Self-Assessment and customs supervision

The elaboration of a Self-Assessment concept, including appropriate customs supervision which safeguards the interest of both the business community and tax income and a comparison to current UCC legislation

Deliverable for workpackage 2 of the project *"Kansen van het DWU voor de BV Nederland"*

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1 Introduction

1.1 "Opportunities UCC for BV Nederland"

In 2018 a consortium[1] started a project "Opportunities UCC for BV Nederland". The purpose of this consortium was to identify and work out concepts that reduces the administrative burden for companies arising from customs requirements and that ensures an unhindered logistical flow for goods coming into the EU, whilst safeguarding compliancy to customs law. The reason for this project was the introduction of the Union Customs Law (UCC) May 2016. As the UCC harmonizes the customs system of supervision on EU cross-border trade of goods, old simplified customs procedures do no longer meet the new regulatory requirements. This presumably leads to increased administrative requirements for companies and delays and disturbances in the flow of goods into the EU. In view of the important role the Netherlands and Dutch logistics companies play in the international flow of goods to and from the EU, there is especially in the Netherlands an economic interest to investigate how simplified procedures can be (re)shaped under the UCC to facilitate international trade.

After a quick scan in the first phase of the project in which several areas were identified for which the development of so-called smart DWU concepts were identified, it was decided by the consortium to further investigate the concept of Self-Assessment (SA). SA is not yet elaborated in current legislation and is thought to offer possibilities for unhindered logistic. Furthermore, it could be a possible alternative to the Dutch LOCAL CLEARANCE and Automated Periodic Declaration (APD)[2], which is one of the simplifications that is considered important by Dutch businesses, but that needs to be reshaped under the UCC. APD offered the possibility to declare goods once a period (instead of separate declarations for each shipment). This reduces the administrative burden for companies and is therefore considered to be beneficial for companies. But also for customs authority efficiency is important. In 2017 Dutch customs organisation was responsible for collecting around 15% of all collected tax in the EU.[3] They did this with around 4% of all EU customs officers.

1.2 Self-Assessment

As said, the consortium decided to further explore the possibilities offered by the application of SA. SA has been defined in Article 185 UCC:

1. "*Customs authorities may, upon application, authorise an economic operator to carry out certain customs formalities which are to be carried out by the customs authorities, to determine the amount of import and export duty payable, and to perform certain controls under customs supervision.*
2. *The applicant for the authorisation referred to in paragraph 1 shall be an authorised economic operator for customs simplifications*."

According to this article in the UCC, SA is a simplified declaration approach. It facilitates the calculation and payment of customs' duties as well as the delegation of certain controls under customs supervision.

In chapter 4 the concept of SA, as the consortium sees it, is being fully described. It describes a way to bring in non-union goods into the EU with as little as possible administrative burden and logistic hinder, whilst safeguarding both national and European tax income and make sure restrictions and limitations are not violated.

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[1] Consortium members are Merten Koolen, Lonneke Vocks (both from Fontys University of Applied Science), Walter de Wit, Esther Bakker (both from Erasmus School of Law), Albert Veenstra (TU/e), Yao-Hua Tan (Technical University of Delft), Frank Heijmann (Dutch Customs Authorities), Johan Hollebeek, Emma van Doornik (both from Deloite), Claudia Buysing Damste (PWC) and Leon Kanters (Meijburg & Co)

[2] In Dutch GPA, Geautomatiseerde Periodieke aangifte.

[3] www.eurostat.eu

1.3 Objective paper

The first objective is to describe a SA concept which reduces administrative burden and facilitates undisturbed and unhindered logistic operations. How companies having such a SA licence could be supervised is also describes, hereby safeguarding that SA will not violate customs law, national and European tax income will be paid, and all restrictions and limitations will be met.

The consortium is aware of different views and interests within the European Union with respect to the use of SA and the hesitation of some stakeholders to allow simplifications based on this concept. Against this background, the aim of the members of the consortium is to provide a scientific analysis of this innovative concept, considering risks and mitigating measures. This should facilitate an underpinned, objective and fact-based discussion of the feasibility and economic benefits to be achieved. In this paper the consortium therefore also aims to investigate the needs and requirements of the various stakeholders in Europa and to integrate these into the concept.

It is the intention that this concept provides the foundation for the preparation of a pilot project, consistent with art. 282 UCC, in which the SA concept can be tested. In order to make such a pilot approach possible, the consortium will make a legal gap analysis to establish which legal changes are required for the implementation of the use case described, which constitutes the third element in this report.

To summarise, the purpose of this paper is therefore three-fold:

- Describe the scope and define a SA concept for a relatively straightforward use case for bringing goods into free circulation and the supervision on this flow;
- Chart the boundary conditions that legitimate interests and/or concerns of stakeholders – from government/authorities and private economic stakeholders – require and discuss how these interests/concerns can be addressed within the SA concept defined; and
- Identify the gaps in legislation.

The next step taken by the consortium is to define this real-life use case in which the concept may be demonstrated. The use case will show how the concept can be implemented and how safeguards and risks can be managed effectively.

1.4 Report Structure

In order to do this, current legislation related to incoming flows will be (briefly) described. Next the result of a quick scan is presented. In this scan several logistic service providers, importers and shippers have been asked to comment on three[4] new declaration scenario's which were developed by Dutch customs and which are in line with UCC. These companies also gave their views on ideal logistic flows. Next, the innovative SA concept will be described, which is developed based on interviews with experts, both from the supervising side of the coin (customs) and the one being supervised (businesses). This is followed by an analysis of the gaps in current legislation related to this concept. The report will finally recommend how current legislation should be adapted so that the SA concept proposed can be piloted within the regulatory requirement set by the UCC, the Delegated Act (UCC DA), the Implemented Act (UCC IA) and other relevant regulations.

[4] During this research one of these scenario's has already been subjected by Dutch customs.

2 Legal Framework in the current UCC

2.1 Short history of the UCC

European customs law was for years regulated by the Community Customs Code (CCC) and the Customs Code Implementing Provisions (CCIP), which dated from 1992 and 1993, respectively. These regulations were revised and modernized. To this end, the EU adopted a new customs code: the UCC.

In 2003 a communication was sent from the European Commission to the European Council, Parliament and the European Economic and Social Committee. The communication regarded a simple and paperless environment for customs and trade, on the role of customs integrated management of external borders and a proposal amending the CCC.[5] The original policy goals, as formulated by the European Commission regarded a simple and paperless environment designed for customs and trade, were to radically simplify and modernize the legislation and procedures and ensure interoperability through a convergent IT framework. Such modernization and simplification of customs legislation would, according to the communication, reduce the cost for business, increase legal certainty for residents and allow businesses and residents to fully benefit from the possibilities offered by IT procedures and the single market. However, according to the Commission, this required a high level of harmonization and standardization. Necessary improvements entailed a common risk strategy by introducing the Common Risk Management Framework, guaranteed an adequate level of human resources and equipment, and facilitated trade without compromising safety and security. In 2005 and 2006 this was followed by legislation.[6] Note that this was all formulated by the European Commission and not so much the European Council and Parliament.

