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Nuances of Customs Valuation

December 2024

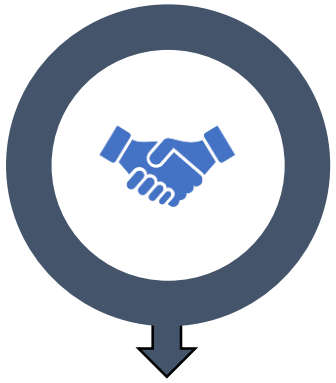
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Customs Valuation



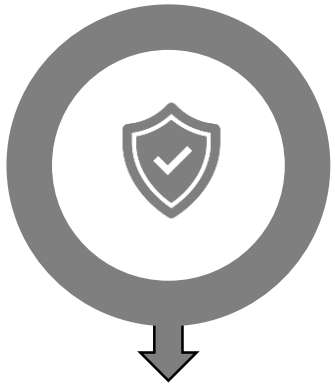
What is Customs Valuation?

Customs Valuation is the process for determining the taxable base for imports and exports



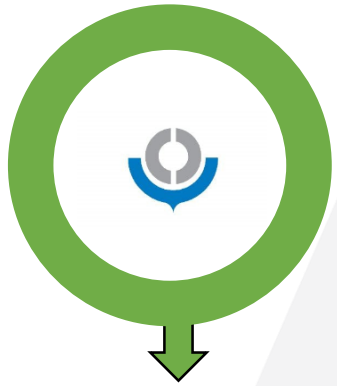
Customs Valuation Agreement

GATT Code on Customs Valuation 1981 - Article VII – the concept of “Actual Value” – charged in the ordinary course of trade



Need for the Agreement

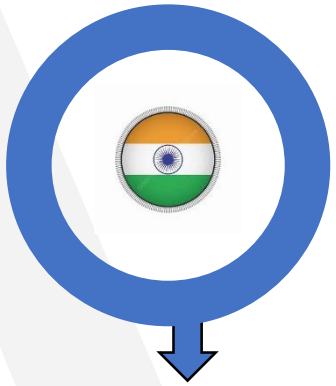
The Agreement sets out a fair, uniform and neutral system for determining the value of imported goods and has been adopted by countries across the globe to frame the jurisdictional customs valuation rules



The WCO

The WCO develops international standards and best practices in customs procedure. The Technical Committee on Customs Valuation provides guidance on Customs Valuation issues through

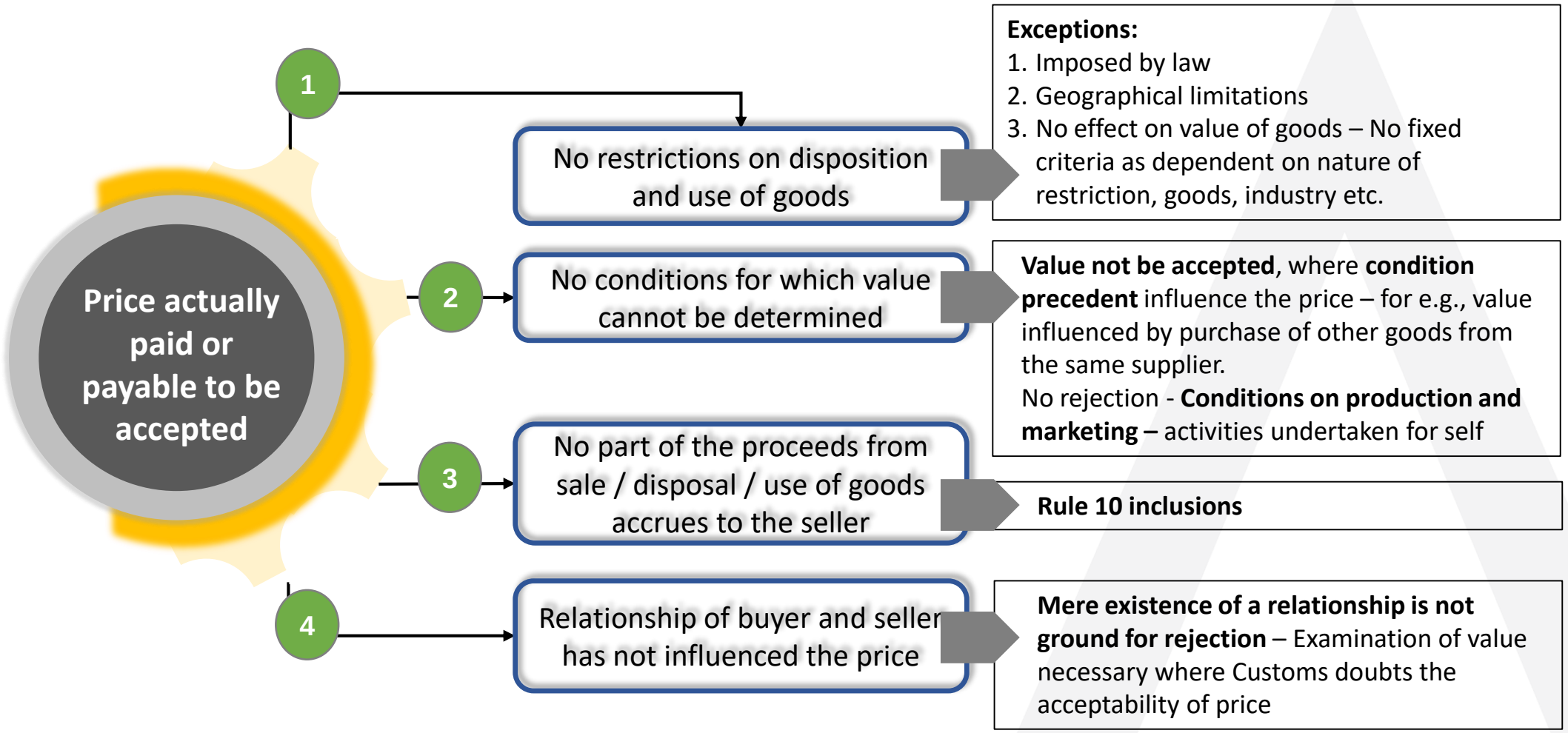
- Advisory opinions
- Commentaries
- Explanatory Notes
- Case Studies
- Studies



