

WCO Sub-Regional Train-the-Trainer Workshop on Customs Valuation

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Article 1 of the WTO Valuation Agreement



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Contents

- Overview of the Transaction Value under the WTO Valuation Agreement
- Key elements of Article 1;
 - Price actually Paid or Payable
 - Sold for export
 - Conditions
 - Discounts
 - Post importation costs

WTO Valuation Methods

- Primary Valuation Method

1.transaction value (*Art 1+ Art 8*)

- Alternative Valuation methods

2.transaction value of identical goods (*Art2*)

3.transaction value of similar goods (*Art3*)

4.deductive value method (*Art5*)

(*Art4*)

5.computed value method (*Art6*)

6.fall-back value method (*Art7*)

Hierarchical order

Transaction value method

The customs value of imported goods shall be the **transaction value**, that is the **price actually paid or payable** for the goods **when sold for export** to the country of importation **adjusted in accordance with the provisions of Article 8**, provide:

■ Customs Value of imported goods



Key element 1: What is PAPP?

PAPP : Price **Actually** Paid or Payable

Made already at the time of customs valuation.

Not yet made at the time of customs valuation but already agreed to be made.

<Attention>

PAPP is **not** the price *normally/usually* to be paid.

The Valuation Agreement precludes the use of arbitrary or fictitious customs values.

What is the PAPP meant?

$$\text{Customs value} \\ = \text{Transaction Value} = \text{PAPP (Art.1)} + \text{Adjustments (Art. 8)}$$

Total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods.
(Interpretative Notes)

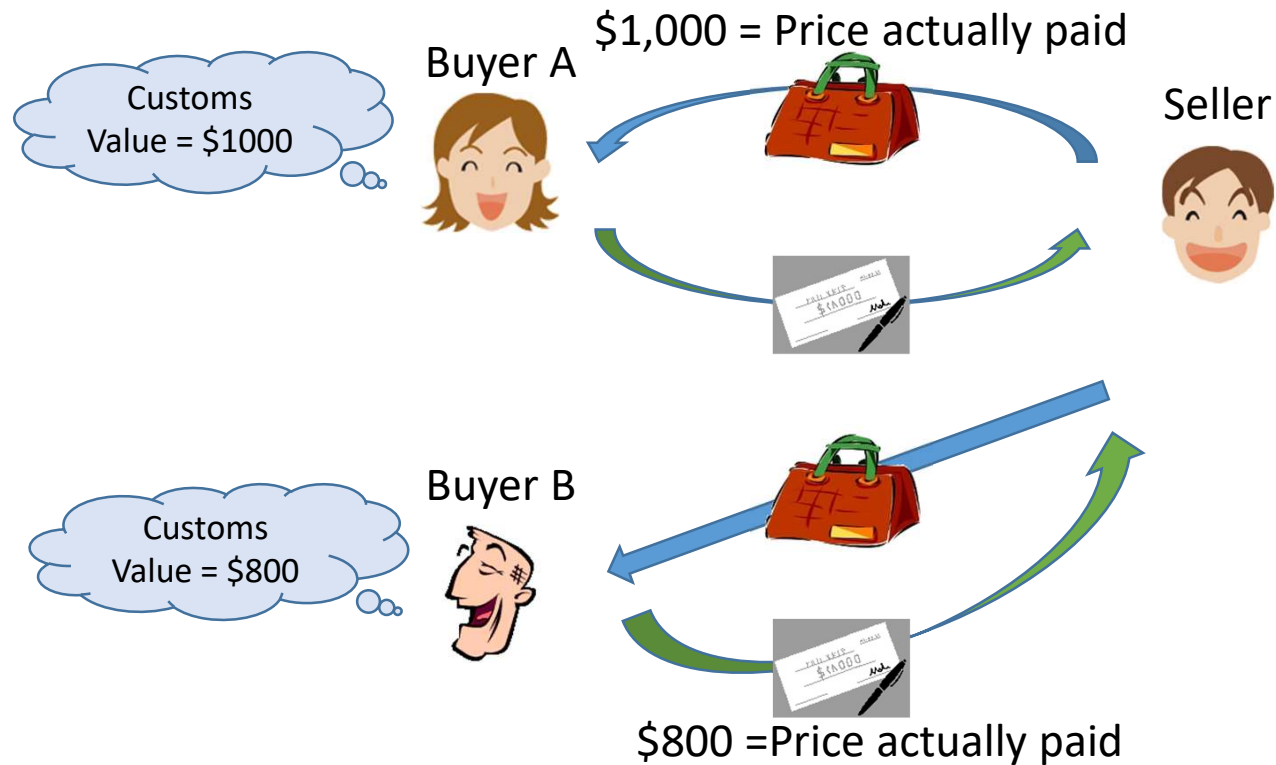
The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. (I.N.)

Payment may be made directly or indirectly. An example of an indirect payment: the settlement by the buyer, whether in whole or in part, of a debt owed by the seller. (I.N.)

All payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller. (para.7, Annex III)

Price Actually Paid or Payable (PAPP)

