



Asia Pacific

**TRADE & COMMERCE
CLIENT CONFERENCE**

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TPP & ISDS

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TPP協定における投資家と国との 間の紛争解決(ISDS)手続の概要

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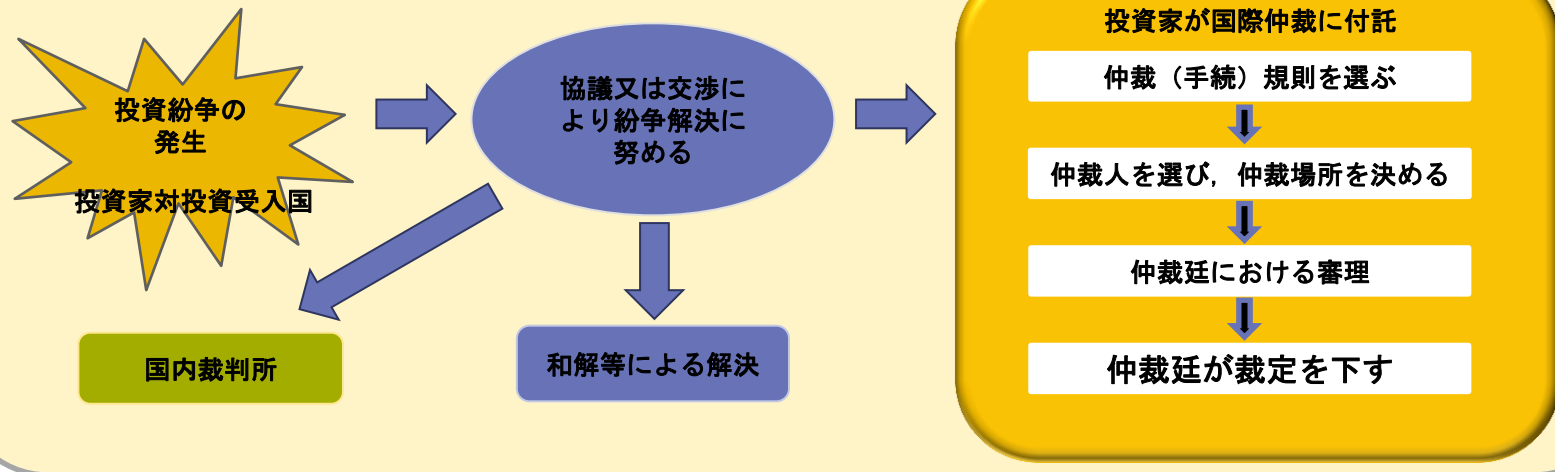
投資家と国との間の紛争解決（ISDS）手続とは？

ISDSとは、「投資家と国との間の紛争解決（Investor-State Dispute Settlement）」の略称

- TPP協定を含む投資関連協定（※）において規定される手続で、投資家と投資受入国との間で投資紛争が起きた場合、投資家が当該投資紛争を国際仲裁を通じて解決するもの。
- 投資家は、投資受入国との間で紛争が起こった場合、投資受入国の司法手続により解決するか、又はISDS手続に基づく国際仲裁に付託するかを選択することができる。
- 仲裁廷は、投資受入国による協定等の違反及び投資家の損害を認めた場合、損害賠償の支払又は原状回復を命じる。
- ISDS手続は、日・フィリピンEPA及び日・豪EPAを除き、日本の締結済の全ての投資協定24本）及び全ての投資章を含むEPA（9本）において規定されているもので、TPP協定で初めて採用される制度ではない。また、日本がISDS手続で提訴された例はない。

（※）投資関連協定とは、二国間又は多国間の投資協定及び投資章を含む経済連携協定（EPA）を指し、TPPもこれに含まれる。なお、我が国以外の国では、EPAに相当する国際協定を自由貿易協定（FTA）と呼称するのが一般的。

紛争解決の仕組み



なぜ国内の司法手続のみとしていないのか？

- 投資家には、投資受入国との間で紛争が起こった場合、投資受入国の裁判所が投資受入国の政府等に対して不当に有利な判断を下しはしないか、という中立性に対する不安がある。
- 投資受入国の国内裁判所に加えて、国際仲裁において紛争を解決することができれば、中立的な紛争解決の場が用意され、判断を受けられるため、①投資家及びその本国にとっては、投資活動を実効的に保護する手段を確保することができ、②投資受入国にとっては、投資家の投資が保護されるという期待を高めることにより、外国からの投資を促すことができる。
- また、投資受入国が投資紛争を投資家との間で直接処理する手続を整備することで、投資紛争が投資家の本国との間で外交問題化することの回避にも資する

T P P 協定に基づく国際仲裁とは？

（１）仲裁（手続）規則

投資家は、国際仲裁に紛争を付託する場合、T P P 協定が規定する複数の仲裁（手続）規則（３頁参照）の中から、当該仲裁で利用するものを選択する。

（２）仲裁廷の構成

３名の仲裁人から成る。仲裁人は、紛争当事者である投資家と投資受入国とが各１名ずつ任命し、仲裁廷の長となる第３の仲裁人は、原則として、紛争当事者間の合意で任命される（５頁参照）。

（３）救済措置

投資受入国による協定等の違反により投資家に損害が生じたことを認定した場合、仲裁廷は、損害賠償又は原状回復のみを命じることができる。

（４）仲裁人の行動規範

仲裁人の独立性と公平性を確保するために、仲裁人の行動規範の適用に関する指針等が作成され、仲裁人はこれに従うことが義務付けられる。

TPP協定において選択可能な仲裁規則①

TPP協定の投資章のISDS手続においては、投資家は、①投資紛争解決国際センター（ICSID）の仲裁規則、②国際連合国際商取引法委員会（UNCITRAL）の仲裁規則、③紛争当事者の合意による仲裁規則、のうちいずれかの仲裁規則を選択することができる。

投資紛争解決国際センター（ICSID）の仲裁規則

仲裁規則	ICSID条約（我が国は1967年に締結）及びICSIDの理事会（2015年4月現在で151か国のICSID条約締約国の代表からなり、一国一票の 多数決で決定を行う。仲裁規則の採択の場合は3分の2の賛成が必要。）により採択されたICSIDの仲裁規則が適用される。
仲裁機関	ICSIDが仲裁機関となる。なお、ICSIDは世銀グループの国際機関であるが、 <u>ICSIDの理事会の意思決定に世界銀行が関わる機会はない。</u> また、 <u>ICSIDの事務局も工程管理等の手続的な側面支援を行うのみであり、仲裁判断を作成することはない。</u>
仲裁場所	当事者の合意により自由に仲裁手続が行われる場所を選ぶことが可能。合意がない場合には仲裁廷が決定する。たとえ米国で行うことになったとしても、 <u>米国政府や米国裁判所が仲裁判断に関与したり、取り消したりすることはない。</u>

TPP協定において選択可能な仲裁規則②

国際連合国際商取引法委員会（UNCITRAL）の仲裁規則

仲裁規則	UNCITRALは、国際連合の常設委員会であり、UNCITRAL仲裁規則を作成している。同委員会が規則を作成するのみで、自ら仲裁は行わない。
仲裁機関	UNCITRAL仲裁規則を選択した場合、仲裁機関を利用しないで仲裁を行う場合と、別途当事者間で合意して仲裁機関に仲裁を管理してもらう場合の二通りがある。なお、UNCITRALは国連の常設委員会であるが、国連が仲裁判断に関与することはない。
仲裁場所	当事者の合意により自由に仲裁手続が行われる場所を選ぶことが可能。合意がない場合には仲裁廷が決定する。

