

The Agreement on Customs Valuation

Objectives and Structure of this Presentation

- ✓ Why rules on customs valuation?
- ✓ The WTO Agreement on Customs Valuation
- ✓ Methodologies to value goods

Why Rules on Customs Valuation

To address the need for a

- ✓ fair,
- ✓ Uniform &
- ✓ neutral system

for the valuation of goods for customs purposes that precludes the use of arbitrary or fictitious customs values

Why Rules on Customs Valuation

Rules on Customs Valuation are necessary to ensure that when applying duty rates to imported goods, the customs service of each WTO Member determines the value of the goods in a neutral and uniform manner, since the value of the good is the basis on which Customs calculates the duty rates that are applied to imported goods.

It is important for exporters to ensure that market access opportunities achieved through tariff reductions are not undermined or negated by unwarranted and unreasonable augmentations in the customs value of goods to which tariffs are applied.

Why Rules on Customs Valuation

The use of arbitrary, fictitious and inappropriate “augmentations” by Customs in the valuation of imported goods when they apply tariffs can result in an unwarranted doubling or tripling of duties.

The result of this inflated valuation is that exporters lose the benefits of the reduced rate of tariffs that have been negotiated, thereby losing out on its market access.

Customs management and regulation under the GATT...

General objective

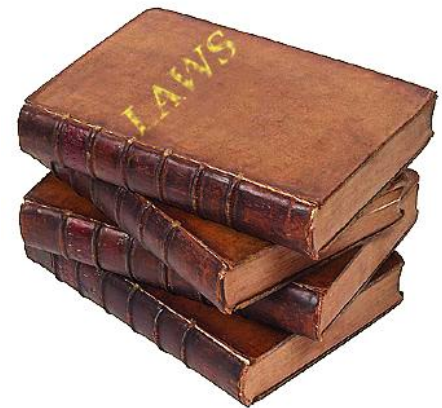
Ensure that regular customs operations

- *do not hinder unnecessarily international trade*
- *are not used to offset concessions that WTO Members have exchanged between one another*

While at the same time recognizing the discretionary autonomy that Customs Authorities must retain in order to fulfil their objectives: ensure security, promote product safety, implement laws and regulations, fight fraud and illegal practices, etc.

Customs management and regulation under the GATT...

- Examples:
 - Art. V – freedom of transit
 - Art. VII – Valuation for Customs Purposes
 - Art. VIII – Fees and formalities connected with importation and exportation
 - Art. IX – marks of origin
 - Art. X – publication and administration of trade regulations



GATT 1947: Articles II:3 and VII

- Cannot alter valuation method to impair the value of the concessions.
- “Actual value”: price of the imported merchandise, or like merchandise, in sales in the ordinary course of trade under fully competitive conditions.
- Customs value shall not be based on value of merchandise of national origin, or arbitrary or fictitious values
- In practice, different systems were used.



Customs Valuation in the Tokyo Round

- Considerable differences among systems of customs valuation between countries and a lack of precision in the GATT provisions on customs valuation
- Unjustified barriers to trade
- Governments elaborated rules that would provide for a greater uniformity and certainty in the valuation of goods by Customs
- In November 1979 a Protocol to the Agreement on Implementation of Article VII was adopted.

Customs Valuation in the Uruguay Round

- Less than one-third of the GATT contracting parties had signed the GATT Valuation Agreement.
- The Uruguay Round negotiations aimed to “improve, clarify, or expand, as appropriate”, the Tokyo Round Code
- To make the Valuation Code a multilateral trade agreement that Members would be obliged to implement
- The UR negotiations resulted in the current ‘valuation rules’

Customs Valuation in the Uruguay Round

- The Agreement on the Implementation of Article VII of GATT 1994 – known as the Customs Valuation Agreement
- The terms of the Tokyo Protocol were incorporated into the WTO Valuation Agreement
- Special provisions for developing and least-developed countries

Current Valuation Rules

1. The Customs Valuation Agreement
2. Ministerial Decisions related to the CVA
 - A Decision regarding cases where Customs have reason to doubt the truth or Accuracy of the Declared Value
 - A Decision on Texts relating to Minimum Values and Imports by Sole Agents, Sole Distributors and Sole Concessionaires
3. The Committee on Customs Valuation in 1995 added another decision:
 - The Decision concerning the Interpretation (5) and Administration (4) of the Agreement (G/VAL/5)