- Image of Price Actually Paid or Payable



Key element 2: **Sale for export**

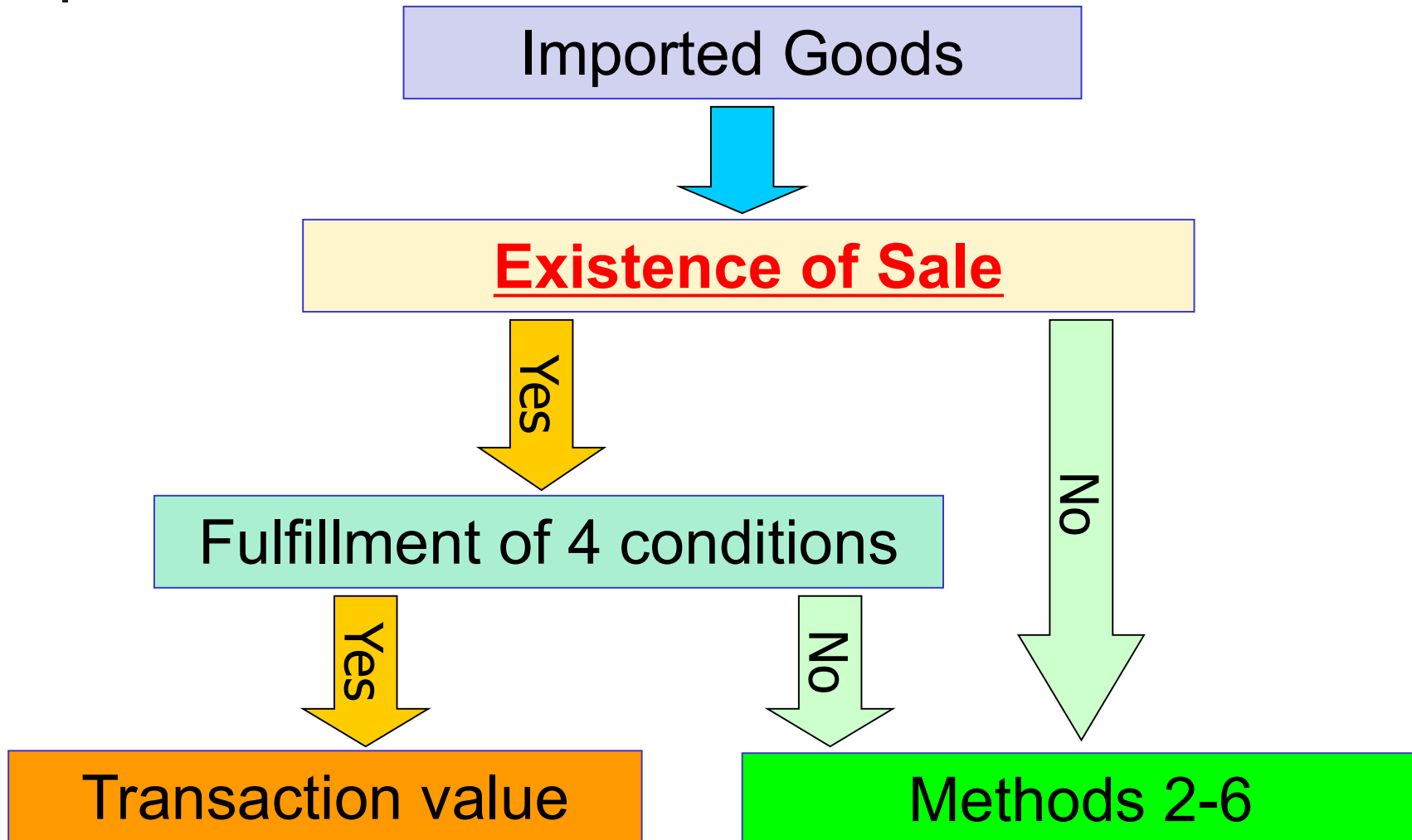
$$\text{Transaction Value} = \text{PAPP (Art.1)} + \text{Adjustments (Art. 8)}$$

Article 1

“... the price actually paid or payable for the goods when **sold for export** to the country of importation ...”

The imported goods must have been **sold** before importation.

Key element 2: **Sale** for export





Sale

- No definition of “sale” in the CVA
- In general, a transfer of ownership of the goods for some type of consideration
- Advisory Opinion 1.1
 - the term “sale” should be interpreted as widely as possible
 - a non-exhaustive list of situations in which imported goods would not be deemed to have been the subject of a sale



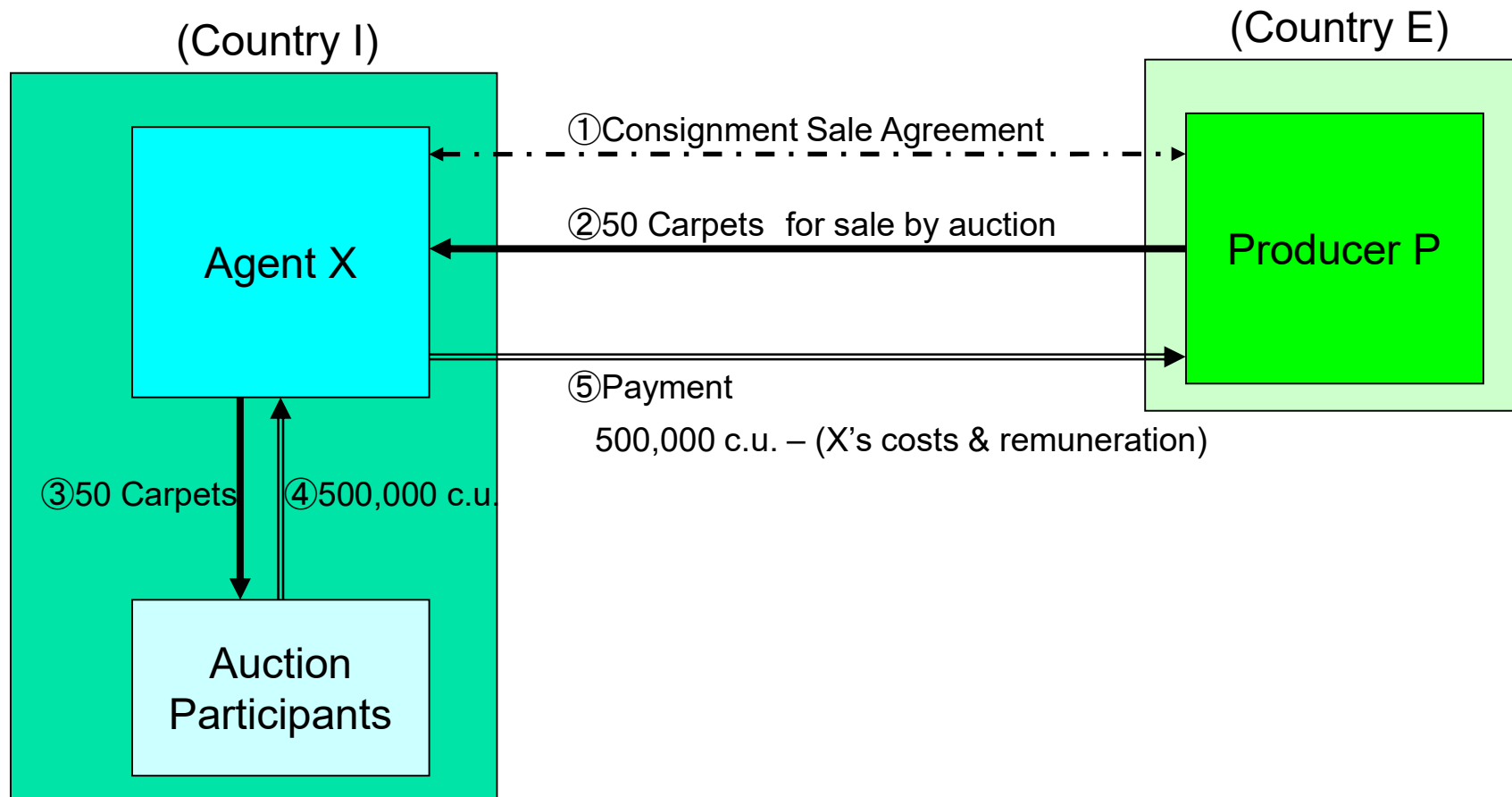
“No Sale” Situation

Advisory Opinion 1.1

1. Free consignments (gift, sample etc.)
2. Goods imported on consignment
3. Goods imported by intermediaries
4. Goods imported by branches
5. Goods imported under a leasing contract
6. Goods supplied on loan
7. Goods imported for destruction

