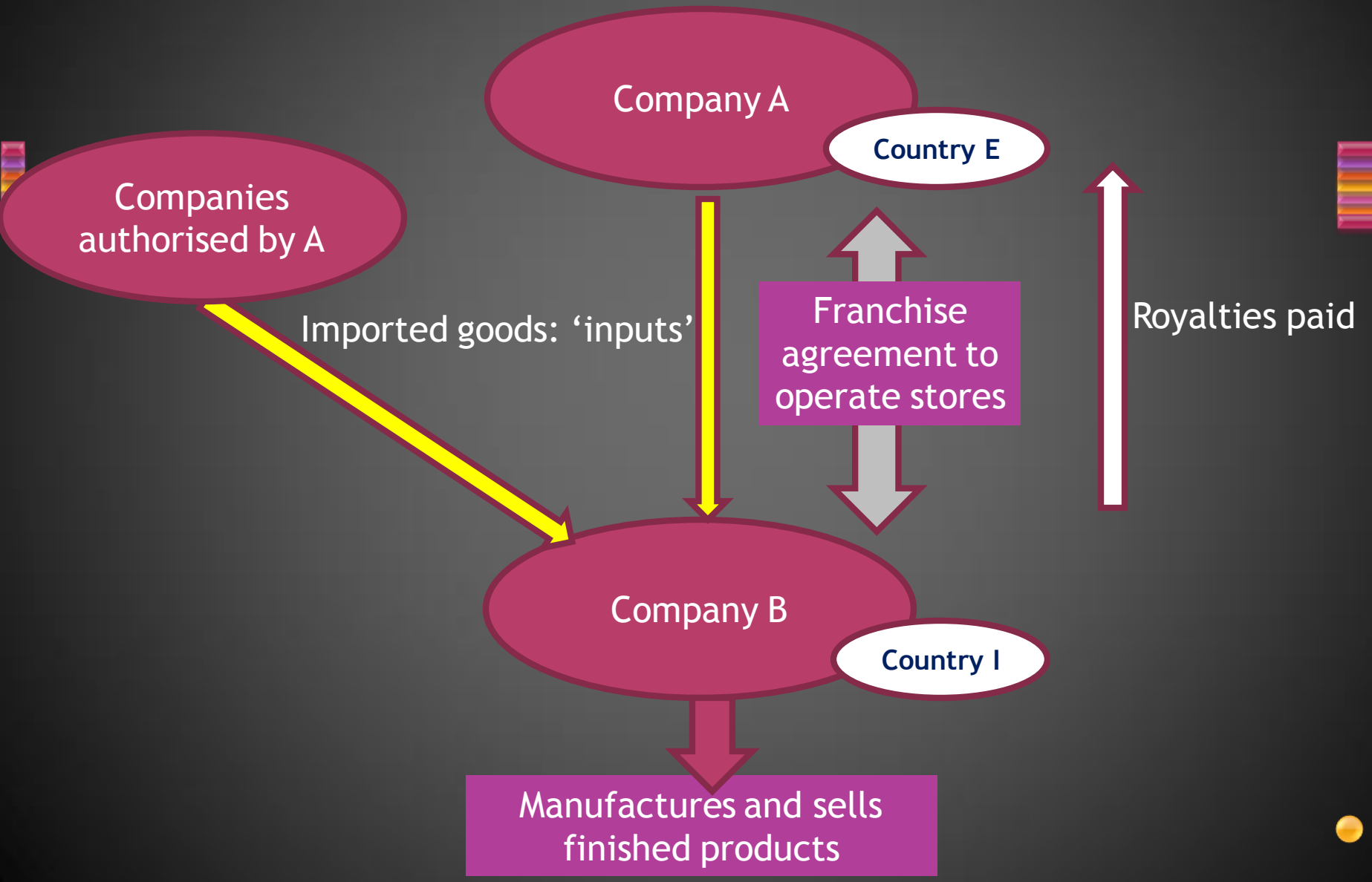
Advisory Opinion 4.17

Royalties and licence fees under Article 8.1 (c) of the Agreement

Royalties and licence fees under Article 8.1 (c) of the Agreement – *Background*

- Company A (importer, buyer and franchisee) in country I entered into a franchise agreement with company B (exporter, seller, franchisor) of country E to operate stores in country I
- Company A may buy only from company B, (or from companies authorized by company B), the inputs needed to manufacture the products which company A sells in its stores
- The inputs are unpatented and are not protected by any intellectual property rights
- Company A may purchase the inputs from third party suppliers selling at lower prices, where duly authorized by company B to meet the quality requirements
- As a condition of the franchise, company A pays B for the use of the brands and system, royalties calculated as a percentage of company A's gross sales of final products, manufactured using inputs imported by company A

Transaction



Royalties and licence fees under Article 8.1 (c) of the Agreement

The issue ….

- . whether the royalties paid under the franchise agreement are to be added to the price actually paid or payable under Article 8.1(c) of the Agreement for the imported goods.

View of the Technical Committee

- The imported goods, though necessary and essential to the manufacture of the products and required to be purchased from the franchisor (or a third party authorized by the franchisor to meet the quality requirements), are ***not*** branded nor patented, or manufactured under a patented process, for which a payment is made

- The payment of royalties is not related to the imported goods but to the use of the brands and system of the franchisor in the manufacture and sale of the products bearing the intellectual property (brand) of the franchisor.

- ***The royalties paid by the franchisee are not to be added to the price actually paid or payable for the imported goods under the provisions of Article 8.1(c).***