

# Enhancing trade compliance to benefit small and medium-sized enterprises (SMEs) in Trade Facilitation Agreement (TFA) implementation in Vietnam

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## Abstract

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Vietnam ratified the Trade Facilitation Agreement (TFA) of the World Trade Organization in 2017. Following the core principles of the World Trade Organization (WTO), the TFA does not discriminate between large business and small and medium-sized enterprises (SMEs) in gaining trade facilitation benefits. This study aims at identifying similarities and differences in trade compliance behaviours between Vietnamese Authorised Economic Operators (AEO) as the biggest economic operators, and SMEs, which are differentiated by AEO criteria and trade facilitation grants. The study is based on a national survey of 399 respondents from Vietnamese import and export enterprises in 2019. The study determines that Vietnamese SMEs face many obstacles in improving trade compliance to gain the benefits of trade facilitation measures. Lastly, it provides some policy implications to enhance trade compliance and facilitation for Vietnamese SMEs in the context of Vietnam's accession to the new-generation FTAs.

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**Keywords:** AEO, trade compliance, Trade Facilitation Agreement, Vietnam

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## 1. Introduction

In brief, the World Trade Organization (WTO) states that the Trade Facilitation Agreement (TFA) is the first multilateral trade agreement to be concluded since the WTO was established 25 years ago, and is expected to reduce total trade costs by more than 14 per cent for low-income countries. The WTO also links the commitments of developing and least developed countries with their capacity to implement the TFA (WTO, 2020).

Vietnam has been a member of the WTO since January 2007 and notified the WTO of its acceptance of the TFA in December 2015, immediately following its approval by the National Assembly through Resolution No. 08/2015/QH13. Previously, in July 2014, the country notified the WTO of the 15 Category A provisions that would be implemented once the TFA came into force. Vietnam's preliminary TFA assessment conducted in 2015 classifies 14 provisions as Category B and nine provisions as Category C and provides an action plan that identifies a period of implementation. In November 2018, Vietnam sent B and C notifications to the WTO. In general, Vietnam is on the right track to reach full TFA compliance but technical assistance is still required for some of the provisions to ensure the timely implementation and adoption of international best practices. However, there are concerns about the effectiveness and efficiency of Vietnam's TFA implementation, and trade

facilitation measures, given that the country ranked 104 out of 189 in the World Bank Doing Business Trading Across Borders indicator, lower than the regional average for East Asia and Pacific and far behind some of its neighbours (for example, China ranked 56, Thailand, 62, and Laos PDR, 78) (World Bank, 2019a; World Bank, 2019b).

According to the TFA's Article 7.4: Risk Management, trade compliance of an economic operator shall be recorded and evaluated to assess transaction risks for customs clearance decisions that concentrate customs control on high-risk consignments and expedite the release of low-risk consignments. Vietnam Customs has categorised Vietnamese exporters and importers into five groups subject to trade compliance records, to assist in applying its risk management program and control measures to every export-import transaction. Among these groups, Vietnamese Authorised Economic Operators (AEOs) are seen as the best operators, gaining many trade facilitation privileges, including 24/7 customs clearance, short release times, fewer document and data submission requirements and an extremely low rate of physical inspection (General Department of Vietnam Customs [GDVC], 2016).

In relation to Article 7.7 of the TFA regarding trade facilitation measures for authorised operators, all accredited AEO-verified enterprises (AEOs) in Vietnam must have good financial capability, with large import-export values. As stated in Circular No.72/2015/TT-BTC dated May 12, 2015 about regulation of application of priority policy in customs procedures, customs inspection and supervision for exported and imported goods of enterprise: "export and import companies must exceed USD100 million per year, enterprises that produce goods in Vietnam for export must exceed USD40 million per year, companies operating in the agricultural and fishery sectors must exceed USD30 million per year and customs brokers must make no less than 20,000 customs declarations per year." According to the GDVC (2020), at the end of 2020, there were 74 Vietnamese AEOs, mainly large firms consisting of the leading export industries in Vietnam but none were small and medium-sized enterprises (SMEs). Although they are only a small number compared to the total number of Vietnamese enterprises, their export and import value reached nearly USD100 billion and accounted for 26 per cent of the total export and import value of Vietnam in 2019 (GDVC, 2020).