紛争当事者の合意による仲裁規則

仲裁規則	紛争当事者の合意に基づき決定される仲裁機関で用いられている仲裁規則が適用される。
仲裁機関	紛争当事者の合意に基づき決定される。例えば、国際商事会議所（ICC）、ストックホルム商業会議所仲裁協会（SCC）等がある。いずれにせよ、仲裁機関の事務局は工程管理等の手続的な側面支援を行うのみであり、仲裁判断の起案には加わらない。
仲裁場所	当事者の合意により自由に仲裁手続が行われる場所を選ぶことが可能。合意がない場合には仲裁廷が決定する。

TPP協定における公平性・中立性確保の仕組み

仲裁廷の構成

3名の仲裁人から成る。仲裁人は、紛争当事者である投資家と投資受入国とが各1名ずつ任命し、仲裁廷の長となる第3の仲裁人は、紛争当事者間の合意で任命される。ただし、請求が仲裁に付託されてから75日以内に3名の仲裁人が選定されない場合には、一方の紛争当事者の要請に応じ、ICSID事務局長がこれを任命することとなるが、その場合も事務局長は紛争当事者が別段の合意をする場合を除き、紛争当事者の国民を仲裁廷の長として任命することはできない。

仲裁審理・判断の公開

全ての事案の審理・判断内容等を原則として公開することを義務付けるものとされている。これにより、仲裁廷に対し、透明性が高く公正な審理・判断をすることが期待できる。

仲裁人の行動規範

仲裁人の独立性と公平性を確保するため、TPP協定の発効までに仲裁人の行動規範の適用に関する指針等が作成され、仲裁人はこれに従うことが義務付けられる。

なお、例えば、NAFTAのISDS手続において米国投資家が提訴したもののうち、米国投資家に有利な判断が出された割合は約26%（※）であり、ISDS手続が特に米国に有利な制度であるということはない。

（※NAFTA各国政府のホームページで公表されているデータに基づき外務省にて算出（2015年1月現在））

I S D S 手続の濫用防止

I S D S 手続に対する代表的な懸念

- I S D S 手続のために、海外投資家による濫訴を引き起こしたりしないのか。



- これまでに我が国は I S D S 手続を含む投資協定及び E P A を複数締結しているが、これまでに我が国が提訴された事例はない（参考資料 1 頁参照）。
- さらに、T P P 協定の投資章では濫訴防止のために複数の規定（※）が置かれている。

※規定の具体例

- 仲裁廷の権限の範囲外である申立て等を迅速に却下することを可能にする規定
- 全ての事案の審理・判断内容等を原則として公開することを義務付ける規定
- 時機に遅れた申立てを防止するために申立て期間を一定の年数（3年6か月）に制限する規定
- 仲裁廷は懲罰的損害賠償を命じることはできないとする規定等

我が国の国内政策との関係

ISDS 手続に対する代表的な懸念

- ISDS 手続によって、我が国の公的医療制度・食の安全・環境基準が脅かされることはないのか。



- ISDS 手続は、正当な規制目的のために必要かつ合理的な規制を差別的でない態様で行うことを妨げるものではない。
- 健康、食の安全、環境等の公共の福祉に係る正当な目的のための規制措置を講ずることが妨げられないことは、TPP の投資章の複数の規定（※）で確認されている。

※規定の具体例

- 内国民待遇及び最恵国待遇の違反の有無の判断において、対象となる措置が公共の福祉に係る正当な目的に基づいて区別するものであるかどうかを考慮要素とするとされている。
- 公共の福祉に係る正当な目的（公共の衛生、公共の安全及び環境等）を保護するための差別的でない規制措置は、極めて限られた場合を除くほか、間接的な収用（*）を構成しないとされている。
- 投資家の期待に反することのみでは、たとえ損害等があった場合であっても、待遇に関する最低基準違反を構成しない。
- 健康保険を含む社会事業サービスについては一部の義務（内国民待遇等）につき特別に留保がなされている。

* 間接的な収用とは、国による行為が正式な権限の移転又は明白な差押えなしに直接的な収用と同等の効果を有する場合をいう。間接的な収用を行う際には、国は補償を行う義務を負う。

参考資料

国際仲裁の利用の現状

- I S D S 手続は、日・フィリピン E P A 及び日・豪 E P A（※1）を除き、日本の締結済の全ての投資協定（24本）及び全ての投資章を含む E P A（9本）において規定されているもので、T P P 協定で初めて採用される制度ではない。
- 提訴された国は、法制度の未整備な発展途上国が過半数を占めており、中南米、東欧、旧ソ連諸国が多い。U N C T A D（※2）によれば、2014年末までに累計で608件の提訴があったが、日本が提訴された例はない。
- 一方で、日系企業が国を提訴した投資仲裁判断が出された事例はこれまでに1件あり、日系企業が勝訴している（Saluka Investments BV 対チェコ、2006年3月17日仲裁判断）。

※1 日・フィリピン E P A 及び日・豪 E P A では I S D S 手続を定めていないが、以下の規定が設けられている。

① 日・フィリピン E P A：両締約国は、協定の効力発生後に、I S D S の仕組みを設けるために、追加的な交渉を開始する。

② 日・豪 E P A：協定発効後5年目の年又は豪州が I S D S を含む投資関連協定を新たに締結した場合に、I S D S の仕組みを設けるために協定の見直しを開始する。

※2 出典：UNCTAD Recent Developments in investor-state dispute settlement (ISDS) IIA ISSUES NOTE No.2 (2015)

NAFTA（1994年発効）における仲裁付託案件

被提訴国	件数（※） （投資家の国籍）	内訳				
		投資家勝訴 （投資家の国籍）	投資家敗訴 （投資家の国籍）	和解 （投資家の国籍）	係属中/ 仲裁未成立/ 手続停止中/ 状況未公開 （投資家の国籍）	請求撤回 （投資家の国籍）
米国	16件 （カナダ15件、 メキシコ1件）	0件	10件 （全てカナダ）	0件	3件 （カナダ2件、 メキシコ1件）	3件 （全てカナダ）
カナダ	5件 （米国34件、 メキシコ1件）	2件 （全て米国）	5件 （全て米国）	4件 （全て米国）	18件 （全て米国）	6件 （米国5件、 メキシコ1件）
メキシコ	20件 （米国19件、 カナダ1件）	5件 （全て米国）	7件 （米国6件、 カナダ1件）	0件	8件 （全て米国）	0件

※件数、内訳に関してはNAFTA各国政府のホームページで公表されているデータ（2015年1月現在）による。

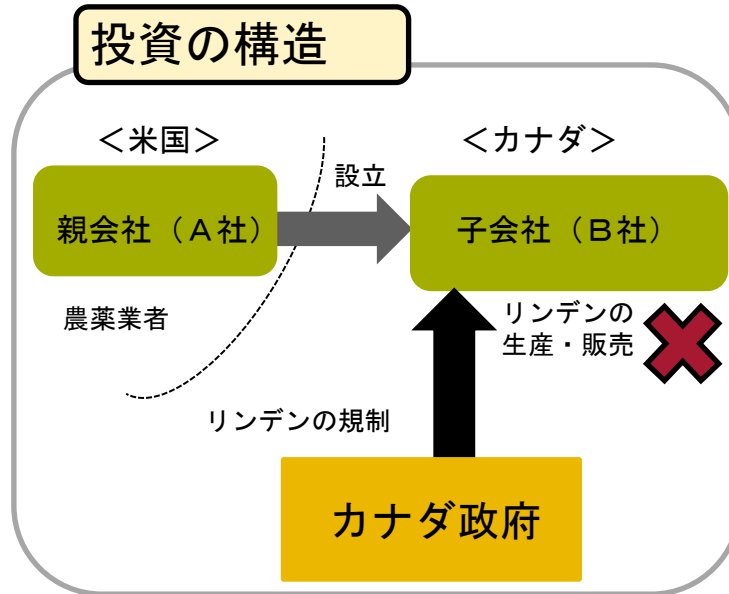
※ 上記のうち、米国企業が訴えを提起した件数は53件で、そのうち係争中のものを除いた27件のうち、米国企業が勝訴した件数は7件（勝率約26%）になる。