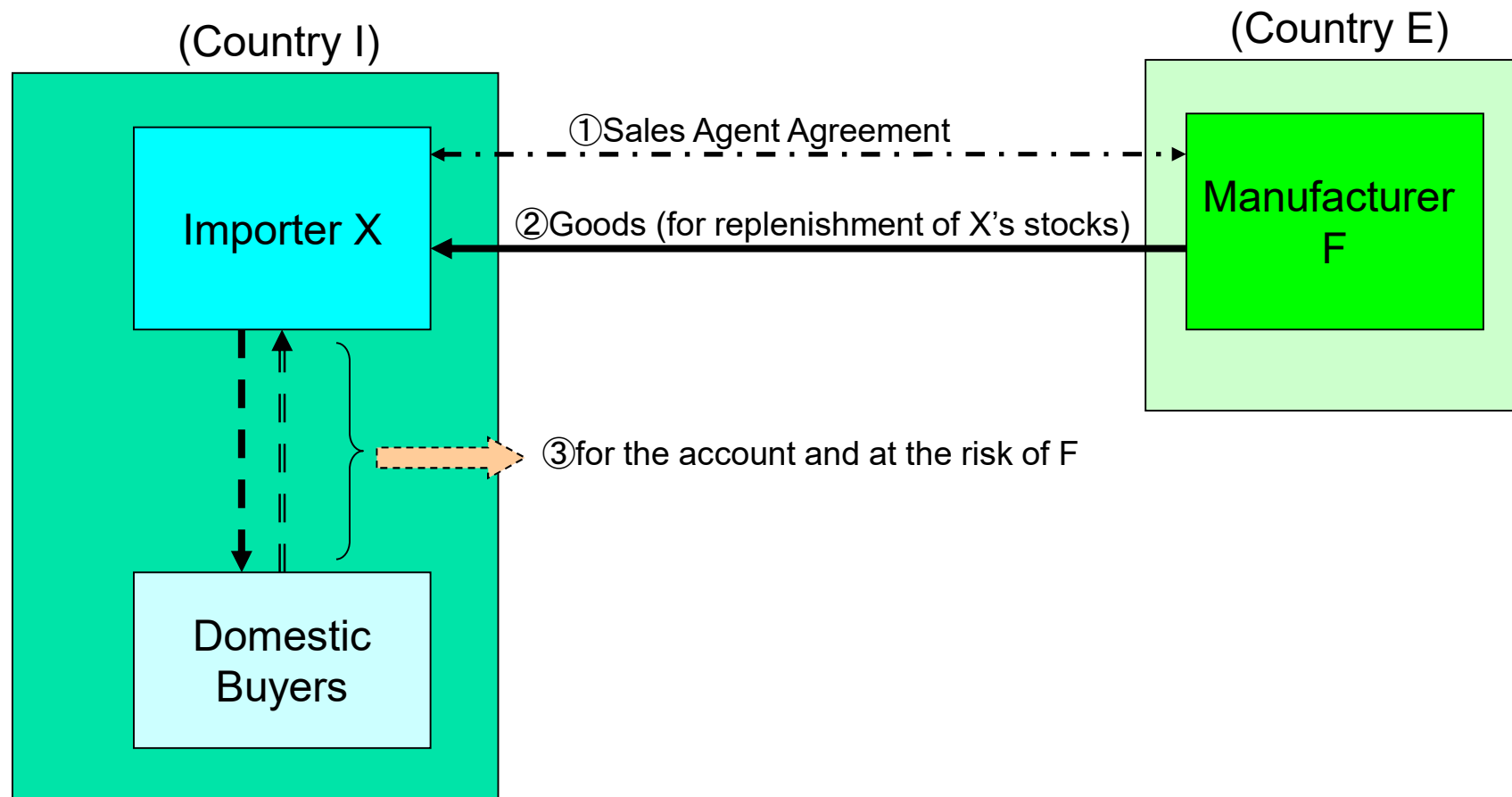
No Sale (A.O. 1.1)

- Goods imported on consignment



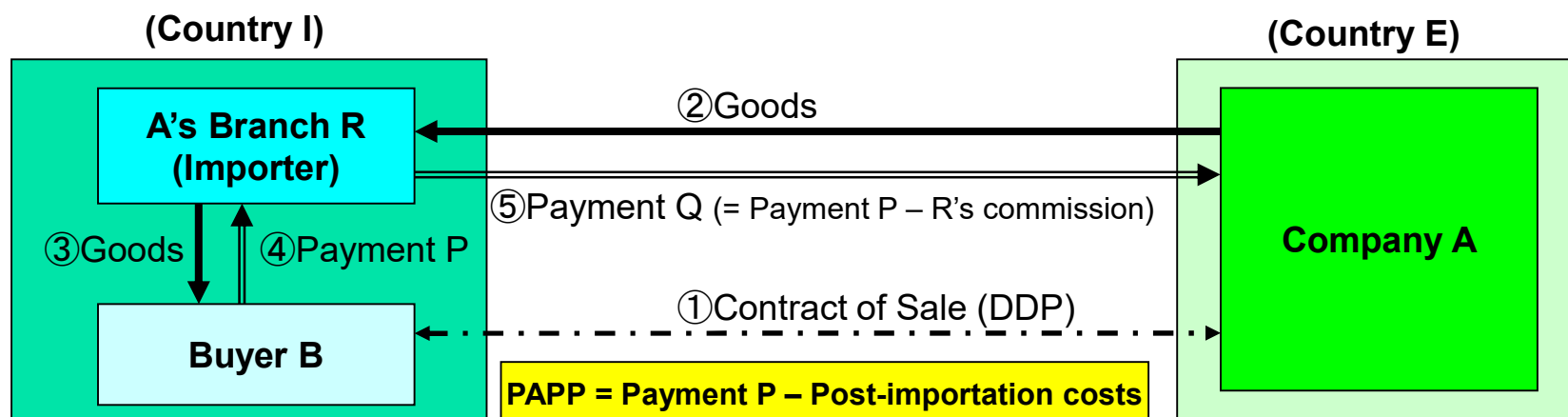
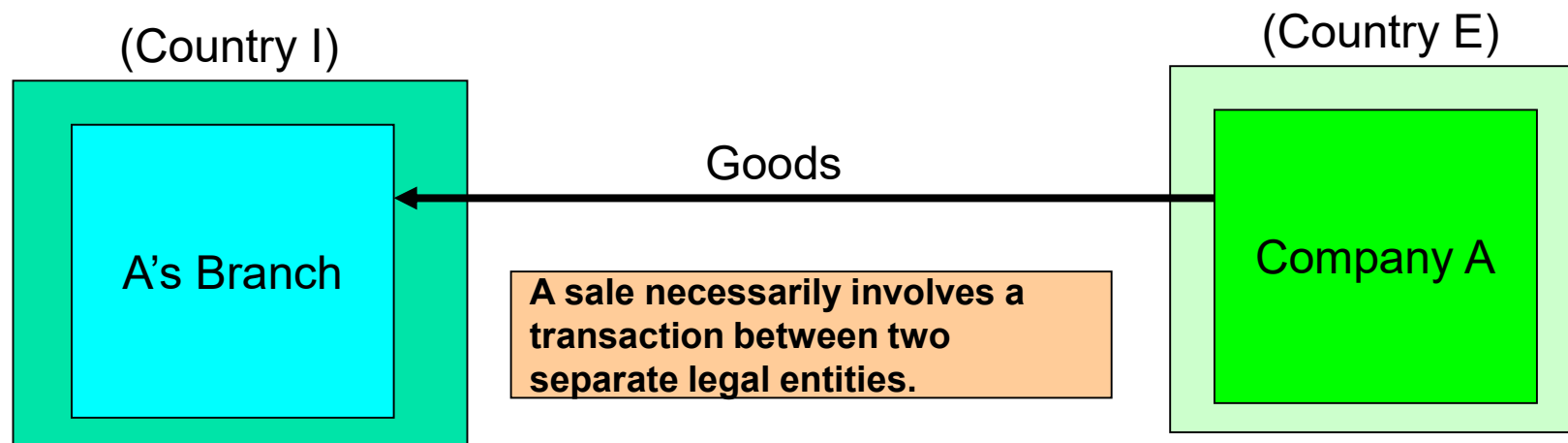
No Sale (A.O. 1.1)

