

Development Model for Facilitating the Negotiation of AEO MRAs

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Abstract

This paper presents a model for an effective Authorised Economic Operator (AEO) Mutual Recognition Agreement (MRA) development process, based on the author's doctoral thesis, which examined factors impacting the negotiation of AEO MRAs. The purpose of the model is to provide governments with a logical framework for facilitating the preparation, negotiation and implementation phases of MRA development at both the bilateral and multilateral level. First, an overview of methodology is presented to highlight the study's data collection, analysis and result integration within the convergent parallel mixed-methods design. Second, identified factors are categorised by way of their impact on the various phases of the MRA process including preparation, negotiation and implementation. Each of the three phases is then discussed, together with the steps involved in each phase.

1. Introduction

In the aftermath of the terrorist attacks on 11 September 2001 in the US, the World Customs Organization (WCO) developed a global initiative known as the SAFE Framework of Standards to Secure and Facilitate Global Trade (WCO SAFE Framework) to strengthen security while maintaining trade facilitation. The initiative (WCO, 2005, 2007, 2011b, 2012b, 2015, 2018d) contains two key concepts: the Authorised Economic Operator (AEO) and Mutual Recognition Agreement (MRA).

An AEO is defined as a business that meets specified customs compliance standards and shows a demonstrated commitment to supply chain security (WCO, 2005). In return, they receive greater levels of trade facilitation than other businesses. Meanwhile, MRAs are the means through which two customs administrations recognise each other's validation and authorisations of AEOs and agree to provide mutual trade facilitation benefits to their respective AEOs (WCO, 2005). The MRA concept broadens the scope of AEO programs beyond national borders through the conclusion of bilateral and multilateral MRA negotiations. While the WCO has developed several tools to facilitate such MRA negotiations (WCO, 2011a, 2018b, 2018c), the literature suggests that numerous challenges remain for countries who seek to negotiate MRAs (Pham, 2019).

AEO mutual recognition has become a common goal for many WCO member countries to pursue following the establishment of their AEO programs. The current global practice of mutually recognising AEO programs through the negotiation of MRAs has shown that, while some countries are doing this well, others are not and often struggle with the process. Furthermore, the literature highlights a wide range of issues and problems associated with the negotiation of MRAs. However, no empirical research has previously been undertaken to identify the factors that impact the negotiation of MRAs (Pham, 2019). The author's doctoral thesis sought to address these gaps in the literature (Pham, 2021).

The main aim of the research was to provide effective recommendations and solutions to governments for facilitating the MRA development process. In this regard, this study was designed to assist

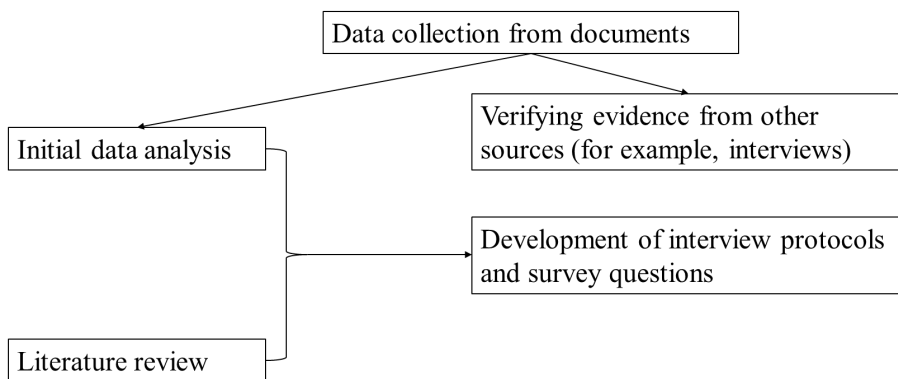
regulators, negotiators and other relevant stakeholders at the national, regional and international level in identifying further ways to facilitate AEO MRA negotiations, which would support international trade and ensure global supply chain security. In the study, it was identified that mixed-methods research can enhance the quality of the research findings because both quantitative and qualitative results are combined in order to mutually support and strengthen each other in a single study (Bazeley, 2006; Kelle, 2006). The study identified 30 factors that impact the negotiation of MRAs and analysed the impact of such factors. It also examined the future trend of regional AEO programs and multilateral MRAs and assessed whether the WCO tools for the negotiation of MRAs are sufficient to promote the MRA development process at both the bilateral and multilateral levels. Therefore, an MRA Development Model, based on the research findings, was proposed to facilitate the MRA development process.