Indian Rules

In India, the rules are called the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 providing the various methods for valuation along with the interpretative Notes

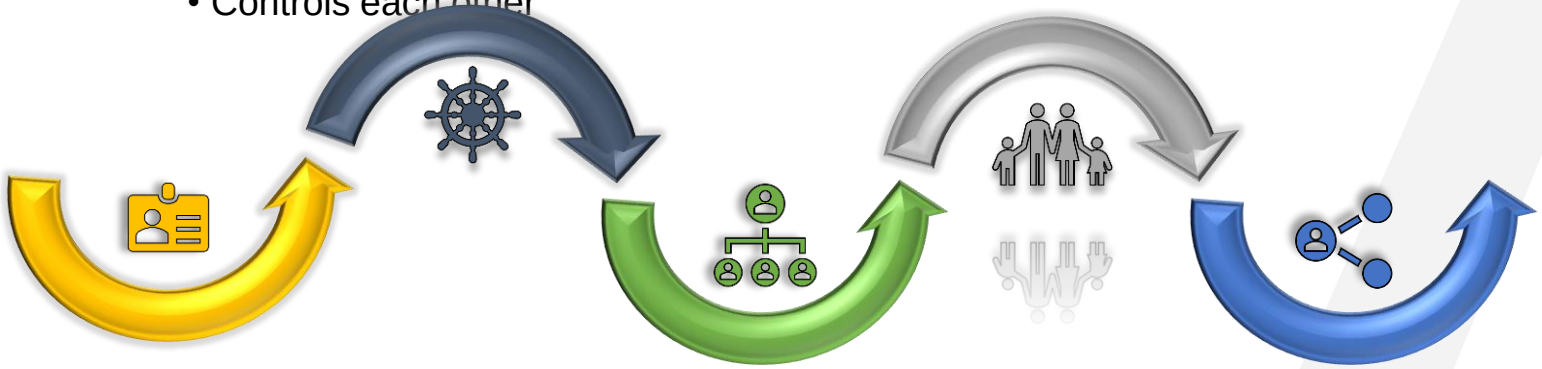
Acceptance of declared invoice value



Related Party

CONTROL
- Person* owns, controls or holds 5% or more of the outstanding voting stock or shares or both
- Controls each other