よくあげられる仲裁判断①

(Chemtura Corporation 対カナダ, 2010年8月10日仲裁判断)

- 米国企業vs. カナダ政府（仲裁規則：国連国際商取引法委員会（UNCITRAL）の規則）
- 農薬製造業

投資の構造



事件の発端

- 米国企業（A社）は、子会社等（B社）を通じて、農薬の一種である流動性リンデン（主に菜種に使用）を生産し、カナダにおいて登録販売していた。
- カナダ政府が、リンデンの危険性を考慮し、リンデン製品について、カナダ国内において販売・輸入可能な物質のリストへの登録の停止及び同リストからの抹消を行った。

仲裁廷の判断

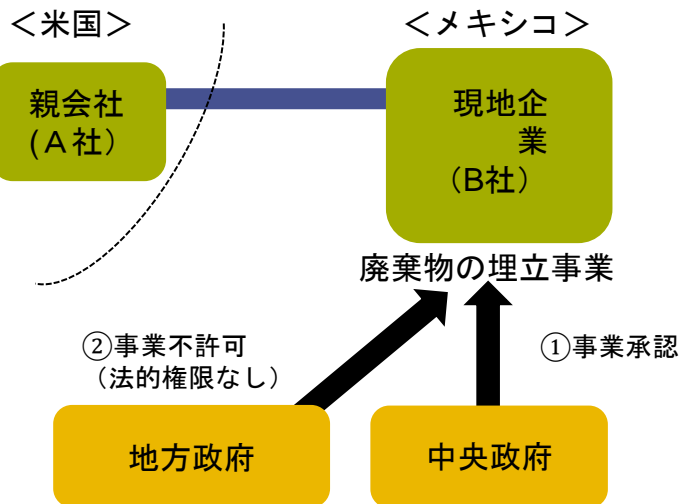
仲裁廷は、①カナダの措置はリンデンの安全性に対する国際的懸念の高まりを考えれば不公正な取扱い等にあたらない、②この措置は投資家の財産を実質的に剥奪していない、③この措置はリンデンの健康に対する危険の高まりを考慮したカナダの正当な「規制権限（police power）」の行使であること等を理由に、カナダがNAFTAに違反していないことを認定し、米国企業の訴えを棄却した。更に、仲裁廷は米国企業に対して、カナダ政府が訴訟に要した費用の半分を負担することを命じた。

よくあげられる仲裁判断②

(Metalclad 対メキシコ, 2000年8月30日仲裁判断)

- 米国企業vs. メキシコ政府 (仲裁規則: 投資紛争解決国際センター (ICSID) の規則)
- 廃棄物の埋立事業

投資の構造



事件の発端

- 米国企業 (A社) は, メキシコ中央政府から廃棄物の埋立事業の許可を受けていた現地企業 (B社) を買収した。
- 地方政府は, 廃棄物処理施設の建設地の住民が建設反対運動を始めると, 施設の建設停止を命じた。当初, 中央政府は, A社に対して, 連邦政府の許可のみが必要であり地方政府は許可を拒否できない旨説明していた。
- 連邦政府及び地元の大学が行った環境評価では, 適切な技術により施設が建設されれば, 同地は有害廃棄物の埋立に適しているとの結論を得ていたが, 地方政府は, 施設建設地を含む地域を自然保護地域に指定することにより, 操業を阻止した。

仲裁廷の判断

仲裁廷は, ①メキシコ中央政府が地方政府の行為を許容したことにより, 廃棄物処理場を操業するA社の権利の否定に同意したといえること, ②有害産業廃棄物を許可する排他的権限は中央政府にあったのであり, 地方政府の行為は権限から逸脱していたこと等を指摘した上で, 収用禁止等の違反にあたりと判断し, 損害賠償として約1669万ドル (利子を含む。) の支払を命じた。

日系企業の利用事例

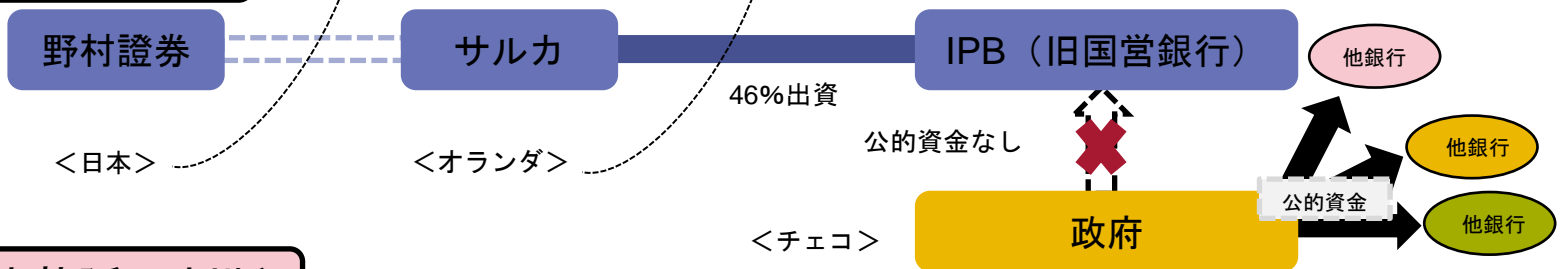
(Saluka Investments BV 対チェコ, 2006年3月17日仲裁判断)

- オランダ企業（野村証券の子会社）vs. チェコ政府（仲裁規則：UNCITRALの規則）
- 金融業
- 本件は、公表されている中で、これまでに日系企業を当事者とした投資仲裁で判断が出た唯一の事例。

事件の発端

- チェコの金融市場で重要な地位を占めていた旧国営の4銀行は、いずれも多額の不良債権を抱え、野村証券のオランダ子会社（サルカ）は、このうち1銀行（IPB）の株式46%を保有。
- チェコ政府は、IPBを除く3行には公的資金の投入など財政支援を行ったが、IPBには行わず、IPBの経営はさらに悪化し、最終的には公的管理下に置かれ、別の国営銀行に譲渡された。
- サルカは、一連のチェコ政府の措置がオランダ＝チェコ投資協定に違反するとして仲裁廷に申し立てた。