By the end of 2020, Vietnam had 800,000 operating enterprises. SMEs accounted for 97 per cent, contributed 45 per cent of GDP, 31 per cent of total budget revenue and attracted more than five million employees. In exports and imports, Vietnamese SMEs accounted for nearly 98 per cent of the total number of international trade operators via the Vietnam Automated Cargo Clearance System/ Vietnam Customs Intelligence System (VNACCS/VCIS). Many studies and reports have shown that Vietnamese SMEs have faced many difficulties in doing business and in taking advantage of the TFA, as well as difficulties gaining the benefits of trade facilitation in Vietnam (WTO, 2016; Organisation for Economic Co-operation and Development [OECD], 2019; Global Alliance for Trade Facilitation, 2021). The subjective causes of this situation are:

1. a lack of financial and qualified human resources
2. very limited legal and business capabilities
3. that small-scale enterprises have difficulty in mobilising resources to invest in technology, management capability and high-quality human resources
4. that the perception of most SMEs is short-term, with neither a defined long-term vision nor actions with strategic thinking, nor compliance with laws (US Agency for International Development [USAID], 2021).

Therefore, although the WTO encourages that the member countries should not design AEO criteria to economic operators as well as to prevent the participation of SMEs that satisfy the basic conditions and requirements, no Vietnamese SME is verified as an AEO. This is widening the gap

between Vietnamese AEOs and SMEs regarding trade records, skills and knowledge of international markets, familiarity with border procedures, trade facilitation grants and effective participation in the global economy.

Arancha Gonzalez, former Executive Director, International Trade Centre (ITC), said “SMEs are the inclusive growth vehicles of the future and the world’s largest potential source of new jobs.” (ITC, 2014). It is noteworthy that, in this study, the authors apply a qualitative research method using basic statistical techniques to explain the factual trade compliance of Vietnamese businesses to determine whether Vietnamese AEOs gaining most trade facilitation privileges perform better than SMEs in terms of trade compliance. In other words, this study tries to determine if there is any difference between the largest businesses as AEOs and the SMEs in terms of trade compliance. Data on trade compliance of Vietnamese businesses was collected through a national survey in 2019 with the participation of different economic operators including Vietnamese AEOs and SMEs.

## 2. Literature review

There are several studies on the implementation of the WTO’s TFA as well as its technical measures for expeditiously moving goods across borders inspired by the best practices from around the world. Aiming at measuring the overall effectiveness of TFA implementation, for instance, the World Bank Group published annual reports covering around 190 economies with full scores and rankings in trading across borders based on time and cost to export and import (World Bank, 2020). In Vietnam, the introduction of the TFA as well as its opportunities and challenges were analysed by Trinh and Phan (2015). In the Vietnamese TFA implementation, Phan (2017a) also analysed the potential AEO mutual recognition agreement of Vietnam with the EU as an important trading partner. Furthermore, Phan (2017b) suggested recommendations to standardise Vietnam’s AEO program and promote AEO mutual recognition agreements with top trading partners such as the USA, the EU, Japan and the Republic of Korea from the perspective of policymaking and technical operations.

The World Customs Organization (WCO) (2018) published a comprehensive package on the implementation of the WCO SAFE Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework) with the WCO’s flagship Customs-Business partnership program with two pillars of compliance and facilitation. In this, trade compliance records provide substantial input data for risk management, customs controls and partnerships between Customs and stakeholders. The WCO (2014) introduced fundamentals of compliance management including theories and principles, operational and technical frameworks, methods of data recording and compilation, best practices, factors affecting compliance management and recommendations on enhancing the effectiveness of compliance management.

Annually, the World Customs Organization publishes a comprehensive package on the implementation of the WCO SAFE Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework) with standards and technical assistance supporting all members in the global uniform implementation of the TFA. The Asia–Pacific Economic Cooperation (APEC) (2016) indicated that every trade facilitation measure and program is configurable to the economy’s specific environment and socioeconomic development, so the participation of SMEs is quite different and no template or model can be used to benefit all economic operators.

Bonthonneau (2019) analysed the importance and contribution of SMEs in global trade but they face many non-tariff barriers, and limited competitiveness and global supply chain participation. Every country should aid SMEs through trade facilitation reforms from government to operational levels, including but not limited to measures resulting from National Trade Facilitation Committees (NTFCs), AEO, Single Window and International Cooperation.

