

Valuation of Software – Decision 4.1

- Based on value of carrier media only

Or

- Based on value of carrier media + software
- Depending on Members decision
- Currently, Committee on Customs Valuation looking at definition of “carrier media”



Recent TCCV case

'Locked' software functions

- Photocopiers imported
- Certain security functions not accessible at import
- Final user may pay fee to access those functions
- Where fee is paid *after import* should it be included in price paid?



Facts of transaction (I)

- Importer B in country of importation I purchases and imports copiers from exporter (manufacturer) S in country of exportation X. S and B are not related under the terms of the Agreement.
- The copiers incorporate application software which prevents the leakage of document data. This security function, which is an optional component for individual customers in country I, is embedded in the imported copiers.
- This software is locked at the time of importation and will not function without entering a password. The imported copiers perform their basic function without the security function being activated.
 - The application software for the security function was developed by licensor L in country X who is not related to B nor S.
 - L owns the copyright of the application software.
 - S is given the license to incorporate the application software into the copiers in a locked/inactivated condition.
 - The license fees for the locked security function paid by S to L are fully reflected in the price actually paid or payable for the imported goods.



Facts of transaction (II)

- The sales agreement for copiers with the locked security function between S and B does not include any provisions concerning the payments for passwords.
- After the importation of the copiers, B sells all the imported goods to customers C in country I.
- C decides whether or not it will obtain the password which activates the application software preventing the leakage of document data.
- If C chooses to access the optional security function, C makes a contract for the purchase of the password with L and needs to pay the fee to obtain the password for the activation either directly from L through the internet (Route 1), or via B and S from L (Route 2).
- If C chooses to acquire the optional security function, the payment made for the password and the amount which accrues to L is the same in each payment method.

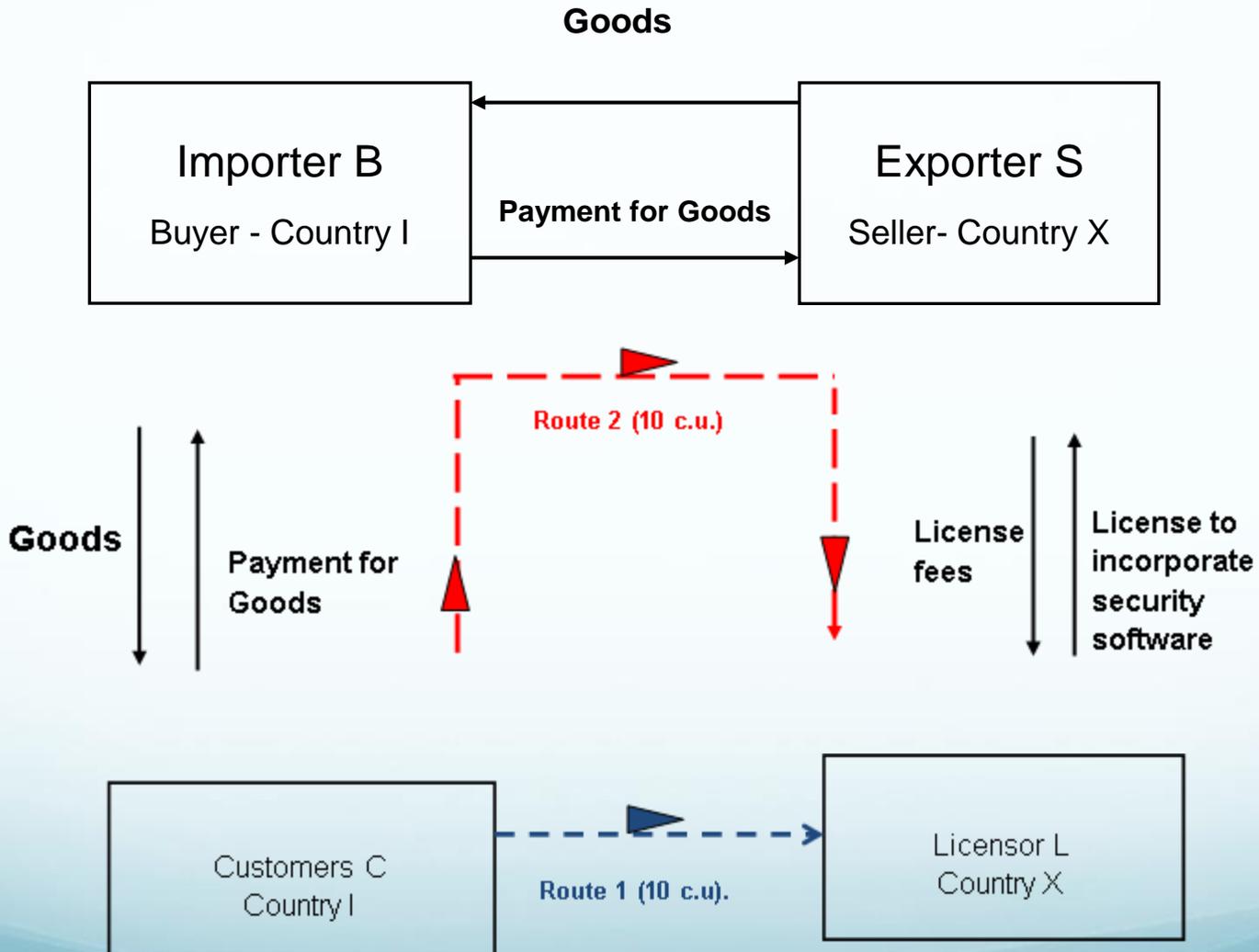


Question for consideration by the Technical Committee

- Where a payment is made to obtain the password which activates the application software preventing the leakage of document data, does such payment constitute part of the price actually paid or payable for the imported goods, or should the payment be added to the price actually paid or payable for the imported goods under Article 8.1(c) or (d)?



Transaction Chart



Conclusion : ?

- No consensus!

What do you think?!

