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Trade Facilitation Workshop

A Business Perspective

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Who am I?



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Frank Debets ***Managing Partner, PwC WMS Asia***

Current PwC role

- Project and client relationship manager for largest WMS clients
- Advise on all aspects of the cross border movement of products
- Analyze and improve trade risk management
- Maximize benefits from trade regulatory opportunities.
- Combine logistical considerations and tax & transfer pricing regulations.

Other Roles

- Editor of WMS's bimonthly "Trade Intelligence - Asia" publication.
- Invited member of the Singapore Customs Advisory Committee
- FTA Advisor for IE Singapore.
- Chair of the Supply Chain Management Committee of AmCham,
- Chair of EuroCham's Regional Trade Committee
- Member of the UK Institute of Export.

Background

- Worked with PwC in London and Thailand
- Research Associate at INSEAD business school in Fontainebleau,
- Masters Degree in Econometrics (Operations Management)
- Diploma in Systems Analysis from Hull University, UK.

Agenda

- 1) A little quiz
- 2) Dealing with a multitude of trade compliance regulations and interpretations
- 3) Business' wishes and concerns on Single Windows
- 4) Break
- 5) Latest developments in business restructuring
- 6) Customs valuation issues in modern business structures
- 7) Practical challenges of utilizing FTAs in modern business structures

“Rules of engagement”

- 1) A business perspective on trade facilitation
- 2) MY reflection of those business views
- 3) Focus on operational, often customs, issues
- 4) Food for thought and discussion
- 5) You learn more if you ask questions and provide opinions!

Objective: take home at least one easily implementable idea

A Little Quiz: The Odd One Out!

The first odd one...

Hint - ASEAN



Indonesia



Singapore



Bangladesh



Vietnam

The second odd one...

Hint - ASEAN



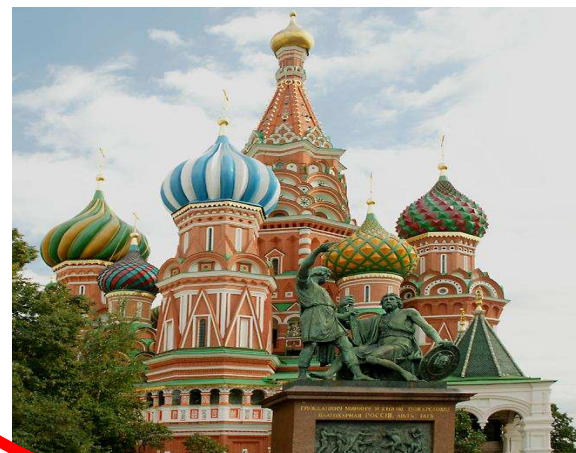
Japan



India



Australia



Russia

The third odd one...

Hint: Rules of Origin

- A. ASEAN – Japan
- B. ASEAN – Korea
- C. ASEAN – China
- D. ASEAN – New Zealand/Australia
- E. ASEAN – India

The fourth odd one...

Hint: Incoterms

- A. India – Singapore FTA
- B. ASEAN FTA
- C. ASEAN – China
- D. ASEAN – Korea
- E. ASEAN – India

The fifth odd one...

Hint: Third party invoicing

- A. ASEAN – Japan
- B. ASEAN – Korea
- C. ASEAN – China
- D. ASEAN – New Zealand/Australia
- E. Singapore – India

The sixth odd one...

Hint: Product Specific Rules

- A. ASEAN – Japan
- B. ASEAN – Korea
- C. ASEAN – China
- D. ASEAN – New Zealand/Australia
- E. ASEAN – India