FAMILY
- Members of the same family



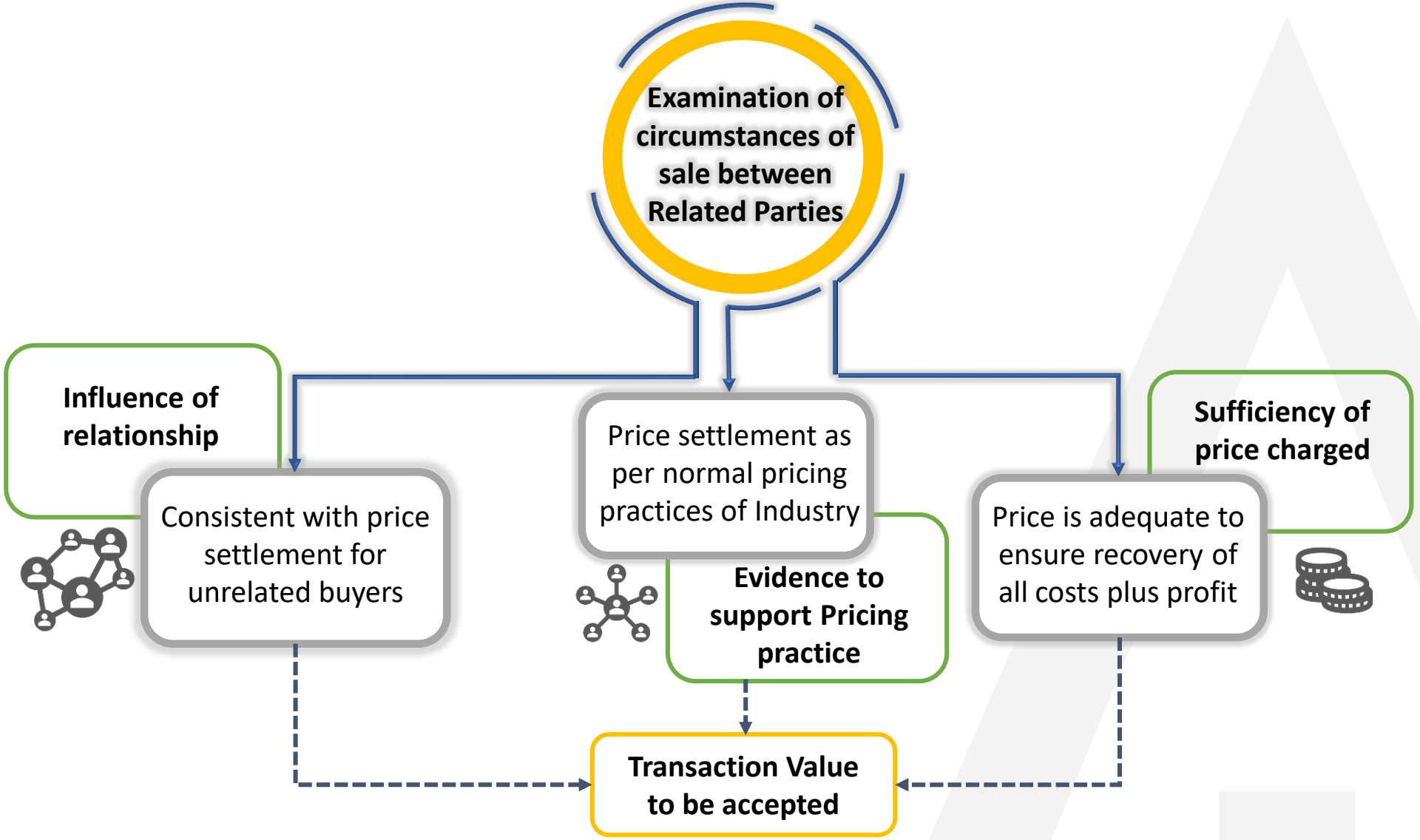
BUSINESS MANAGEMENT
- Officer or director of one another's business
- Legally recognised partners
- Employer or employee

COMMON CONTROL
- Third person controlling both the persons
- Both person controlling the third person

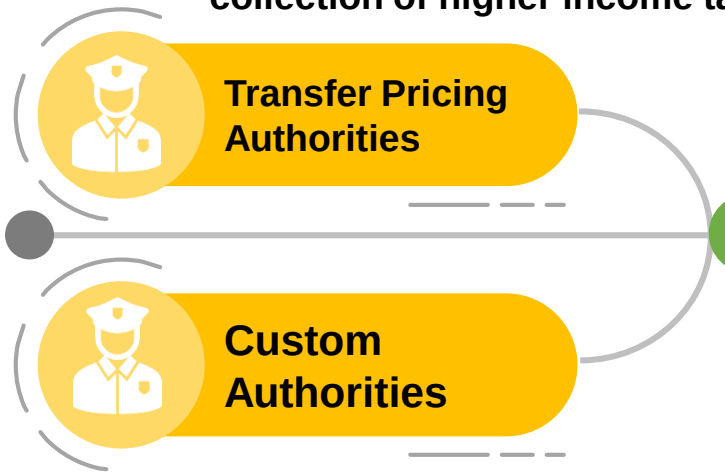
AGENCY
- Sole Agent
- Sole Distributor
- Sole Concessionaire

***Person includes all legal persons**
**** Transaction value is acceptable where the relationship does not influence the price and importer is able to demonstrate it [Rule 3(3)(a) – Circumstances of sale]**

Circumstances of Sale



Custom Valuation and Transfer pricing



Will want to fix a lower value of imported goods for higher potential profits to enable a collection of higher income tax

Will want to fix a higher value of imported goods to collect higher duties of customs