The USAID's 2021 publication *The Trade Facilitation Agreement: A World of Opportunities for MSMEs* indicates that the value and benefits of the TFA to the business community and SMEs largely depend on its implementation by each WTO country member with different modalities and roadmaps. The USAID study analysed all the TFA measures in connection to trade transactions and global value chain participation of SMEs, then introduces best practices and recommendations that will benefit SMEs to expand their ability to engage in international trade, and thereby contribute to national economic growth and prosperity (USAID, 2021).

### 3. Survey description

Data on the trade compliance of Vietnamese businesses including AEOs and non-AEOs was collected through a survey conducted from March to December 2019. This survey aimed to examine the trade compliance behaviours of Vietnamese exporters and importers. Questionnaires were sent to the customs declarants at different customs clearance depots in north, central and south Vietnam. All questionnaires were hard-copy and completed by representatives of the responding companies. The survey was designed based on the legislation and practices of customs clearance for exports and imports in Vietnam. The questionnaires were measured using a five-point Likert scale. There were 399 respondents in the different business sectors. Those with 100 per cent domestic ownership accounted for 56 per cent of respondents, those with 100 per cent foreign ownership accounted for 41 per cent, and joint ventures accounted for three per cent. Regarding business size, large enterprises accounted for four per cent while 96 per cent were SMEs. Ten respondents were AEOs, accounting for only two per cent of the total number of respondents, but these 10 comprised nearly 14 per cent of the total number of Vietnamese AEOs at the time of the survey.

### 4. Results of the survey

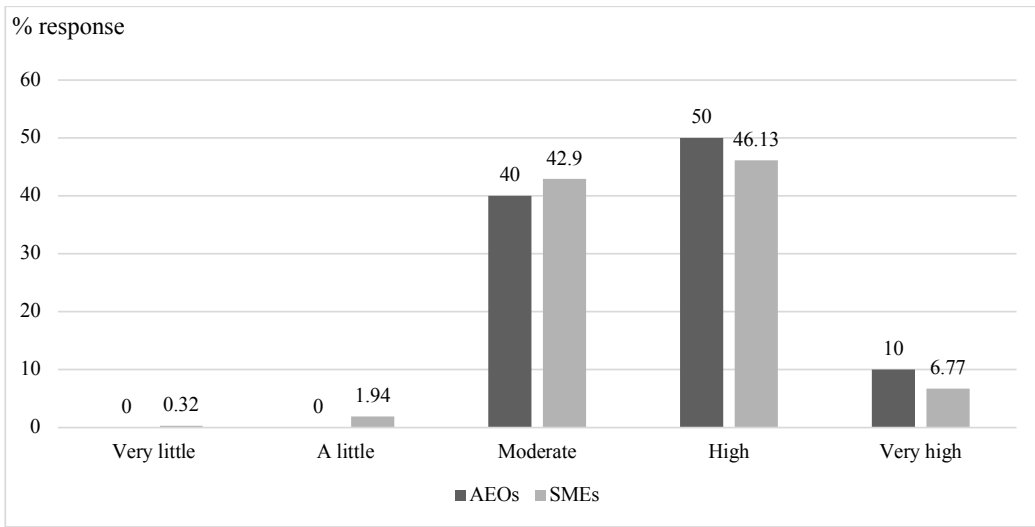
This study describes trade compliance behaviours that are core criteria for the granting of AEO status as encouraged by the WTO TFA and the WCO SAFE Framework of Standards. In this study, trade compliance means operating within the regulations of cross-border trade and customs. It focuses on the perception, practices and operational manner of Vietnamese exporters and importers to comply with the regulations and requirements on the cross-border movements of goods.

The survey results highlight the trade compliance of Vietnamese businesses including perspectives, practices and contributing factors.

#### 4.1 Trade compliance behaviour in exports and imports

The survey results show several notable characteristics/behaviours of trade compliance. First, most of the respondents have a moderate or good understanding that trade compliance is a legal responsibility for exporting and importing (see Figure 1).