Dealing with a multitude of trade compliance regulations and interpretations

A business view

Customs & trade environment in Asia

Regional overview

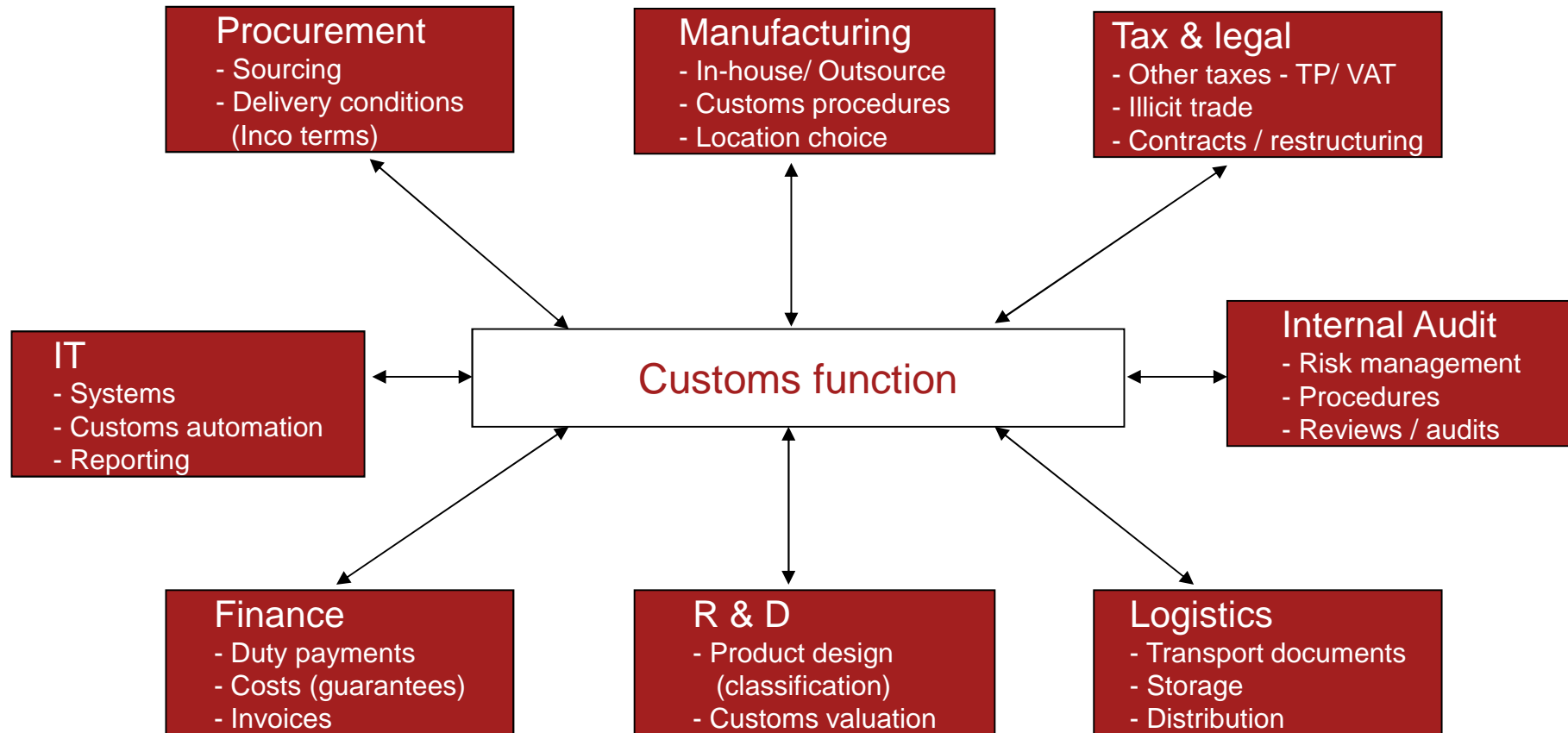
- Customs duty is still a major revenue to Government
- Related party transactions viewed with increasing suspicion
- Penalty apply even for genuine error; most encourage voluntary disclosure
- Key issues:
 - **Valuation**
 - **Classification** – HS2012 / AHTN
 - **Free Trade Agreements**
 - **Export Controls**
 - **Clearance matters**

Key customs & trade questions

1. How do I get goods in and out of countries?
2. Am I using the best trade facilitation options?
3. Are all my shipments legal?
4. Can and should I use Free Trade Agreements (FTAs)?
5. Can I use a transfer pricing approach to customs valuation?
6. Am I fully utilizing trade incentives?
7. Am I managing my third party connections?
8. Am I ready for my next customs audit?
9. What happens if I got it wrong?