2. Overview of methodology

The research adopted the convergent parallel mixed-methods design, with three data sources, being documents, interviews and a survey. Quantitative data was collected using the survey, while qualitative data focused on all three sources of data including relevant documents, interviews and the survey's open-ended questions.

Data collection from documents was used for two purposes: supporting the interviews and survey; and verifying evidence from other sources (for example, interviews). The examination of relevant documents (Polner, 2010; WCO, 2012a, 2014, 2016, 2017, 2018a, 2019) assisted the development of research interviews and survey, the status of bilateral and multilateral MRAs and information about the trends and current situation of MRA negotiations and implementation. Documents were then analysed and combined with information from the literature review to develop interview protocols and survey questions. Figure 1 shows the development of interview protocols and survey questions based on the initial data analysis.

Figure 1. Development of interview protocols and survey questions



Source: Author

The interviews and survey shared the same study population, which included experts in the public sector, private sector, international organisations and academia. Public sector representatives were drawn from customs administrations, academics were identified via the International Network of Customs Universities (INCU) and participants from international organisations and the private sector were identified from lists of attendees from relevant international conferences or recruited from online social networks.

Interview participants were selected by quota and snowball sampling strategies, the sample size being 21. The use of quota sampling determined how many samples were drawn from each category to reflect the characteristics of the population (see Collins, 2010, p. 359). Snowball sampling is a technique where several recruited interviewees are encouraged to nominate other interviewees, which helps to increase the sample size (Visser et al., 2000, pp. 236–237).

In the survey, a purposive random sampling strategy (Collins, 2010, p. 358) was used to select 420 participants. From the list of interviewees, seven participants were randomly selected for inclusion in the survey. In the sampling frame of AEO conference attendees and academics who have at least one relevant publication, 96 participants were selected. By using LinkedIn to create a sampling frame, 317 participants were selected in this group. Table 1 highlights the dataset development of the study.

Table 1. Dataset development of the study

| | Interviews | Survey |
|------------------------------------|--|--|
| Defined study population | Experts in the public sector, the private sector, international organisations and academia | |
| Sampling | Quota and snowball sampling | Purposive random sampling from the created sampling frame |
| Sample size | 21 | 420 |
| Recruitment of participants | <ul style="list-style-type: none"> • The public sector: invitation letters • Academics: assistance from the INCU • International organisations and the private sector: conference attendees and online social network | <ul style="list-style-type: none"> • Seven participants from the list of interviewees • 96 participants from the sampling frame of AEO conference attendees and academics who have at least one relevant publication • 317 participants from the sampling frame created by using LinkedIn |

Source: Author

Once interviews and survey data were collected and prepared for analysis, different techniques were employed to analyse the data. Descriptive statistics were used to analyse the quantitative data and the thematic technique was used to analyse the qualitative data.

In the integration of qualitative findings and quantitative results (Creswell, 2014; Guetterman et al., 2015), the joint display technique was employed. This technique, an effective tool to provide meaningful integration in mixed-methods research (Plano Clark, 2019), is highly recommended by Guetterman et al. (2015), who suggest that joint displays be used more often for the integration and interpretation of mixed-methods research.

Findings from this integration assisted in proposing an MRA Development Model to provide governments with a logical framework to facilitate the negotiation of MRAs at both the bilateral and multilateral level. In doing so, the model identifies the various steps involved in each phase of development, that is, the preparation, negotiation and implementation phase, together with a description of the elements which have an impact on each step.

3. MRA Development Model

The model identifies the various elements that have an impact on the MRA development process. These elements are grouped into two categories, MRA tools and factors. The impact of each element is also identified against the three phases of MRA preparation, negotiation and implementation.

The WCO MRA Guidelines, the WCO MRA Strategy Guide and the WCO Trader Identification Number (TIN) Guidelines were identified as the three most relevant MRA tools, which provide guidance to customs administrations throughout the MRA development process including the MRA preparation phase, the MRA negotiation phase and the MRA implementation phase. In addition to these three tools, a total of 30 factors were identified, which are considered to have an impact on the development of MRAs.

Eight factors including *free trade agreements, coordinated border management, customs cooperative agreements, internal commitment, resource allocation, MRA training, trader awareness* and *MRA benefits* have some impact in all three phases of the MRA development process.

Seven factors have an impact in the MRA preparation and negotiation phases only. These are *political ties, geopolitical considerations, economic size, trust, political will, form of selective agreements* and *MRA lobbying*.