- Goods imported by intermediaries, who do not purchase the goods and who sell them after importation



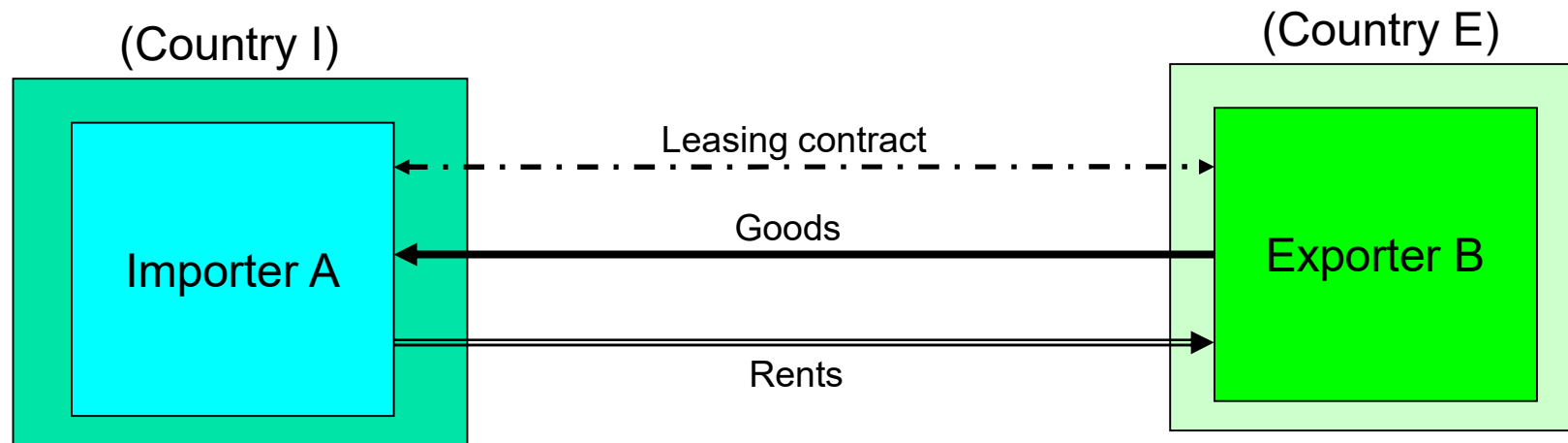
No Sale (A.O. 1.1)

- Goods imported by branches which are not separate legal entities

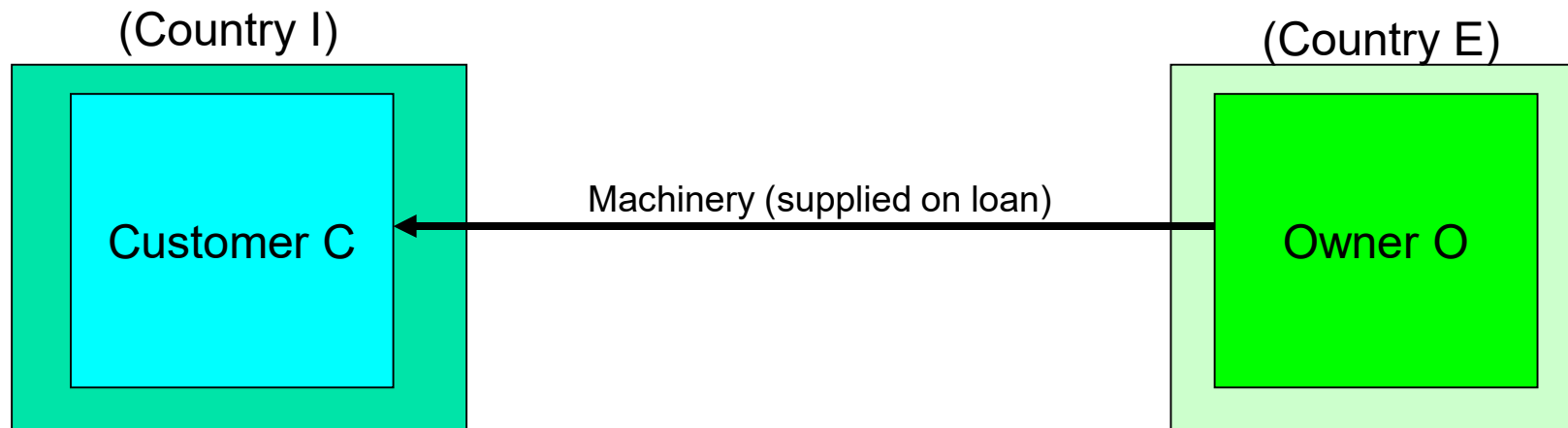


No Sale (A.O. 1.1)

- Goods imported under a hire or leasing contract

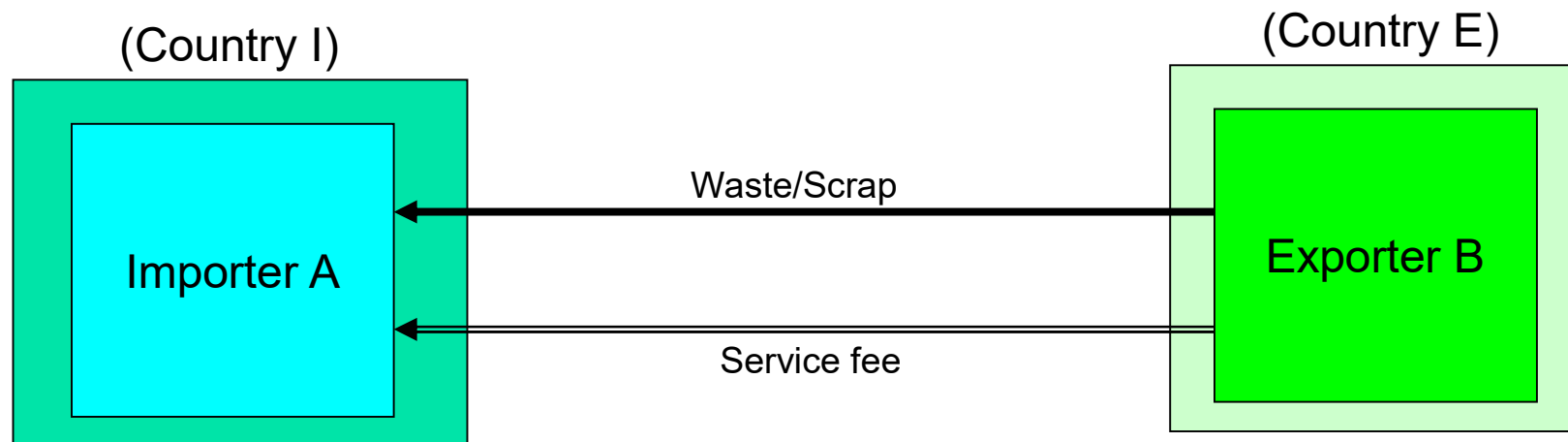


- Goods supplied on loan, which remain the property of the sender



No Sale (A.O. 1.1)