In 2008, the European Commission outlined a course of action for a more unified Customs Union by 2020 in its communication on the state of the Customs Union.[7] The communication provided for a reform of the current legal framework as well as a vast shift towards digitalization. The Modernised Custom Code (MCC) was adopted on 9 October 2013, which enabled customs to focus more on trade facilitation as well as on security and safety. It should also improve cooperation between custom authorities and other services.[8] The Authorized Economic Operator (AEO) status was being introduced around the world with the intention to order to combat terrorism by better security measures in world trade. The MCC has changed the requirements to become and remain AEO-certified.

The application of the UCC as from 1 May 2016 set in place changes, which aimed, amongst other things, to ensure that in 2020 the customs system ceases to be based on paper documents and is adapted to a world in which electronic communications are the new standard and a risk-based control of globalized supply changes is essential.[9] The Customs Union is, according to the European Commission, crucial to ensure that customs administrations - that act as though they were one - can implement the UCC in an effective and efficient way, at the same time cooperating effectively with authorities responsible for other relevant policies with border and internal security implications. This is important for the correct implementation of the new UCC which, given its emphasis on fully electronic communication between the customs administrations and trade by 2020, would only be possible based on EU wide interoperable IT systems and uniform application of rules by all EU customs administrations.[10]

[5] COM(2003) 452 final, 2003/0167 (COD), 24.07.2003.
[6] See regulation of the European Parliament and Council of 13 April 2005 amending the CCDC (EC) 648/2005 [20055] OJ L117/13 ('the 2005 regulation'). See also Commission Regulation (EC) 1875/2006 of 18 December 2006 [2006] OJ L 360 which amends the Implementing Regulation. Some of the provisions of these regulations came into force on 1 January 2009 and some at other times: see 2005 Regulation, art. 2 and the 2006 Regulation, art. 3. However, this is out of scope of this research.
[7] COM(2008) 169 final, 01.04/2008
[8] European Commission, Commission modernizes EU customs procedures, http://europe.eu/rapid/press-release_IP-15-5445_en.htm, 20.10.2015
[9] COM(2016)813 final, 21.12.2016, p. 2
[10] COM(2016)813 final, 21.12.2016, p. 3

The general objective of Customs 2020, as presented by the European Commission in 2008, is to support the functioning and modernization of the Customs Union in order to strengthen the internal market.[11] It is intended to do so by achieving certain specific objectives. These are intended to support customs authorities in protecting the financial and economic interests of the Union and of the Member States. The fight against fraud, the protection of intellectual property rights, safety and security, the protection of citizens and the environment are all mentioned. Also noted is the improvement of the authorities' administrative capacity and the strengthening of the competitiveness of the European Business.[12]

Under the MCC, the concept of self-assessment was elaborated in a case study, initiated by the Netherlands, Sweden and the UK.[13] The aim of the concept of self-assessment in the proposal was a far reaching simplification of customs formalities with regard to fiscal, and financial aspects.[14] Safety and security could be included after the concept had proven itself. There was a broad support from the EU business community and initially of the European Commission as well.[15,16]However, in the course of time on a political level in the EU Council there was substantial resistance from Member States and certain Commission services. Not much was left of the original initiative and therewith a real effort to modernize customs legislation had been sent "back to the future".[17]

2.2 Self-Assessment in the UCC

This section lists how SA is described in UCC, IA UCC and DA UCC.

First the basics of SA, as defined in the UCC in art. 185 UCC:

1. *Customs authorities may, upon application, authorise an economic operator to carry out certain customs formalities which are to be carried out by the customs authorities, to determine the amount of import and export duty payable, and to perform certain controls under customs supervision.*
2. *The applicant for the authorisation referred to in paragraph 1 shall be an authorised economic operator for customs simplifications.*

As said in paragraph 2.1, according to this article in the UCC, SA is a simplified declaration approach. As such, it is also mentioned in the UCC as a simplification. It facilitates the calculation and payment of customs' duties as well as the delegation of certain controls under customs supervision.

Other important articles which refer to SA are:

- Art. 186 and 187 UCC indicates SA is further defined in UCC IA and UCC DA.
- The SA-licence holder must have an AEO-C licence (as already describe above). This means that the article 39 UCC and articles 24, 25, 26 and 27 of the UCC IA are criteria the operator must meet. Specifically, for SA-licence keepers, this means for the requirements listed in art. 25 UCC IA, the satisfactory system of managing commercial and transport records, is important.
- Art. 151 UCC DA indicates that a SA-licence will only be granted if the party is a holder of an EiDR. The SA-license will be granted for the customs procedures for which the EiDR-license is granted. Art. 182 UCC and art. 150 UCC DA lists then the demands for EiDR. Important is that "particulars

[11] COM(2008)169 final 01.04.2008. p. 3-4.
[12] Regulation (EU) No 1294/2013 of the European Parliament and the Council of 11 December 2013 establishing an action program for customs in the EU for the period 2014-2020 (Customs 2020) and repealing Decision No 264/2007/EC
[13] Article 116 MCC, Seminar Report of the high-level seminar on Self-Assessment and other related issues, 19-21st of November 2008.
[14] "High-level seminar on Self-Assessment and other related issues, Seminar Report, 19-21st November 2008, Amsterdam, p. 4-6.
[15] "High-level seminar on Self-Assessment and other related issues, Seminar Report, 19-21st November 2008, Amsterdam, p. 3.
[16] See also the proposal for a new form of self-assessment in the MCC: TAXUD/C4/9104/2009/-EN, draft implementing provisions of Title V, Chapter 2, Section 5 of the MCC, Other simplifications. However, this never came to fruition.
[17] According to an interview with Johan Stoopen, Dutch Customs authorities. In 2008 he was as a member of the Dutch Customs authorities involved in the design of the concept of SA in the MCC (including the high-level seminar on Self-Assessment).

of that declaration are at the disposal of the customs authorities in the declarant's electronic system at the time when the customs declaration in the form of an entry in the declarant's records is lodged" (art. 182:1 UCC). This means that the company must also conduct real time[18] administration in which all data, as specified in Annex B of the UCC DA, must be recorded. The economic operator is required to present the goods at a customs authority's office, but may be waived to do so (art. 182:3 UCC). The declaration is deemed to have been accepted at the moment when the goods are entered in the declarant' records (art. 182:2 UCC). A supplementary declaration (according to art. 167 UCC) may be required at a later date providing the full fiscal and statistical information.

