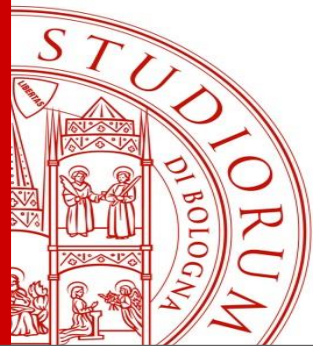


ECCE - EUROPEAN COMMON
CUSTOMS EVALUATION

RECONCILIATION BETWEEN CUSTOMS VALUE AND TRANSFER PRICING: SOME PROPOSALS

Rotterdam, 31° March 2022

Dr. Federico Tarini



Overview

1. Preliminary Remarks
2. Simplified-supplementary declaration
3. Art. 73 Authorization
4. Amendment of a Customs Declaration; the “Dutch solution”
5. Conclusions



1. Preliminary Remarks

Legal POV

Find a (sound) legal basis in the UCC

Practical POV (from a CA perspective)

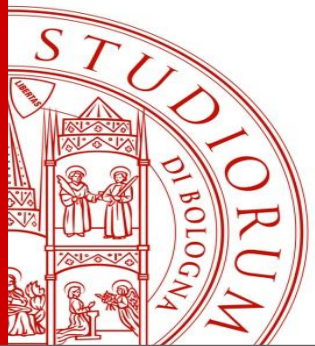
Ensure that the declared value is close to the «*actual value*»

Ensure that the importers do not avoid the payment of duties

Practical POV (from business perspective)

Ensure that CAs appreciates upwards as well as downwards adjustments

Avoid overcomplicated procedures (more red tape = more costs)



1. Preliminary remarks

- Can we find a solution within the **current** UCC framework?
- Can we ensure that the needs of both CAs and economic operators are met?
- Do we need a direct action by the EU?



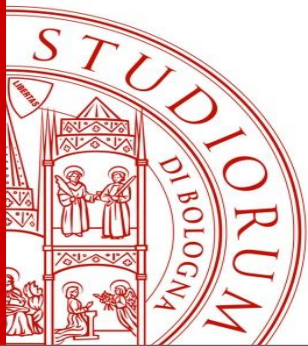
2. Simplified-supplementary declaration

Legal Basis

Art. 166 UCC: *The customs authorities may accept that a person has goods placed under a customs procedure on the basis of a simplified declaration which may omit certain of the particulars referred to in Article 162 or the supporting documents referred to in Article 163 [...]*

Art. 167 UCC: *In the case of a simplified declaration pursuant to Article 166 or of an entry in the declarant's records pursuant to Article 182, the declarant shall lodge a supplementary declaration containing the particulars necessary for the customs procedure concerned at the competent customs office within a specific time-limit. [...]*

See also artt. 146 and 147 of the UCC DA



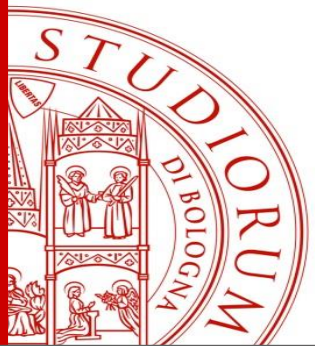
2. Simplified-supplementary declaration

Occasional Si.D.

- Occasionally used by traders
- Supplementary declaration *of a general nature*
- Supplementary declaration 10 days from the date of the release of the goods.

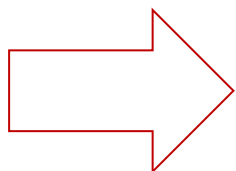
Regular use of the Si.D

- Subject to authorization by the CA
- Supplementary declaration *of a periodic or recapitulative nature*
- Supplementary declaration *10 days from the date on which the period of time covered by the supplementary declaration ends*

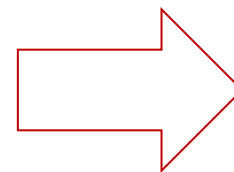


2. Simplified-supplementary declaration

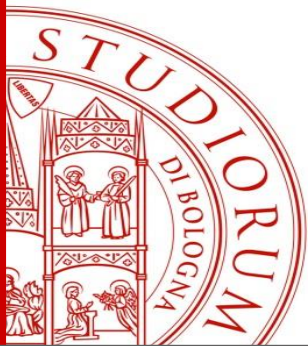
**Simplified
declaration**



**TP
adjustment**



**Supplementary
declaration**



2. Simplified-supplementary declaration

The good

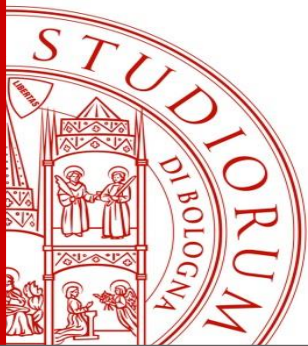
Already in use in some MS (Italy, Spain, The Netherlands...)

Allows reconciliation between TP and CV

The bad

The declarant must give a detailed new adjusted value to each imported goods; no flat-rate adjustment may be performed (quite burdensome!)