事件の発端

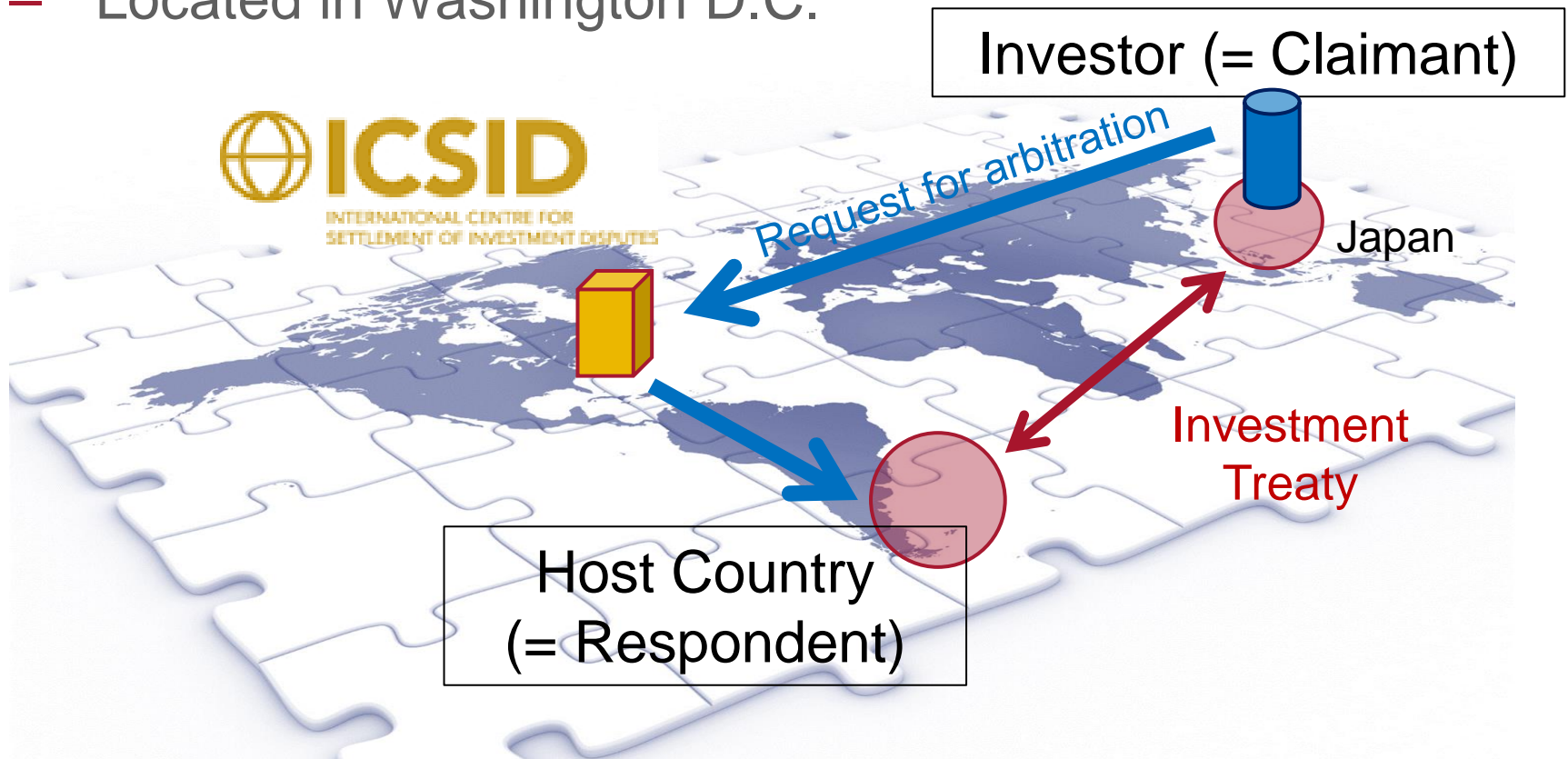


仲裁廷の判断

公正・衡平待遇の規定は、投資受入国に投資家の合理的期待を阻害しないことを義務づけている。チェコ政府の措置・態度は、この公正・衡平待遇に違反すると判断。最終的にチェコ政府は投資家側に対して約187億円＋利子の賠償支払を行った。

ICSID – International Center for Settlement of Investment Disputes

- One of the five organizations of the World Bank Group
- Founded in 1966. 525 arbitration cases up to June, 2015
- Located in Washington D.C.





Thank You



Asia Pacific

**TRADE & COMMERCE
CLIENT CONFERENCE**

25 May 2016

Regional Trade & Commerce Update

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Australia

Australia - Trade

- TPP agreed
 - Currently going through Parliamentary process
 - Delayed by 2 July Federal Election
 - Some questions about the extent Australian laws will change for TPP commitments
- ChAFTA, JAEPA and KAFTA implementation
 - Active government campaign to encourage use of FTAs
 - FTA toolkit - online application for above FTAs showing tariffs and country of origin requirements
- Australian Trusted Trader (ATT) Program
 - Being piloted
 - 1 July 2016 ATT open to all supply chain participants

Australia - Trade

- Export controls
 - Intangible transfer and brokering offences started 2 April 2016
 - New AUSGEL licences for 5+ years for certain controlled goods, software and technology to some countries including Japan
- Sanctions - many Iran sanctions lifted
- New country of origin food packaging labelling laws
- From 1 July 2017, digital products, and other imported services supplied to Australian consumers by foreign entities, will be subject to GST similarly to equivalent supplies by Australian entities



China

China - Trade

— Customs

- New customs declaration requirements:
 - whether there is special relationship
 - whether the special relationship has influenced the transaction value
 - whether there are royalty payments
- New inventory reconciliation method for bonded manufacturers
 - “Work order-based” reconciliation which reduces risk of discrepancy
 - Companies can choose between the new and traditional methods

China - Trade

- Customs (Cont'd)
 - Tariff reduction for apparel and footwear
 - Trade Facilitation
 - Integrated customs clearance reform extended to bonded areas
 - New regulation to implement the mutual recognition arrangement of AEOs between EU and China
- North Korea Sanction
 - Customs enforcement currently focuses on mineral and gasoline products

China - Commerce

— E-commerce

- Dual-track tax and regulatory system for cross-border e-commerce retail sales
 - “Pilot e-commerce program”
 - Traditional channels through postal and courier services (“grey imports”?)
- New import tax rates
- New value limit and annual quota
- “Positive list” regime
 - Equalizing the regulatory requirements for pilot e-commerce sales and ordinary trade transactions?

China - Commerce

- Cyber Security
 - New Anti-terrorism Law (effective 1 January 2016)
 - Specific obligations on “telecom business operators” and “internet service providers”
 - technical interface or decryption assistance
 - prevention of dissemination of terrorist content
 - customer identity verification
- New Consumer Products Recall Rules (effective 1 January 2016)
 - On top of product specific recall rules

China - Commerce

- Old mechanical and electric products
 - Pre-importation recordal not required
 - Products are re-classified based on new restrictive measures required for importation
- Duty-free shops
 - Expanded to 19 additional ports
 - Value limits of RMB 8,000 (USD 1,200) per entry
 - Majority-owned by companies specially licensed by the central government



Hong Kong

Hong Kong - Trade

— Free trade agreements

- Hong Kong aims to conclude the Hong Kong-ASEAN free trade agreement in 2016.
 - This was announced by Hong Kong's Financial Secretary John Tsang.
 - China and ASEAN already have a longstanding FTA, but Hong Kong is not part of it.
- Hong Kong already has FTAs with New Zealand, Chile, Iceland, Liechtenstein, Norway and Switzerland, etc.

Hong Kong - Trade

- Revised Control List for Strategic Commodities
 - Pursuant to Strategic Trade Controls Circular No. 8/2015 published by the Trade and Industry Department, the Import and Export (Strategic Commodities) Regulations (Amendment of Schedule 1) Order 2015 came into effect on 20 April 2015.
 - This brought Hong Kong's export control regime in line with the December 2013 changes to the Wassenaar Arrangement.

Hong Kong - Trade

— Sanctions

- In 2015 and 2016, Hong Kong has updated its sanctions regulations to be in line with the latest United Nations Security Council Resolutions.
- Affected countries include Somalia, Iran, Liberia, Cote d'Ivoire, Libya, Yemen, South Sudan, Central African Republic and the Democratic Republic of Congo, with a mixture of the following:
 - Most of the resolutions prohibit financial dealings with blacklisted persons;
 - Prohibits the trafficking of weapons;
 - Prohibits providing military assistance, advice or training; and
 - Prohibits the entry into or transit through Hong Kong of blacklisted persons.

Hong Kong – Commerce

– Electrical waste

- To tackle the growing problem of waste electrical and electronic products (WEEE), the Legislative Council passed the Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Act 2015 in March 2016.
- It amends:
 - Product Eco-Responsibility Ordinance; and
 - Waste Disposal Ordinance.
- Introduces a mandatory Producer Responsibility Scheme (PRS).
- Covers air-conditioners, refrigerators, washing machines and television sets as well as computers and certain associated devices including printers, scanners and monitors.