- Art. 152 UCC DA states that *"Holders of authorisations for self-assessment may be authorised to carry out controls, under customs supervision, of compliance with prohibitions and restrictions as specified in the authorisation".* Which does not as such specify that the method of supervision by customs will be transaction-based (implying that a systems-based method of supervision is within the scope of the law), and also implies that articles subject to prohibitions and restrictions may be included in an SA regime.
- Art. 233 UCC IA indicates a specific control program must be made to supervise economic operators which have a licence EiDR.
- Art. 237 UCC IA indicates that SA enables operators to manage cash-flow by allowing them to provide fiscal data at a later date.
- Art. 225 UCC IA direct access for customs to company records.

So besides legal demands set for SA, demands set for Entry in the Declarant's Records are equally important.

[18] 100% real time is often not possible, as uploaded data is often processed in batches. Batch processing of data each night should be enough.

3 Companies' preferences on the by customs developed new declarations models based on UCC

As an effect of the implementation of the UCC, last May 2016, customs organisations adapt declaration processes to this UCC. For example, the Dutch GPA will be phased out en no longer applicable after January the 1st 2023. Instead, Dutch customs are developing alternative models which are in line with the UCC[19].

Part of the UCC project, which is mentioned in the introduction, is to identify the preferences of companies for making customs declarations. This is done by a quick scan[20] with 11 companies[21]. The models developed by customs were discussed with these companies. Trade Compliance managers were asked:

- To describe the current declaration process;
- To describe a preferred way to declare in line with the developed models by customs;
- To list decisive criteria related to customs procedures; and
- To describe an ideal situation of unhindered logistic and how this can be achieved.

The main outcomes of these interviews are that:

- Unhindered and plannable logistic flow is considered to be important. The stored buffer in the own warehouse is currently used to back up unexpected events in incoming flow of goods (e.g. physical inspection by customs in the port). Unhindered flow of goods is also considered to be most important when supplying own customers, as lead times must be kept.
- The models proposed only support unhindered logistic flows when the characteristics of the goods involved do not prescribe structural (physical) inspection.
- It is very beneficial for AEO-companies that they may transfer inspection to a more favourable location in the logistic chain.
- The introduction of the UCC and the proposed declaration models are perceived to increase the administrative burden as the requirements to the record keeping have increased, the number of messages that must be exchanged with customs has increased, making necessary changes in ICT systems.
- The practical implications of the three models are still insufficiently clear for companies in order to provide a definitive reaction. For example, the implications of the control plan of scenario 3 are unclear, as are the answer to the question how the ICT systems should be adapted to meet new requirements.
- Another view that interviewees regularly provided is that AEO companies are supposed to be trustworthy and that therefore they should be treated as such: Trustworthy companies should have the opportunity to declare incoming and outgoing shipments via an "administrative and fiscal" implementation, which is comparable to the Dutch VAT-system with system(s) based controls rather than transaction/ shipment based controls, which would bring tangible benefits for economic operators to achieve and maintain AEO status.

[19] At the time of these interviews, customs had developped three models to make customs' declarations, later one model was already rejected by customs. But even now, it is not known yet how customs' declarations will be done in the near future.

[20] Report "Een inventarisatie van voorkeuren van bedrijven op de UCC-gebaseerde aangiftemodellen van Douane voor het realiseren van ongehinderde logistieke stromen", Deliverable in project "Kansen van het DWU voor de BV Nederland", Fontys, June 2019

[21] These 11 companies consist of five shippers, one distributor, three logistic service providers and two customs agents.

Therefore, a declaration- and supervision approach which would decrease the administrative burden and ensure unhindered logistic flow, could bring significant benefits to economic operators.

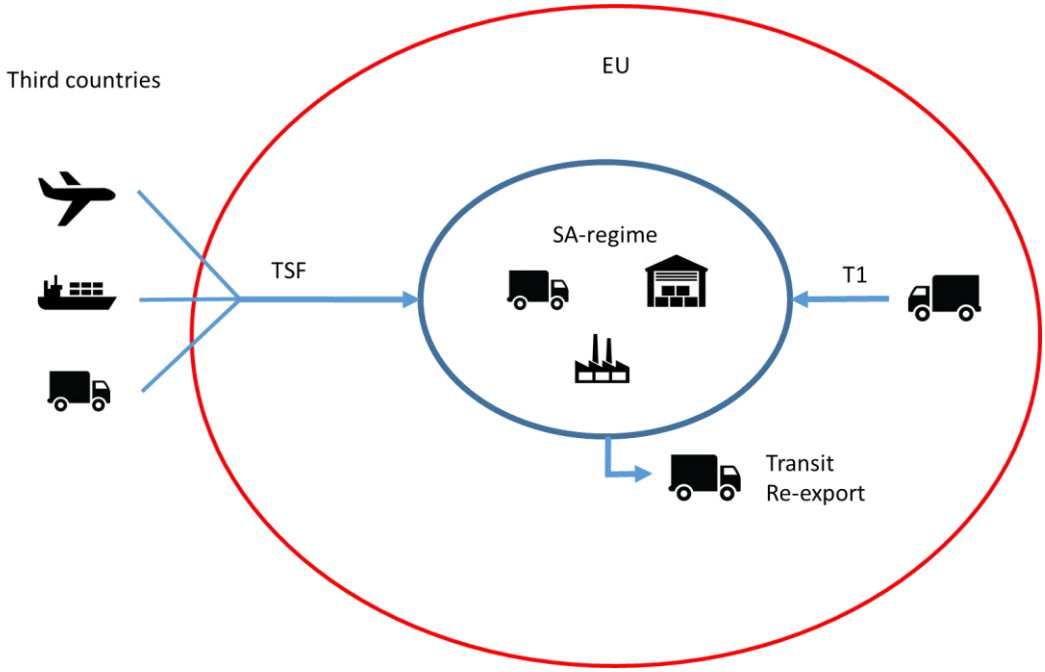
4 Concept Self-Assessment and Customs Supervision

4.1 Concept of Self-Assessment

4.1.1 General description

Companies having a SA-licence will benefit maximum from unhindered logistic flow and reliable throughput times. Once non-union goods fall under a SA-regime, they do not need to be declared anymore for any customs' procedure and may be transported, stored and processed without any declaration or notification to customs. Just as if these non-union goods were union goods. As they are not declared while under SA-regime, no inspections based will be triggered by such declarations. Note that this does not infringe on the authority of customs carry out any controls that they deem necessary, even in the case of SA.

Figure 1 Concept Self-Assessment



This implies that SA – which is, according to the UCC, a simplified declaration – is in its operation would be like a customs procedure, which can end other procedures. Concretely this means that goods are declared for a SA-procedure after the (possible) inspection on safety and security at the Temporary Storage Facility (TSF), which ends temporary storage (whereas according to the current UCC text SA is a simplification when declaring goods for a specific (follow-up) customs procedure). In case goods arrive at a SA-company on a T1, the declaration SA ends transit. This also implies that placing goods under other customs procedures may end the SA-regime. Declaration SA should hardly trigger physical inspections or administrative control, as the SA licence holder has already proven to customs that they can be trusted to act compliantly. The supervision of these flows is done otherwise and explained in subchapter 4.2.