- Goods (waste or scrap) imported for destruction in the country of importation, with the sender paying the importer for his/her services





Sale for export to the country of importation

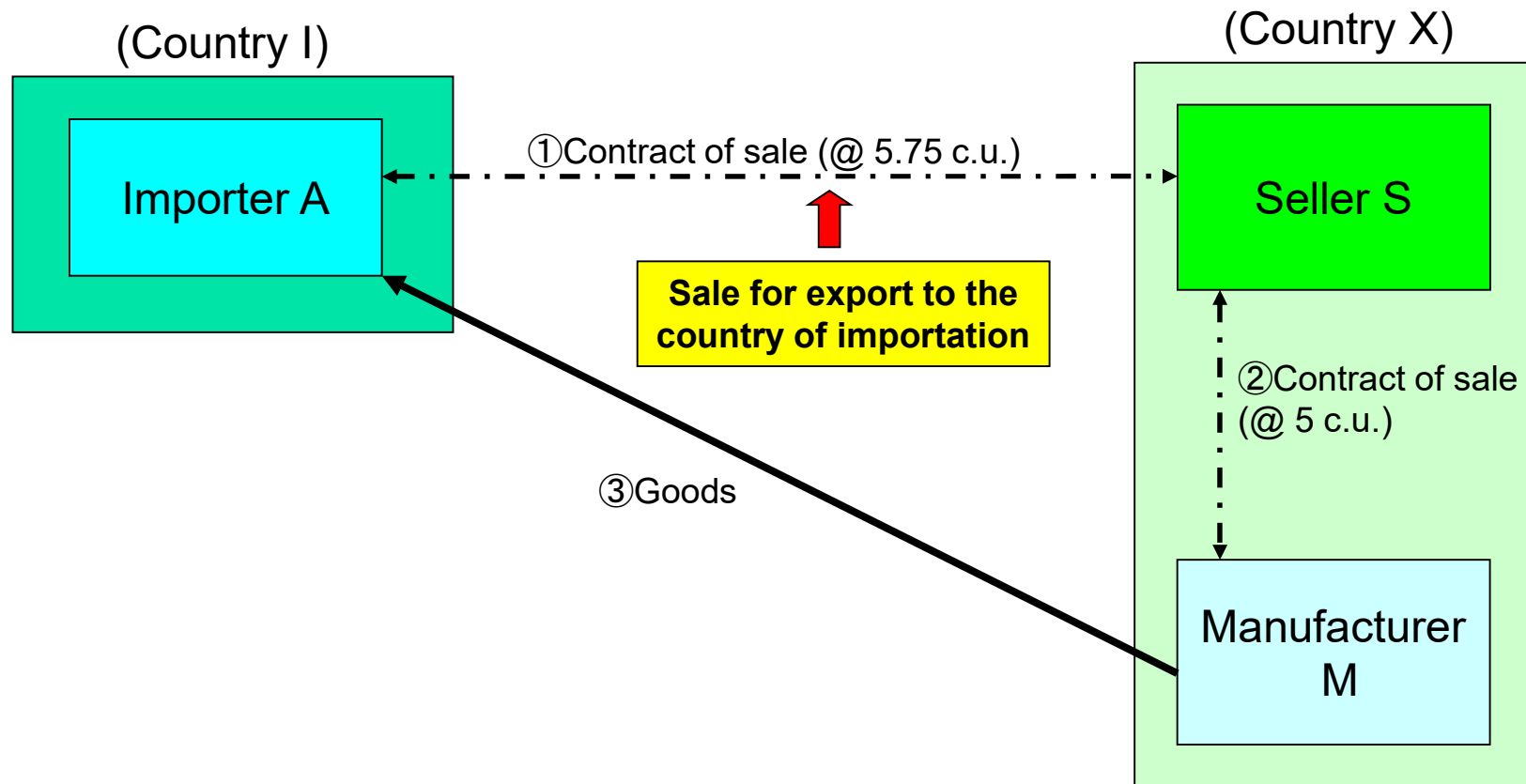
Article 1

“The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when **sold for export to the country of importation** adjusted in accordance with the provisions of Article 8, ...”

- **Advisory Opinion 14.1**
 - If the importer can demonstrate that the immediate **sale** under consideration took place **with the view to export the goods to the country of importation**, Article 1 can apply.
 - Only transactions involving **an actual international transfer of goods** may be used in valuing merchandise under the transaction value method.

