



Customs Valuation



Your Subject Co-Ordinator – Phill Norley

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What We'll Touch Upon in this Session

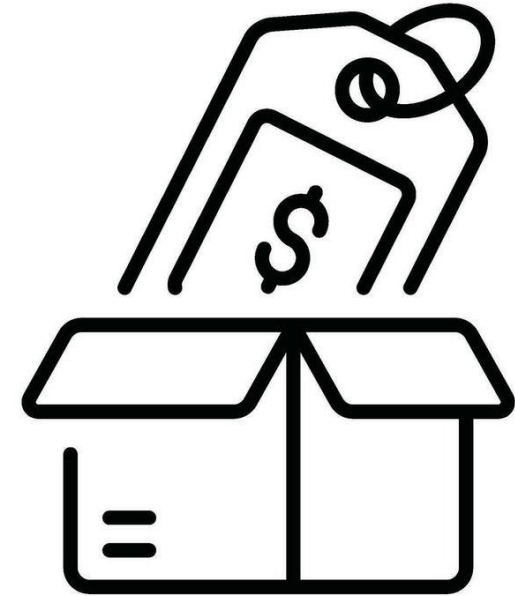
- Background to the World Trade Organization (WTO) Valuation Agreement and how it developed
- The structure of the Agreement and its key articles
- Transaction value: the price actually paid or payable
- Allowable additions: commissions, packing, assists and royalties
- The alternative valuation methods and when they apply
- Importer rights, burden of proof and compliance risk



Objectives

At the end of the lesson, participants will be able to:

- Explain the concept of “value” and its various forms.
- Identify the development of Customs valuation systems to the current WTO Valuation Agreement.
- Apply the six valuation methods in their correct hierarchical order.
- Determine the price actually paid or payable, with the Article 8 additions and permitted deductions.
- Define the role of the Technical Committee on Customs Valuation
- Understand the customs compliance implications



Product Price

Background to the WTO Customs Valuation Agreement



The path to a fair and neutral international system

1947 Article VII of the General Agreement on Tariffs and Trade (GATT)

The BDV track

1950 Convention on the Valuation of Goods for Customs Purposes (BDV), Brussels

1953 Entry into force of the BDV

1980–81 Signatories begin moving across to the GATT Valuation Code

1995 BDV overtaken: WTO Members apply the Valuation Agreement

The WTO track

1973–1979 GATT Valuation Code agreed in the Tokyo Round

1981 Entry into force of the GATT Valuation Code

1986–1994 Uruguay Round

1994 Agreement on Implementation of Article VII signed in Marrakesh, in force 1995



What the Valuation Agreement establishes

- A uniform, fair and neutral system for valuing goods for customs purposes
- A hierarchy of six valuation methods, applied in strict order
- Primacy given to “transaction value” — the price actually paid or payable
- Alternative methods available only where transaction value cannot be used
- Same text as the earlier Valuation Code, supplemented by WTO Decisions



WTO Valuation Agreement + Texts

World Customs Organization (WCO) Valuation
Compendium includes:

Article VII of GATT

Text of the Agreement

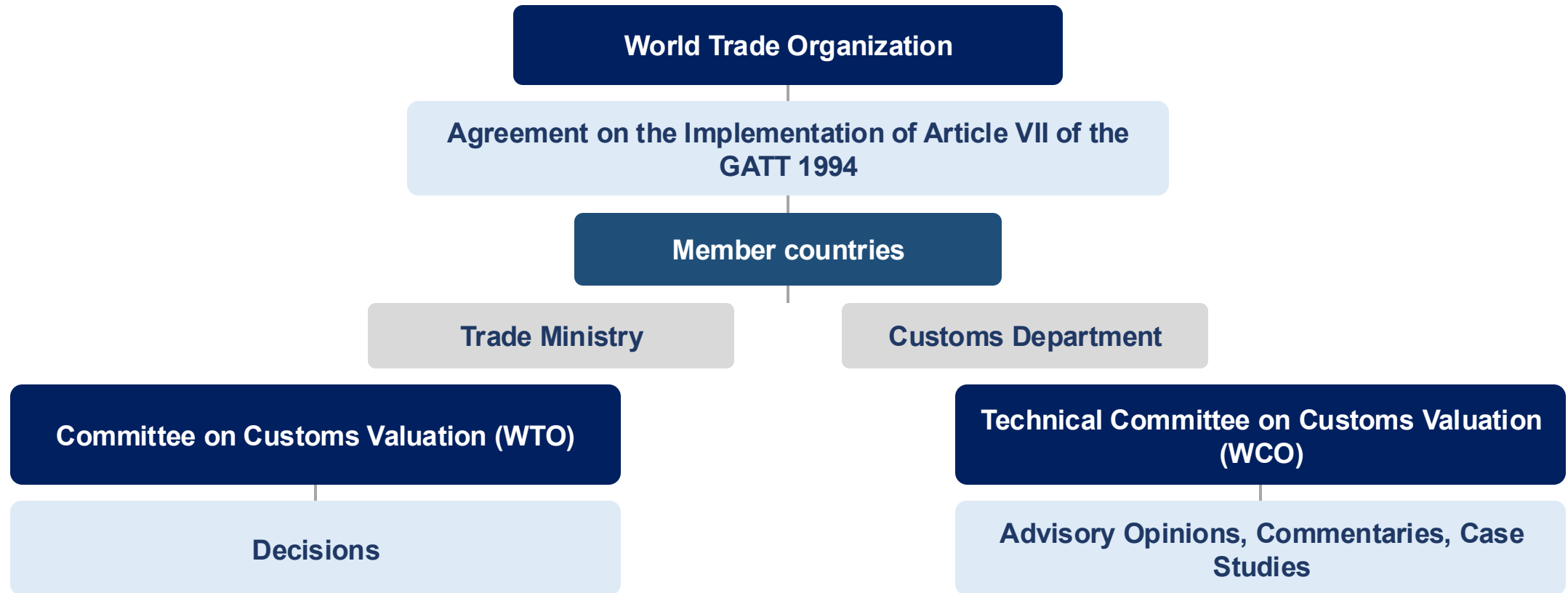
Technical Committee instruments

Online and hard copy versions

Published as part of the WCO Revenue Package,
alongside the valuation control and transfer pricing
guidance



The institutional structure



How the Two Committees Work Together

WTO Committee on Customs Valuation (CCV) Geneva, Switzerland

- Established under Article 18.1, all WTO Members
- Oversees implementation and operation of the Agreement
- Reviews the national legislation Members notify
- Forum for consultation, and the gateway to WTO dispute settlement

refers technical questions

reports annually

WCO Technical Committee (TCCV) Brussels, Belgium

- Established under Annex II, under WCO auspices
- Secures uniformity in the technical application of the rules
- Issues advisory opinions, commentaries, explanatory notes and case studies
- Examines technical questions referred to it

Two seats, one Agreement: technical guidance from Brussels supports policy oversight in Geneva



Poll Question 1



In your professional experience, which of these compliance issues occurs most often?

- Tariff classification
- Valuation
- Incorrect country of origin

Article VII of GATT: Basic Principles

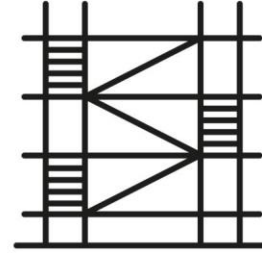
- Based on the ACTUAL value of the imported merchandise
- Where not ascertainable (e.g. no sale), use the nearest ascertainable equivalent value
- It must NOT be based on arbitrary or fictitious values
- Actual value may be represented by the invoice price



General Introductory Commentary – Key Points

- Transaction value to be used to the “greatest extent possible”
- Consult with the importer where transaction value cannot be determined or no sale exists
- Work down the hierarchy in order — no skipping to a more convenient method
- Use of generally accepted accounting principles
- The Commentary tells you how to read the Agreement, not what the value is