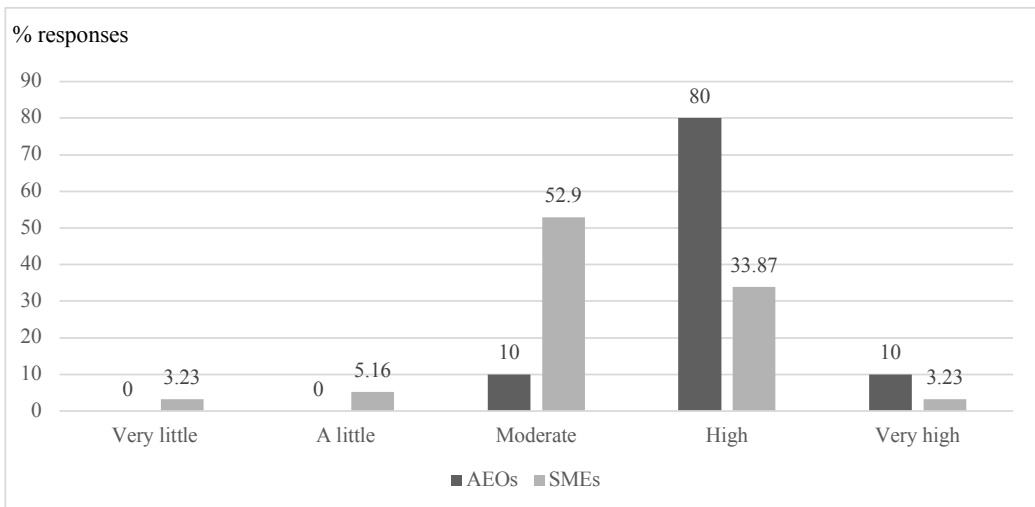
Figure 1: Perception of trade compliance in exporting and importing



Source: Authors

Figure 1 reveals that there is very little difference between the AEOs and SMEs in their perception of trade compliance in exporting and importing. To determine the legal capacity of Vietnamese enterprises, the survey results about knowledge, practices of cross-border trade regulations and customs formalities are illustrated in Figure 2. It is noticeable that 80 per cent of the AEO respondents understand cross-border trade regulations and customs formalities well, much higher than that of the SMEs (33.87 per cent). Similarly, a proportion of the AEO respondents (10 per cent) have a high degree of expertise in border procedures and customs formalities, much higher than that of the SMEs (3.23 per cent).

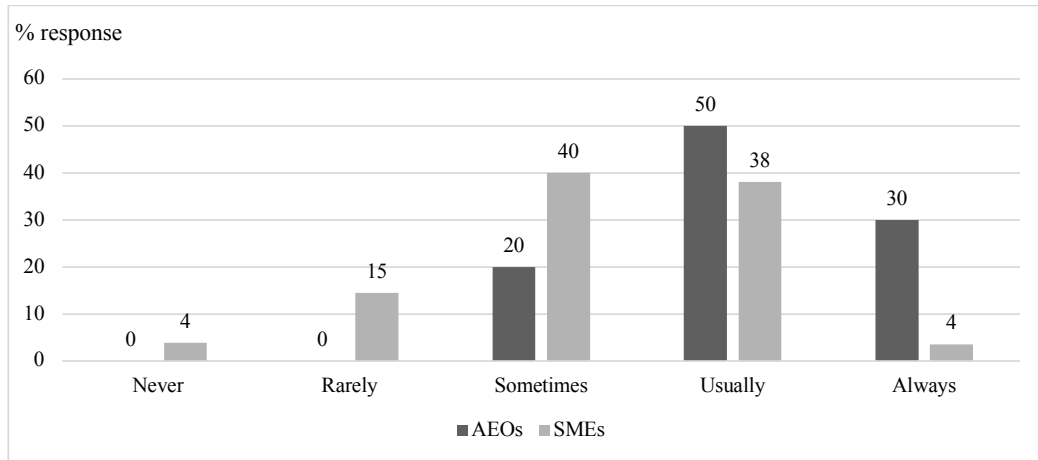
Figure 2: Knowledge of cross-border trade regulations and customs formalities



Source: Authors

To comply with regulatory requirements for customs clearance, the respondents sought legal consultancy and technical assistance. In Figure 3, the percentage of AEO respondents (30 per cent) who seek legal advice is much higher than that of SMEs respondents (only four per cent). In addition, all the AEO respondents understand the importance of legal consultancy and usually use this service. This is evidence that the Vietnamese AEOs are well-briefed in the benefits of trade compliance (facilitation privileges) while the SMEs lag well behind.