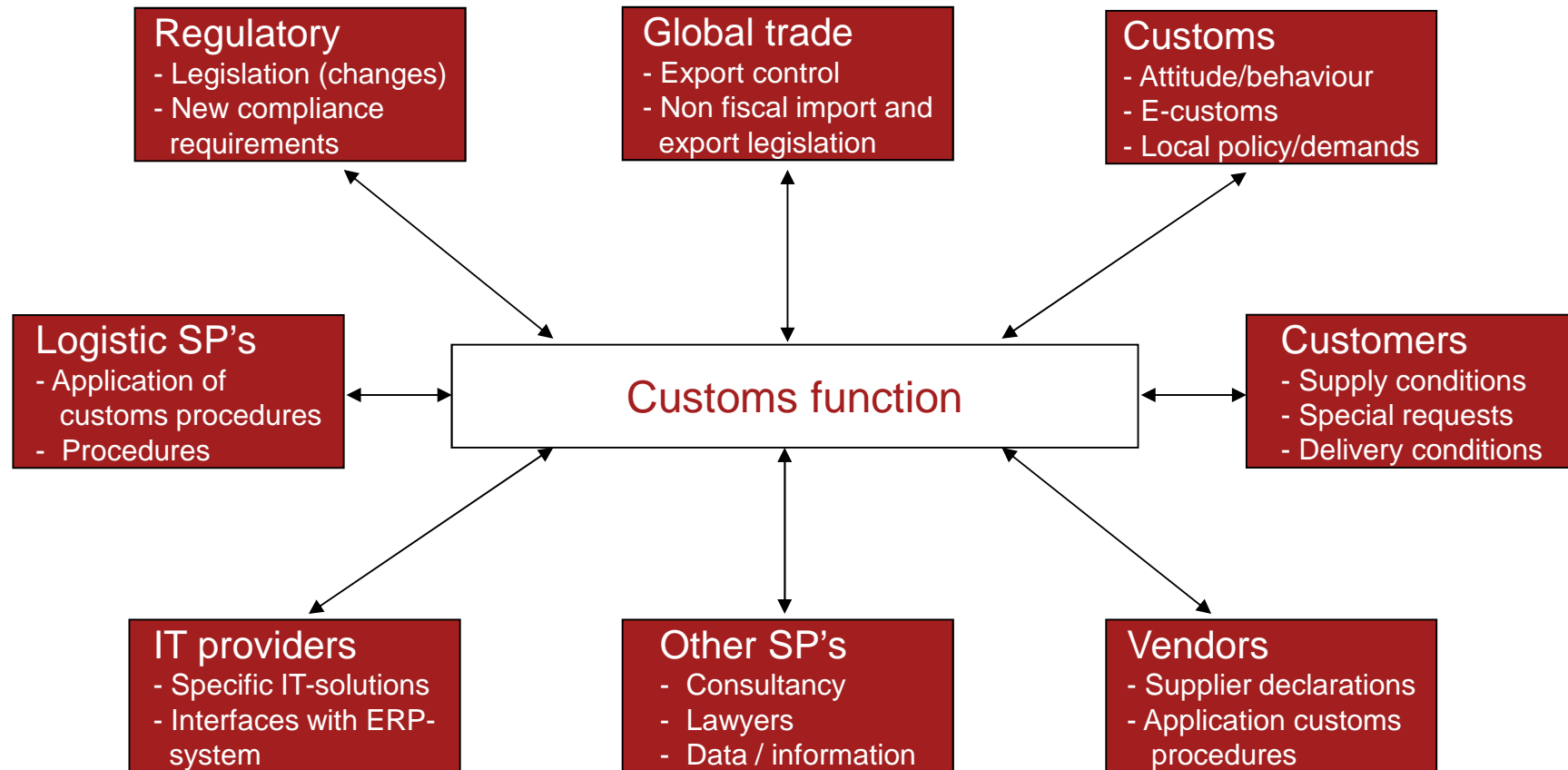
Managing the customs and trade function

Internal links



Managing the customs and trade function

External factors



Addressing the needs

Dealing with all the issues identified

- Control, awareness, early involvement, integration, communication

Creating the right customs and trade “department”

- Open, constructive, solution driven attitude
- KPIs and Internal Controls
- Internationally aligned
- Trained

Having the right infrastructure

- Use of IT and systems
- Access to up-to-date information sources

Customs management – what to do

- How to measure the cost of customs management?
 - Duty paid on goods?
 - Average goods clearance time?
 - Penalties to non-compliance?
 - Time spent on challenges, audits and investigations?
 - Other measures?
- How to manage customs brokers used in each country?
- How to ensure customs documentation is compliant?
- How to identify and manage the customs-related opportunities & risks?