WTO Valuation Agreement

Structure and Key Articles Walk Through

Why Customs Valuation Matters

- Customs duty is usually, though not exclusively, charged ad valorem, on the value of the goods
- That makes value the pressure point: understate it and you understate the duty
- Self assessed — the importer declares the value and calculates the duty
- Customs verifies afterwards, which shapes every compliance risk in this field
- So the rules must be robust enough to be checked, not just applied



The Architecture of the Agreement

Preamble and General Introductory Commentary

Sets the intent: transaction value first, fair and neutral

Part I – Rules on Customs Valuation

Articles 1–17: the six methods, adjustments, importer rights

Part II – Administration and Dispute Settlement

Articles 18–19

Part III – Special and Differential Treatment

Article 20

Part IV – Final Provisions

Articles 21–24

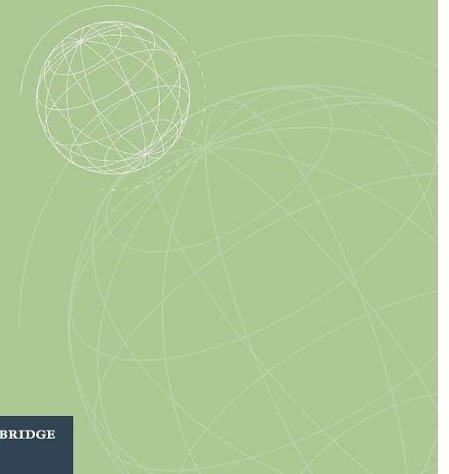
Three Annexes

Annex I Notes, Annex II TCCV, Annex III additional provisions



A Handbook on the WTO Customs Valuation Agreement

Sheri Rosenow and Brian J. O'Shea



Determining the Customs Value



Applied strictly in order; under Article 4, Methods 4 and 5 may be reversed at the importer's request

Method 1 – Transaction Value

1

METHOD

Article 1

- Price actually paid or payable for the goods
- When sold for export
- The price actually paid or payable is to be adjusted where necessary to take account of certain specific elements, including additional costs and/or certain deductions.
- Used for the great majority of international trade transactions



Article 1

Transaction Value Requires

- A sale for export
- To the country of importation
- A price paid or payable
- Parties unrelated, or the relationship did not influence the price
- Usually, the price shown of the commercial sales invoice

ABC Company
COMPANY NAME
123 Main St. Memphis, TN 38125
COMPANY ADDRESS

COMMERCIAL INVOICE

INTERNATIONAL AIR WAYBILL NO. 789123456789 (NOTE: All shipments must be accompanied by a Federal Express International Air Waybill.)

DATE OF EXPORTATION 06/11/2019 EXPORT REFERENCES (i.e., order no., invoice no.) 2786

SHIPPER/EXPORTER (complete name and address) Chris Smith
ABC Company
123 Main St.
Memphis, TN 38125

CONSIGNEE (complete name and address) Anthony Sparks
100 Wall St
New South Wales 2000
Australia

COUNTRY OF EXPORT United States IMPORTER — IF OTHER THAN CONSIGNEE (complete name and address)

COUNTRY OF MANUFACTURE United States

COUNTRY OF ULTIMATE DESTINATION Australia

MARKS/NOS.	NO. OF PKGS.	TYPE OF PACKAGING	FULL DESCRIPTION OF GOODS	QTY.	UNIT OF MEASURE	WEIGHT	UNIT VALUE	TOTAL VALUE
1324	1	Box	100% cotton men's long-sleeved shirts	3	Pieces	1	50	150
	TOTAL NO. OF PKGS.					TOTAL WEIGHT		TOTAL INVOICE VALUE
	1					3		150

SEE REVERSE SIDE FOR HELP WITH THE ABOVE SECTION

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I DECLARE ALL THE INFORMATION CONTAINED IN THIS INVOICE TO BE TRUE AND CORRECT.

SIGNATURE OF SHIPPER/EXPORTER (Type name and title and sign.) DATE

Mr. Chris Smith 06/11/2019

8-1084 REV 3/00 LOGOS 110547 WCS

Check one
☐ F.O.B.
☒ C & F
☐ C.I.F.