The four factors *export volume/value, import volume/value, trade volume/value, and trade patterns* are identified as having an impact on the MRA preparation phase only and *national sovereignty* only has an impact on the MRA negotiation phase. Two factors, *import clearance time* and *non-tariff barriers*, have an impact on the two phases of MRA preparation and implementation.

The remaining factors consisting of *SAFE compliance, AEO program focus, AEO program scope, privacy and data protection, data integrity, number of AEO memberships, data exchange* and *dispute resolution procedures* have an impact on the two phases of MRA negotiation and MRA implementation.

In addition, the MRA Development Model identifies those elements which have an impact in each step of the three phases of MRA preparation, negotiation and implementation (see Section 4). The MRA Development Model created from the research findings is presented in Figure 2.

Figure 2. MRA Development Model

| | | Preparation | | | Negotiation | | | | | Implementation | |
|-------------------------------|--------------------------------|-------------|--------|--------|-------------|--------|--------|--------|--------|----------------|--------|
| | | Step 1 | Step 2 | Step 3 | Step 1 | Step 2 | Step 3 | Step 4 | Step 5 | Step 1 | Step 2 |
| Tools | WCO MRA Guidelines | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ |
| | WCO MRA Strategy Guide | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ |
| | WCO TIN Guidelines | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ |
| Factors | Political ties | | █ | █ | █ | █ | █ | █ | | | |
| | Geopolitical considerations | | █ | █ | █ | █ | █ | █ | | | |
| | Economic size | | █ | █ | █ | █ | █ | █ | | | |
| | Export volume/value | | █ | | | | | | | | |
| | Import volume/value | | █ | | | | | | | | |
| | Trade volume/value | | █ | | | | | | | | |
| | Trade pattern | | █ | | | | | | | | |
| | Free trade agreements | | █ | █ | █ | █ | █ | █ | █ | █ | █ |
| | Coordinated border management | █ | █ | | | █ | █ | █ | █ | █ | █ |
| | Customs cooperative agreements | | █ | █ | █ | █ | █ | █ | █ | █ | █ |
| | National sovereignty | | | | | █ | █ | █ | █ | | |
| | Trust | | █ | █ | █ | █ | █ | █ | █ | | |
| | Political will | █ | █ | █ | █ | █ | █ | █ | █ | | |
| | Internal commitment | █ | █ | █ | █ | █ | █ | █ | █ | █ | █ |
| | Resource allocation | | █ | █ | █ | █ | █ | █ | █ | █ | █ |
| | Form of selective agreements | | █ | █ | █ | █ | █ | █ | █ | | |
| | MRA training | | █ | █ | █ | █ | █ | █ | █ | █ | █ |
| | Trader awareness | | █ | █ | █ | █ | █ | █ | █ | | █ |
| | MRA benefits | | █ | █ | █ | █ | █ | █ | █ | | █ |
| | Import clearance time | | █ | | | | | | | █ | █ |
| | Non-tariff barriers | | █ | | | | | | | █ | █ |
| | MRA lobbying | █ | █ | █ | █ | █ | █ | █ | █ | | |
| | SAFE compliance | | | | | █ | █ | █ | █ | | █ |
| | AEO program focus | | | | | █ | █ | █ | █ | | █ |
| | AEO program scope | | | | | █ | █ | █ | █ | | █ |
| | Privacy and data protection | | | | | █ | █ | █ | █ | █ | █ |
| | Data integrity | | | | | █ | █ | █ | █ | █ | █ |
| | AEO memberships | | | | | █ | █ | █ | █ | █ | █ |
| Data exchange | | | | | █ | █ | █ | █ | █ | █ | |
| Dispute resolution procedures | | | | | █ | | | █ | █ | █ | |

Source: Author

4. Phases of the MRA Development Model

Having provided a broad overview of the MRA Development Model (see Figure 2), this section further details the MRA Development Model in terms of its three phases of MRA preparation, negotiation and implementation.

4.1 Preparation phase

In the MRA preparation phase, a country should develop a holistic national MRA strategy, which provides a framework for competent authorities (for example, customs administrations) to negotiate and implement MRAs. The MRA strategy should include, but should not be limited to, the country's vision and mission in achieving both bilateral and multilateral MRAs, its long-term and short-term goals in relation to MRA negotiations, an analysis of the country's strengths, weaknesses, opportunities and threats in dealing with potential MRA negotiations, an analysis of information and intelligence obtained from relevant stakeholders and an appropriate resource allocation and operational plan.