The Customs Valuation Agreement

- Part I: Rules on customs valuation (Articles 1-17)
- Part II: Administration, consultations & dispute settlement (Articles 18 and 19)
- Part III: Special & differential treatment (Article 20)
- Part IV: Final provisions (Articles 21-24)

- ✓ Primacy of the transaction value method
- ✓ Uniformity in valuation
- ✓ Fairness and neutrality
- ✓ Simple and equitable criteria
- ✓ Consistency with commercial practice

Part I: Content of the Agreement (Articles 1 to 16 **PLUS** Annexes)



- **Valuation Methods** (Art. 1-8)
- Currency conversion (Art. 9)
- Confidentiality (Art. 10)
- Right of Appeal (Art. 11)
- Publication (Art. 12)
- Release of Goods (Art. 13)



- **Definitions** (Art. 15)
- Written explanation (Art. 16)



- **Interpretative Notes** (Annex I)
- Technical WCO Committee (Annex II)
- Developing countries (Annex III)

The annexes are an integral part of the CVA (Art. 14)

Part II (Administration, Consultations, and Dispute Settlement): Articles 18-19

- Article 18: Establishes two Committees:
 - ✓ WTO Valuation Committee – Geneva (policy issues) e.g. implementation issues; software decision
 - ✓ Technical Committee on Customs Valuation, WCO in Brussels
- Article 19: Consultations and disputes

Part III: Special and Differential Treatment (Article 20)

- When the World Trade Organization was created in 1995, signatories were obliged to accept all GATT instruments, including the WTO Valuation Agreement
- In recognition of this, special arrangements were introduced for developing country Members who might have faced difficulties implementing all of the provisions of the Agreement

Part IV (Final Provisions): Articles 21-24)

- Article 21: Reservations
- Article 22: Obligations regarding national legislation
- Article 23: Review of implementation and operation of the Agreement by the WTO Valuation Committee
- Article 24: Responsibilities of WTO and WCO Secretariats

Importance of Customs Value

- Importation of bananas (10€/Kg):



- Import duties:
- « 2€/Kg » (specific)

➔ 2 €

- « 20% » (ad valorem)

➔ ?

20% ofwhat?

- If value = 5 € ➔ 1 €
- If value = 15 € ➔ 3 €

**Rules needed to preserve the
value of tariff bindings**

Authorized Valuation Methods

Order MUST be followed

- 1 - Transaction value
- 2 - Transaction value of identical goods
- 3 - Transaction value of similar goods
- 4 - Deductive value
- 5 - Computed value
- 6 - “Fall-back “method



Prohibited Valuation Methods

(Article 7)

- Selling price of goods domestically produced
- Higher of two alternative values
- Price of goods in the domestic market of the country of exportation
- Cost of production other than computed values
- The price of goods for export to a country other than the country of importation
- Minimum customs values
- Arbitrary and fictitious values



Decision on Reasonable doubts about the truth of the importer's declaration

- Customs may ask importer for additional information/documentation
- Customs must inform importer of its reasons for doubts
- Customs must give importer reasonable opportunity to respond
- Customs must inform importer in writing of final decision
- Transaction value can be rejected

Notifications on Customs Valuation

#	Notification	Established in:	Type	G/VAL/
1	Copy of national legislation	G/VAL/5, B.2	One-off	N/1
2	Changes in legislation	CVA, Art. 22.2	Ad hoc	N/1
3	Checklist of issues	G/VAL/5, B.3	One-off	N/2
4	Treatment of Interest charges	G/VAL/5, A.3	One-off	N/3
5	Para. 2 carrier media (software)	G/VAL/5, A.4	Ad hoc	N/3

METHOD 1:

TRANSACTION VALUE

Article 1.1: Transaction Value

“CV of imported goods **shall
be the transaction value”**





Cannot use transaction value if:

1. There is no sale
2. Restrictions on disposition or use of the goods (Art. 1.1(a))
3. Conditions for which a value cannot be determined at time of import (Art. 1.1(b))
4. Part of the proceeds of subsequent resale, disposal, etc. revert directly or indirectly to the seller (Art. 1.1.(c))
5. Related parties (only if it influenced the price) (Art. 1.1(d))

Transaction Value:

(1) The Price Actually Paid or Payable

Whatever amount the buyer agrees to pay the seller to obtain the goods

Customs cannot reject an importer's declared price on the grounds that:

- It is lower than prevailing market prices
- It is lower than prices for identical goods in other transactions
- It is a sale at a discount (*cash discount, volume discount, trade discount, trade discount, purchase discount*)

Transaction Value: (2) for the goods....