Critical success factors

1. A defined customs strategy
2. Senior Management buy-in and support
3. Clear allocation of responsibilities
4. Effective data mining for accurate assessment
5. Clear and open communication

Customs risks

- A step up in audit visits and investigation activities
- Significant pressure to collect revenue - aggressive interpretations on technical points
- Many are unprepared for audit, exposure to back duties, penalties & disruption to operation
- Management of onsite issues
 - Proper documentation
 - Strategy to manage the process
 - Submission of follow up information
- Ensure sound and supportable closure

Trade facilitation

- Review available facilities provided for by in-country legislation

Examples

- Free Trade Zones and/or customs warehouses
- Duty exemption regimes or concessions for export manufacturing
- Merit-based duty exemptions
- Import duty refunds or drawback facilities

Benefits

- Deferment of payment (i.e. cash flow)
- Reduction in duty payments
- Recovery of import duties paid

Practical examples



Benefiting from Free Trade Agreements

Concern

- FTA – import clearance delays because of incomplete documents
 - Incomplete commercial invoice or packing list
 - Incomplete Certification of Origin (CO)
 - Data insufficiency
 - Erroneous documents

Solution

- Review current process and documentation
 - Create appropriate supporting documentation trail
 - Avoid inappropriate application of preferential duties
 - Advance negotiation and agreement with Customs (in Japan and overseas)
 - Smooth customs clearance

Import Licenses

Concern

- No Import license holder or representative
 - Unable to be import license holder
 - Complex procedure to be import license holder
 - No representative for import
 - Inefficient or risky contractual obligations

Solution

- Licensing procedures and management
 - Assess conditions and documents to be importer beforehand
 - Timely and comprehensive application for import licenses
 - Determine most appropriate representative for import
 - Advance negotiation and agreement with Customs

Matching theory and practice

Concern

- Variations in interpretation and implementation of law
 - Law varies from country to country
 - Implementation and interpretation of internationally consistent law may vary from country to country
 - Implementation and interpretation of national law may vary from port to port and officer to officer

Solution

- Preparation and testing of reliable information in advance
 - Prior confirmation of requirements
 - documents
 - process
 - practicalities
 - Conduct training for staff
 - Build professional and sustainable relationships with Customs

Using customs facilities

Concern

- Complexity of operating bonded and non bounded warehouse
 - Manufacturing product for domestics customer in bond
 - Re-export requirements
 - Payment of duty and VAT and fees
 - Application for authorizations
 - Stock management

Solution

- Prepare optimum bond utilization for your business plans
 - Determine most appropriate bonded regime
 - Import duty and VAT exemption applications
 - Determine and implement appropriate logistics
 - Proactive management of relationship with on-site customs officials

Business' wishes and concerns on Single Windows (SWs)

What is a Single Window (SW)?

- Lack of understanding of the SW environment
- How do you define a SW?
 - Countries define their SW differently
 - limited to electronic declaration (B2G) or cover entire trading process (B2G & B2B)?
 - Difference in capabilities and supporting features
- Unclear underlying objective
- National, regional or international level?

Value proposition to the business community

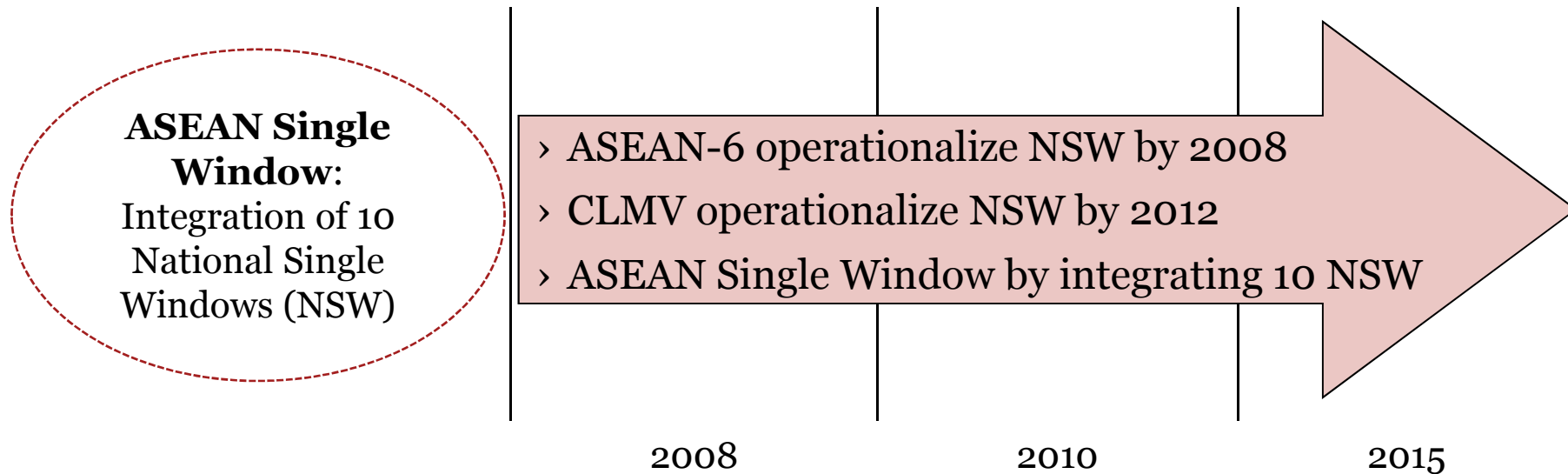
- A well defined and integrated SW system
- End-to-end coverage throughout the supply chain
- Simple system integration
- A flexible system that can cope with arising business needs