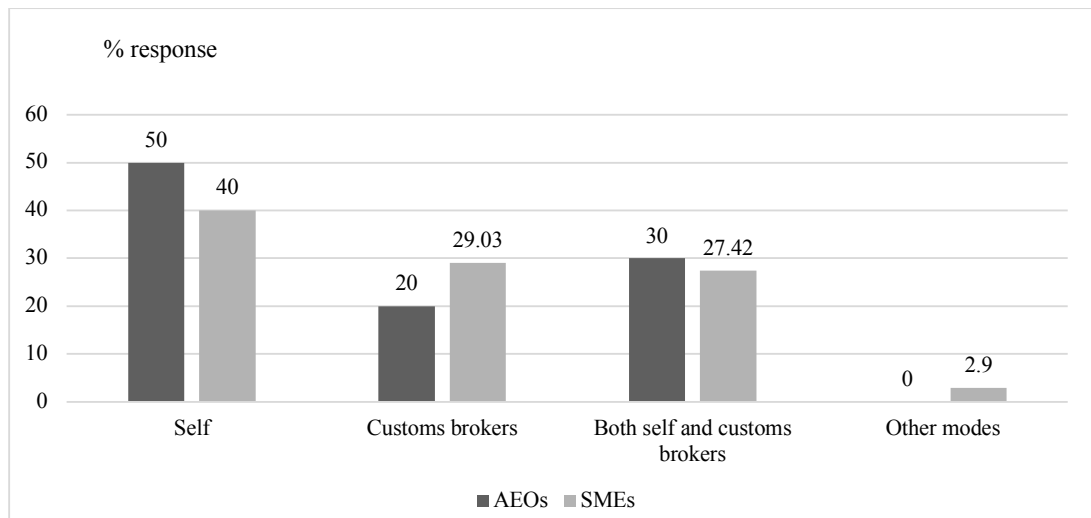
*Figure 3: Frequency of use of legal consultancy in doing cross-border trade transactions*



Source: Authors

Notably, a large proportion of the AEO respondents (50 per cent) perform customs clearance themselves for exports and imports, taking advantage of their AEO status and TFA implementation as trusted partners of Vietnam Customs (see Figure 4).

*Figure 4: Modes of customs clearance for exports and imports*



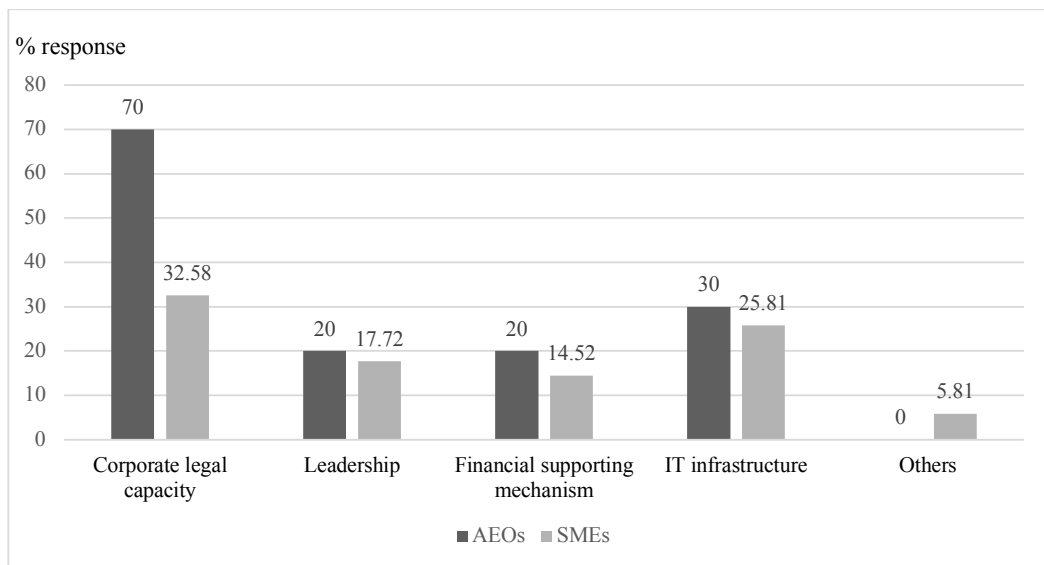
Source: Author

Nevertheless, Figure 4 shows that there is very little difference between the AEOs and SMEs in terms of performing customs clearance themselves. The big difference is that the AEOs take advantage of the priorities and benefits from trade facilitation due to their AEO status, meanwhile it is the authors' contention that limitations in human and financial resources make it more difficult for SMEs to comply with the various and sophisticated laws and regulations for trade and customs in Vietnam. Notably, a very small proportion of the SME respondents (2.9 per cent) did not reveal their method of customs clearance for exports and imports. This implies that some of the Vietnamese SMEs and traders may be using informal channels and operations in trade activities, which reduces income and transparency for the state.