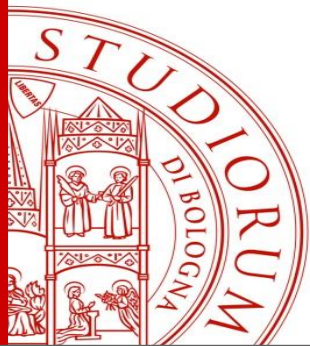
The regular use of the Si.D. is subject to CAs authorization (there is no guarantee that the CA will authorize it)



2. Simplified-supplementary declaration

What do we need to make it work?

An **official interpretation of the legislation at European level** to clarify that transactions between related parties are **per se** circumstances that justify granting of an authorization to use the simplified-supplementary declaration scheme



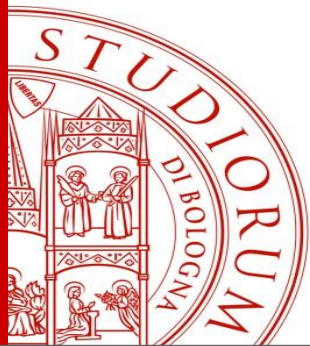
3. Art. 73 authorisation

Legal Basis

Art. 73 UCC: *The customs authorities may, upon application, authorize that the following amounts be determined on the basis of specific criteria, where they are not quantifiable on the date on which the customs declaration is accepted:*

- (a) amounts which are to be included in the customs value in accordance with Article 70(2); and*
- (b) the amounts referred to in Articles 71 and 72.*

See also art. 71 of the UCC DA.



3. Art. 73 authorisation

Conditions

Only if the simplified declaration procedure entails

- (i) an excessive administrative burden and if
- (ii) the customs value determined does not differ **significantly** from that determined, in the absence of an authorization.

See also art. 71 (2) of the UCC DA

Subsidiary to the simplified-supplementary declaration procedure.



3. Art. 73 authorisation

The good

Already in use in some States (Italy, The Netherlands, ...)

Less burdensome than the Si.D. scheme

The bad

Unclear if the procedure can be used for all elements to be included in the value and whether the specific criteria can also include those for determining the transfer prices, based on the wording of art. 73 UCC.

Unclear what are the “**specific criteria**”



3. Art. 73 authorisation

The bad (2)

Risk to deviate significantly and excessively from customs valuation rules for intra – group imports

Timing problems (CV: assessed at the time of importation – TP: assessed on an annually)



3. Art. 73 authorisation

What do we need to make it work?

Official EU interpretation allowing
the **art. 73 procedure for transactions between related parties**

Require CA and importers **to specify the “specific criteria”**
when issuing the authorization



4. Amendment of the Declaration

Legal Basis

Art. 173 UCC: *The declarant shall, upon application, be permitted to amend one or more of the particulars of the customs declaration after that declaration has been accepted by customs. The amendment shall not render the customs declaration applicable to goods other than those which it originally covered. [...]*



4. Amendment of the Declaration

Upwards price adjustments

(within three years of the date of acceptance of the C.D.)

The importer **must** pay the excess duties

Permitted in most MS

Downwards price adjustments

(within three years of the date of acceptance of the C.D.)

The importer **may** ask for a refund

Not always permitted by the CA



4. Amendment of the Declaration

The good

Already in use in some states (Italy*, ...)

Simple procedure

The bad

Not every national CA allow amendments that result in a refund

Is the TP documentation (which is not legally binding) enough to justify an amendment to the declaration?



4. Amendment of the Declaration

The bad (2)

Significant limitation (art. 173 (2): **No such amendment shall be permitted** where it is applied for after any of the following events:

- (a) the customs authorities have informed the declarant that they intend to examine the goods;
- (b) the customs authorities have established that the particulars of the customs declaration are incorrect;
- (c) **the customs authorities have released the goods.**)



4. Amendment of the Declaration

What do we need to make it work?

Allow the amendments of the declaration **even after the release of the goods** in case of TP Adjustments