The three critical steps in preparing for an MRA consist of organising a national MRA committee, devising an MRA project and accepting or sending invitations.

Step 1: Organising a national MRA committee

This step should be undertaken with guidance from the relevant tools, that is, the WCO MRA Guidelines, the WCO MRA Strategy Guide and the WCO TIN Guidelines. Key factors in achieving this include the need for a high level of political will, internal commitment, effective cooperation among border agencies and MRA lobbying. A customs administration needs to seek political support at government level for the establishment of a competent committee. In this stage, the factors of political will and internal commitment play an important role in encouraging relevant stakeholders, such as competent border agencies, trade associations, AEO associations and AEO companies, to join the committee and develop an MRA project. Lobbying by the private sector is a legal activity in many countries and these countries encourage trade associations, AEO associations and AEO companies to present their views to facilitate the MRA development process.

Step 2: Devising an MRA strategy

In this step, a proactive approach should be adopted to develop a national MRA strategy. This strategy should be devised with the participation of relevant stakeholders, such as border agencies, trade associations, AEO associations and AEO companies. All elements shown in Step 2 of Figure 2 for the MRA preparation phase are relevant, together with guidance from the MRA tools.

A high level of political will and internal commitment within the national MRA committee and each of the stakeholders' organisations is needed to support the development of the MRA strategy, which may be influenced by lobbying to help identify potential MRA partner countries. The factors of *coordinated border management* and *MRA training* are also relevant because the MRA strategy must have effective cooperation from governmental agencies at the borders, with MRA training providing relevant knowledge to negotiators, validators and auditors, as well as enhancing trader awareness.

In consulting with private sector stakeholders, the MRA committee should consider factors including *MRA training* to the private sector, *trader awareness* and *satisfaction with MRA benefits* to obtain the private sector's opinions, perceptions and suggestions. Meanwhile, it is essential to receive feedback on issues such as *import clearance time* and *non-tariff barrier*, common issues or problems arising in particular foreign markets. Consultation with the private sector regarding *import clearance time* and *non-tariff barrier* in several potential MRA partner countries could prove helpful in subsequently reviewing and evaluating actual MRA implementation.

When identifying a priority list of potential MRA partner countries, several factors need to be addressed, including *political ties, geopolitical considerations, economic size, trade volume/value, export volume/value, import volume/value, trade patterns, free trade agreements and customs cooperative agreements* to ensure appropriate countries are selected. Through careful examination of these factors, the MRA committee will also build an initial level of assurance of *trust* that MRAs with countries in the priority list would be appropriate. Furthermore, the national MRA committee should decide early in the process which form of selective agreements (binding or non-binding) it should pursue, based on a country's legislation or any other national requirements. Then, appropriate resources (human, time and finance) are allocated for successful progress of the national MRA strategy.

Based on information and intelligence collected from relevant stakeholders, an analysis should be conducted to examine the countries' and prospective partners' relative situations (for example, legal basis for MRAs, IT issues, resources, political relationships, geopolitical considerations, trade and the presence of free trade agreements and customs cooperative agreements).

Results from this analysis should provide a priority list of prospective MRA partner countries in which a country could have confidence in terms of the partner countries' regulatory environment and AEO program implementation. An MRA with these countries should also be considered achievable and bring mutual benefits to both parties. Prospective MRA partner countries should be listed in a priority sequence, on which decisions as to whether to accept or send MRA invitations would be based. In addition, the MRA committee could seek further political support from competent authorities to progress the national MRA strategy, to ensure appropriate MRA training to government officials and the wider business community, and to ensure sufficient resources for both the MRA negotiations and the implementation process. Additionally, lobbying should be encouraged as such activities will support and facilitate the MRA development process.