Hong Kong – Commerce

– Electrical waste

- Manufacturers and importers of regulated electrical equipment will be required to register as registered suppliers and pay a recycling fee for regulated electrical equipment that is distributed in Hong Kong.\
- In addition:
 - a seller must arrange, after distribution of regulated electrical equipment, a removal service for consumers free of charge so that the old equipment can be delivered to a competent recycler;
 - any person who is engaged in the storage, treatment, reprocessing and recycling of regulated e-waste must obtain a waste disposal license;
 - a permit is required for the import and export of regulated e-waste; and
 - regulated e-waste will no longer be accepted at landfills for disposal.

Hong Kong – Commerce

– Infant formula labelling

- The Food and Drugs (Composition and Labelling) (Amendment) (No. 2) Regulation 2014 was passed in October 2014 by the Legislative Council.
- The Regulation comprises requirements on nutritional composition of infant formulae and nutrition labelling of infant formulae, follow-up formulae and prepackaged food for infants and young children.
- The requirements on nutritional composition and nutrition labelling of infant formulae came into operation on 13 December 2015, with a grace period of 18 months.
- The requirements on nutrition labelling of follow-up formulae and prepackaged food for infants and young children will come into operation on 13 June 2016 after a two-year grace period.



Indonesia

Indonesia – Trade

- New regulation on the importation of forestry products
 - Under Minister of Trade Regulation No. 97/M-DAG/PER/11/2015 on Import Provisions for Forestry Products ("**Regulation 97**"):
 - Only forestry products set out in the Appendix can be imported by companies holding (i) a General Importer License (API-U) or (ii) a Producer Importer License (API-P) after securing an Import Approval from the Minister of Trade
 - Forestry products imported by API-U holders are only for trade purposes. API-U holders are prohibited to export forestry products before they undergo domestic processing
 - Forestry products imported by API-P holders are only for raw materials or auxiliary materials for a self-production process, and cannot be traded to other parties
 - Regulation 97 removes IP Forestry Products license and IT Forestry Products license as a required license before importing forestry products
 - API-U or API-P holders now need only secure an Import Approval

Indonesia – Trade

- New Regulation on Import of Used Capital Goods
 - The Trade Law provides that an importer can only import goods that are in a new condition
 - There is an exemption under which used capital goods can be imported by certain companies under a specific approval from the Minister of Trade
 - Ministry of Trade issued Minister of Trade Regulation No. 127/M-DAG/PER/12/2015 on Import Provisions for Used Capital Goods ("**Regulation 127**")
 - Only direct user companies, reconditioning companies and remanufacturing companies can import used capital goods
 - Health appliances provider companies can no longer import used capital goods
 - Imported used capital goods must meet certain age limitations ranging from a maximum of 15 years old to a maximum of 30 years old

Indonesia – Trade

- Ministry of Industry issues regulation on granting recommendations for importing complementary, test market and after sales goods
 - Ministry of Industry issued Minister of Industry Regulation No. 19/M-IND/PER/3/2016 on Provisions for Granting of Recommendation for Importing Complementary Goods, Goods for Test Market Purposes and Goods for After Sale Services (“**Regulation 19**”)
 - Regulation 19 sets out the requirements for obtaining a recommendation from the Minister of Industry to secure an Import Approval from the Minister of Trade
 - Regulation 19 provides certain limitations on the quantity of goods and the maximum period of an Import Approval that will be given by the Minister of Trade for each category of goods stipulated in the Appendix
 - For example, the term of an Import Approval to import electronic goods for test market is limited to 2 years and the amount of electronic goods which can be imported is no more than 5% per year of the previous 2 years average production realization

Indonesia – Trade

- Minister of Trade Issues New Regulation on Distributing Goods
 - Minister of Trade Regulation No. 22/M-DAG/PER/3/2016 on General Provisions for Distributing Goods ("**Regulation 22**")
 - Regulation 22 clarifies that retailers are not classified as consumers. As such, sales by distributors and wholesalers to retailers do not amount to retailing
 - Regulation 22 leaves open the question of whether a different rule applies to foreign investment distributors. One may still argue that a foreign investment distribution company cannot sell directly to retailers and must appoint a local distributor or agent as an intermediary
 - Regulation 22 prohibits an "importer" that is not also acting as a distributor from selling to retailers. This appears to support the current view that foreign investment "import/wholesaling" companies cannot resell directly and that they must appoint an intermediary

Indonesia – Customs

- Government Introduces Regulatory Framework on Bonded Logistic Centers
 - The Government introduces the concept of Bonded Logistic Centers by issuing Government Regulation No. 85 of 2015 ("**Regulation 85**") and Minister of Finance Regulation No. 272/2015 on Bonded Logistic Centers ("**Regulation 272**")
 - A Bonded Logistic Center is a Bonded Storage Place to store goods originating from outside the Indonesian customs area and/or goods from other places in the Indonesian customs area, which may be accompanied with one or more simple activities, for a certain period of time for later removal
 - Goods entering a Bonded Logistic Center may enjoy certain facilities such as (a) postponement of import duty; (b) non-collection of VAT, Sales Tax on Luxury Goods and Article 22 income tax on import; and (c) exemption from excise duty

Indonesia – Customs

- Government Introduces Regulatory Framework on Bonded Logistic Centers

INDUSTRY	FISCAL	STIMULUS	KITE Exemption	KITE Draw-back	Bonded Zone	Industrial Zone	Free Trade Zone	Special Economic Zone	Inland FTA
	Import Duty	Deferred			√	√		√	√
		Exempted	√				√	√	
		Drawnback		√					
	Excises	Exempted	√		√		√	√	√
	Import Withholding	Uncollected	√		√	√		√	
	VAT	Exempted	√				√	√	√
		Uncollected			√			√	√

NON INDUSTRY	FISCAL	STIMULUS	Warehouse Bonded	Bonded Logistics Center	Free Trade Zone	Special Economic Zone	Temporary Import Exemption	Temporary Import Reduction
	Import Duty	Deferred	√	√		√		
		Exempted			√	√	√	
		Reduced						√
	Excises	Exempted	√	√	√	√		
	Import Withholding	Uncollected	√	√		√	√	√
	VAT	Exempted			√	√	√	
		Uncollected		√		√		

Indonesia – Investment

– Principles of the New Negative List

- On 11 February 2016, the Government announced the principles that will be adopted in the new President Regulation on Negative List of Investments in Indonesia ("**New Negative List**")
- 35 business lines will be removed from the New Negative List, resulting in these business lines being open for 100% foreign ownership, such as crumb rubber industry, direct selling, cold storage, restaurants and e-commerce
- The New Negative List will add 1 business line that will be closed for any investment for environmental preservation reasons, i.e. extraction and distribution of coral
- The New Negative List will increase the permitted foreign investment in certain business lines such as distribution from 33% to 67%

Indonesia – Commerce

- Govt. Issues Circular Letter and Draft Regulation on “Over-the-Top” Service Providers
 - The Government has finally decided to take action against foreign internet content and application providers which it refers to as “Over-the-Top” (OTT) Services
 - Circular Letter No. 3 of 2016 on Over-the-Top Service Providers (“**Circular**”) stipulates that all foreign OTT service providers operating, or seeking to operate, in Indonesia must be registered as permanently established businesses (*bentuk usaha tetap* - BUT)
 - Besides the obligation to establish permanent businesses, the Circular sets out a number of other obligations such as the obligation to employ censorship mechanisms, as regulated by a Ministerial Regulation, as well as to use national payment gateways and Indonesian internet protocol numbers, etc.