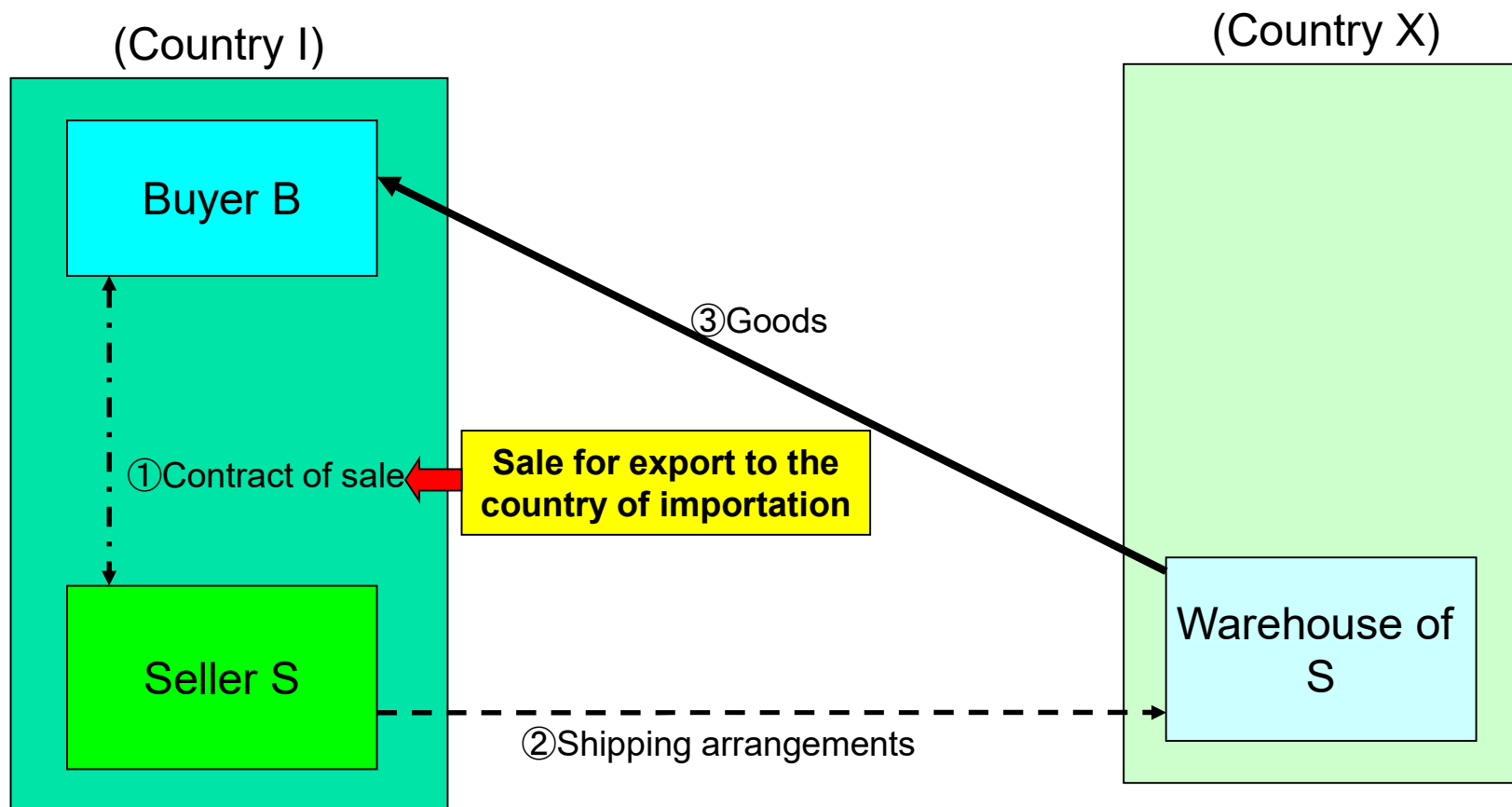
Sale for export to the country of importation

- Advisory Opinion 14.1: Example 1



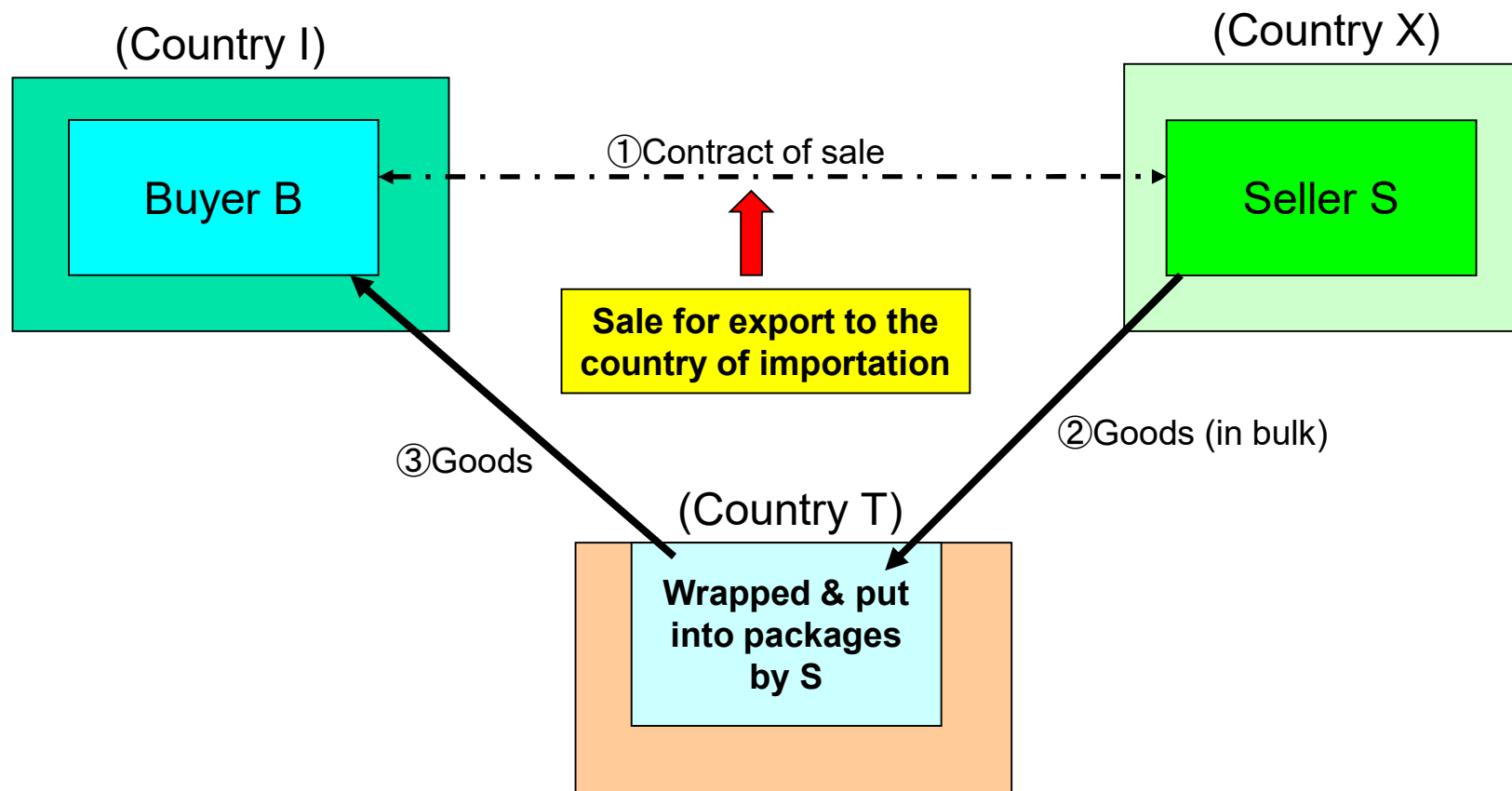
Sale for export to the country of importation