The Four Conditions – Article 1.1

1

METHOD

All four conditions must be satisfied before the transaction value method can be used.

Article 1.1

(a)

No restrictions on the buyer

Other than limits imposed by law, geographic resale limits, or ones not affecting value.

(b)

No unquantifiable conditions

The sale or price is not subject to a condition for which a value cannot be determined.

(c)

No proceeds accruing to the seller

No proceeds of later resale accrue to the seller, unless adjustable under Article 8.

(d)

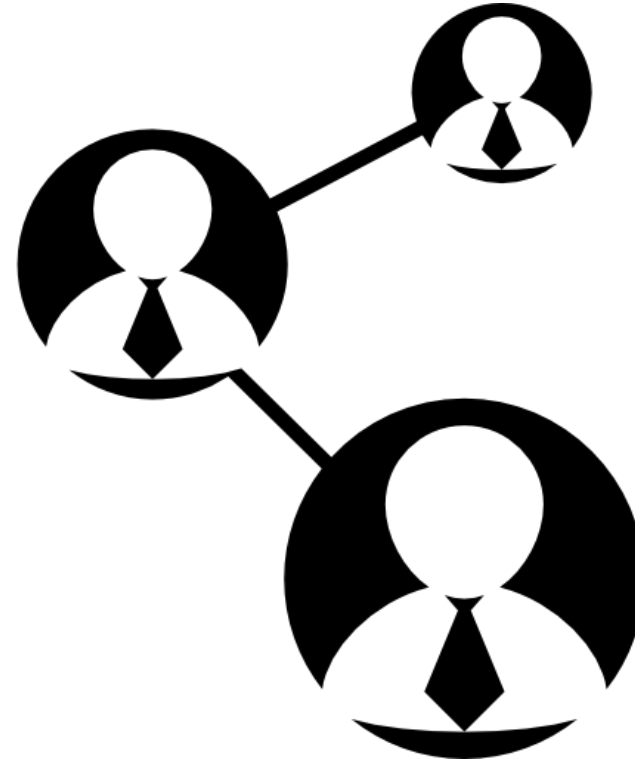
Parties not related

Or, if related, the relationship did not influence the price



Related Parties

- Common shareholdings
- Partners in business
- Under common control
- Family members
- The transaction value method can be applied provided evidence suggests that the relationship has not influenced the price
- Arm's length transaction
- Article 1.2(b): the importer may instead show the value closely approximates a test value
- Transfer pricing studies are evidence to be weighed, not proof in themselves



Valuation Tension Between Customs & Inland Taxes

1

METHOD

INTERNATIONAL

THE BORDER

DOMESTIC

Customs — at the border

Import invoice declared lower



Import duty goes down



Customs collects less in duties

Tax office — after the border

Same goods valued higher in the tax return



Higher declared cost of goods sold



Profit goes down — less domestic tax to pay

Same Company, same goods — lowering values on imports, raising values to lower tax exposure

Customs guards against undervaluation; the tax authority guards against overvaluation



From Price Paid to Customs Value

1

METHOD

The price actually paid or payable is the starting point – it is then adjusted to arrive at the customs value.

Articles 1 + 8



Additions to the Price – Article 8 (1 of 2)

1

METHOD

These additions are mandatory – they must be made on objective and quantifiable data, where not already included in the price.

Article 8.1(a)–(b)



Commissions and Brokerage

Selling commissions and brokerage borne by the buyer.
Buying commissions are NOT added.



Containers and Packing

Containers classified with the goods, plus packing labour and materials.
Freight containers are excluded.



Production Assists

Goods or services supplied by the buyer free or at reduced cost for use in production.

Additions to the Price – Article 8 (2 of 2)

1

METHOD

Article 8.1 additions are mandatory; the Article 8.2 costs are the only ones members may choose to include or exclude.

Article 8.1(c)–(d), 8.2



Royalties and Licence Fees

Payable by the buyer as a condition of sale and not already in the price.



