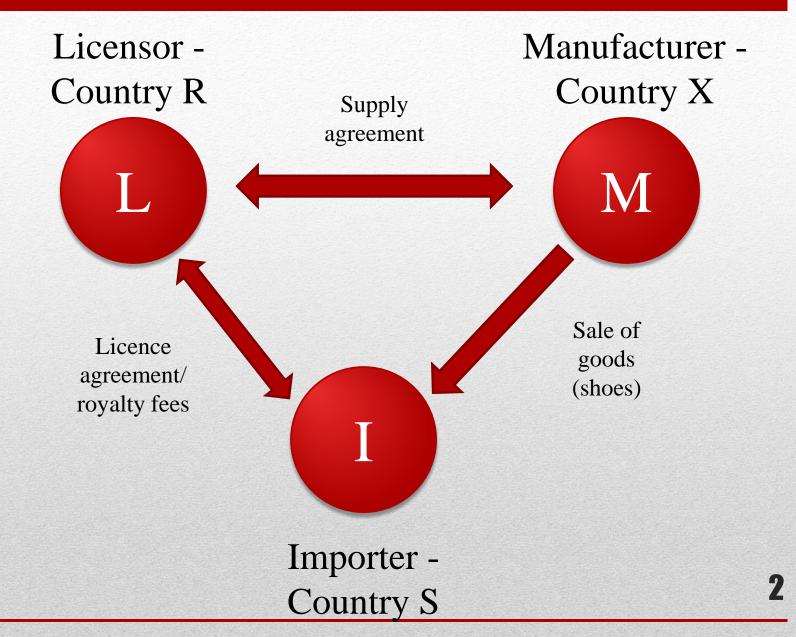


Third Party Royalties and Licence Fees



- Under the licence agreement a royalty is payable, for the right to use its trademark in connection with manufacture and importation of the goods
- Royalty consists of a fixed percentage calculated on the net income obtained by I from sales in country S of the products bearing such trademark
- If I fails to pay L the royalty, L has the right to terminate the licence agreement
- L and I are related under the terms of the Valuation Agreement.

Licence agreement.

- L has signed a supply agreement with company M of country X in order for M to manufacture the goods bearing its trademark and then to sell them to I
- Under this agreement:
 - M must follow the specifications relating to quality, design and technology provided by L
 - M undertakes to produce and to sell products with this trademark exclusively to I or other companies determined by L
- Company M is not related to L or to I.

Supply agreement.

- Under the sales contract, M sells to I goods bearing the trademark of L
- There is no explicit requirement in the contract to pay the corresponding royalty
- The price actually paid by I to M for the imported goods does not include the royalty payment from I to L

Sales agreement.

Is the royalty related to the imported goods?

• As the goods bear the trademark of L, it can be stated that the royalties in question are related to the goods being valued

View of the Technical Committee on Customs Valuation 1.

Is the royalty paid as a condition of sale of the imported goods?

- Under the supply agreement, L controls the production relating to the goods bearing its trademark by:
 - Authorizing the manufacture of the licensed goods, determining which companies M may sell to
 - Directly providing the designs and technology to manufacturer M
- Under the license agreement, L further influences and controls the transaction between M and I by selecting what party may use the trademark and purchase the imported goods.

View of the Technical Committee on Customs Valuation 2.

Is the royalty paid as a condition of sale of the imported goods? (continued)

- Although the sales contract does not contain any clause requiring
 payment of a royalty, payment of the royalty is made as a condition
 of sale of the goods, because I would not be able to buy them if it
 failed to make that payment to L
- Non-payment of the royalty would cause termination of the licence agreement and withdrawal of the authorization given to M to manufacture and sell to I the goods bearing the trademark

View of the Technical Committee on Customs Valuation 3.

CONCLUSION

 The royalties in question should be added to the price actually paid or payable for the goods under Article 8.1(c) of the Agreement.

Advisory Opinion 4.15 – concluded April 2013