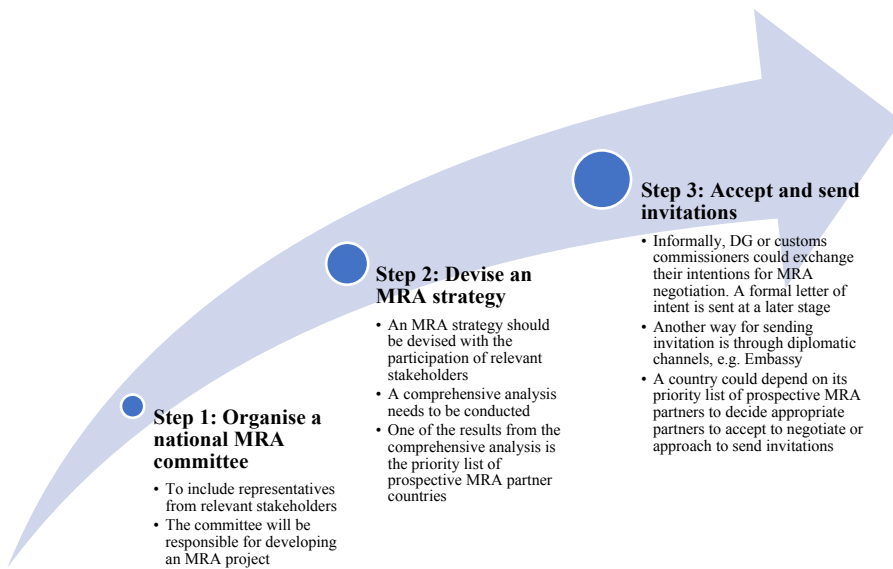
Step 3: Accepting or sending invitations

Based on the national MRA strategy, a customs administration should now have a clear road map and mandate to initiate MRAs with prospective MRA partner countries. There are two ways in which this may occur. First, the customs administration may be approached by a potential MRA partner, and second, the customs administration may approach a potential partner by sending an invitation to commence MRA negotiations.

There are also several ways to invite or accept invitations from prospective countries to initiate MRA negotiations. The director-general or customs commissioner may have personal contacts with their counterparts in other customs administrations and contact them informally. Also, through their interactions at international or bilateral conferences, they could exchange their interest in engaging in MRA negotiations. A formal Letter of Intent could follow at a later stage. When countries are key trading partners and free trade agreements or customs cooperative agreements are in place, this may further facilitate the initiation of MRA negotiations. Another way of sending or receiving invitations is through diplomatic channels, for example, embassies or overseas representative offices.

Note that a priority list of prospective MRA partners is very important for a country to compile, and if an inviting country is not on the invitation receiver's priority list, then the receiver is likely to decide not to proceed with MRA negotiations and therefore refuse the invitation. On the other hand, the invitation receiver will most likely accept the invitation if the inviter appears on their priority list of prospective MRA partner countries. Figure 3 provides a summary of the MRA preparation phase.

Figure 3. Three steps of the MRA preparation phase



Source: Author

Common challenges in the MRA negotiation phase are that countries often lack the vision or motivation to develop a holistic national MRA strategy. This reduces these countries' ability to pursue and achieve MRAs. Therefore, the objective of the MRA preparation phase is to develop a national strategy that provides guidance and a mandate to achieve MRAs with other countries. An important part of the strategy is the priority list of prospective MRA partner countries.

To summarise, a customs administration may use the priority list in one of three ways. First, it may be invited by another customs administration to negotiate an AEO MRA and could either accept or reject the invitation based on the priority list. Second, the customs administration may proactively send an invitation to a customs administration on the priority list. Third, the customs administration may receive several invitations, and use the priority list to prioritise its MRA negotiation program.

4.2 Negotiation phase

Having decided to proceed with MRA negotiations, the study suggests that several relevant elements, including the three MRA tools and 24 of the 30 factors, may have some impact on the MRA negotiation phase. This phase is comprised of five essential steps and each step is impacted by different elements.

Step 1: Acceptance of MRA invitations

As indicated in Step 3 of the preparation phase, a customs administration checks the priority list to see if it has already been approached to engage in MRA negotiations. If the answer is yes, the customs administration will then rely on other factors to determine whether it accepts and proceeds with the MRA negotiations. Factors relevant to this step could include *political ties, geopolitical considerations, economic size, free trade agreements, coordinated border management, customs cooperative agreements, trust, political will, internal commitment, resource allocation, form of selective agreements, MRA training, trader awareness, MRA benefits and MRA lobbying* (see Figure 2).

A country might have a prerequisite for MRA negotiations in which it and its inviting country must have a *customs cooperative agreement (CMAA or free trade agreements* with provisions of customs cooperation) in place. In this case, an MRA may be negotiated according to provisions within the customs cooperative agreements. Therefore, this prerequisite should be checked to ensure an invitation will not be declined. While *MRA lobbying* may facilitate the MRA development process, accepting MRA invitations requires a customs administration to have *political will, internal commitment* and *coordinated border management* where the customs administration must cooperate with other border agencies and have trust in the inviting country before proceeding with MRA negotiations. The customs administration might rely on its country's *political ties* and *geopolitical considerations* with the inviting country to build its initial *trust*. The customs administration should consider the *economic size* of the inviting country because MRA negotiations with a large economy could also be challenging. Together with accepting an invitation, the customs administration must also allocate appropriate resources for the negotiation phase.