Creating a successful SW model – Key considerations

- Strong political will and empowerment
- Data harmonisation
- Strengthen stakeholder coordination and communication
- Unification of import and export processes
- Strengthen legislation and governance framework
- Invest on up-to-date technologies
- Determine the best fit model
- Involvement of the business community (actual users!)
- Mandated??

ASEAN Economic Community (AEC)

The AEC Objective



Is this a realistic target?

Break

Latest developments in business restructuring

What is the company's business strategy

- Growing business operations
- Selling new goods into a new market
- Re-structuring the supply chain (e.g. centralised resourcing or using a single buy-sell entity)
- Reverse Logistics planning
- Re-distributing profits
- Buying another organisation
- Spinning off or outsourcing certain activities
- Standardization of sourcing requirements

Who decides a company's Business Strategy?

- C-suite executives
- Sales and marketing
- Logistics & operations
- Tax
- Procurement
- Legal

Where's the voice of customs and trade?

Key customs and trade considerations

If importing for local processing or sales:

1. (How) Can you make use of FTAs?
2. Can you make use of merit-based exemptions?
3. Is the "best" party acting as importer?

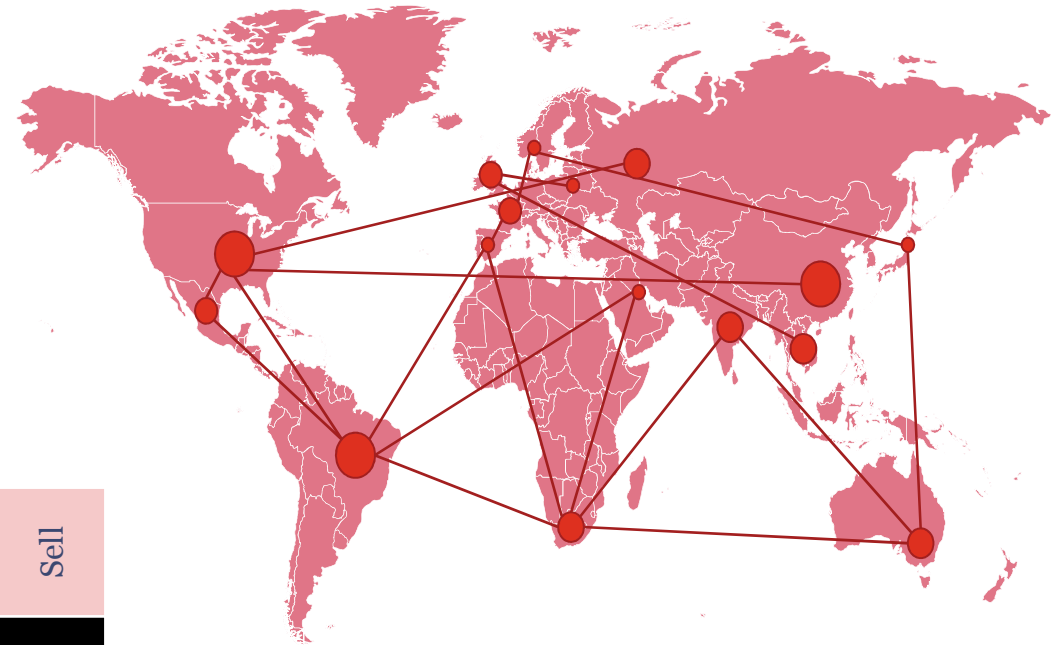
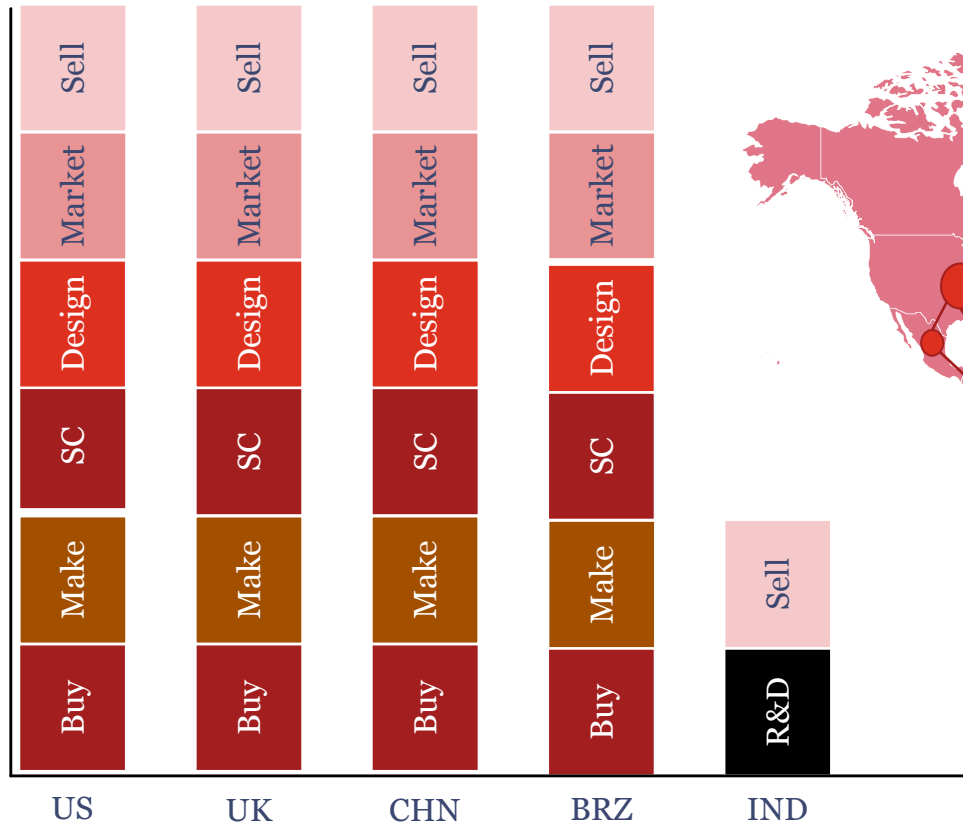
If importing for re-export:

1. Can you draw back any duty paid?
2. Can you operate in bonded facilities?

Supply chain considerations - Example

Current state

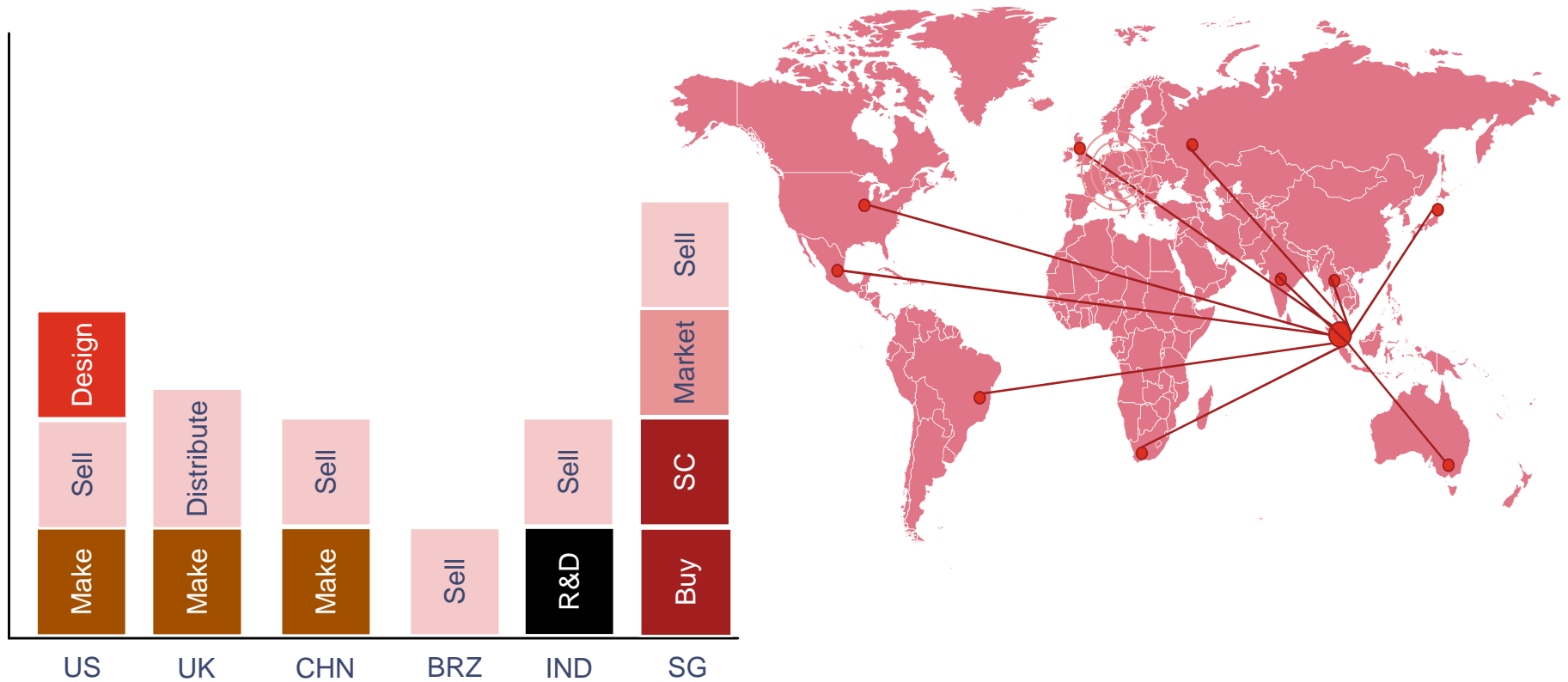
Complex, Disconnected, and Tax agnostic



Supply chain considerations - Example

Future state

Aligned, Lean, and Tax-effective



Business restructuring - why?

Internal Drivers

- Driving Strategy execution
- Simplifications of transactions
- Managing financial and trade compliance risks
- Expansion of ERP Information Technology Systems
- Effective management of cash flow

External Drivers

- Changes to tax rules
- Changes in Free Trade Agreements
- Pressure from customers
- Competitive pressures

Customs valuation issues in modern business structures

Authorities approach to customs valuation

- Revenue driven – the priority task
- Often tough and unfriendly environment
- Customs perceived as neither well trained nor very knowledgeable about business models and trends
- Inconsistency in interpretation and implementation
- Little interaction with Inland Revenue

Key Customs Valuation issues

- Making sure the price is right
- Documentary support
- Transfer pricing adjustments
- Other payments (royalties, license, commission fees, etc)
- Different approach depending on where you declare

Customs value vs. Transfer pricing

The **right** question

“What **impact** does a transfer pricing policy have on customs compliance?”

- Price determination
- Customs value support
- Dealing with adjustments
- Dealing with other payments

Documentation requirements

- No specific legislated customs documentary requirements, other than indicative
- Transfer pricing documentation normally insufficient for customs value support
- Companies rely too much on 3PLs

Transfer Pricing adjustments

- Little legislative guidance
- Steps and methods for dealing with adjustments often agreed case by case.
- Limited understanding of commercial rationale for price changes
- Reference to unrelated party transactions

Voluntary disclosure

- Rarely legal provisions for voluntary disclosures
- Processes hard to predict and manage
- Strict penalty provisions, but often applied based on the spirit rather than letter of the law
- Usually few precedents
- May trigger full audits

Other payments

- Presumed dutiable
- Often need to be declared up-front
- Aggressively challenged
- Supporting documentation is key