Japan

Japan – Trade

- Customs
 - Amendment to the Customs Tariff Act
- Export controls
 - Revision of the list of “Items Highly Likely to be Used for the Development and others of Nuclear Weapons”
 - Revisions of the Export Trade Control Order and Foreign Exchange Order in July 2015

Japan – Trade (cont'd)

– Sanctions

- Increased Sanctions on North Korea Effective From April 2016
- Lifting Sanctions on Iran in January 2016

– WTO / FTAs / BIT

- New bilateral EPAs with Mongolia expected to be enacted in July 2016
- Japan – Iran Bilateral Investment Agreement was signed in February 2016 and is expected to go to effect coming summer in 2016
- Japan – EU EP Ais expected to generally agreed within 2016

Japan – Commerce

- Supply chain compliance/relevant regulations
 - Regulatory requirements for precursor substances
 - Amendment of the Guidelines Concerning Distribution Systems and Business Practices under the Antimonopoly Act

Japan – Commerce

– E-commerce

- Various regulations supporting e-commerce (time stamp, e-signature, e-document, e-consumer contract, etc.)
- Amendment of the Act for Specified Commercial Transactions, the Act for Consumer Contract
- Interpretative Guidelines on Electronic Commerce and Information Property Trading issued by METI

Japan – Commerce (cont'd)

- Testing and labelling
 - Amendment of the Act for Misrepresentation in response to Increasing misrepresentation of food labelling
- Cyber Security
 - Enactment of Cyber Security Act in 2014
- Data Privacy
 - Amendment of Personal Information Protection Act
 - Extraterritorial Application of the Act
 - Cross border transfer of personal information



Malaysia

Malaysia Trade Update: Trans-Pacific Partnership Agreement (“TPP”)

A. Potential regulatory changes

- 26 amendments to be made to 17 laws as a result of the TPP
- Key legal amendments will be seen in areas including:
 - labor
 - intellectual property
 - customs
 - government procurement
- net effect of such changes:
 - removal of both tariff and non-tariff barriers
 - increased transparency in state policies
 - enhanced business environment to facilitate trade

Potential Opportunities Under the TPP (Con't.)

B. Snapshot of potential economic opportunities in Malaysia

- **lower and more extensive tariff coverage** – cheaper to export and/or import goods resulting in significant savings
- **removal of foreign equity restriction for certain industries** – ease of entry and exit into the Malaysian economy
- **new opportunities in government procurement** – better penetration into the Malaysian economy
- **recalibration of state-owned enterprises** – level playing field for foreign companies to compete effectively
- **potential trend in automation of production lines** – boom in demand for high grade machineries and robotics

Malaysia's Export Which Will Enjoy Immediate Import Duty Elimination Under TPP

Product		Import Duty Before TPP	Duty After TPP	Export value in 2014 (US\$ mil)
Electrical & Electronic Products	US	3-5%	0%	11,138.0
	Canada	5-11%		308.2
	Mexico	5-15%		1,148.7
	Peru	9%		39.0
Rubber Products	US	2.4-14%	0%	1,238.2
	Canada	5-15.5%		84.6
	Peru	9%		8.5
Palm Oil	Canada	11%	0%	17.9
	Mexico	4%		2.2
Transport Equipment	US	5%	0%	292.9
	Mexico	5-15%		20.5
Wood Products including Plywood	Japan	6-10%	0%	1,103.4

Potential opportunities under the TPP

C. Snapshot of impact on select industries in Malaysia

AUTOMOTIVE

- ❖ Presently, the Malaysian automotive tax policy provides for tax deductions on excise duties for motor vehicles which have at least 30% local content.
- ❖ The Malaysia-US Automotive Side Letter and the Malaysia-Canada Automotive Side Letter contain prohibitions whereby Malaysia may not provide excise tax credits for motor vehicles based on the use of local content beginning 1 January 2021.
- ❖ If excise tax credits based on local content are removed, Japanese car brands can better compete with national cars and penetrate the Malaysian market more effectively.
- ❖ Malaysian parts and component producers can benefit from ability to supply to new markets and participate in regional supply chain.
- ❖ Encourage also Investment from other TPP parties to invest into automotive parts manufacturing sector in Malaysia.

RETAIL TRADE

- ❖ Based on prevailing policies, the foreign equity cap for convenience stores (“konbini”) in Malaysia is at 30%; there is also minimum 30% Bumiputera shareholding requirement.
- ❖ Large retailers are dominated by foreign-linked firms in the Malaysian distributive trade sector e.g. GCH (5%), Tesco (3%) and AEON (2%).
- ❖ The TPP is like to bring about liberalization of the distributive trade sector, specifically the konbini subsector.
- ❖ Given that Malaysia Annex to the TPP only preserves the 30% Bumiputera shareholding requirement, foreign investors (e.g. Lawsons) would be able to hold up to 70% of shareholding in konbini.

Customs Updates

– Exemption of Certificate of Approval for Hybrid Products

- 77 tariff codes of hybrid products with Bluetooth, WiFi and other technology (toys, medical devices, electrical products) going into Free Industrial Zones, Licensed Manufacturing Warehouses, Bonded Warehouses.

– Significant increase in excise duty rates for alcoholic products

- For example, excise duty on beer made from malt under subheading 2203.00 increased from RM 7.40 per litre per 15% volume per litre to RM 175.00 per 100% volume per litre.

– New items in Customs Prohibition of Imports Order

Description	HS Code
Nicotine and its salts	2939.99
Essential oils containing nicotine, Nicotine tables and chewing gum	2106.90
Nicotine patches, Mixture and preparation for vaporizer smoking	3824.90
Hypophosphoric acid (diphosphoric (IV) acid (H ₄ P ₂ O ₆)) and its salt	2809.20
Alpha-Phenylacetoacetonitrile (APAAN)	2926.90

Other Trade & Commerce Updates

- **Medical Device (Exemption) Order 2016** gazetted on 8 April 2016 provides exemption of registration of equipment for personal use, demonstration for marketing, education, clinical research or performance evaluation of medical device, custom-made medical devices and special access medical devices,
 - Exemption also for importers and manufacturers of above medical devices from obtaining establishment license
 - Class A medical devices are now exempted from the conformity assessment procedures by a conformity assessment body
- **Temporary ban on hiring new foreign workers:**
 - Announced in May 2016, but later relaxed for 4 industries: (i) manufacturing, (ii) construction, (iii) plantation; (iv) furniture-making
 - Other sectors will be considered on a case-to-case basis
- **Minimum Wages Order 2016**: on 29 April 2016, the national minimum wage for employees except domestic servants increased from RM900 to RM1,000 (for Peninsular Malaysia)



Philippines

Philippines – Trade

– Customs

- Customs Modernization and Tariff Act (CTMA) has been passed by Congress and awaiting the signature of the President
- CTMA amends the TCCP in compliance with the Revised Kyoto Convention. CTMA also increased the de minimize value and provides for harsher penalties for smuggling

Philippines – Trade (cont'd)

– Export controls

- Strategic Trade Management Act (STMA) was signed into law on 13 November 2015 and became effective on 2 December 2015
- STMA provides for a National Strategic Goods List (NSGL). Most likely will adopt the EU control list (munitions and dual-use items) plus additional Nationally Controlled Goods
- Implementing rules and regulations of the STMA have not yet been issued

Philippines – Commerce

– Data Privacy

- The Data Privacy Act of 2012 seeks to protect the personal and sensitive personal information of data subjects
- Commissioner and Deputy Chiefs of the National Privacy Commission were recently appointed
- Implementing rules and regulations of the law have yet to be issued



Singapore

Singapore - Trade

— Customs

- Updated documentation requirements for removal of shut-out goods from Free Trade Zone
- Development of National Trade Platform

— Export Control

- Strategic Goods Control Order 2015 came into effect on 2 November 2015

— FTAs and BITs

- Implementation of Revised Rules of Origin and Operational Certification Procedures under ASEAN-Australia-New Zealand FTA