Once the Letter of Intent (or Letter of Invitation) for MRA negotiations has been accepted by the prospective MRA partner country, the two parties will exchange initial information regarding their first point of contacts, AEO programs and the status of AEO implementation, objectives and expectations. This step is very important for the two parties because it shows their commitment in pursuing a successful outcome. If both parties have already researched and prepared their priority lists carefully, as discussed in the MRA preparation phase, they will be able to identify each other as prospective partners. It would then be appropriate for the parties to progress to the next step of MRA negotiations.

Step 2: Agreement on the action plan

An action plan (sometimes called a work plan, joint work plan or road map) will provide a way forward and a schedule of activities for both parties to fulfil, follow up and review their work throughout the MRA negotiation phase or even through further stages of MRA implementation. In this step, both parties should refer to the three MRA tools for instruction as well as all relevant factors (as specified in Step 2 of Figure 2) to develop, and then agree on, the action plan. For example, based on possible factors of *MRA lobbying, political ties, geopolitical considerations, free trade agreements, customs cooperative agreements, national sovereignty* and *trust*, a party could gain further *political will* and *internal commitment* for its MRA negotiations.

It will be essential for the action plan to demonstrate the scope of the negotiations, timeframes, designated roles of each party, evaluation mechanisms, types of communication, MRA training and the legal basis for MRA texts (for example, the form of selective agreements and types of MRA benefits). Once the parties agree on the details of the proposed road map, the action plan can be signed by competent representatives from both parties.

Step 3: Program comparison

This step is one of the activities that should be specified in the action plan. In it, each party requests their counterpart to provide the relevant documents for initial program comparison. These documents will include the relevant legal framework for data protection and the current implementation of AEO programs, such as eligibility criteria, minimum security requirements, authorisation, validation procedures, benefits, how many AEOs and what types of AEOs are involved in the program. Therefore, key relevant factors involved in this step include *SAFE compliance, AEO programs focus, AEO program scope, privacy and data protection, data integrity* and *AEO memberships* as both parties will compare the equivalence and actual implementation of their AEO programs, while the remaining factors will help to facilitate such a comparison.

Based on available documents, both parties should conduct a detailed side-by-side program comparison of each party's legislation, procedures and guidelines regarding AEO programs, their implementation and relevant legal framework for data protection and exchange. The comparison may

identify possible gaps, including in relation to SAFE compliance of their AEO programs. In addition, the comparison will indicate whether their AEO programs are equivalent in terms of security standards, mutual interests and reciprocated benefits.

This step often identifies several issues. First, a party's AEO implementation may differ from their prospective MRA partners (for example, in the AEO validation process and methods, MRA benefits in AEO programs, or in the number of AEO memberships). Second, lack of a legal framework for privacy and data protection or data exchange may be identified in one or more of the negotiating parties. It is critical that once issues are identified they are addressed promptly by each party so that such gaps are closed to allow matching of the AEO programs' compatibility and equivalence requirements. If further issues arise, each party should clarify and address them via ongoing communication. Alternatively, these issues could also be addressed in Step 4, joint validation audits.

Step 4: Joint validation audits

Joint site validation audits (or country joint visits) occur either at the customs headquarters or the AEOs' premises. Visits to customs offices will provide both parties' negotiators, validators and auditors the opportunity to observe the partners' program's implementation. Additionally, such visits allow both parties to benchmark best practices and exchange training materials. The negotiators, validators and auditors may also validate any on-site certification practices, such as application, validation and authorisation, which would supplement their program comparison to determine whether they are compatible and equivalent. In Step 4, key relevant factors involve *resource allocation, national sovereignty, trust, SAFE compliance, AEO program focus, AEO program scope, privacy and data protection, data integrity* and *AEO memberships* while other remaining factors should also be considered to foster the audit process.

Joint validation audits are also generally organised at the AEOs' premises for observation and validation purposes. The audits provide data about on-site practices which are used to support and validate the side-by-side program comparison in Step 3. On completion of joint validation audits, some key issues (for example, privacy and data protection, and data exchange) need to be identified and addressed. Both parties rely on the data collected from the program comparison and joint validation audits to determine the compatibility and equivalence of both AEO programs. If the respective programs are compatible and equivalent, both parties may proceed to prepare and sign an MRA.