- **Total payment** a buyer makes for the goods to, or for the benefit of, the seller, whether **directly or indirectly**.
- Includes **all payments** required as conditions of the sale of the imported goods
- Often there are payments “in addition to” and “apart” from the price of the goods (Art. 8)
- **May exclude** from the calculation:
 - Interest Payments
 - Dividend Payments
 - Post Importation services and costs
 - Advertising/marketing costs
 - Special case: Software (“carrier media decision”)

Transaction Value: (3) when sold for export....

- The sale must be one **for export to the country of importation.**
- The seller can be located in any country (incl. importing cont.)
- The sale **involves an international transfer** of goods
- Thus, the seller may ship the goods to the country of importation from a 3rd country or from no country at all

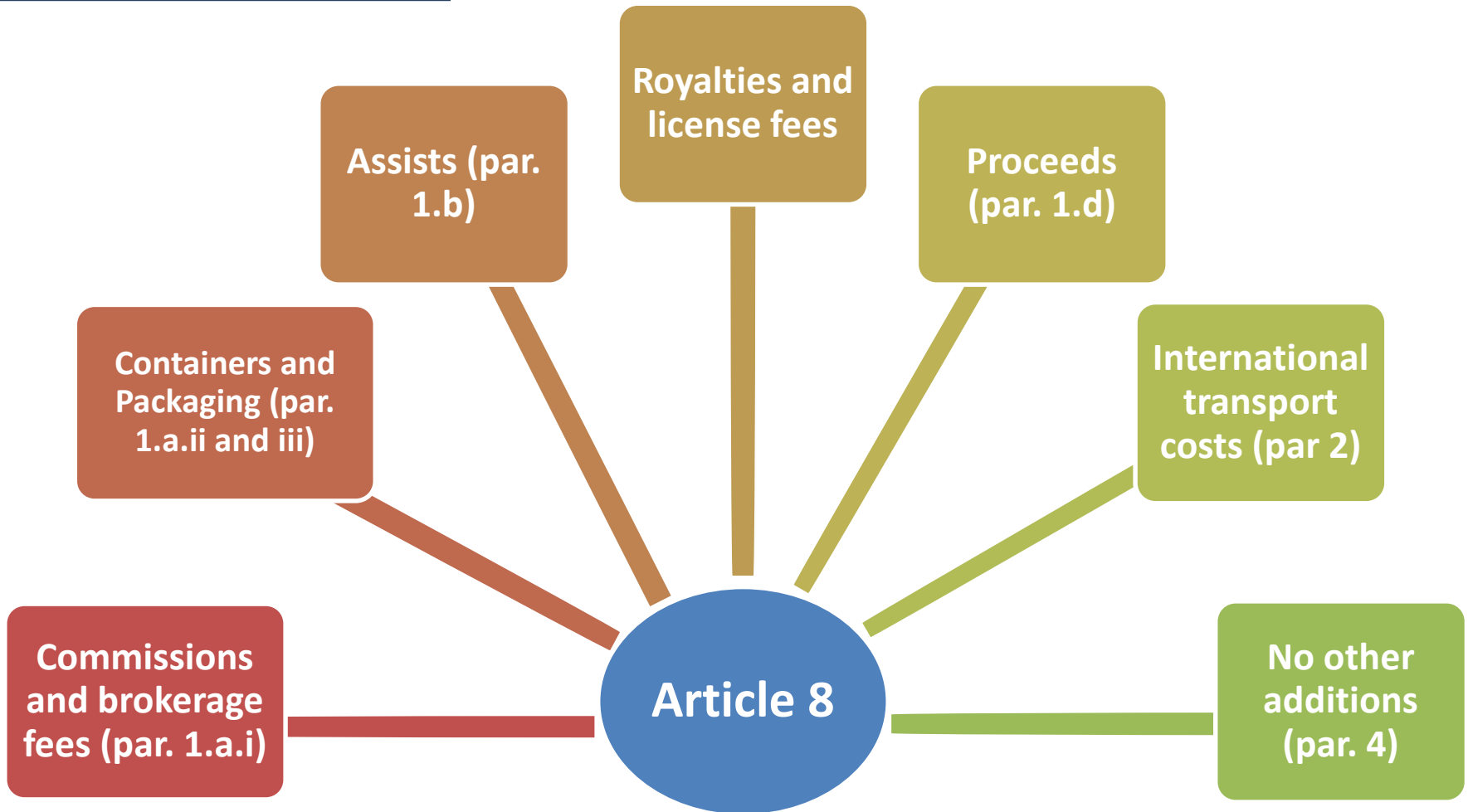


Transaction Value: Adjustments in Article 8 can be added....

1. only if the charge is not already included in the price of the goods (*e.g. selling commission, cost of containers treated as one; packing*)
 - *If in doubt, customs may ask the importer to demonstrate that sale price was inclusive of charge*
2. Any additions must be based on “**objective and quantifiable data**”
 - *If customs are not able to quantify the costs, the adjustments cannot be made. It limits customs’ discretion*
3. Only the additions provided in Article 8 can be used

Article 8: Required additions to price

Exclusive list of additions



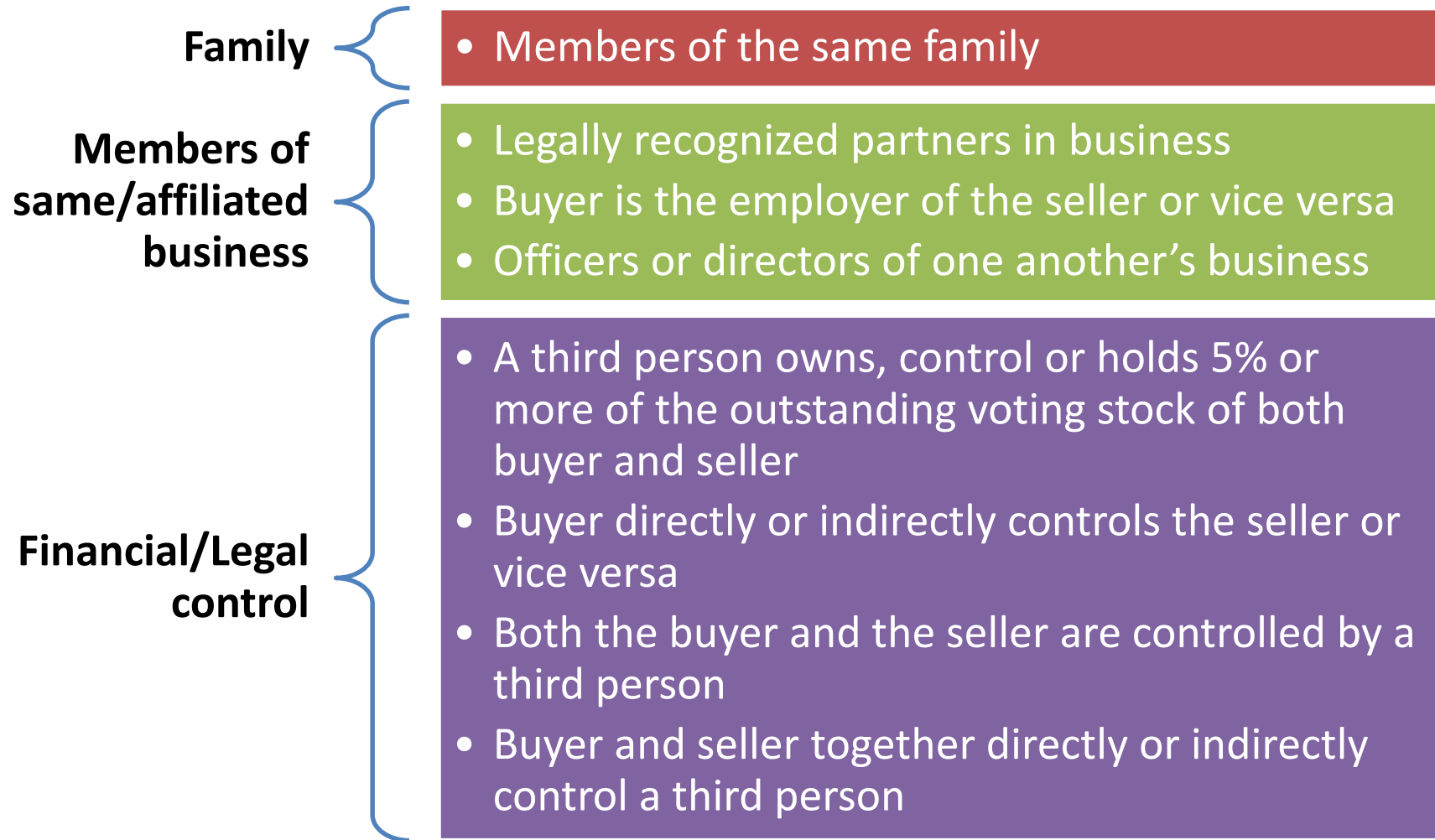
Related Parties:

Why does it matter?

The concept of “**transaction value**” relies on competing businesses to freely negotiate the fair market value of imported merchandise. This system works well in a free market where businesses maximize their profit.

When companies are related, however, this may, or may not, be the case.

Definition of related parties – Art. 15



How should Customs proceed?

**Buyer and Seller are
found to be related**



**Not in itself grounds for
rejecting the T.V.**

Main question: Was the price
influenced by the relationship?



Review:

- 1. Observe the circumstances
surrounding the sale OR**
- 2. Measure against test values**

Normally importer's option

Buyer/Seller Relationship:

“Circumstances of the sale”



1. Consider the way buyer and seller organize their commercial relations

2. Consider the way in which the price in question was derived

Did the relationship influence the price?

Proof 1:
Consistent with
normal industry
practice

Proof 2:
The same in sales to
unrelated parties

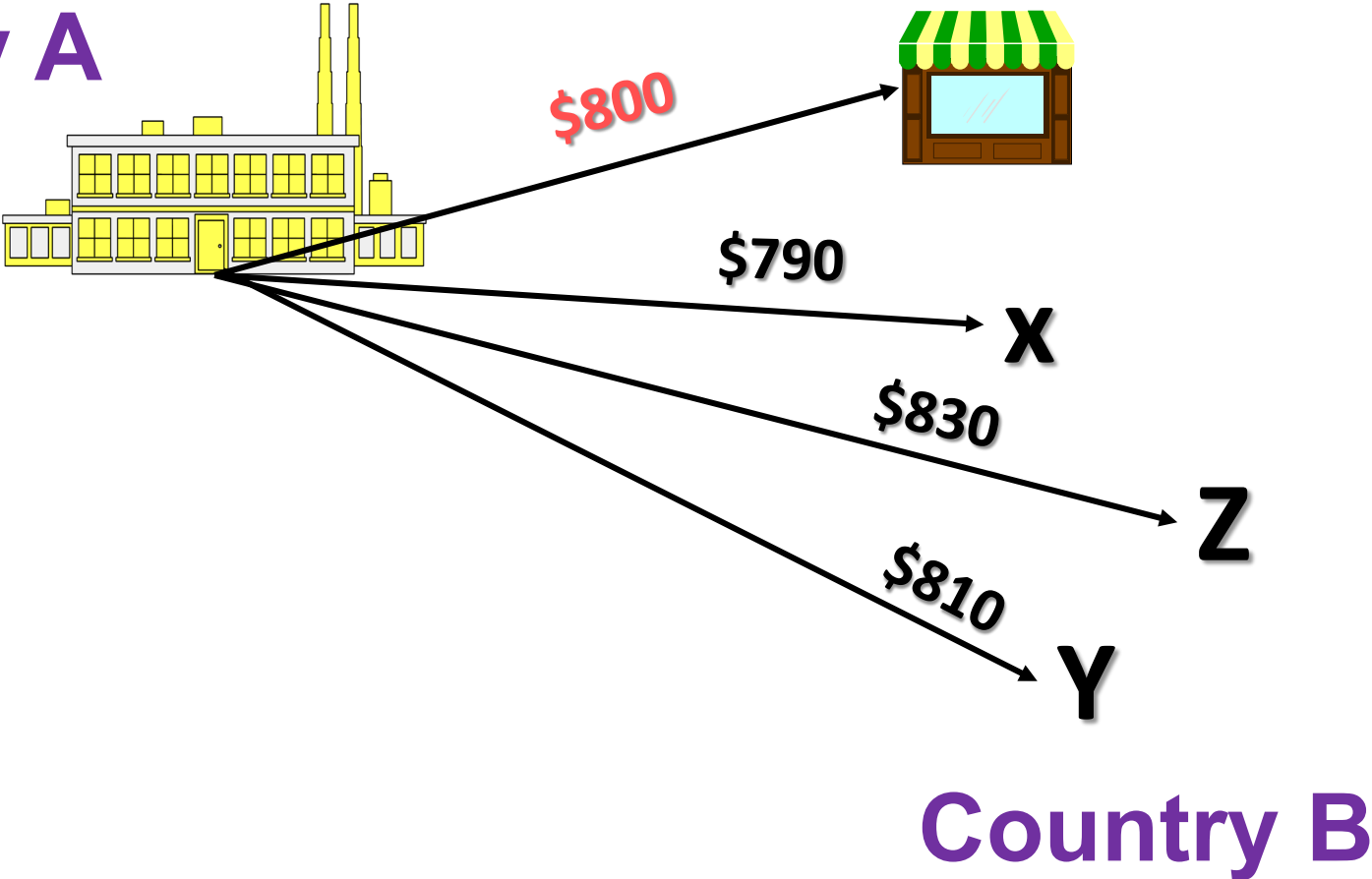
Proof 3:
enough to allow
recovery of costs plus
average profit

Buyer/Seller Relationship:

“Test value”

Do these test values “closely approximate” the import price?