- Advisory Opinion 14.1: Example 2



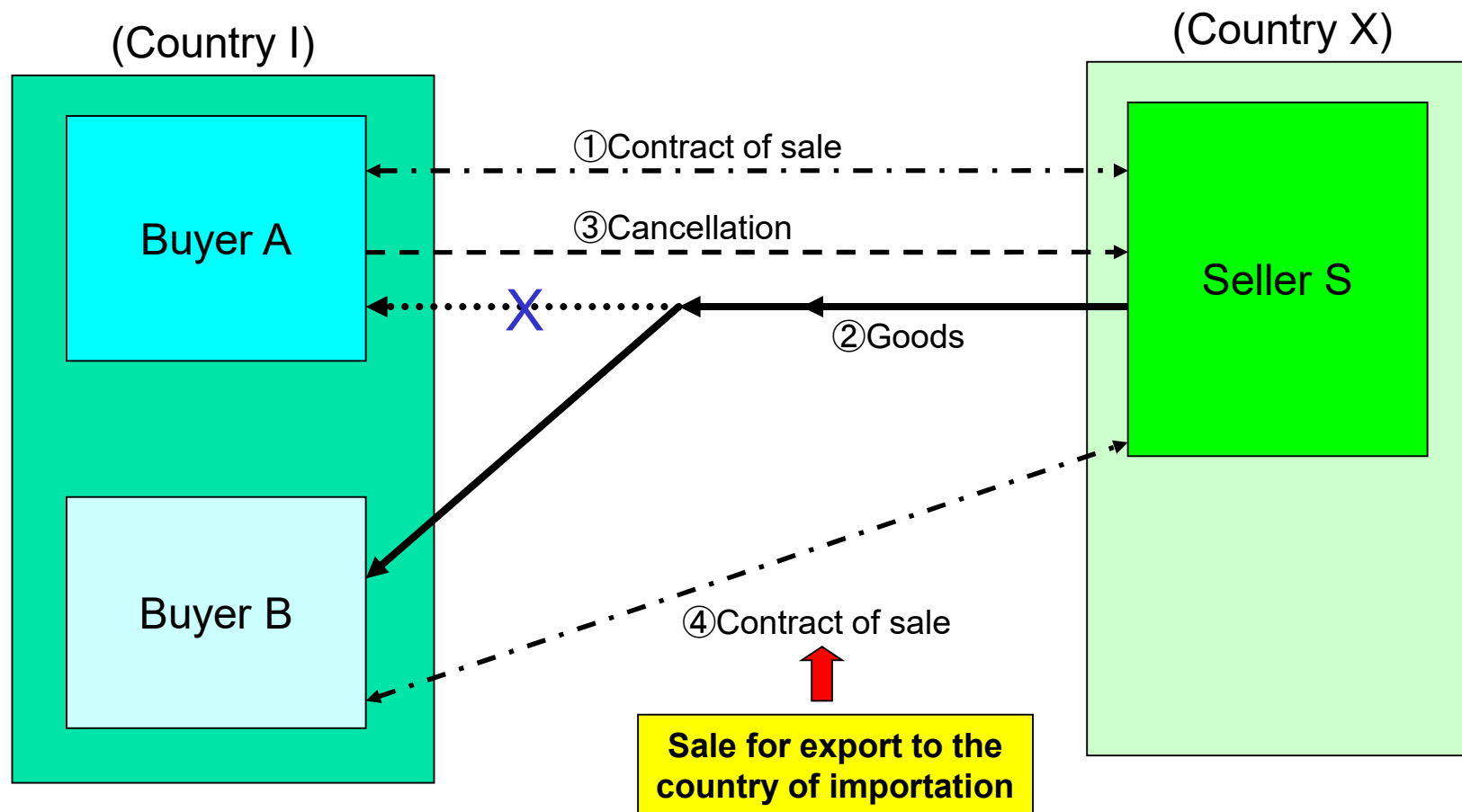
Sale for export to the country of importation

- Advisory Opinion 14.1: Example 3



Sale for export to the country of importation

- Advisory Opinion 14.1: Example 4





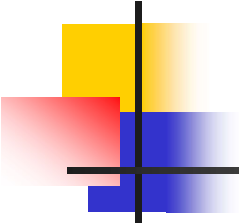
Key elements 3: **Conditions** (Article 1.1)

- The transaction value method cannot be used if:
 - there are restrictions as to the disposition or use of the goods by the buyer. (Art. 1.1 (a))
 - the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued. (Art. 1.1 (b))
 - part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue to the seller and an appropriate adjustment cannot be made under Article 8. (Art. 1.1 (c))
 - the buyer and seller are related, and the transaction value is not acceptable under the provisions of paragraph 2. (Art. 1.1 (d))



Restrictions as to the disposition or use of the goods by the buyer

- Examples
 - The buyer is allowed to use the goods only for display.
 - The buyer is allowed to use the goods only for charitable purposes.
- *However*, the transaction value method **is to be used if such restrictions:**
 - are imposed or required by law or by the public authorities in the country of importation. (Art. 1.1 (a) (i))
 - limit the geographical area in which the goods may be resold. (Art. 1.1 (a) (ii))
 - do not substantially affect the value of the goods. (Art. 1.1 (a) (iii))
 - E.g., a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year. (Note to Paragraph 1 (a) (iii) of Article 1)



Condition or consideration for which a value cannot be determined with respect to the goods being valued

- Examples (Note to Paragraph 1 (b) of Article 1)
 - The seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities.
 - The price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods.
 - The price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on condition that the seller will receive a specified quantity of the finished goods.



Related Party: (Article 1.1(d))

- the buyer and seller are not related
 - Related parties
- If related, relationship not influence the price
 - Circumstances of sale (*Article 1.2(a)*)
 - Test value (*Article 1.2(b)*)



Related party transactions

- Are the buyer and the seller related?

The term “persons” includes a legal person, where appropriate. (Note to Article 15.4)

- Definition is set out in Article 15.4

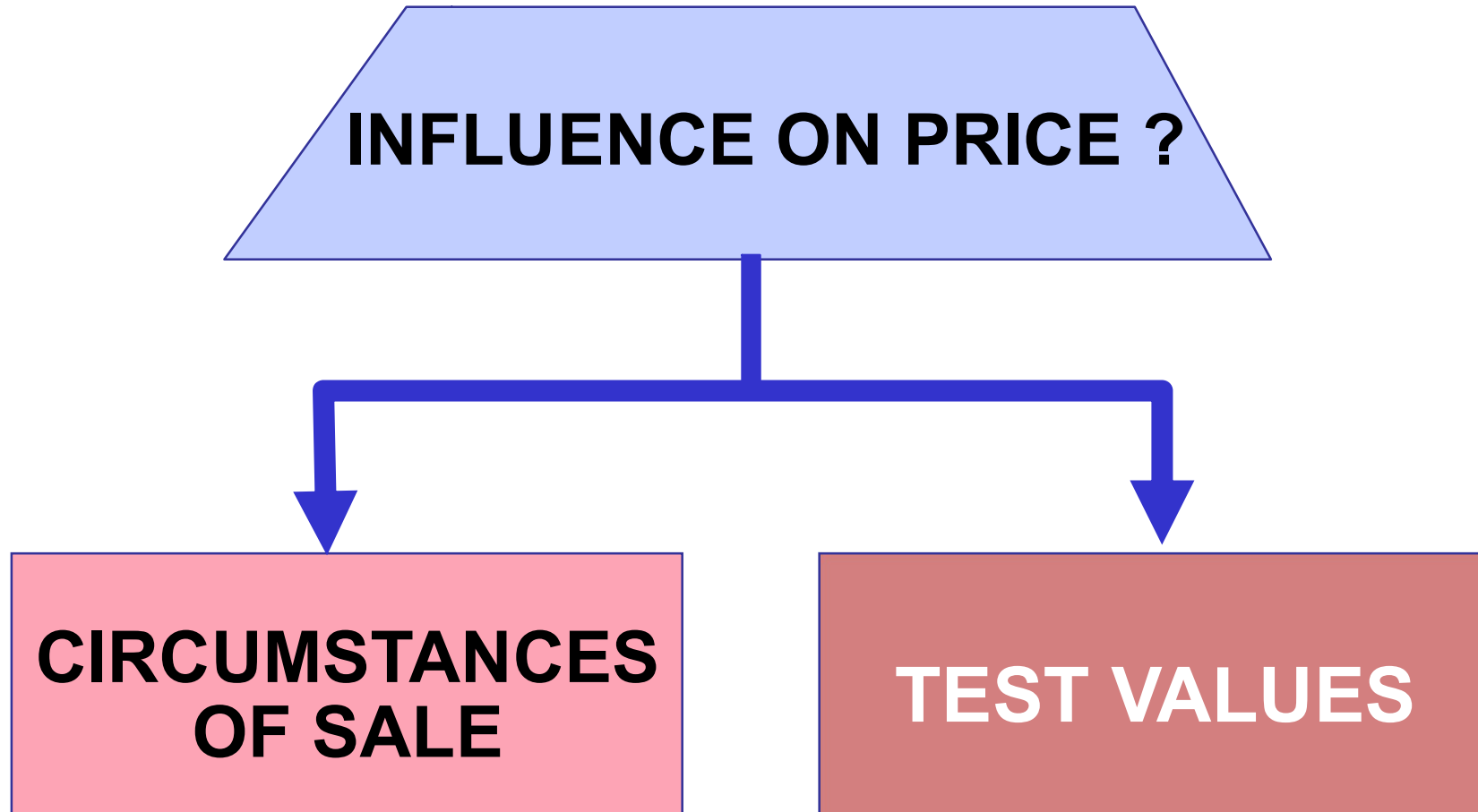
Persons shall be deemed to be related **only if**:

- (a) they are officers or directors of one another's businesses;
- (b) they are legally recognized partners in business;
- (c) they are employer and employee
- (d) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;
- (e) one of them directly or indirectly controls the other;
- (f) both of them are directly or indirectly controlled by a third person;
- (g) together they directly or indirectly control a third person; or
- (h) they are members of the family.

Persons who are associated in business with one another in that one is the sole agent, sole distributor, or sole concessionaire of the other is not deemed to be related unless they fall within the above criteria. (Note to Article 15.4)



Influence on the price





Circumstances of sale(Article1.2(a))

- Circumstances of sale is examined
 - the way the buyer and seller organize their commercial relations
 - the way in which the price in question was arrived at
- No influence (examples)
 - the price consistent with the normal pricing practices of the industry
 - the price same as sales to non-related parties
 - the price is adequate to recover all costs plus a profit



Test value (Article 1.2(b))

Value of the
imported goods



Transaction value of
Identical/similar goods

or

Deductive value of
Identical/similar goods

or

Computed value of
Identical/similar goods



Key element 4: Discounts

- Cash Discount
- Advance Payment Discount
- Trade Discount
 - Given According to the Status of the purchaser
- Quantity Discount
- Seasonable Discount
- Old Model Discount
- Flush Sale Discount
 - New instrument Advisory Opinion 23.1



Price actually paid or payable

- Para 1 of I.N. to Article 1
 - total payment made or to be made by the buyer to or for the benefit of the seller
 - Payment may be made directly or indirectly
- Para 7 of Annex III
 - all payments actually made or to be made as a condition of the sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller



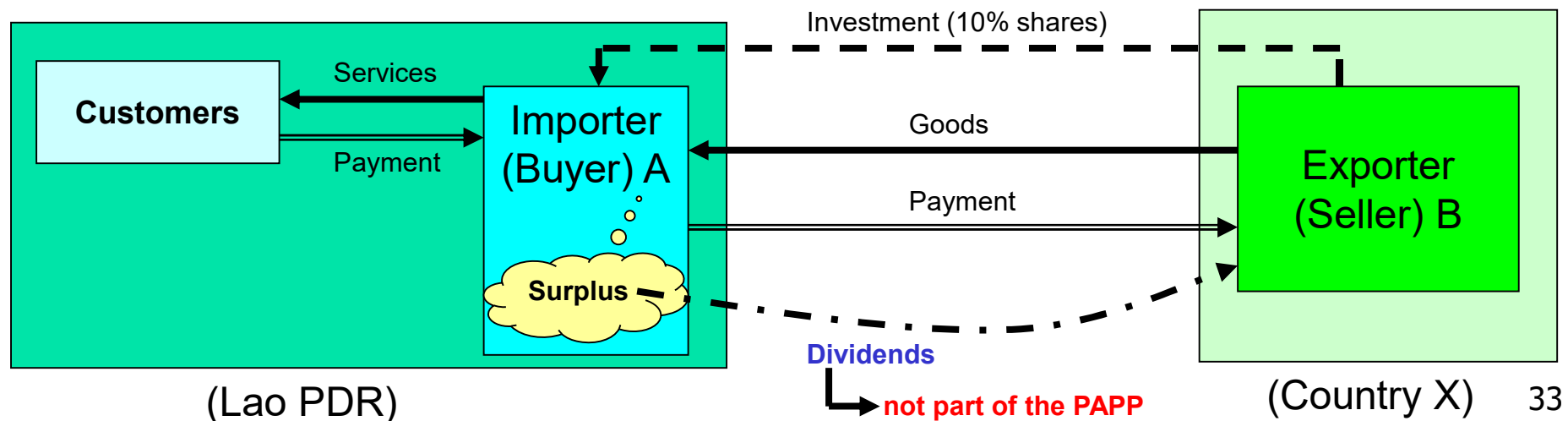
Key element 5: **Post importation cost**

- Customs Value not include the following costs (*Para3 of I.N. to Article1, Commentary9.1*)
 - Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods
 - The cost of transport after importation
 - Duties and taxes of the country of importation (*A.O.3.1*)

Payments that do not relate to the imported goods

Note to Article 1, PAPP, paragraph 4

“The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.”



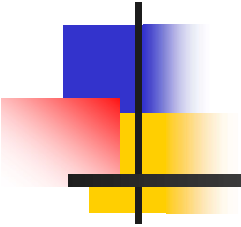
Summary of Transaction value

To be included

To be excluded

Option

Price actually paid or payable (Art1)	DIRECT PAYMENTS		INDIRECT PAYMENTS
	<i>Dividends</i>	<i>Discounts</i>	
	<i>Post importation costs</i>		
Adjustments (Art8)	COMMISSION & BROKERAGE	<i>Buying Commission</i>	
	COSTS OF CONTAINERS & PACKING		
	ASSISTS		
	ROYALTIES & LICENSE FEES		
	PROCEEDS		
	<u>FREIGHT, LOADING CHARGE, INSURANCE, etc.</u>		
Others	<i>Costs for activities undertaken by buyer on his account</i>		
	<i>Others</i>		



Thank you for your attention!!

