

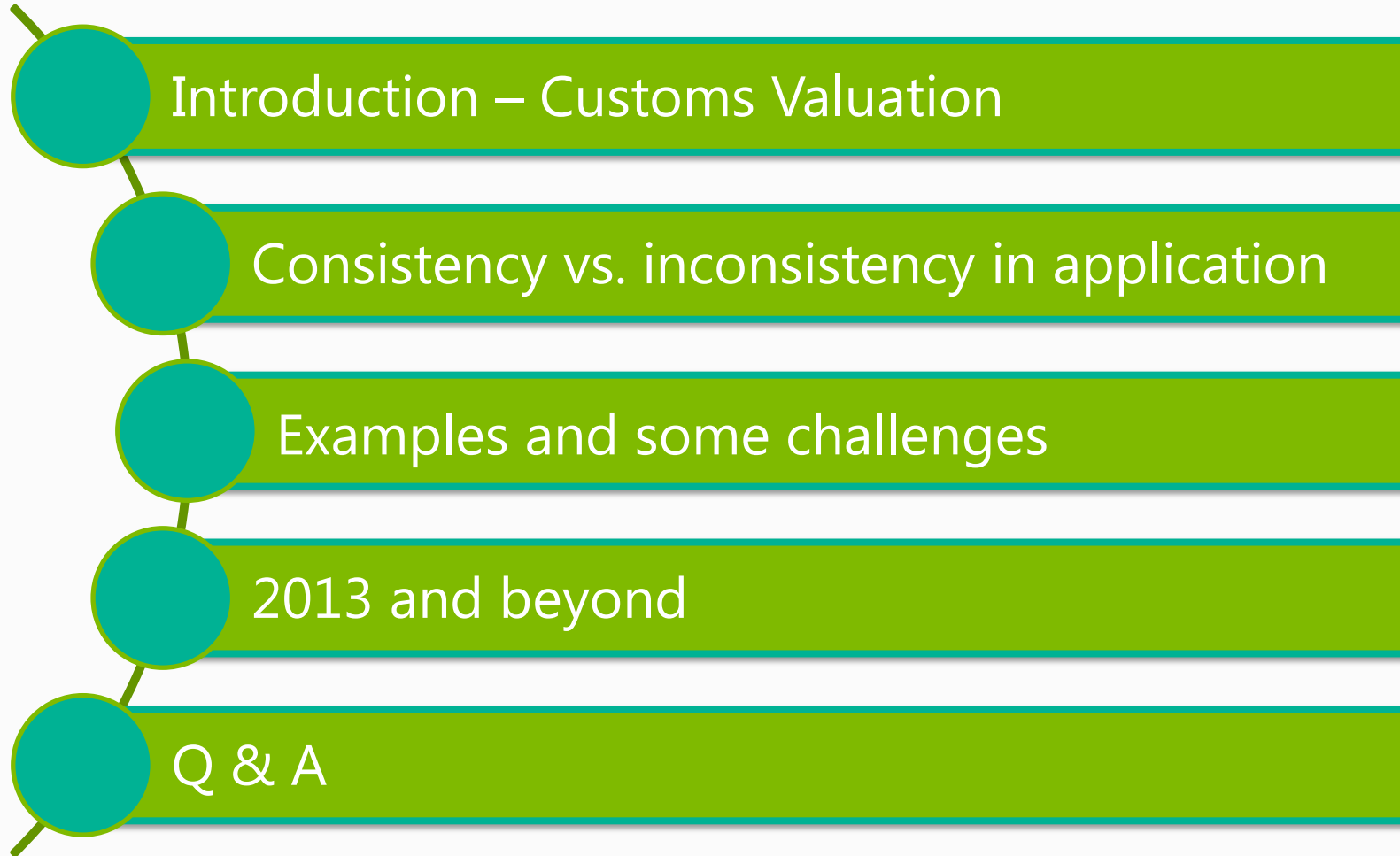
# ICC SEMINAR ON TP & Customs Valuation

Montreal, Quebec  
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# Agenda



# Customs Valuation – General

## Principle

- Agreement on Implementation of Article VII of GATT, 1994
  - 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...
- Canada
  - Under the *Customs Act*, the primary basis of determining the value for duty of imported goods is the transaction value...
- United States
  - 19 U.S.C. 1401a(b)(1) states: The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States...

# Customs Valuation Basics

- Transaction Value - preferred method
  - Price actually paid or payable for the merchandise when sold for exportation to the country of import plus certain statutory/regulatory additions such as
    - Packing costs, Selling commissions, Assists, Royalties or License Fees, and Proceeds of subsequent resale, disposal, or use
- The transaction value is the appraised value only if certain conditions are met, including
  - The buyer and seller are not related, or the buyer and seller are related but the transaction value is acceptable.
  - Circumstances of Sale Test
    - The transaction value between a related buyer and seller is acceptable if an examination of the circumstances of the sale of the imported merchandise indicates that the relationship between the buyer and the seller did not influence the price actually paid or payable.
  - Test Values
    - The transaction value between a related buyer and seller is acceptable if the transaction value closely approximates certain “test values” which represent previously accepted customs values.
- Other Methods
  - TV Identical/Similar;
  - Deductive;
  - Computed;
  - Fall back

# Customs Valuation – Its Application

- Importer has the legal obligation to declare to Customs the correct value for duty
  - Sequential application of valuation rules
  - What if interpretation differs between importer and Customs
- Factors for consideration
  - Import country's specific interpretation and application of the WTO Valuation Agreement
  - Should importer defend Valuation standards or agree to local Customs interpretations
  - Weighing avenues of recourse versus market access

# Examples

1

Price Reductions

2

Valuation of Software

3

Royalties and License Fees

# Example Highlights

## Price Reductions

- \$65.00 CU (Jan – Nov)
- \$35.00 CU (Dec +)
- $TP = COGS + \text{___}\%$
- Value for Duty?

## Software Valuation

- Prepack'd software
- Software licenses
- Software updates
- Methods of delivery of software (Dec. 4.1)

## Royalties & License Fees

- "in respect of the goods"
- Condition of sale
- Right to reproduce

# 2013 and Beyond

- Regulations
- Uniformity
- Transparency
- Consequences

- Transfer Pricing vs. Customs Valuation
- Valuation of software and E-Commerce

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