In the SA-licence the applicable scope of the entire SA-regime must be defined. The licence applicant must indicate how the goods will be handled while being under SA-regime, including transport, storage, processing, location of storage and processing, the nature of the processing, et cetera. This is comparable with the licence application of customs warehouse and inward processing.

4.1.2 Operational aspects of Self-Assessment

4.1.2.1 Placing goods under Self-Assessment

Normally, goods entering the EU are placed under a customs procedure while in Temporary Storage. SA however is not a customs' procedure (art. 5: 16 UCC). So bringing goods under the SA-regime, three options exist:

1. Adapt the UCC, art. 5:16 by adding SA to be a customs' procedure. In that case, from Temporary Storage the goods can be declared for the SA-regime like any other customs' procedure.
2. As the licence EiDR is a precondition to obtain a SA licence (art. 151 UCC DA), declaring goods for SA can be done by entering them in the records. For each individual entering, a notification is send via the declaration application, just like the EiDR-procedure. Combined with this notification a reference to the SA-licence number must be made to inform customs goods are now under the SA-regime.
3. As SA is a simplified way to declare, bringing goods under a SA-regime, can be done by declaring the goods for the customs' procedure for which SA is the simplification. While making this declaration, a reference must be made to the SA licence number, herewith informing customs the goods are now under SA regime.

As Portbase – for example - is linked with the customs declaration application, the Temporary Storage licence holder is now informed that the goods may be released for further transport into the hinterland.

Under the SA regime the holder of the authorization is allowed to transport goods, store goods and process goods as indicated in the SA authorisation, without any declaration/ notification to customs. However the licence holder must enter all relevant actions into the (declarant's) records, allowing customs to control administratively (afterwards) that all activities have been carried out compliantly.

Note that:

- The SA authorization does not waive the obligation to file an Entry Summary Declaration (ENS) for incoming goods and all the other declarations and notifications that need to be done prior to arrival in the EU. Consequently, customs will still be able to do a risk assessment and select goods for inspection for security reasons. Since the holder of the SA is an AEO, any customs inspections can be planned at times and locations where there is minimal operational disturbance for the economic operator.
- Placing goods under a SA regime will most ideal not trigger/ hardly trigger (physical) inspections.
- The Commission may demand to be informed on specific goods which are imported or exported (art. 56:5 UCC and art. 55:2 IA UCC). As goods are one way or the other real time declared for SA, this will not influence the possibility for the customs authorities to inform the Commission on which goods have been imported.

4.1.2.2 Ending Self-Assessment

The SA-regime is ended when the holder of the authorization brings the goods into free circulations or places the goods under a procedure that is not covered by the holder's SA authorization. In the first case, the SA-regime is ended when the holder of the authorization makes the appropriate entry into his records, followed by a monthly summary declaration (see next subchapter) and payment of the customs' debt. In the second case the goods are brought into the normal customs regime by making a declaration placing these goods under a follow-up procedure (e.g. Transit) and by referring to the MRN related to the SA. Obviously, bringing goods outside the SA-regime by placing them under another procedure may trigger a physical inspection.

4.1.2.3 Monthly declaration

The SA-company periodically provides, e.g. monthly, a summary of all customs duties to be paid and pays this debt within ten days. This summary covers all goods that have entered the EU in that month, have been brought into free circulation, have been sold on, et cetera. This summary resembles the Dutch VAT payments by companies. In the table below the information to be submitted to customs of this periodic declaration is added. It is compared with the monthly (Dutch) VAT- declaration.

Table 1 Overview periodic VAT declaration and import declaration

VAT	**Import duty**
Total turnover and VAT inlands	Total number of incoming shipments within period XXX
Total turnover and transferred VAT inlands	Total amount of related customs value
Total turnover related to export and Intracommunity transactions	Total customs' value of goods brought into free circulation in period XXX
Purchases related to import and intracommunity transactions	Total customs' value of non-union goods sold on in period XXX
Total paid VAT related to purchase	Total customs' value of goods remaining under SA regime in period XXX (including previous period)
Total VAT to be paid	Total import duty to be paid, split into customs' duty, anti-dumping duty, countervailing duty, and other trade regulating duty.

At the same time as the monthly declaration, a separate declaration for statistics will be made. This way of working is consistent with the reporting and declaration requirements for Dutch VAT.

4.1.3 Authorization requirements

The flow of goods described above is very straightforward and does not incorporate border crossing difficulties and could serve as an initial use case to test the SA-concept in a controlled environment. However, the concept can also be extrapolated towards a more complex, international setting where multiple member states could be involved. In such a case, if an economic operator wants to execute activities in several Member States, all customs authorities involved must be incorporated in the licence application (just like any other licence).

According to experts in the field, in order to be allowed to work as described above, the SA-licence keeper must very like at least prove to customs they can be trusted to act compliantly. They can prove this by:

- Creating detailed work instructions, which prescribe all steps an employee must take in order to determine import duty. This work instruction includes not only the determination of commodity code, origin and customs value, but also assures all data needed for a normal declaration (all 44 fields of a declaration). These work instructions must capture the specific circumstances related to the specific flow of goods.
- Having an administrative/ IT system, which records data and archives documents, which enables customs to supervise the company's trade compliancy.
- Performing fiscal and non-fiscal risk-analysis, risk assessment and by taking appropriate action to mitigate these risks.
- Having a proven working internal control system that safeguards correct calculation import duties. Control measures are threefold: they must prevent, detect and correct.[22] As the circumstances differ for each company no standards of these internal control measures can be

[22] Romney, 2015

determined which apply to all companies. As said, the control system must be in line with the assessment of the risks. Possible control measures are proper authorisation of activities, segregation of duties, design and use of documents and records, safeguarding assets, records and data and last independent check on performance.[23]

- Having documentation about the control measures taken of individual declarations and the findings of these.
- Having a proven working audit system, which results in an improvement plan. Hereby creating a learning company
- Having a pro-active attitude to inform customs about internal changes and findings. Unless severe fraud is expected, these findings can result in payment of supplement duties, but not to punishment.[24]
- As the customs' duty will be paid by the end of a period (e.g. a month), a comprehensive guarantee is needed. At the end of the pre-audit, customs and company must establish a reasonable financial guarantee.[25]

4.2 Supervision by customs

4.2.1 Levels AEO

The concept described above assumes a very high confidence in the company's compliant behaviour. It is so to say an **AEO double +**, or **AEO²**.