Proceeds of Resale

Any part of the proceeds of later resale, disposal or use that accrues to the seller.



Transport and Insurance

Article 8.2 option: members choose to include or exclude these — CIF (cost, insurance and freight) or FOB (free on board).

Commissions and Brokerage

1

METHOD

Article 8.1(a)(i)

- Agents represent the buyer or seller but do not take title of the goods
- Selling agents act for the seller, whilst buying agents act for the buyer
- Brokers may act for both
- Selling commissions form part of the price; buying commissions do NOT
- The test is function, not job title



Buying Agent Services Excluded from the Price

1

METHOD

Article 8.1(a)(i)

- Finding suppliers for the goods wanted by the buyer
- Expressing the needs of the buyer to the seller
- Obtaining samples
- Assisting the buyer in negotiating the best prices
- Inspecting the goods or arranging quality control before shipment
- Consolidating shipments, and arranging storage pending shipment
- Handling documentation and customs formalities for the buyer
- All of these are services to the buyer, so the commission paid for them stays outside the customs value



Allowable Additions - Production Assists

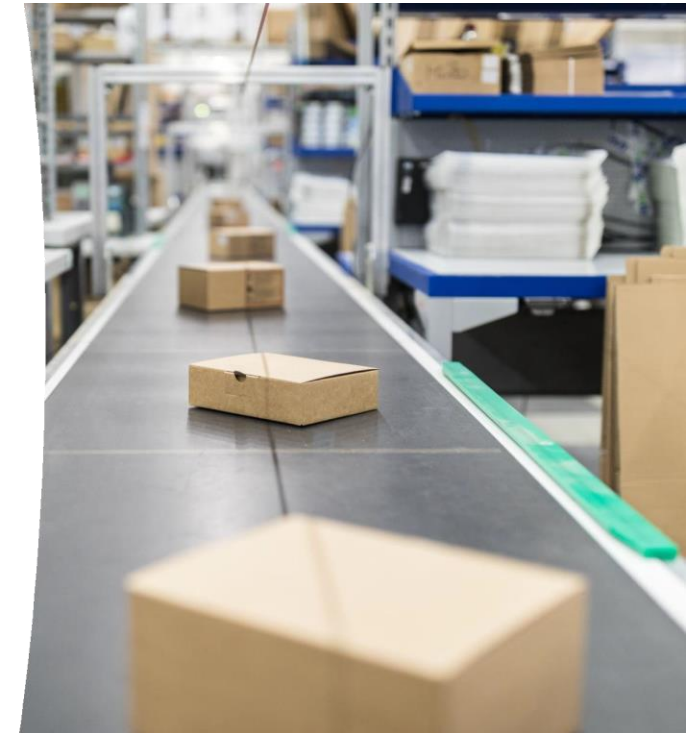
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METHOD

Article 8.1(b)

Goods and services such as:

- Raw materials, parts and components
- Tools, dies, moulds, machinery etc.
- Consumables, material consumed, scrap
- Engineering, design, plans and sketches
- Supplied free of charge or at a reduced cost by the BUYER to the SELLER



Royalties and Licence Fees

1

METHOD

Article 8.1(c)

- May be added if they are paid by the buyer
- A condition of sale
- Related to the goods
- Not already included in the price actually paid or payable



Proceeds of Resale

1

METHOD

Article 8.1(d)

- Payments by the buyer to the seller based on the resale, disposal or use of the imported goods
- When the amount of proceeds is known, the amount is added to the price
- When the amount of proceeds is unknown, Transaction Value cannot be used
- Where the amount is not yet known, release against a guarantee under Article 13 may allow the value to be finalised later



Overseas Transportation

1

METHOD

Article 8.2

- WTO Members may choose whether to include transport, insurance and freight in the customs value
- Many, including the EU and the UK, require a CIF basis, so cost, insurance and freight form part of the customs value
- Others, such as the USA and Australia, base the value on FOB and exclude those costs
- Where included: costs of transport, sea and air freight, handling, loading and unloading
- Together with the costs of transport insurance
- The Incoterm agreed, FOB or CIF, must be read against the rules of the country of import



Poll Question 2



Article 8.2

Does your country's customs law require customs value to be determined on a CIF basis, an FOB basis, or something else?