## 4.2 Factors affecting trade compliance of Vietnam enterprises

Significantly, in most areas, both the AEOs and SMEs have similar difficulties in performing customs clearance for exports and imports in Vietnam.

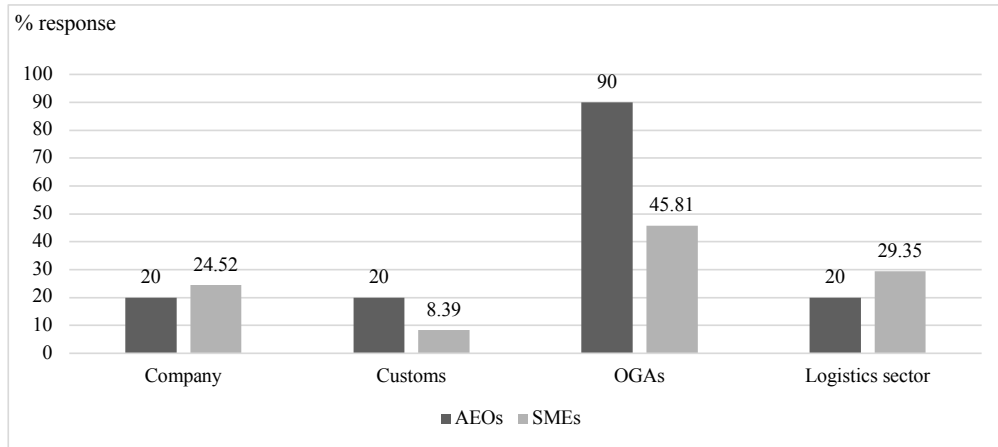
Figure 5: Difficulties in trade compliance for exports and imports



Source: Authors

Figure 5 reveals that the biggest difficulty experienced by AEO respondents in achieving trade compliance is legal capability (70 per cent), much higher than that of SMEs (32.58 per cent). The respondents were also asked about the reasons deterring Vietnamese enterprises from complying with cross-border trade regulations and customs procedures, as shown in Figure 6.

Figure 6: Factors contributing to difficulties in trade compliance for exports and imports

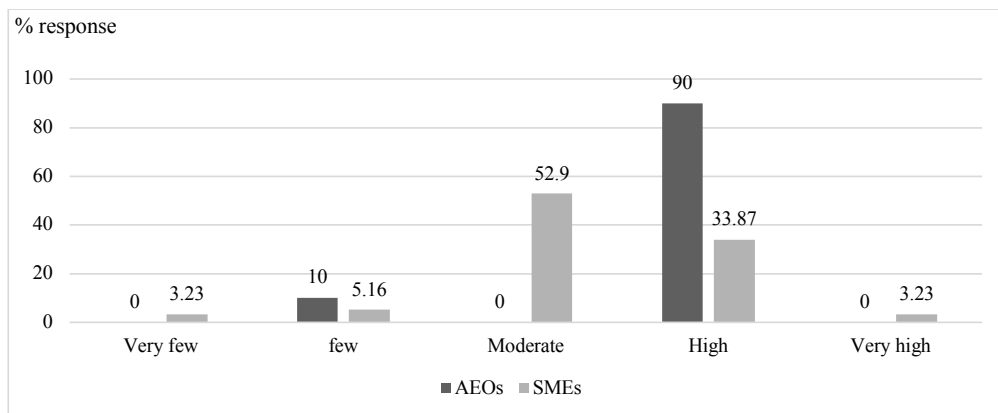


(OGAs: Other Governmental Agencies)