To illustrate: In the past Dutch customs had defined 6 maturity levels of AEO[26]:

- Level 0 no control measures taken
- Level 1 the internal control measures of processes are ad hoc and unorganised
- Level 2 the internal control measures of processes are structured
- Level 3 the internal control measures of processes are described and known
- Level 4 processes are internally controlled and evaluated
- Level 5 internal control measures are fully incorporated into processes and are continuously evaluated

In order to obtain the AEO licence, companies had to score on average level 3. This is however not a sufficient level of internal control for a SA licence. ***So not every AEO licence holder nor every current APD licence holder will automatically qualify for SA licence.*** Being **AEO²** implies being a learning organisation, hence level 5. This means that control measures are incorporate in daily processes and while executing daily tasks, employees' control or are controlled by colleagues/ IT system to meet all legal requirements. Next to this the organisation is frequently, structured and systematically audited, both internally and externally. And last, found mistakes are corrected, hence processes and their control mechanisms are adapted to these findings. These organisations learn and have an effective PCDA cycle (i.e. Plan-Do-Check-Adjust cycle) in place. Only such a learning organisation may ensure compliancy now and in the future.

Dutch tax authorities apply the concept of horizontal supervision based upon organised trust.[27] This organised trust is the sum of experiences from the past and the own responsibility of the company.

[23] Romney, 2015
[24] Art. 152 DA UCC
[25] Art. 151 DA UCC and art. 237 IA UCC
[26] TKI Logistiek, 2014
[27] For further reading on so called horizontal supervision: mr. dr. M.E. Oenema, *"The procedural law aspects of horizontal monitoring in tax cases"*, Deventer: Kluwer, 2014.

In a comparable way a company may prove to customs that is has safeguards, security measures and internal controls in place to ensure compliant behaviour. Only after a company has proven to customs that the safeguards, security systems and internal control measures in place ensure compliant behaviour, this company could get a SA-licence. This organised trust could very well be extended to the entire supply chain, in case risks involved justifies this. This means that the SA-licence applicant will prove to customs the entire chain is to be trusted. How this must be proven and re-assessed is part of the licence application process and the control plan.

Therefore, supervision of SA-companies must be done one three levels: pre-conditional, licence application and ensuring future proof.

4.2.2 Three levels of supervision of SA companies

4.2.2.1 Pre-conditional

The UCC (and UCC DA) already lists some of the pre-conditions for a SA-licence and sets the beginning of the supervision. These pre-conditions are:

1) The applicant of the SA-licence must be recognised by EU or national law as a person. This means a natural person, a legal person, and any association of persons which is not a legal person but which is recognised under Union or national law as having the capacity to perform legal acts; as having the capacity to perform legal acts (art. 5:4 UCC).
2) The applicant must be located in the customs' territory of the EU (art. 170:2 UCC and art. 11 UCC DA).
3) The applicant must have a valid Economic Operators Registration and Identification-number (EORI number) art. 11 UCC DA).
4) The applicant must have an AEO licence for customs (art.185:2 UCC).

4.2.2.2 License application and assessment

A company requesting a SA licence will first undergo a pre-audit. This pre-audit will be in line with COSO's internal control framework[28] and will therefore focus on:

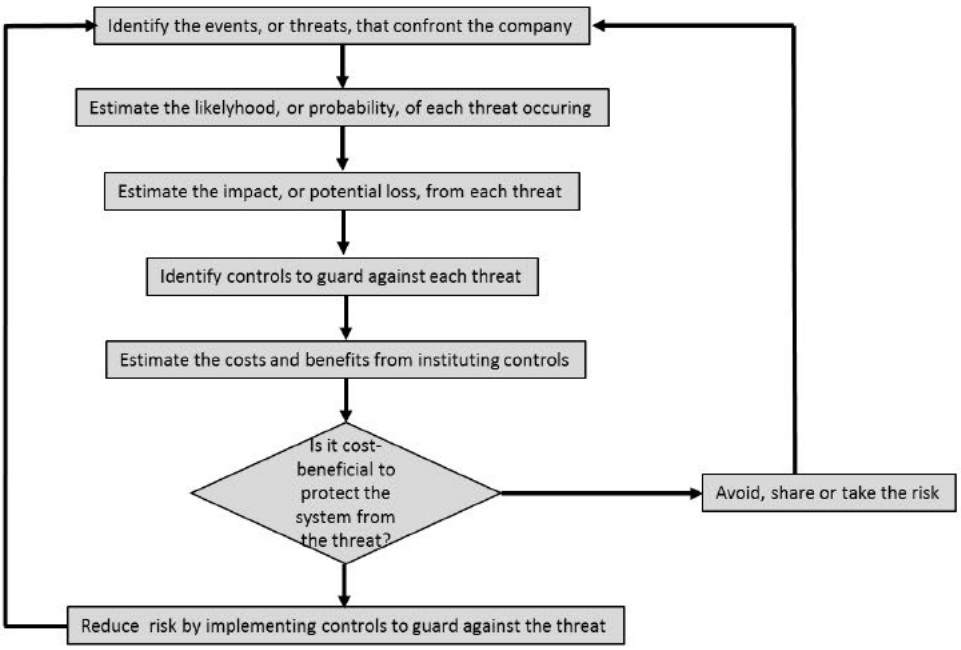
1) identifying all risks both fiscal and on the prohibitions and restriction field;
2) assessing these risks according the likelihood they will occur and the (financial) impact they incorporate;
3) the internal processes needed in order to calculate customs' duty. This would typically include the EiDR requirement with respect to administration of customs relevant transactions in order to provide an auditable control trail.
4) the internal control measures the company has taken/ must take in order to meet all fiscal and non-fiscal risks, and that are in line with the assessment of the risks;
5) the audit system the company has implemented, according to the European Courts of Auditors' recommendations (special report no1/ 2010), which assures a learning organisation; and
6) the determination of the control plan by customs, which focuses on all the stages of the entry in the declarant's records and the physical flow of goods.

The above must be a ***co-production*** of both the company and customs. For the company it remains important to establish whether or not SA offers benefits and the costs and efforts of control measures taken will not exceed the benefits. For customs it is important to have adequate guarantees that all risks are covered.

[28] Romney et al, 2015

Assessing the risks is an important step in this process. Below this has been explained.[29]

Figure 2 Risk assessment



By combining the second and third step of the risk assessment process above, a prioritisation of the risks is made. Just like in the table below.

Table 2 Combination likelihood and impact

Impact/ probability	Low impact	Medium impact	High impact
High likelyhood	Medium	Medium	High
Medium likelihood	Low	Medium	Medium
Low likelihood	Low	Low	Low

This assessment justifies higher investments in control measures for risks with a high impact and a high probability of occurrence (indicated in red above). As these risks must be fully mitigated by the taken control measures. At the same time, it also justifies taking risks which have a low impact and low likelihood to happen (indicated in green above). So no further action will be taken to mitigate these risks or the prevent this to happen.