- CIF - transport, insurance and freight are included
- FOB - those costs are excluded
- Other, or not sure

What Is Not Included in the Customs Value

1

METHOD

Article 1 Note

- Construction, erection, assembly or maintenance carried out after importation
- Technical assistance provided after the goods arrive
- Transport and insurance costs incurred after importation
- Duties and taxes of the country of importation
- Buying commissions (Article 8.1(a)(i))
- Interest charges under a written financing arrangement, subject to conditions
- Charges for the right to reproduce the imported goods in the country of import
- The post-importation costs are excluded only where shown separately from the price actually paid or payable



Worked Example: Harbourline Bottling Pty Ltd

1

METHOD

Article 8.1(a)–(b)



Worked Example: Harbourline Bottling Pty Ltd

1

METHOD

Article 8.1(a)–(b)

- Harbourline Bottling Pty Ltd imports eight filling machines in unassembled condition; the supplier and importer are not related
- The commercial invoice shows a price of US\$740,000
- The importer also provided free moulds and jigs worth US\$55,000 to the manufacturer
- Free engineering drawings, produced overseas, worth US\$11,000
- Installation and commissioning after importation, valued at US\$18,000
- A commission of US\$25,000 paid by the importer to its own buying agent
- Which of these must be added to the price actually paid or payable to determine the customs value?

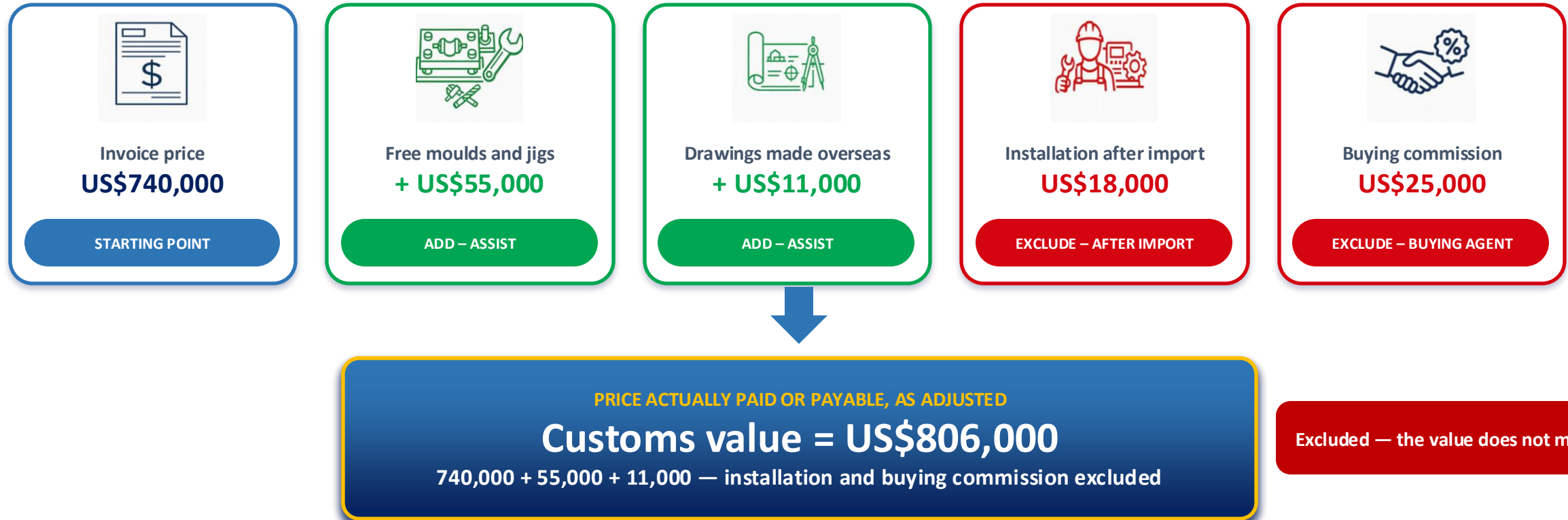


Worked Example: Building the Customs Value

1

METHOD

Article 8.1(a)–(b)