Country A



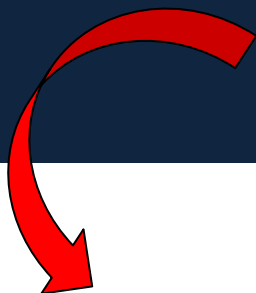
Recap

Transaction Value

=

1. Price paid or payable
2. For the goods
3. When sold for export

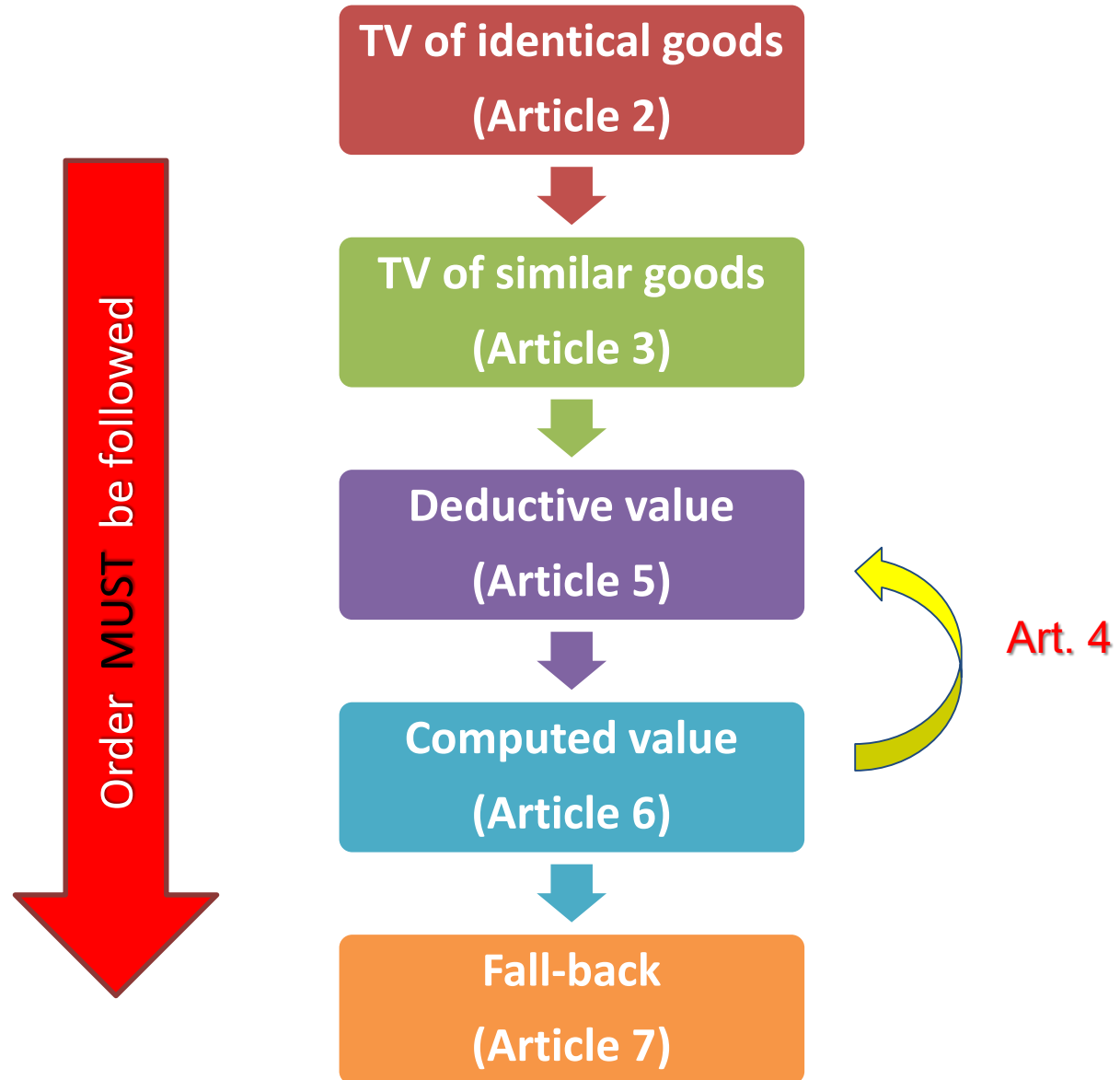
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ONLY those in Article 8

D. ALTERNATIVE VALUATION METHODS

If customs cannot use the Transaction Value Method...



CVA and the WTO Accession Process

The aim of the active members of accession Working parties has been to ensure as far as possible that the WTO rules on valuation are implemented in full from the date on which new Members accede.

The baseline Protocol commitment is therefore:

“The representative of [X] confirmed that [it] would implement the provisions of the WTO, including the Agreement on the Implementation of Article VII, concerning customs valuation in full from the date of accession to the WTO”.

Elimination of prohibited valuation methods

Members have been particularly vigilant in ensuring that new Members conform to certain of these provisions, focusing, for instance, on the necessity of eliminating and not reintroducing any prohibited valuation methods, such as:

- the use of minimum values and
- any system of reference prices or fixed valuation schedules applied in lieu of the transaction value.

Notifications under Articles

The purpose of the notification requirements as laid down in Article 22.1 is simply to provide transparency to the Committee on the implementation of the Customs Valuation Agreement by each Member, and the procedure is pretty straightforward.

- The notification of Customs Legislation is simply to provide the Committee with the title and details of a Member's national legislation which covers customs valuation, as well as a copy of the relevant texts.
- Regarding the notification of Replies to the Checklist of Issues, the Checklist of Issues serves as a basis for an initial examination of the national legislation of each Member by the Committee. The document consists of a standard list of questions regarding certain articles of the Customs Valuation Agreement which Members are required to answer and notify to the Committee.

Notifications under Articles

The remaining two notifications relate to two decisions taken by the Committee concerning the interpretation of the Agreement:

1. Decision on the Treatment of Interest Charges

With regard to the Decision on the Treatment of Interest Charges, any Member that applies this Decision must notify the date from which they have implemented it.

2. Decision on Carrier Media

With regard to the Decision on Carrier Media, again, each Member must notify the Committee whether they apply paragraph 2 of this Decision.

THANK YOU