For example, companies importing a stable flow of goods (meaning a constant, reliable and predictable or always the same goods) can easily assess their risks, hardly anything unforeseen will happen. They can relatively easy build a control system, mitigating all relevant risk. This makes them a very trustworthy operator, to act compliantly all the time.

Since the central element of SA is EiDR (without the obligation to file notifications and declarations with customs as long as the goods stay within the authorized SA regime), the basis for the pre-authorization

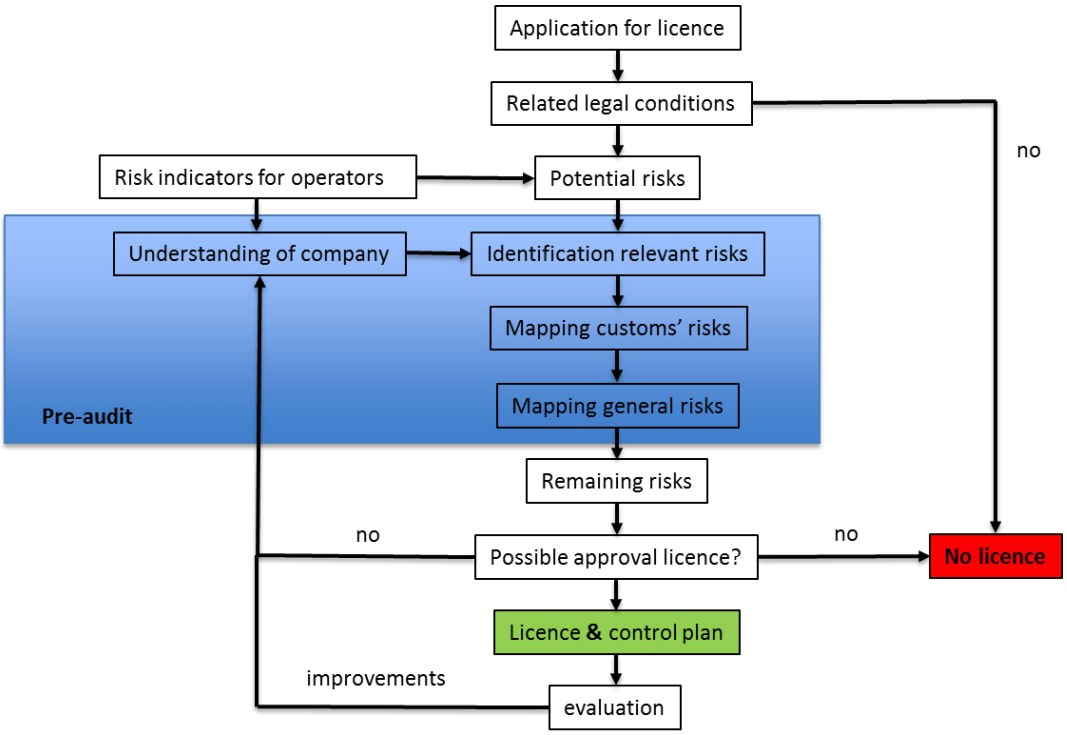
[29] Romney, et al, 2015

audit is based on the audit required to obtain an EiDR authorization. Additional elements that may be assessed in the pre-authorization audit include the past performance in administrative audits and physical inspections, and the applicants controls on adherence to relevant internal processes and procedures, as well as (internal) improvement- and audit programs as demonstrated by evidence provided. Customs may consider to either implement such pre-authorization audits themselves or develop a community of certified external auditors that may perform such pre-authorization audits according to agreed standards.

In this context we observe that – since SA builds on the existing concept and implementation of EiDR – customs authorities across Europe should already be able to implement such pre-authorization audits in a consistent manner.

Below the COMPACT model[30], used by Dutch customs which presents the AEO-licence application process, and which incorporates all the steps described above. Therefore, this model can also be used for SA-licence applications.

Figure 4 COMPACT Model



Three final remarks are to be made here:

1. By identifying all risks involved and evaluating the internal control measures in a co-production of both the company and customs, an underpinned/objective assessment can be made whether a company can meet the requirements of a trustworthy company.
2. Obviously, if on the other hand risks, both fiscal and non-fiscal, are considered to be too high, the company should ***not*** be granted a SA-licence.
3. The above suggests that risks assessment is extremely important and as no two companies are the same, this assessment can't be standardised. The value of the risk assessment depends therefore on the qualification of the people involved.
4. The target group for the self-assessment is A-class companies with their direct representatives, and relatively low risk incoming streams, where there are no applicable prohibitions and

[30] TKI Logistiek, 2014

restrictions while the product is under the SA regime. Consequently, risky streams such as e-commerce are at this time not considered to be suitable for a SA regime.

4.2.2.3 Future proof of trust

One element of organised trust is the own responsibility of the company. The third element of maintaining a SA license should be that customs must be able to trust this company to anticipate on future events and to inform customs likewise. The judgement whether the company will do so, will be part of the risk assessment.

As the company must be a learning organisation, processes, internal control measures and risks involved, both fiscal and non-fiscal, must be audited frequently by the company. The result of this audit and the adaptions from this must be reported to customs every year (just like the AEO licence). Last, like re-assessment AEO, the SA-company must be reassessed regularly (could be every three years, just like AEO). Special focus must be on changes in the prohibitions and restrictions. Just like the AEO-licence, the SA- licence can be revoked in case the company does not meet the SA criteria anymore.

4.3 Impact SA

The SA concept, as it has been described above, could be seen as an extension of the old Dutch Local Clearance and APD licences. Therefore, below an indication of the importance of APD for Dutch economic operators is shown as an illustration of the potential effect on the number of declarations and duties collected.

Table 3 Dutch APD declarations 2014 - 2018[31]

	# APD declarers	# APD declarations (in million)	Total # import declaration lines at item level (in million)	% APD[32]	Cumulative customs duty (€) via APD (in million)	Total amount import duty[33] (€) (in million)	% APD[34]	Average customs duty/ declaration (€) via APD
2014	240	99.6	113.9	87%	839.8	2,589.2	32%	8.43
2015	234	112.8	132.9	85%	946.1	2,889.1	33%	8.38
2016	236	121.9	131.9	92%	921.8	2,913.7	32%	7.56
2017	223	135.1	144.1	94%	940.6	3,054.7	34%	6.96
2018	218	167.3	(not available)		1,051.4	(not available)		6.29

The table shows that the number of declarers using APD has decreased between 2014 and 2018 (reduction of 9%). Furthermore, although APD declarations represent around 90% of all declarations, the duties related to these declarations only around 30% of total.