The invoice price is the starting point, not the finishing point



Methods 2 and 3 – Identical and Similar Goods

2.3

METHOD

Articles 2–3

- Shared requirements: produced in the same country, exported at or about the same time, at the same commercial level and in substantially the same quantity, with adjustments permitted for differences
- Goods of the same producer are preferred; other producers' goods only where none are available
- Where two or more values qualify, the lowest is used
- Method 2 – Identical goods (Article 2): same physical characteristics, quality and reputation
- Method 3 – Similar goods (Article 3): like characteristics and materials, commercially interchangeable



Method 4 – Deductive Value

4

METHOD

Article 5

- Find sales in the country of importation
- Calculate unit price
- Deduct profit and general expenses or commissions
- Deduct transport costs, duties and taxes
- Sales to related parties in the country of import cannot be used
- Deductive and Computed Methods can be switched in the hierarchy



Method 5 – Computed Value



METHOD

Article 6

Computed value is the sum of:

The cost of production

The usual profit and general expenses

Transport costs to the port of importation

Built from the producer's own cost data, supplied voluntarily, not data held in the country of import

Article 6.2: a non-resident producer cannot be required to produce accounts

Rarely used, and usually only where the parties are related



Method 6 – Fall Back Value

6

METHOD

Article 7

- Apply all methods with reasonable flexibility in their hierarchical order
- Consult with the importer, and finalise on the basis of data available in the country of import
- Article 7.2 rules certain bases out entirely, however difficult the case:
- The selling price of goods produced in the country of importation
- A system taking the higher of two alternative values
- The price of goods on the domestic market of the country of export
- The price of goods for export to a third country, minimum customs values, or arbitrary or fictitious values



Other Key Articles 9–11

These articles govern how value is expressed, protected and challenged.

Article 9

Currency conversion

- The rate must be market driven, published by the competent authorities and freely available.
- It is the rate in force at the time of exportation or importation of the goods.

Article 10

Confidentiality

- Information given in confidence must be treated as strictly confidential.
- No disclosure without permission, except in judicial proceedings.

Article 11

Right of appeal

- The importer may appeal any determination of value, without penalty.
- A final right of appeal must lie to a judicial authority.



Guarantees and Release of Goods – Article 13

Valuation must not hold up trade: goods can move while the value is settled.

Article 13

Obligation to provide a guarantee system

- Where final determination of the value is delayed, the goods may still be released.
- The importer must give sufficient guarantee — a surety, a deposit or other instrument.
- The guarantee must cover the duties for which the goods may ultimately be liable.



Rights of Importers and Administrations – Articles 16–17

The Agreement balances the importer's right to know against customs' right to verify.

Article 16

Right to a written explanation

- On written request, customs must explain in writing how the value was determined.
- This underpins the importer's right of appeal under Article 11.

Article 17

Rights of customs administrations

- Customs may satisfy itself as to the truth or accuracy of any statement or document.
- A declared value may be questioned, but it may not be replaced arbitrarily.



Other Parts of the Agreement – Parts II–IV

Beyond the valuation rules, the Agreement sets out how it is administered and applied.

Part II

Articles 18–19: Administration and disputes
Consultation between Members, and the route into WTO dispute settlement.

Part III

Article 20: Special and differential treatment

- Allows developing country members to delay application of the Agreement.

Part IV

Articles 21–24: Final provisions

- Reservations, national legislation, review and the operation of the Agreement.

Annexes

Annexes I–III

- Annex I, the Interpretative Notes, forms an integral part of the Agreement.





Rights and Obligations under the Agreement

What are the rights and obligations under this Agreement?