WCO Guidance

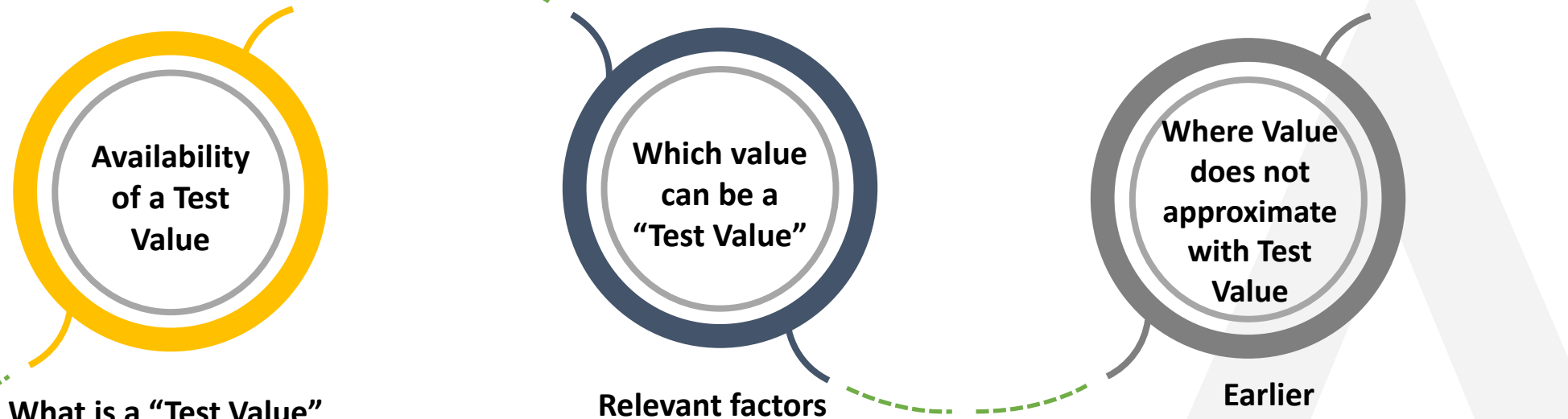
- **Transfer Pricing Study a good source of information – only where it contains the information about circumstances of sale**
- **Where there are significant differences in method prescribed by WCO and OECD for arriving at value – TP study may not be relevant / adequate**

*"the use of a transfer pricing study as a basis for examining the circumstances of the sale should be considered on a **case by case basis***

Indian jurisprudence / view

- **Where prices are arms-length and confirming with the Transfer pricing OECD Guidelines – value to be accepted** ***[Gemplus India (P.) Ltd. v. Commissioner of Customs, Chennai [2005] Taxmann.com 82 (Bangalore - CESTAT) Volvo India Private Ltd. [2005 (180) E.L.T. 489] and Hindustan Unilever [2023 (5) TMI 616]]***
- **Arms' length discounted prices rejected where circumstances prove that there is flow back from the importer to the related supplier in other forms** ***[Sun microsystems India Pvt. Ltd. [2016(339)ELT475]]***

Test Value



What is a "Test Value"

Its an alternative to Circumstance of sales test and means a value [in unrelated sales] previously accepted by Customs that closely approximates with the value of imported goods *for e.g., identical or similar goods*

Relevant factors to decide

Nature of goods imported, nature of industry, season in which goods are imported, similar commercial / quantity levels, requirement to undertake adjustments etc.

Earlier determination

Computed value or deducted value not "Test Values" where such values do not correspond to values earlier appraised and upheld by Customs for unrelated transactions.
Where no "Test Value" found circumstance of sale test to be satisfied

Methods of Valuations

Identical Goods

- Same in respect of physical characteristics, quality, and reputation – Minor differences in appearance not relevant
- Produced in the same country by the same person
- Same commercial levels and same quantity – if not same, reasonable and accurate adjustments to be made for difference in commercials and quantity

Similar Goods

- Goods though not alike have like characteristics and like component materials; and
- Perform same function and are commercially interchangeable – consideration to be given to the quality of the goods, their reputation and existence of trademark
- Produced in the same country and by the same person [where not available goods produced by different person
- Adjustment for commercial and quantity level difference to be undertaken

Does not include goods incorporating or reflecting engineering, development, artwork, design work, and plans and sketches undertaken in the country of importation

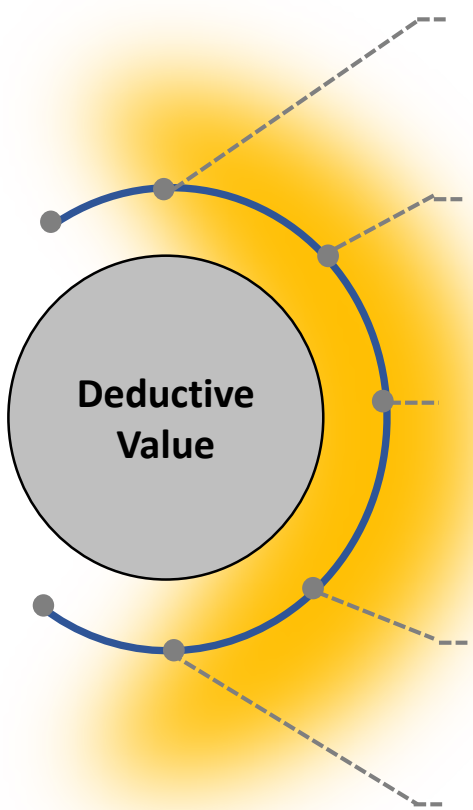
Deductive Value

- Also known as the retail minus method – value of imported goods determined based on the selling price in the country of importation [within 90 days of the import].
- Applicable to the goods where the cost of value addition is accurately determinable.
- The selling price of imported goods [in the country of importation] is adjusted by deducting cost of transport, duties and taxes, and profit margin.