Step 5: Preparing and signing an MRA

Step 5 involves the establishment of MRA texts at both legal and operational levels. Firstly, both sides' MRA negotiators focus on setting a legal framework for the proposed MRA. If the parties already have a CMAA, it could form part of the future MRA's legal framework. Also, both parties should address other aspects of the proposed MRA, such as type of benefits and type of selective agreements (binding or non-binding). Therefore, the key relevant factors in this step include *coordinated border management, customs cooperative agreements, free trade agreements, form of selective agreements, trader awareness* and *MRA benefits*, among others. It is also essential that a legal framework is established for governance, operation and maintenance of an MRA to facilitate the MRA implementation phase, which further involves the factors of *data exchange* and *dispute resolution procedures*. At the operational level, MRA texts involve the exchange of data, pilot testing and communication channels. The two parties' MRA negotiators then discuss selection of suitable timing and the location for the official signing of the MRA. Figure 4 presents a summary of the MRA negotiation phase.

Figure 4. Five steps of the MRA negotiation phase

| Step 1 Accept MRA invitations | Step 2 Agreement on the Action Plan | Step 3 Program comparison | Step 4 Joint validation audits | Step 5 Preparing and signing an MRA |
|---|--|---|---|---|
| <ul style="list-style-type: none"> • Accept MRA negotiations • Exchange of contacts, legal documents of AEO programs, current status of AEO implementation • Express expectations for an MRA | <ul style="list-style-type: none"> • Meetings to develop an Action Plan • Demonstrate the scope for the MRA negotiations, timeframes, legal ground for MRA texts (e.g., binding or non-binding, types of MRA benefits) • Sign the Action Plan | <ul style="list-style-type: none"> • Request extra documents (if required) • Conduct a detailed side-by-side program comparison of each side's legislation, procedures to identify gaps and determine the compatibility and equivalence • Any issues identified will be addressed through ongoing communications and also verified in Step 4 | <ul style="list-style-type: none"> • Observe and verify the implementation of the respective partners' AEO program • Validate on-site certification practices, e.g. application, validation and authorisation • Determine the compatibility and equivalence of AEO programs. | <ul style="list-style-type: none"> • Establish MRA texts at legal and operational levels • At the legal level, a legal framework for the proposed MRA is prepared together with mechanisms for governance, operation and maintenance • The operational level involves the exchange of data, a pilot testing phase, communication channels. |

Source: Author

Three outcomes are identified within the MRA negotiation phase. First, a customs administration could accept an invitation from another, but the invitation does not proceed further because there is a change in its priorities, lack of political will or insufficient resource allocation.

Second, an invitation is accepted and both parties would like the MRA negotiations to proceed. Subsequently, an action plan is agreed upon and signed by both parties. However, several common issues identified in either Step 3 or Step 4 need to be addressed before negotiations proceed further. For example, one party may not have legislation regarding data protection and data exchange, or the countries cannot agree on the form of selective agreements because one party requires it to be binding while the other insists on a non-binding arrangement. Thus, it is recommended that countries consider the form of selective agreements early in Step 2 of the MRA preparation phase to facilitate subsequent MRA negotiations.

The third outcome is that both parties negotiate through Step 1 to Step 5 of the MRA negotiation phase, addressing all inherent issues and an agreement is reached and signed by both sides' competent representatives. Pilot testing may be conducted before or after the conclusion of the MRA to facilitate subsequent MRA implementation (see below).

4.3 Implementation phase

The MRA implementation phase involves effective governance, operation and maintenance of the concluded MRA. The relevant MRA elements involved in the implementation phase are the WCO MRA Guidelines, the WCO MRA Strategy Guide, the WCO TIN Guidelines and 18 factors (see Section 3). This phase is undertaken in two steps and each step is impacted by different elements.

Step 1 Pilot testing

Pilot testing may be conducted before the conclusion of an MRA. In this case, the pilot test would be at the operational level of the MRA negotiation phase and involve IT experts from each party designated in the MRA negotiation team. Hence, an action plan should clearly outline pilot testing steps before the MRA is concluded.

Alternatively, the pilot testing step could be conducted after the conclusion of an MRA, before the MRA comes into effect. Again, the two parties should cooperate in the pilot test which will involve the exchange of data, the identification of AEOs in each counterpart's IT systems and the granting of benefits to AEOs.