Furthermore it can be observed that the number of APD declarations has increased enormously since 2014. Several explanations for this development are possible. This could be the result of streamlined internal administrative processes with customs declarations. It is for companies easier to declare items on invoice or batch level in a local clearance authorisation than consolidating them for customs purposes. It could also be related to the increase of e-commerce shipments which are known to be declared via APD in the Netherlands. In customs-terms, these e-commerce shipments have a high-risk profile, leading to many

[31] Source: Frank Heijman, Dutch Customs organization.
[32] This column is calculated by dividing the second column by the third column.
[33] Included agricultural levies, excluded anti-dumping, countervailing duty, additional duties and VAT.
[34] This last column is calculated by dividing the fifth column by the sixth.

controls (both physical and administrative controls afterwards). The risks are related to the determination of commodity code, origin and customs value. The latter also influences whether enough VAT is paid.

Last, this table indicates that in the past APD “declarations” were responsible for a large part of the total collected import duties (around 30%) and declaration lines (around 90%). As said before, having an APD-licence now, does not automatically mean that these companies qualify for SA-licence, but indicates for which companies a SA-licence could be beneficial. This is significant.

4.4 To conclude

This three-level supervision must guarantee both customs and DG Budget, that all import duties are paid, and all regulation related to prohibitions and restrictions are met. The very severe and strict criteria during the SA-licence application and re-assessment must also reassure all Member States that SA companies are not supervised. They are supervised, however not on transaction level. The supervision level is even much more comprehensive: it includes supervision on company level and incorporates supervision on processes, IT systems and the internal control measures taken. It does not take away administrative demands from a company, the demands will even be higher than a regular AEO company. The benefit for companies is the guaranteed unhindered logistic flow inside the EU.

5 Legal scope for SA under the UCC

5.1 Introduction

As mentioned before, the basis for SA in the UCC can be found in art. 185. At first sight this gives the possibility for economic operators to apply for a SA license. The only condition that is posed, is that the operator is an authorised economic operator. However, based on articles 186 and 187 of the UCC the European Commission can adopt delegated acts to determine the conditions for granting the authorisation and implementing acts to determine the procedural rules regarding customs formalities and controls to be carried out by the operator.

Regarding SA, the most important condition set is that the operator applying for SA must have an authorisation for EiDR (art. 151 UCC DA). This implicates that a SA-holder must fulfil the requirements under EiDR. The question is whether this requirement makes the concept of SA in practice a non-existing facility, since EIDR operators having a SA-license still must not only report per line item and per shipment in their administration, but must also share this information with the customs authorities on a periodical basis. Based on Annex B to the UCC DA a supplementary customs declaration must be filed at the end of the month comprising separate declarations of each article within each separate shipment received in the period concerned.

For the Netherlands the transfer from the current electronic declaration system AGS to the new one DMS also brings important changes, seemingly hollowing out the concept of EiDR to a certain extent. In Scenario B discerned by the Dutch customs authorities in the "*Informatieset overgang SPA en GPA naar DMS*" (Dutch Customs Authorities, May 2019), EiDR is combined with real time reporting. Real time reporting thus replaces the supplementary customs declaration currently being filed under EIDR. In practice it means that EiDR license holders must report the supplementary declaration on a real time basis, as soon as entry into the records has been completed. The dataset to be submitted is the dataset as prescribed by Annex B to the UCC DA.

The concept of filing supplementary declarations (be it at the end of the month or on a real time basis) seems to conflict with the idea of SA. What is the point of including SA in the UCC when all the conditions of EiDR must also be met? It also seems to conflict with art. 237 of the UCC IA, in which it is determined that the SA holder at the end of the period fixed by the customs authorities in the authorisation, is authorised to determine the amount of import and export duties for that period in accordance with the rules laid down in the authorisation. This seems to indicate that conditions can be laid down in the authorisation by the customs authorities themselves.

The above being said, there are also some possibilities under EiDR which may help facilitate the implementation of SA in practice. According to art. 225 UCC IA if the operator has both an EiDR and SA license, the operator '(…) *shall either lodge the supplementary declaration or the customs authorities may allow the supplementary declarations to be available through direct electronic access in the authorisation holder's system'.* This article gives the possibility to make available the supplementary declarations by giving electronic access to the customs authorities and, if applied by the customs authorities, could therefore set aside the 'normal' obligations under EiDR, such as those in Annex B to the UCC DA. Depending which information and in what format the customs authorities require electronic access, the application of the concept of SA comes closer. After all, if the information, to be accessed by the customs authorities, is in essence the information that is needed for filing a customs declaration, then this information will be available with operators making use of SA. However, which information should be available must be further defined and investigated so that both the needs of customs authorities and the possibilities of operators are satisfied.

Another 'advantage' which EiDR gives can be found in art. 182 (3) UCC. According to art. 182 (3) UCC the

'customs authorities may, upon application, waive the obligation for the goods to be presented'. In order to approximate the genuine concept of SA, it is recommendable that customs authorities make use of art. 182 (3) UCC when dealing with SA holders. After all, by making use of this possibility, SA holders no longer need to present their goods to customs, thereby reducing interactions with the customs authorities substantially.

Based on the above it can be concluded that by referring to the requirement of EIDR, the whole concept of SA could become obsolete. However, the option given in art. 225 UCC IA, if applied by customs authorities offers the possibility to provide the supplementary declaration by giving electronic access to the customs authorities. In combination with the possibility under art. 182 (3) UCC, allowing to waive the obligation to present the goods to customs, the concept of SA being applied in practice comes closer. It should be investigated further how this should be implemented in practice, taking in to account requirements regarding surveillance data and statistical data (art. 55 IA UCC).

5.2 Position of the European Commission on Self-Assessment

In art. 186 UCC the European Commission is empowered to adopt delegated acts in order to determine the conditions for granting the authorization for SA and the customs formalities and the controls to be carried out by the holder of the SA authorization. However, the DA UCC does not specify these controls.

The European Commission states that SA does not constitute a new or additional form or type of customs declaration, but it is merely a simplification that allows the delegation of certain tasks of the customs authorities to the economic operator.[35] The Commission states that the delegation of the controls on compliance with prohibitions & regulations (P&R) will be possible only if the non-customs authorities competent for the P&R concerned have agreed thereon.[36] The delegation of customs controls to the operator may require amendments of the non-customs legislation related to the control type. According to the European Commission it is recommended that national customs authorities liaise with their counterparts in other administrations in order to study the concrete possible delegations. However, the control delegated to- and performed by the economic operator does not prevent customs authorities from controlling **how** the economic operator performs its delegated tasks. According to the Commission such delegations remain under customs supervision and can lead to relevant controls specific to the delegation.[37]

In the SA concept, customs supervision and customs controls are system-based instead of transaction-based. There is a shift of certain responsibilities from customs to the economic operator, but ultimately customs will be the overall responsible party. The customs authorities shall monitor the proper use of the authorization, via pre-audit and post-implementation audits.