Computed Value

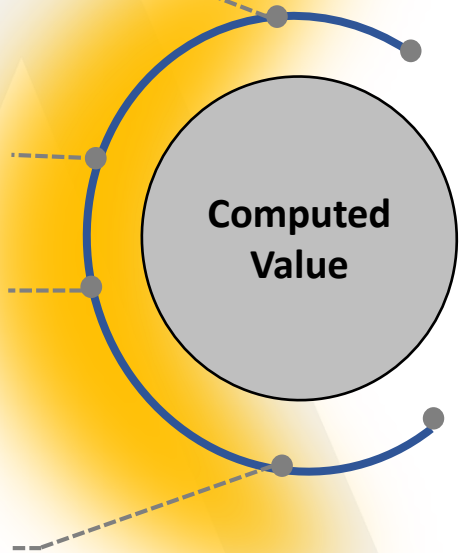
- This method also known as cost plus refers to the value by identifying the costs incurred by the supplier in the production and delivery of the goods.
- These costs include material costs, labour costs, and any other direct or indirect costs attributable to the production of the goods along with an appropriate markup to account for the supplier's profit margin - determined by reference to the gross profit margin earned in comparable uncontrolled transactions between independent parties.

Intricacies – Deductive and Computed Value Method



- Difficulty in determining highest quantity sold at a particular price
- Difficulty in determination of commission or profit and general expenses
- Deriving product specific margin and accurately allocating costs to specific products
- Sale of products where manufacturer does not value valuable intangibles
- Difficulty in determining the value addition for any further process

- Explaining discrepancies between global profit margin (as per TP report) and product wise profit margin
- Fluctuations in value owing to market conditions
- Different profit margin for traded and manufactured products
- Foreign suppliers reluctant to disclose product level profit margin owing to data confidentiality