Rights and Obligations Side by Side

Rights of the importer

Article 10 Confidentiality of information

Article 11 Appeal without penalty

Article 12 Publication of laws

Article 13 Release against guarantee

Article 16 Written explanation of value

Obligations of the importer

Article 1 Declare the price actually paid

Article 1.2 Disclose any relationship

Article 8 Include all required additions

Article 13 Give guarantee to obtain release

Article 17 Produce records on request



Burden of Proof

- Customs have the right to investigate, review and question the truth and accuracy of any declaration or supporting document submitted by the importer
- Under Decision 6.1, where customs has reason to doubt the declared value it may require further explanation and evidence
- In practice this means Customs can require proof of the price actually paid, such as contracts, invoices, payment and banking records





Compliance Risks in Valuation

Undervaluation, mis-invoicing and overvaluation



Undervaluation: What It Looks Like

- Declared price below the price actually paid or payable
- Understated or omitted additions such as assists, royalties or freight
- Side payments made outside the commercial invoice
- Declared values out of line with the goods, the trade lane or the trader, which customs treat as a key risk indicator



Mis-invoicing

- Invoices that misstate price, quantity or description of the goods
- Dual invoicing: one document for Customs, another for payment
- Mis-invoicing is a recognised channel for moving value across borders
- It undermines the transaction value method at its foundation



Overvaluation in Cross-Border Trade

- As we saw earlier, value is the pressure point in an ad valorem system, and it can be manipulated upwards as well as downwards
- Declared values above the price actually paid or payable
- Used to move funds out of a country or to inflate costs and reduce profits taxed elsewhere
- May also be used to claim higher export incentives or refunds
- A valuation risk even where duty revenue is not directly reduced



Case Study: Undervalued Chinese Imports into the UK

- From 2007 the European Anti-Fraud Office (OLAF) identified extreme undervaluation of textiles and footwear from China, imported through missing-trader shell companies
- OLAF issued EU-wide risk profiles; it found the UK released the goods without applying them
- Infringement proceedings covered November 2011 to October 2017
- Case C-213/19, Commission v United Kingdom, 8 March 2022



What the Court Found and Why It Matters

- The UK failed to apply effective controls, account for the correct duty and make the correct own resources (money) available
- The Commission claimed EUR 2.7 billion in lost own resources; the Court rejected that calculation method, so the sum had to be reworked
- The UK also failed to supply the data the Commission needed to quantify the loss
- **Fraud migrates to the weakest border, so risk-based checks before release are the defence**

UK pays EU £583m after customs ruling on Chinese imports

© 30 June 2022



Minimum Values in Practice

- The Agreement rules out arbitrary or fictitious values, and minimum customs values
- Annex III allowed developing countries only a time-limited reservation
- Even so, some administrations still apply minimum acceptable prices
- Typically textiles, footwear, used vehicles, tyres, alcohol, tobacco and steel
- The effect is a value fixed by list, not the price actually paid
- Such data may only be used as a risk indicator



Managing the Risk

- Apply the valuation methods in their proper hierarchy and document the basis used
- Keep contracts, payment records and evidence of all additions
- Use the Article 17 powers: burden of proof, and post-clearance audit of company records where the declaration is questionable
- Build valuation checks into risk profiling and trader engagement



Poll Question 3



As part of your work, have you experienced a rejection of a declared customs value by the importing customs authority?

- Yes, more than once
- Yes, on one occasion
- No, not so far

Module Summary

- Price Actually Paid or Payable: transaction value for goods sold for export, subject to specific additions or deductions
- Related Parties: transaction value can be used if the relationship has not influenced the price
- Alternative methods follow a strict hierarchy: identical goods, similar goods, deductive value, computed value and fallback
- Fallback Method: applies the valuation methods with reasonable flexibility, using available data in the importing country
- Rights and Obligations: importer rights include confidentiality, appeal, explanation, release of goods and publication of rules



Key Points to Remember

- Document valuation decisions and keep the evidence supporting every addition and deduction
- Seek guidance where related parties, royalties, assists or resale proceeds are involved
- Build valuation into risk profiling and trader engagement, not just border checks
- Good valuation practice reduces disputes, protects revenue and speeds legitimate trade



Thank You Questions?