Recognize the importance of TP documentation at the legislative level

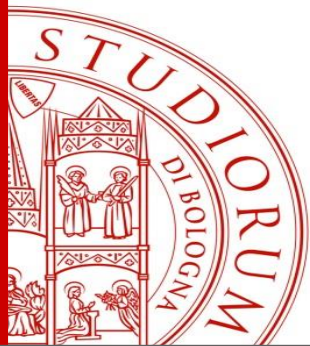


4bis. The Dutch solution

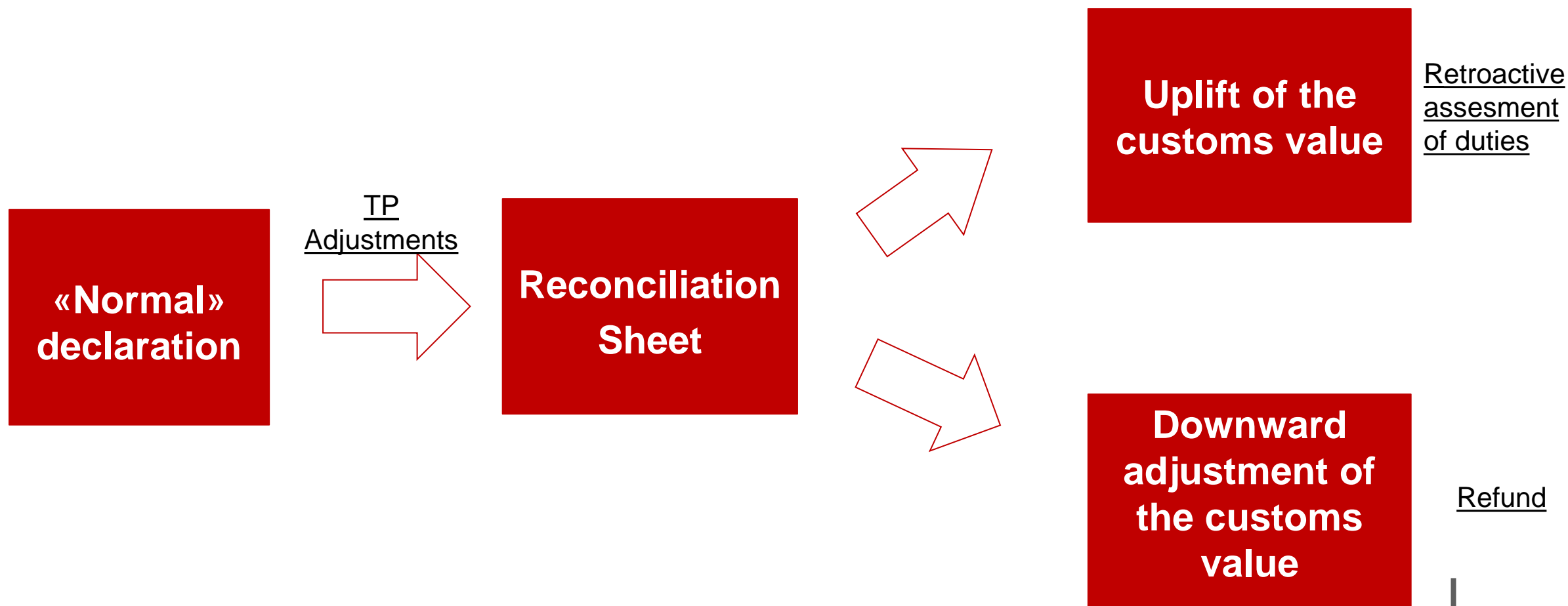
Legal Basis

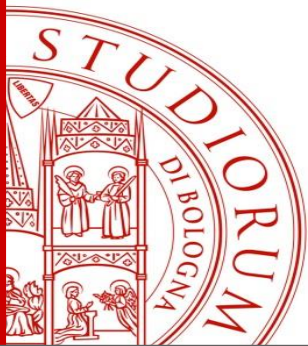
NO LEGAL BASIS (Dutch CA practice)

Theoretically it should be possible to legitimize this practice on the basis of article 173, UCC, but the article does not say anything about it.



4bis. The Dutch solution





4bis. The Dutch solution

The good

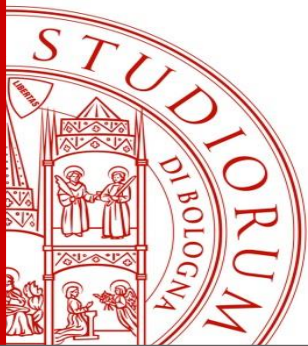
Easily implemented

«Business friendly»

The bad

Is the TP documentation (which is not legally binding) enough to justify an amendment of the declaration?

Value of imported goods Vs. company's overall profit



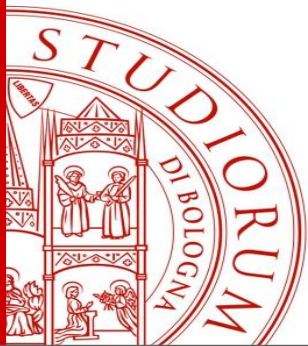
4bis. The Dutch solution

What do we need to make it work?

Create a **sound legal basis** (by adding a fourth paragraph to art. 173)

Making sure that **every MS allows the reconciliation** sheet

Create and authorization procedure in order to **specify how TP adjustment will reflect on CV**



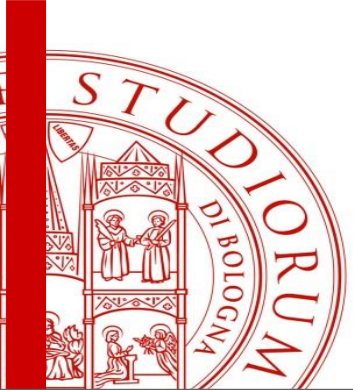
5. Conclusions

What do we need to make it work?

There **is more than one solution** suitable to effectively tackle the interplay between TP and CV

Every approach requires a **direct action by the EU** at the legislative level

IS A DIRECT ACTION AT THE EU LEVEL FORESEEABLE IN THE NEAR FUTURE?



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THANK YOU FOR YOUR ATTENTION!

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