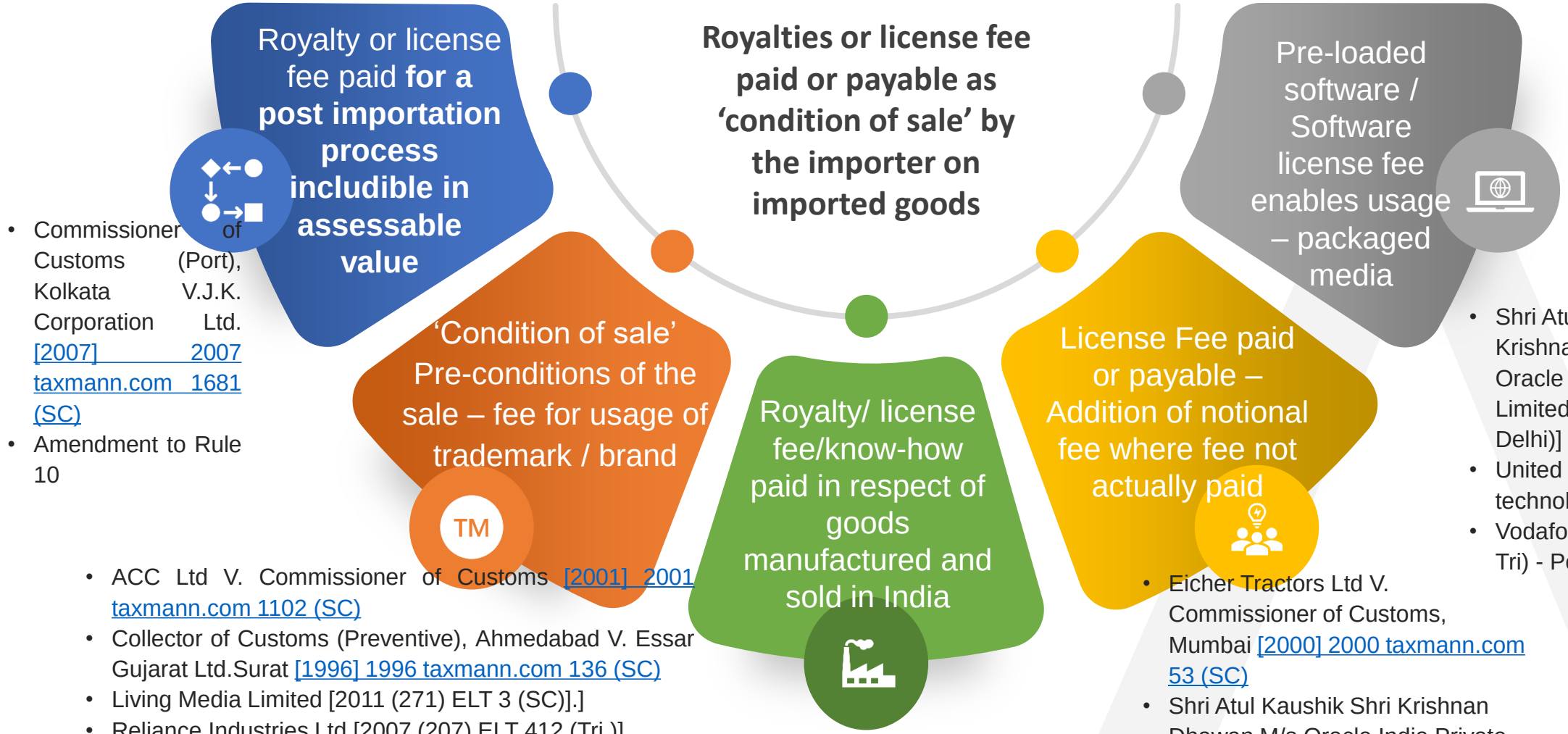


Rule 10 - Additions to value of goods



Guidance tools on valuation – Interpretative Notes to the Valuation Rules and WCO Advisory Opinions *[Avaya Global Connect Ltd – 2016 (337) ELT 402 & Mahindra & Mahindra – 2014 (312) ELT 545]*

Issues pertaining to inclusion of condition of sale



- Commissioner of Customs (Port), Kolkata V.J.K. Corporation Ltd. [2007] 2007 taxmann.com 1681 (SC)
- Amendment to Rule 10

- ACC Ltd V. Commissioner of Customs [2001] 2001 taxmann.com 1102 (SC)
- Collector of Customs (Preventive), Ahmedabad V. Essar Gujarat Ltd.Surat [1996] 1996 taxmann.com 136 (SC)
- Living Media Limited [2011 (271) ELT 3 (SC)].]
- Reliance Industries Ltd [2007 (207) ELT 412 (Tri.)]

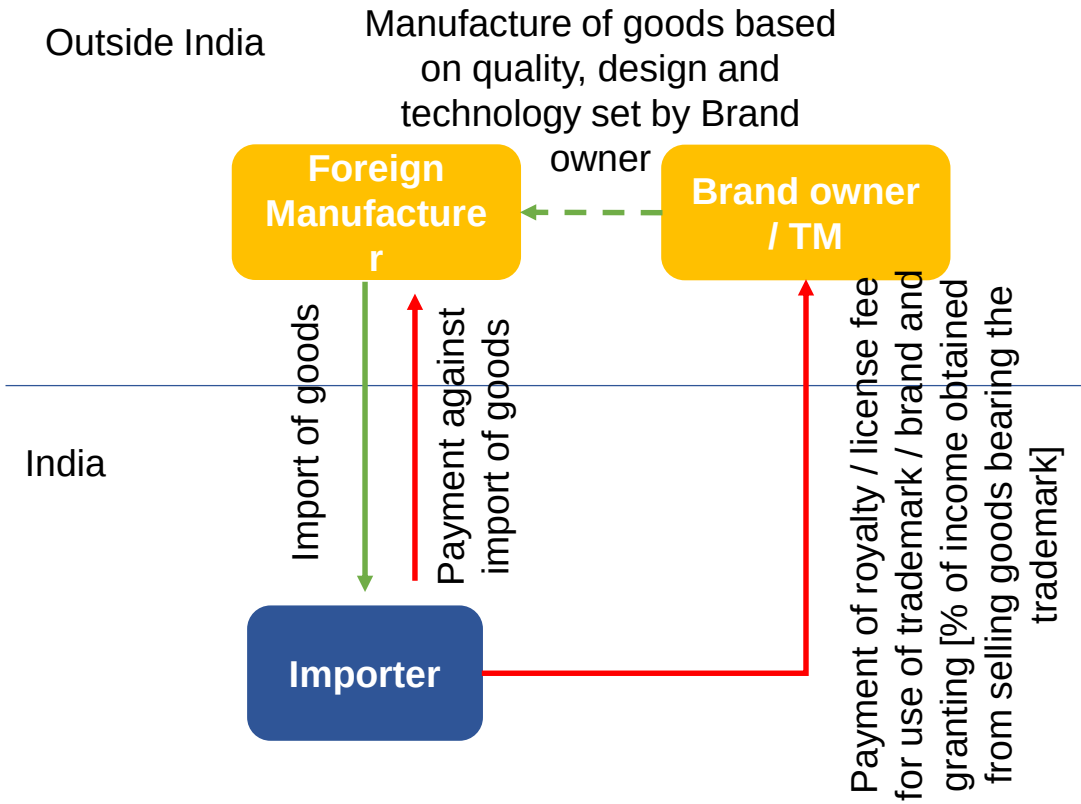
Bridgestone India Private Limited [2012 TIOL 166 CESTAT MUM]