- Dutiable charges can be imputed

Practical challenges of utilizing FTAs in modern business structures

Introduction

- FTAs - An effective tool to promote and enhance cross border trade
 - Increase mobility for goods and services
 - Reduction / Elimination of trade barriers

- Practical challenges in applying for tariff concessions
 - Common in Asia
 - A result of country-specific interpretations and practices
 - No clear guidelines or consensus between customs authorities

Examples of practical challenges

- Indirect invoicing
- Cumulation
- Back to Back certificates of origin
- Minimum processing
- Definition of profit
- Minor discrepancies
- Duty refunds

Indirect invoicing

Companies structure their operations to optimise cheaper costs in one country coupled with central management capabilities in another country



- Supply chain structures that de-link the flow of goods from the flow of invoices
- No single invoice that correlates with the movement of goods
- The legal texts of various FTAs address such structures differently

Indirect invoicing

Examples

- More than three parties in the supply chain
- No existing commercial invoice (e.g. under a tolling structure)
- Requirements to present a second invoice which may not exist at time of export

Mitigations

- Clarity of rules and consistency in their interpretation
- Considerations for modern business and invoicing flows
- Removal of the value on a certificate of origin

Origin cumulation

Integrated manufacturing approach: network of production facilities in ASEAN



Produced by the Cartographic Research Lab
University of Alabama

- Unknown final destination of finished products at the point export of materials used for further processing
- Vague and unclear rules on the level of allowable cumulation

Origin cumulation

More Parties to FTA = More materials can be counted as originating
e.g. ACFTA versus CSFTA:

FTA	Thai originating content	Value of Heating Element from Indonesia	Non-ASEAN content	Originating content	Non-originating content	Qualifies?
CSFTA	\$39	\$11	\$50	\$39	\$61	No
ACFTA	\$39	\$11	\$50	\$50	\$50	Yes

Business issues

- Which certificate of origin is valid for cumulation?
- How many certificates can or need to be used for the same material?
- What if the material is excluded by the intermediate party?
- Under a value-added rule: does only qualifying or full value of material count?

