mechanism for these KPIs may be used to identify areas of action that will enable realization of the full benefits of these two programmes. The KPIs cover all elements of the AEO and PAP programmes from programme design to implementation and are designed such that they are easily measurable, and data is available from key government and private sector stakeholders.

These KPIs will allow implementing agencies to identify their strengths and weaknesses in these two trade facilitation measures, prioritize areas for action, and mobilize technical assistance and capacity building in a more targeted way. The KPIs not only measure the actual extent with which implementing agencies have implemented these two programmes, but also measure their performance relative to best practices. SCEA, GIZ and their partners may update these KPI data annually, to enable appropriate monitoring and progress measurement.

### i. AEO KPIs

KPI	Description
Number of AEO certifications issued	Actual number of business entities certified as new AEOs
AEO programme utilization rate	Number of import/export transactions completed using the AEO programme
	Percentage of import/export transactions cleared using the AEO programme
	Total value of goods cleared using the AEO programme
AEO-related complains	Number of complaints reported to the online AEO complains management system
AEO compliance rate	Number of non-compliance incidences by AEOs as a proportion of all AEO transactions
AEO certification turnaround time	Average time taken to receive AEO certification after application
AEO clearance turnaround times	Average time taken to clear goods using the AEO programme vis-à-vis the normal clearance processes
AEO consignments inspection rate	Proportion of AEO transactions that are flagged for inspection
SME Participation Rate	Proportion of SMEs certified as AEOs relative to the total number of AEO certified businesses

### ii. PAP KPIs

KPI	Description
Number of PAP shipments released on arrival	Total count of shipments that are released immediately upon arrival
PAP programme utilization rate	Number of import/export transactions completed using the PAP programme
	Percentage of import/export transactions cleared using the PAP programme
	Total value of goods cleared using the PAP programme
PAP-related complains	Number of complaints reported to the online PAP complains management system
PAP compliance rate	Number of non-compliance incidences reported for PAP programme users as a proportion of all PAP transactions
PAP clearance turnaround times	Average time taken to clear goods using the PAP programme vis-à-vis the normal clearance processes
PAP consignments inspection rate	Proportion of PAP transactions that are flagged for inspection

## 8. KEY AREAS OF ACTION AND IMPLEMENTATION PLAN

Issue	Action Required	By Whom?
PAP Awareness	Design and implement a PAP awareness programme	Customs and private sector partners
AEO and PAP complains management systems	Design and implement a web-based complains management system for the AEO and PAP programmes	Customs
Clarity of procedures and processes	Develop standard operating procedures (SOPs) to guide implementation of elements of the AEO programme including certification and clearing processes	Customs
Legislative amendments	Advocate for relevant legislative amendments to support implementation of the AEO and PAP programmes	SCEA, Customs and private sector partners
Standardized risk management framework	Develop a standardized methodology for risk assessments that includes all the agencies involved in trade facilitation	Customs and private sector partners
Training and change management for the AEO programme	Undertake change management programmes targeting both government and private sector players.	Customs and private sector partners
Monitoring and reporting of KPIs	Regular monitoring and reporting of the AEO and PAP KPIs	Independent entity, preferably SCEA or any other private sector entity
SME specific AEO benefits	Develop requirements and benefits specific to SMEs	Customs and private sector partners
Learning from best practices	Expand opportunities to learn and share knowledge with countries that are known to have made significant progress in implementing the AEO and PAP programmes	SCEA, Customs and private sector partners

## 9. REFERENCES

1. World Trade Report 2015. Speeding up Trade: The Benefits and Challenges of Implementing the WTO Trade Facilitation Agreement
2. Compendium of Authorized Economic Operator Programmes. WCO 2020 Available at <chrome-extension://efaidnbmninnipcbajpcgclcfndmkaj/http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/aeo-compendium.pdf>
3. Ibid (i)
4. UNECE Trade Facilitation Implementation Guide. Available at <http://tfig.unece.org/contents/case-studies.htm>
5. National Time Release Study 2022. Central Board of Indirect Taxes and Customs India. Available at <https://www.cbic.gov.in/resources/htdocs-cbec/implmntin-trade-facilitation/national-time-release-study-2022.pdf>
6. Trade Facilitation Implementation Case Study 2011. Risk Management – New Zealand’s Experience
7. WCO Customs-Business partnership guidance in 2015
8. WCO AEO Implementation and Validation Guidance 2021
9. World Customs Organization (WCO) Safe Framework of Standards 2021
10. Christopher Hodges (2019) Ethics in Businesses Practice and Regulation
11. WCO Global Information and Intelligence Strategy (GIIS).







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