Source: Authors

As shown in Figure 6, a high percentage of AEOs (90 per cent) and SMEs (45.81 per cent) agreed that OGAs are the most problematic factor in trade compliance. Meanwhile, a small proportion of the AEO respondents (20 per cent) and SME respondents (8.39 per cent) believed that the difficulties come from customs agencies in cross-border clearance. These figures reflect an improvement in procedural customs facilitation from the perspective of Vietnamese businesses, especially the SMEs. In line with some specialised legal requirements on exports and imports as prescribed in the 2017 Foreign Trade Administration Law, customs declarants must submit permissions for following formalities, administrative procedures of regulatory bodies that are Ministries and OGAs. Regulatory bodies decide goods that are permitted to be imported, exported and transited; based on which customs authorities shall make decisions about granting customs clearance and releasing goods. Major inspections and specialised controls focus on “quality examination of imported goods”, “conformity assessment”, “issuing quality, technical safety and environmental protection certificates” and “issuing licences to export/import”. In particular, the respondents focused on the burden of inspection regulations and specialised controls, as shown in Figure 7.

Figure 7: The burdens imposed by the laws and regulations on specialised inspections and controls for exports and imports in Vietnam

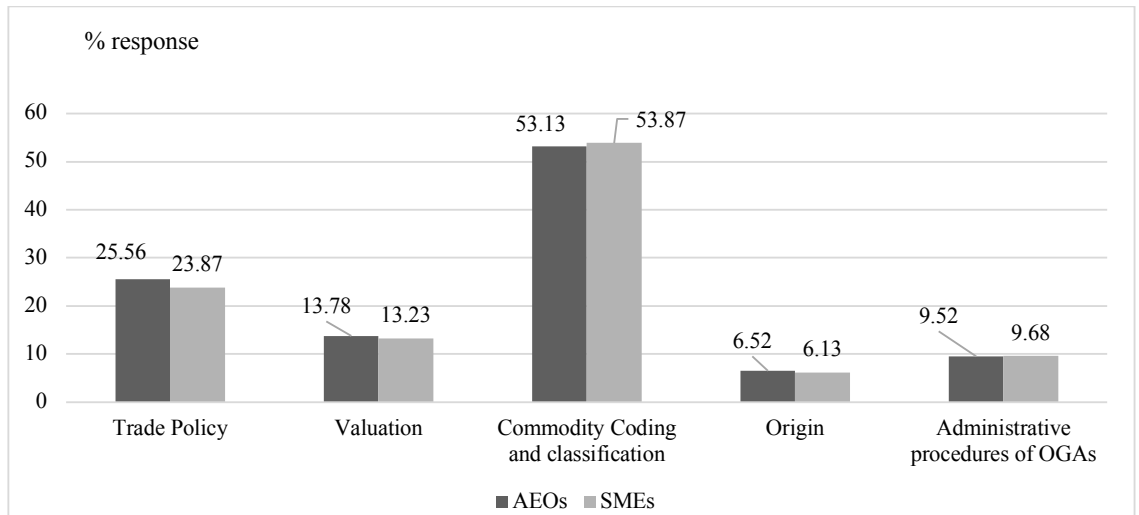


Source: Authors



Figure 7 shows that most AEO respondents (90 per cent) consider that there are incumbent regulations on specialised inspections and controls that are undertaken by OGAs in Vietnam (excluding customs agencies). Similarly, nearly 90 per cent of the SME respondents consider that laws and regulations on specialised inspections and controls pose considerable burdens on their trade compliance, if the results from the moderate, high and very high categories are combined (Figure 7). Furthermore, Figure 8 shows that there is a high similarity in the opinions of AEOs and SMEs when asked about the risks and challenges in conducting technical operations for customs clearance.

Figure 8: Challenges and risks in performing customs clearance for exports and imports in Vietnam



Source: Authors

In future, it is estimated that Vietnamese enterprises will face more challenges when new-generation (mega) FTAs come into force, which will include several technical and non-tariff barriers like EU-Vietnam Free Trade Agreement (EVFTA) and Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). It appears that it is harder for Vietnamese SMEs than for AEOs to overcome these barriers due to their different competency and trade behaviours.