- Eicher Tractors Ltd V. Commissioner of Customs, Mumbai [2000] 2000 taxmann.com 53 (SC)
- Shri Atul Kaushik Shri Krishnan Dhawan M/s Oracle India Private Limited [2015 (330) ELT 417 (Tri.-Delhi)] – affirmed by SC

- Shri Atul Kaushik Shri Krishnan Dhawan M/s Oracle India Private Limited (330) ELT 417 (Tri.-Delhi)] – affirmed by SC
- United Telecom / PCS technology - Negative
- Vodafone Essar (Mumbai Tri) - Positive

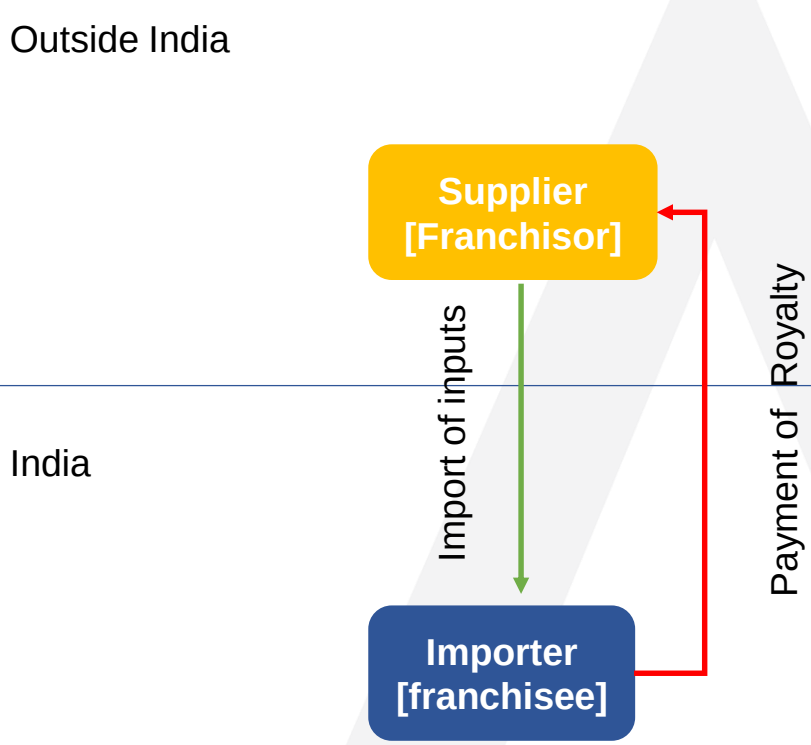
Royalties and license fees [WCO Technical Advisory]