Singapore – Trade

- FTAs and BITs
 - 9th Package of Commitments under ASEAN Framework Agreement on Services
 - Singapore-Iran Bilateral Investment Treaty
- Sanctions
 - Obligations to Combat Terrorism Financing and Proliferation Financing
 - South Sudan Asset-Freeze Sanctions
 - Revocation of Sanctions against Liberia
 - Cancellation of Prohibition on Transactions with Iran
 - Singapore Company Fined for Violating UN Sanctions against North Korea
- Commerce
 - Updates to Personal Data Protection Act Regime



Taiwan

Taiwan – Trade

Export Controls

- The "Examination Directions of the Export of Equipment for Semiconductor Production to the Mainland Area" terminates on 26 June 2015
 - semiconductor manufacturing equipment sales to China no longer needs advanced approval from the Taiwan government
- A new SHTC Control List is in effect 16 May 2015
 - Now track EU 2014 military and dual-use lists
- The SHTC Regulations now grant export exemptions to the United States and Japan
 - under certain conditions an export permit is no longer required
- Starting from December 25, 2015, Cuba is no longer listed as a controlled country

Taiwan – Commerce

Cyber Security

- The *Commercial Electronic Mail Management Act* is an anti-spam act pending in the Legislature. It introduces:
 - consumer consent and other requirements with which commercial email senders must comply; and
 - the right for spam recipients to recover damages.
- Commercial email senders must provide certain disclosures in their emails and the *Act* prohibits most forms of randomly generate spam
- Spam recipients can potentially recover US \$17 to US \$69 for each unauthorized email
- Class action lawsuits by authorized organizations on behalf of 20 or more persons are now possible

Taiwan – Commerce

- Personal Data Protection Act (“PDPA”)
 - Further amended on December 31, 2015, effective on March 15, 2016
 - Sensitive personal information collection possible, but subject to more stringent requirements
 - Negative consent conditionally permissible
 - Collection and processing has no adverse impact to the data subject is permissible
 - Can use if beneficial to the data subject
 - The penalties for violations of the PDPA are imposed if the violator has intention to increase his/her illegal benefits or to damage the data subject's interests



Thailand

Thailand – Trade

– Customs

- Proposed new customs act
 - Rewards sharing system
 - Power to seize or attach the properties of debtors
 - Customs offenses and penalty for duty evasion
 - Timeframe for customs appeal
 - Amount of duty surcharge
 - Audit period



Thailand – Trade (cont'd)

– Customs

- Pre-arrival processing system
- New free zone regulations
 - More areas of businesses and operations
 - More secure financial status
- Conditions on duty exemption for products brought out of free zone or IEAT-free zone for domestic sale or consumption
 - Customs tariff at 0 percent for Thai and/or ASEAN value of content

Thailand – Trade (cont'd)

– Export controls

- Export control of dual-use goods
- Draft trade controls of weapons of mass destruction
 - WMD related items that include dual-use items, goods for which it is believed or suspected that its end use or end user are relevant to the WMD related items and armament, irrespective of whether they are tangible or non-tangible goods
 - export, re-export, transshipment, transit, and brokering activities of WMD related items



Vietnam

Vietnam – Trade

- Stricter Control on Representative Offices and Branches of Foreign Merchants in Vietnam
- Fewer Requirements for Importing Used Machines and Equipment
- Importation of used IT products into Vietnam
- Promulgation of Law on Export and Import Duties 2016
- Higher Taxable Base for Imported Goods under new regulations on Special Consumption Tax (Excise Tax)
- Vietnam - EU Free Trade Agreement
- Trans-Pacific Partnership Agreement
- ASEAN Framework Agreement on Services - New Package on Market Access

Vietnam – Trade (cont'd)

- Stricter Control on Representative Offices and Branches of Foreign Merchants in Vietnam
 - Limitation to the nationality of foreign merchants
 - RO establishment is subject to Vietnam's commitments in international treaties;
 - In the absence of Vietnam's commitments in international treaties: RO establishment is subject to approval on case by case basis.
 - Narrowing the operation scope of ROs
 - Remove the function of “monitoring and accelerating the performance of contracts signed between the foreign merchant and Vietnamese partners”

Vietnam – Trade (cont'd)

- Fewer Requirements for Importing Used Machines and Equipment
 - Permission to import used equipment of less than 10 years old, in compliance with the National Technical Regulations (QCVN) or National Technical Standards (TCVN) or meets the safety, energy saving and environment protection requirements set by the G7 countries
 - Permission to import used equipment listed in an approved foreign direct investment project application (may conflict with Vietnam's goods quality regulations)

Vietnam – Trade (cont'd)

- Importation of used IT products
 - Banning used IT products or parts from importation
 - Exemption to importation ban (subject to Ministry of Information & Communications' approval):
 - Imports for scientific use; or
 - Import for processing, recycling, repair for foreign merchants (but must then be re-exported)
 - Expanding the scope of exemption to importation ban from 1 Jul 2016
 - Imports for relocation of manufacturing equipment of an organization;
 - Imports for controlling, operating, or supervising the operation of, a part or entire manufacturing system;
 - Import for manufacturing or processing software products, IT business process outsourcing (BPO), data processing for foreign entities; and
 - Imports for specialized usage purposes

Vietnam – Trade (cont'd)

- Promulgation of Law on Export and Import Duties 2016
 - Duty exemption applicable to more goods, most importantly goods imported for export production
 - Eliminate duty refund in the event of wrong declaration
 - Wrong declaration conducted within 365 days from the date of detection shall no longer be entitled to duty refund;
 - Grace period of import duty payment
 - Privileged enterprises are entitled to a grace period of up to 40 days in comparison with other taxpayers

Vietnam – Trade (cont'd)

- Higher Taxable Base for Imported Goods under new regulations on Special Consumption Tax (Excise Tax)
 - Increase of the taxable base of imported goods
 - Imported goods, except for gasoline, are subject to Special Consumption Tax at two stages: being imported and being sold
 - Tightening the margin in selling prices between manufacturers and distributors
 - For importers and manufacturers of automobiles under 24 seats manufactured or assembled locally: must not be 7% lower than average selling price of distributor
 - For imported automobiles under 24 seats: No less than 105% of import cost (import price plus import duty and SCT at import stage)

Vietnam – Trade (cont'd)

- Vietnam - EU Free Trade Agreement (“**VEFTA**”) signed on 7 Dec 2015
 - Liberalize 65% of import duties on EU exports at entry into force and the remaining duties will be eliminated in ten subsequent years ;
 - Eliminate EU duties over a seven-year period;
 - Open market for most of EU food products;
 - Liberalize wine, spirit and frozen pork meat after seven years; dairy products after five years at most;
 - Eliminate duties for sensitive products (textile and footwear)

Vietnam – Trade (cont'd)

- Vietnam - EU Free Trade Agreement (“**VEFTA**”) signed on 7 Dec 2015 (cont'd)
 - Offer access to Vietnamese exports via Tariff Rate Quotas
 - Address non-tariff barriers regarding automotive
 - Consider “a new model for trade policy with developing countries”

Vietnam – Trade (cont'd)

- Trans-Pacific Partnership Agreement (“**TPP**”) signed on 4 Feb 2016
 - Set forth the labor and environment issues in international trade activities in Vietnam
 - Be designed to promote the formation of an effective supply chains among country members
 - Open considerable opportunities for Vietnam:
 - Textiles and Apparels: Reduction of import duties in the U.S. and Japan
 - Eliminate import duties on shrimp, squid and tuna;

Vietnam – Trade (cont'd)

- ASEAN Framework Agreement on Services - New Package on Market Access (“**AFAS**”) signed on 15 Dec 1995, latest 9th Package
 - Further market access
 - No restriction at all (CPC 82201, 82202, 83203)
 - Restriction on foreign ownership (CPC 853, 852, 83103)
 - Restriction on qualification (CPC 921)
 - Removal of all references to the supply of services through presence of natural persons (Mode 4)
 - Supersession by the Member States under the ASEAN Agreement on the Movement of Natural Persons (“**MNP**”)