Each party should review implementation timelines, manage expectations, provide necessary MRA training to frontline officers, engage relevant stakeholders (for example, other border agencies) and disseminate the concluded MRA to the public. Frontline officers should be aware of the respective parties' IT and legal systems. It is critical that the IT systems update the latest types of AEO identifiers, AEO recognition procedures and facilitate the granting of MRA benefits to eligible AEO companies. Therefore, key relevant factors in this step are *MRA training, privacy and data protection, data integrity* and *data exchange*.

Step 2 MRA governance, operation and maintenance

The provisions for MRA governance, operation and maintenance, negotiated during the MRA negotiation rounds, will have been agreed upon and concluded in the MRA texts. Each party establishes their points of contact for communication with their counterpart in the MRA implementation phase. Effective communication channels foster the exchange of information, for example, program updates and supply chain security policies, which are required to improve both parties' risk management. In this step of the MRA implementation phase, all relevant factors specified in Step 2 of Figure 2 are involved.

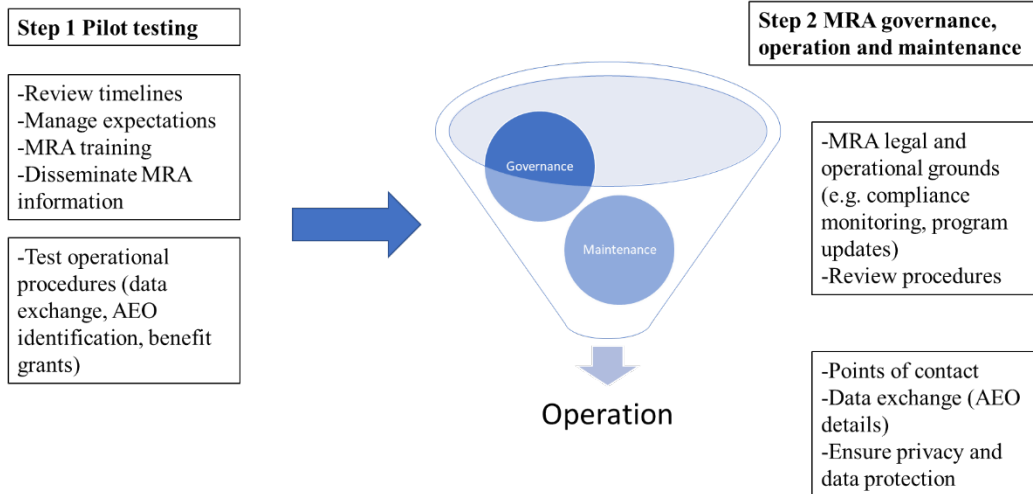
Everyday MRA operation involves data exchange with members of both AEO programs. This information needs to include their name, address, AEO status, the validation or authorisation date, suspensions and revocations and especially, the TINs. Significantly, such information is required to accurately communicate any changes or amendments to the counterpart on time, for example, if suspensions and revocations are updated.

Subject to each party's privacy and data protection regulations, the data exchanged with the MRA counterpart is to be used exclusively for the purposes of the implementation of the MRA. Both parties should have legal procedures in place to handle data, such as data deletion procedures, notifications and archiving. Such procedures are enacted solely for MRA implementation. Also, MRA texts may include compliance provisions developed to allow monitoring of the exercise of MRA provisions, for example, privacy and data protection.

Furthermore, the MRA texts should include provisions regulating review and consultation procedures. These provisions enable parties to conduct periodic meetings to review (partly or comprehensively) the MRA implementation to identify strengths, shortcomings and future benefits.

The MRA should also contain provisions to regulate the conditions of commencement, suspension and termination. Also, if an MRA is concluded as part of an existing CMAA, then this MRA is subject to the CMAA and does not constitute a new international agreement. Figure 5 below summarises the MRA implementation phase.

Figure 5. Two steps of the MRA implementation phase



Source: Author

5. Conclusion

Based on the identified factors that impact the MRA development process and the inherent challenges and issues associated with such factors, this paper provides a comprehensive understanding of MRA negotiations in the context of the WCO SAFE Framework. In this regard, it presents a proposed MRA Development Model to facilitate MRA negotiations to assist regulators, negotiators and other relevant stakeholders at the national, regional and international level to support trade facilitation and secure global supply chains.

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