A. Tri-partite arrangements



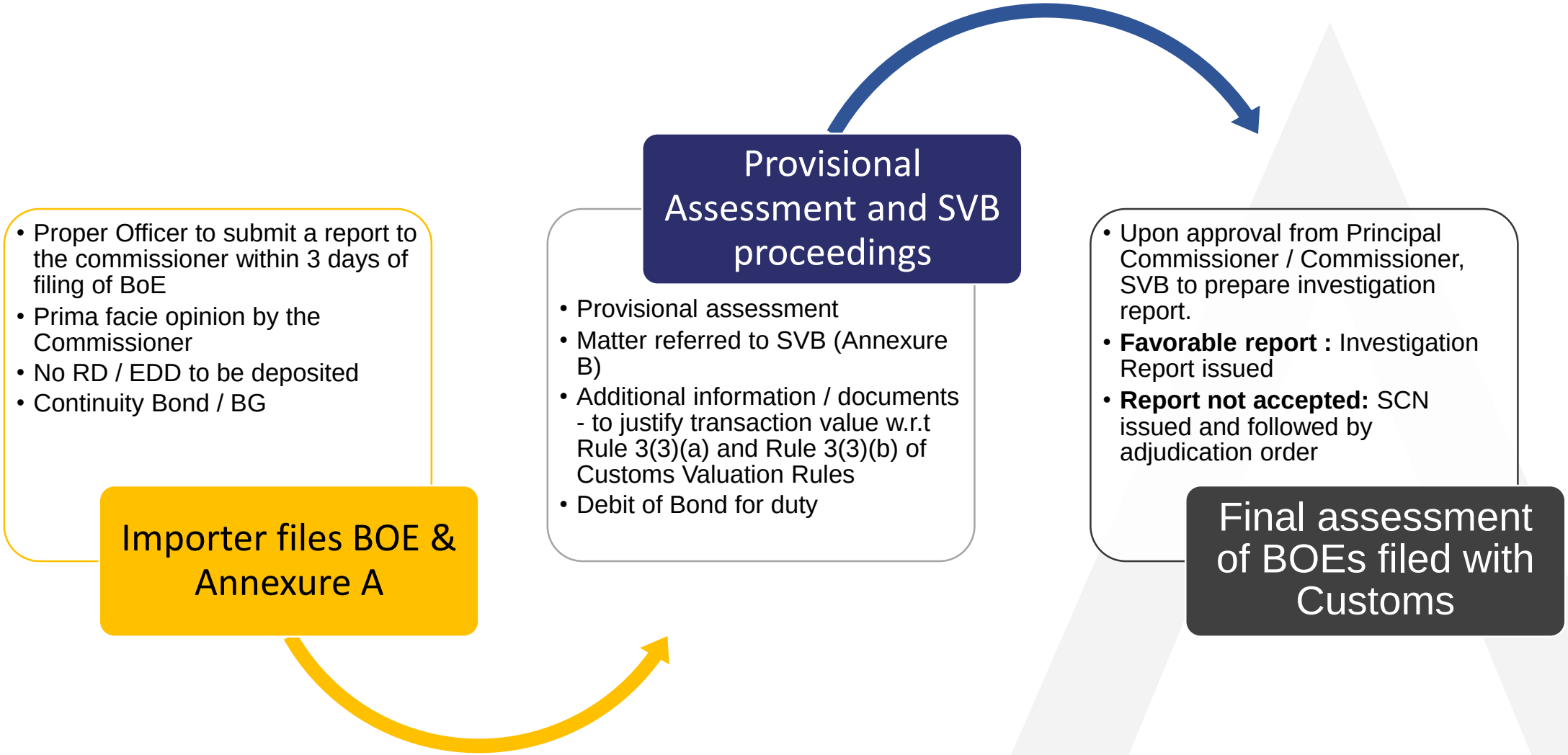
Whether Royalty is includible in the value of goods imported?

B. Franchise



Where the payment of royalty is not related to the imported goods but is related to the use of the brands and system of the franchisor in the manufacture and sale of final product bearing the IP of the franchisor – **not includible**

SVB Process


Importer files BOE & Annexure A
• Proper Officer to submit a report to the commissioner within 3 days of filing of BoE
• Prima facie opinion by the Commissioner
• No RD / EDD to be deposited
• Continuity Bond / BG
Provisional Assessment and SVB proceedings
• Provisional assessment
• Matter referred to SVB (Annexure B)
• Additional information / documents - to justify transaction value w.r.t Rule 3(3)(a) and Rule 3(3)(b) of Customs Valuation Rules
• Debit of Bond for duty
Final assessment of BOEs filed with Customs
• Upon approval from Principal Commissioner / Commissioner, SVB to prepare investigation report.
• **Favorable report :** Investigation Report issued
• **Report not accepted:** SCN issued and followed by adjudication order

Critical Documents

Identical Goods

- Statement containing value of identical goods
- Supplier invoices supporting the identical values

Similar Goods

- Statement containing value of similar goods
- Supplier invoices supporting the similar values

Deductive Value

- CA certificate certifying the deductive value.
- Documents/details to substantiate the method of cost appropriation and method for deriving profit margins as reflected in the computation/certificate.
- The transfer pricing report, if the retail minus method is used to arrive at the arm's length price.

Computed Value

- Statement showing a breakdown of various costs along with profit recovered on each product.
- Trend analysis of imports to substantiate that appropriate profit margins have been maintained across financial years
- In the case of traded items, supporting invoices showing the price at which goods were purchased by the supplier.

Common documents

1. Annexure A & B – with accurate details
2. Written submissions on the method applied for arriving at the value of Goods
3. Statement of goods imported during the period under investigation
6. Summary of high value imported goods.
7. Financial Statements / Form 3CEB / Details on payments made to Suppliers [other than for supply of imported goods] / Transfer pricing report / APAs
8. Agreements entered into with Supplier

Rules of Customs Valuation



Agreement on implementation of Article VII of the GATT

Article		Rule
1	**Transaction value** – price paid or payable for the goods / actual value – not influenced by the relationship of parties	3
2	**Identical goods** – goods same in respect of physical characteristics, quality, and reputation	4
3	**Similar goods** – goods that are not alike but have like characteristics and component materials – perform the same functions and are commercially interchangeable	5
5	**Deductive value** – Unit price at which goods are sold in the country of importation to third parties after deducting commission, operational expenses, duties etc.	7
6	**Computed value** – The sum of the cost of materials and processing of imported goods, profits, general expenses, transportation, insurance, etc.	8
7	**Residual / fall back mechanism**	9

Section 14 of the Customs Act & Customs Valuation (Determination of Value of Imported Goods) Rules

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