The Commission shall specify, by means of implementing acts, the procedural rules regarding the customs formalities and the controls to be carried out by the holder of the SA-authorization.[38] Art. 237 UCC IA specifies that the economic operator, authorised for SA-purposes, determines the amount of import and export duty at the end of the period fixed by the customs authorities. The rules shall be laid down in the authorization. Within 10 days of the end of this period, the SA-authorization holder shall submit to the supervising customs office details[39] of this amount, including the customs debt.

[35] TAXUD/A2/05/11/2018: Simplifications – title V UCC "guidance for MSs and Trade", p. 42
[36] TAXUD/A2/05/11/2018: Simplifications – title V UCC "guidance for MSs and Trade", p. 43
[37] According to the Commission, risk management will remain the responsibility of the customs authority (having confidential information that will not be disclosed to the SA authorization holder) and controls performed by the trader must be distinguished. If the legislation imposes that a type of control must be performed by customs, then there is no possibility to delegate this task to the economic operator.
[38] Art. 187 UCC
[39] Art. 237:2 and 237:3 IA UCC and art. 108:1 UCC

Finally, the Commission states that this simplification does not include (for the time being) security and entry formalities. However, the consortium is of the opinion that in the future there may be possibilities to include these security and entry formalities to make SA more usable and attractive for economic operators. For the time being they are not included in this report to make a pilot more feasible.

Concluding, the SA according to art. 185 (1) UCC and the comment of the European Commission constitutes authorization for:

- Carrying out certain customs formalities which are to be carried out by the customs authorities (art. 185 (1) UCC)
- Determining the amount of import and export duty payable (art. 184 (1) UCC, 237 IA UCC and 151 DA UCC) mostly combined with EIDR (art 182 (1) UCC and art. 150 DA UCC); and
- To perform certain controls under customs supervision (art. 185 (1) and 152 DA) regarding prohibitions and restrictions.

6 Conclusion

6.1 Self-Assessment and supervision by customs

In order to achieve unhindered logistic and reduced administrative burden, the consortium proposes the use of SA as an appropriate approach. The use of SA consists of multiple elements:

1. Non-union shipments arriving in the EU still need to be announced by an ENS, allowing EU customs to inspect on safety and security.
2. After temporary storage, goods can be declared for SA, which automatically ends the temporary storage or a T1. The goods are now in a SA-regime.
3. The SA-licence keeper may bring the goods inlands, store the goods and process the goods without any declaration to customs.
4. Periodically (typically once a month) the SA-licence keeper provides customs a statement of the total import duties to be paid, just like the VAT payment. Obviously, like VAT payment, the company must register and document in its administration all necessary evidence that this statement is correct. In the table below, an example is added of how this overview could look.

Table 4 Overview import duty payment

Import duty
Total number of incoming shipments within period XXX
Total amount of related customs value
Total customs' value of goods brought into free circulation in period XXX
Total customs' value of non-union goods sold on in period XXX
Total customs' value of goods remaining under SA regime in period XXX (including previous period)
Total import duty to be paid, split into customs' duty, anti-dumping duty, countervailing duty, and other trade regulating duty.

SA approach as proposed will change the way of supervision by customs. Instead of transaction-based supervision, companies are supervised on internal process level. This supervision is even more strict than requirements AEO companies must meet. SA-companies could therefore be labelled as **AEO²**. Companies pursuing a SA licence, will have to prove to customs that they have incorporated control measures in their daily processes ***and*** that they are a learning organisation that has an effective continuous improvement process in place. The latter means that they adapt processes based on events in the past as well as on emerging risks. The company must demonstrate a reflective ability. Questions like "What has happened? Where did we go wrong? How can we avoid making this mistake again in the future?" are important. They have to prove to customs they have anticipated on current ***and*** future trade compliance risks, both fiscal and non-fiscal, providing assurance that import duties due will be paid and relevant trade regulation measures followed. The consortium believes that a SA-licence will therefore be limited to a select group of businesses. Not all current AEO-licence holders or APD-licence holders will qualify for SA licence.

To assure this reflective ability and compliance to current and future demands supervision is systems-based rather than transactions-based and is done on three levels:

1. Pre-conditional. This means that the company must meet all legal requirements connected to SA.
2. Licence application. In this phase customs needs to be assured that they can trust the company to act compliantly regarding fiscal and non-fiscal risks. This license application is therefore a co-production of customs with the company. Assessing fiscal and non-fiscal risks related to the company is an important step in this phase, together with the assessment whether the company has taken sufficient and adequate control measures.
3. Future-proof trust. Here the company must demonstrate to customs they have this reflective ability and can be trusted to remain compliant in the future as well.

Based on the analysis performed, the consortium considers that such systems and process-based controls by customs can provide sufficient guarantees to allow selected enterprises meeting these high standards to implement the SA concept proposed and proposes to design a pilot project to prove the concept in a specific use case.

6.2 Legal scope for SA under the UCC.

To conclude, currently SA is a simplification for making declarations (art. 185: 1 UCC). Having a SA authorization enables economic operators to:

- Carry out certain customs formalities which are to be carried out by the customs authorities, to determine the amount of import and export duty payable and to execute customs controls under customs' supervision (art. 185 (1) UCC);
- Having an AEOC licence (art. 185:2 UCC) and having a licence EiDR (art 151 DA UCC) is obliged, whereby art. 182:1 UCC and art 150 IA UCC indicates that a licence EiDR is a simplification for making declarations for customs' procedures;
- Calculate the customs debt at the end of the period (which is determined in the authorisation) according to the rules which have been laid down in the licence (art 237:1 IA UCC);
- Carry out control on compliance related to prohibitions and restrictions, as laid down in the authorization (art. 152 DA UCC);
- To lodge the supplement declaration by giving customs authorities direct electronic access to the administrative system of the operator (art. 225 IA UCC)
- Not having to present the goods to customs, in case the operator has a waiver to do so (art. 182:3 UCC)

So in order to work according the SA concept as described in chapter 4, the economic operator needs to have several licences. The operator must be able to use several procedures and for each procedure the license SA must be applied for, while the operator must also have a licence AEOC and EiDR and a waiver to present. It must be agreed on how the operator executes the controls and calculates the customs' debt. And it must be agreed on how customs has access to the administrative system. Still the economic operator must declare each movement in his records (EiDR), by recording all data listed in Annex B of the DA.

Another possibility is to adapt the UCC and transform SA into a customs procedure. This would give economic operators the possibility to work entirely according the concept described in chapter 4.

The described SA concept relies more on system based control, instead of transaction based. However customs will always have the possibility to (physically) inspect individual shipments according to art. 46:1 UCC.

Therefore, It should be investigated further how this should be implemented in practice and to investigate if SA truly brings the advantages described.

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