Origin cumulation

Examples

- No express allowance for a certificate for cumulation to be raised
- Difficulties in obtaining a supporting certificate of origin
- Not knowing which certificate of origin for cumulation purposes is required at point of export

Mitigations

- Harmonization of Rules of Origin between all ASEAN agreements
- Development of a single document for purposes of cumulation
- Removal of reciprocity requirements

Back-to-Back Certificates of Origin

- No clear rules surrounding the details and circumstances on the issuance and acceptance of a “back-to-back” certificate of origin
- Allowability and acceptability is unpredictable

Examples

- Validity date of the back-to-back certificate to match that of the original certificate of origin
- Unknown date of re-export when the back-to-back certificate needs to be issued
- Difficulty in obtain certain supporting documents

Mitigations

- Harmonization of Rules of Origin between all ASEAN agreements
- A single document for purposes of supporting a back-to-back certificate of origin
- Extension of validity period

Minimum processing

“Substantial transformation” – what is considered enough?



Produced by the Cartographic Research Lab
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Minimum processing

- Concept: substantial transformation in the last country of export
- What is considered “substantial transformation”?
 - Change in Tariff Classification
 - Value Add (Local Content)
 - Specified processes (e.g. chemical reaction rule)
- “Minimum Processing” defines the non-qualifying processing, even if goods qualify under ROO laid down by FTAs
- Indicative examples of “Minimal Processing” (not specific to an FTA)

Preservation
Painting
Disassembly
Affixing of labels

Testing
Breaking bulk
Dilution with water
Simple placing in bottles

Minimum Processing

- Rules for minimum processing vary widely in level of detail
- Subjective interpretation and implementation
- Uncertainty on the level of required minimum processing (Catch – 22 situation between importing and exporting party)

Examples

- Quality control operations using specialised equipment and trained labour

Mitigation

- Harmonization / standardization of minimum processing requirements
- Allowance for a binding decision process between different parties to an FTA

Definition of Profit

- No precise definition of profit when considered as a RVC qualifying component
- “Profit” as a balancing component in many commercial transactions

Examples

- Re-allocation of profit based on transfer pricing rules
- Profit-sharing arrangements
- Royalties as qualifying content
- Profit generated from distribution activities

Mitigations

- Clarity on the treatment of profit for RVC calculation purposes
- Clarification and harmonization / standardization of rules
- If certain profits are to be disallowed as qualifying content, reduction of qualifying threshold under value-added rules

Minor Discrepancies

- Significant variance in the interpretation of ‘minor discrepancies’
- Rare for the legal text to be specific
- Disallowance of preferential treatment due to discrepancy/unclarity in the paperwork

Examples

- Difference between manufacturer and exporter details (China)
- Incorrect identification of currency

Mitigation

- Clarification of definition of “minor discrepancies”
- Consistent application of this definition at port level
- Clearer and swifter process

Retroactive Duty Refund

- Payment of duties at non-preferential rates while FTA qualification is verified
- Retrospective introduction of FTA benefits (implemented with retrospective effect)
- Unspecified/cumbersome duty refund process

Examples

- Practical verification process stretched to a few years (Philippines and Indonesia)
- Requirement of providing unusual supporting documents

Mitigation

- Provision for a duty refund process upon payment of non-preferential duty rates
- One-step processing of duty refunds upon confirmation

Key take-aways

- Business transactions are often more complex than adequately catered for in FTAs
- Many issues hold companies back from utilising FTAs
- Inconsistency in implementation and interpretation a major hurdle
- Uncertainty on benefits and fear of penalties puts off SMEs
- Need to lobby authorities

Conclusions

- Businesses want to be compliant
- Difference in rules and their interpretation / implementation makes life difficult
- Non-predictability / non-transparency of treatment also a concern
- Consultations often perceived as lip-service
- Better coordination between policy-makers and implementers needed
- Well designed and implemented trade facilitation attracts legitimate business and hinders others

Thank you!

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