## 5. Conclusion and policy implications

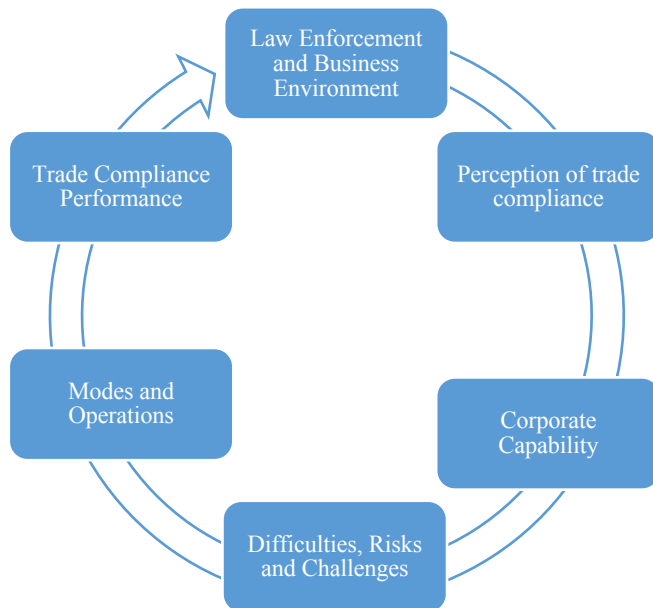
This study delivers empirical evidence that opportunities to gain the benefits and privileges of trade facilitation for large business and SMEs are not equally available with the implementation of the TFA in Vietnam. Notably, while facing the same challenges and difficulties, such as cumbersome specialised inspections and controls of many governmental agencies, highly technical trade operations, poor quality IT infrastructure or workforce, the Vietnamese AEOs and SMEs behave differently in relation to trade compliance. This is because their perceptions differ on the importance of regulatory capability, legal consultancy and modes of conducting customs clearance for exports and imports. As a result, it will be more challenging for Vietnamese enterprises, especially SMEs, to comply with the increasingly technical and non-tariff barriers in the context of Vietnam's accession to new-generation FTAs. However, the study indicates that if Vietnamese enterprises gain AEO verification, they may be able to apply better trade compliance practices.

Bonthonneau (2019) suggests that policy makers should implement the TFA and business environment reforms in a manner that benefits MSMEs. To enhance trade compliance of Vietnamese SMEs, some policy measures should be introduced. Firstly, it is necessary to extend trade facilitation measures

and programs like the AEO program in Vietnam to other economic operators, apart from importers, exporters and brokers as stipulated in the Circular No72/2015/TT-BTC dated May 12, 2015. Also, Vietnam's AEO program should not distinguish Vietnamese enterprises by the special AEO criterion of import-export volume. Secondly, government agencies should reduce the burden of specialised inspections and internal controls for imports and exports. Thirdly, Vietnam Customs and OGAs should organise training courses focusing on legislation, technical operations and compliance practices for SMEs, with support and connections to business associations and alliances. Socioeconomic changes, new laws and regulations on trade and customs should be updated, taught and applied in the business life of SMEs. Fourth, more improvements are needed in public-private dialogues, information sharing and exchange mechanisms between customs authorities, OGAs, SMEs and traders in Vietnam, for better law compliance. Trade facilitation platforms, websites, smart administrative solutions and information technology-driven measures should be user-friendly and convenient for SMEs. This should be fostered by all the border control agencies, together with Vietnam Customs, and regional and international cooperation. Finally, Vietnamese SMEs should acknowledge the importance and benefits of trade compliance in internationalisation and global trade, therefore enhancing the capability and qualifications of human resources and take advantage of being strategic partners of AEOs, Foreign Direct Investment (FDI) firms, multinational companies (MNCs) and other stakeholders in global supply chains.

In conclusion, this study maps a vicious circle of the factors affecting, and the impacts of, trade compliance for the whole economy as well as business performance, then concentrates on legislation reforms to benefit SMEs within the TFA implementation of Vietnam. This is illustrated in Figure 9 below.

Figure 9: The factors affecting, and the impacts of, trade compliance on behaviours of SMEs



This research could be expanded to include further direct surveys and interviews with Vietnam's customs officers as well as other government agencies. Their expertise and recommendations on trade compliance and facilitation for Vietnamese enterprises is a valuable resource. Other criteria, such as financial records, regulatory compliance profiles or supply chain security stipulated by Article 7 of the TFA, and Vietnamese regulations related to risk management, trade compliance and AEO programs, as well as the best practices worldwide should be taken into account in future research to deliver more comprehensive insights into trade compliance and facilitation in Vietnam under the flag of the WTO TFA.

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