European Union

EU – Trade

– UCC

- New Union Customs Code (UCC) entered into force on 30 October 2013 and will be implemented in phases between 1 May 2016 and 31 December 2020
- The changes implemented by the UCC will have significant practical and financial implications for businesses importing into or exporting from the EU. The three key changes under the UCC will be:
 - Changes to customs valuation rules;
 - Introduction of compulsory guarantees; and
 - Introduction of benefits for holders of the AEO Customs Simplifications (“AEOC”) status

EU – Trade

– EU Dual-use Control List

- New EU Dual-use Control List entered into force on 24 December 2015 (EU 2015/2420)
- Main changes relates to Software and Crypto analytical items
- Overview of changes to EU Dual-use Control List:
 - <http://ec.europa.eu/trade/import-and-export-rules/export-from-eu/dual-use-controls/>

EU – Trade

– Export Licensing

- Longer processing times
- Stricter export licensing conditions (EUC requirement, no military end-use, etc.)
- Increasing importance of human rights considerations when deciding whether or not to issue a particular export license
- Increased use of Catch-all clause by the authorities
- Increase of license denials

EU – Trade

– Sanctions – General Comments

- Greater willingness by EU to impose sanctions
- Increasing government-to-government cooperation
- Stricter enforcement of EU sanctions, in particular in relation to Russia / Crimea
- High expectations of compliance programs (some countries)
- Screening of third parties is minimum expected from companies doing business with/in ‘sanctioned countries’
- Note: Ensure appropriate sanctions clauses (other than *force majeure*) included in your commercial documents

EU – Trade

– Sanctions – Iran

- EU Sanction relief 16 January 2016
- EU sanctions relief mainly relates to:
 - Delisting of designated parties
 - Termination of nuclear-related sanctions
- Is there a risk for snap-back?
- Question remains: Will EU banks be willing to be involved in transactions with Iran?

EU Sanctions - Iran

- What has been lifted?
 - Oil and Gas product controls
 - Petrochemical product controls
 - Related investment restrictions on these sectors
 - Related import restrictions on these sectors (already suspended previously)



EU Sanctions - Iran

- What has been lifted?
 - Gold / precious metals product controls (already suspended previously)
 - Controls on diamonds
 - De-listing of over 400 Designated Parties (DPs)
 - Implementing Reg: 2015 / 1861



EU Sanctions - Iran

- What has been lifted?
 - Correspondent banking restrictions
 - Restrictions on loans to O/G and petrochem sectors
 - Insurance restrictions for Iranian Persons
 - Controls on coinage
 - Certain Iranian banks de-listed (though not all)



EU Sanctions - Iran

- Remaining Controls
 - DPs
 - Metals product controls
 - Nuclear product controls
 - Arms embargo
 - Internal repression
 - Standard EU export controls and end-use controls

EU Sanctions - Russia

- No major changes lately
 - Weapons embargo
 - Dual-use restrictions: 9 (mixed-)defense companies, military use, and military end-user
 - Oil related equipment
 - Military end-use clause
 - Designated parties
 - Sectoral sanctions
 - Including related services / assistance

EU Sanctions - Crimea / Sevastopol

- Sanctions – Crimea / Sevastopol
 - Import ban into EU
 - Export prohibition for many products (including non-controlled products)
 - Investment restrictions
 - Prohibition on tourism related activities
 - Including related services / assistance



Thank You



Asia Pacific

**TRADE & COMMERCE
CLIENT CONFERENCE**

25 May 2016

Customs Issues in Difficult Jurisdictions

Led by:

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Panellists:

Anne Peng, Hong Kong

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Riza Buditomo, Indonesia

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Agenda

1. Introduction
2. Update on key customs issues in Asia Pacific
 - a. China
 - b. Thailand
 - c. Indonesia
 - d. Malaysia
 - e. Vietnam
 - f. Japan
3. Q&A



Introduction



China

Customs Valuation

- Close Scrutiny on Related Party Transactions
 - Recent Amendments to the Import and Export Customs Declaration Forms (*GAC Announcement No. 20*)
 - Importers and exporters are required to declare the following information to China Customs:
 - i. whether there is a special relationship between the buyer and seller (i.e., whether they are related parties);
 - ii. whether the special relationship has influenced the transaction value; and
 - iii. whether the buyer has paid or will pay royalties to the seller or relevant parties.

Customs Valuation

- Increased Queries on Transfer Pricing (“TP”) Policy
 - In customs audits, Customs requests companies to provide TP documentation to them
 - Customs makes research on the benchmark of gross profit margin in certain industries
 - If a company’s gross profit margin is higher than the benchmark, Customs will query whether the import price is too low and whether the company has paid less duties and import VAT than it should pay to Customs
 - As a result, they may lift the dutiable value and levy additional duty and import VAT

Customs Valuation

- Increased Queries on Warranty
 - China Customs investigates the warranty amount and other warranty-related expenses incurred in after sales services of imported goods
 - Customs takes the view that warranty and warranty-related expenses should be added to the dutiable value of imported products
 - Due to lack of legal basis, some cases are arguable

Tariff Classification

- A different HS Code can result in significantly higher or lower customs duty
- It can also affect the import / export licensing requirements
- An error in tariff classification could lead to big problems:
 - Customs Clearance Divisions transfer the cases to Anti-Smuggling Bureaus (“**ASB**”) easily
 - Customs will recover additional customs duty and import VAT, and
 - Impose penalties
 - Companies may be downgraded



Thailand

Customs Tariff Classification

Customs Tariff Classification

- Thai customs adopts self assessment method in determining customs classification.
- Generally, Thai customs interprets the tariff classification according to Explanatory Notes
 - based on the information of the importer, e.g., samples, brochures, catalogues
 - based on the interpretation of the customs officers (may not be in line with specialized knowledge)
 - based on General Rules for the Interpretation of the Nomenclature



Impact of Tariff Classification

- Calculation of Import Duty/ VAT
- Entitlement to Duty Privileges
- Utilization of Duty Privileges under FTAs
- Import Requirements
- Customs Offenses
 - False Declaration/ Under-declaration
 - Importation of Prohibited/ Restricted Goods into Thailand

Tariff Classification: Case Study

- Company A imports approximately 95% of motor car parts with 5% local parts of motor car, which are max wheels, screws, nuts and carpets, for manufacturing car model X, and declares the imported parts on part-by-part basis.
- Questions:
 - Import duty based on part-by-part rate or import duty as complete “motor car”?
 - GRI Rule 2 (a) should apply in this case?

Tariff Classification: Case Study (cont'd)

- GRI Rule 2 (a):
 - “Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or failing to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.”
- Essential character of motor cars: power generation, transmission, drivetrain, direction control or transmission, or shock absorber should constitute the essential character of the motor car? Wheels?

Customs Valuation

Customs Valuation

- Thai customs normally utilizes “transaction value” as a primary customs valuation method
- Transaction Value → price actually paid or payable by the buyer to the seller for the goods when sold for export to Thailand
- Price lists of goods imported into Thailand as guidelines for customs officers at port of importation to adjust the import price to be in line with the price lists prepared by Thai customs

Customs Valuation: Issues raised by Thai Customs

- Additions to the transaction value, which include:
 - royalties and license fees
 - commissions and brokerage fees, except buying commissions
 - assists
- Transfer Pricing
 - Transfer pricing study and “transaction value”
 - Price adjustment and customs valuation
 - Transfer pricing study in the eyes of Thai customs



Impact of Customs Valuation

- Calculation of Import Duty/ VAT
- False Declaration/ Under-declaration Offenses



Indonesia

Customs Classification

Customs Classification

- Indonesian customs adopts self assessment method in determining customs classification
- Customs classification is one of the elements to calculate the correct import duty rate



Customs Classification

- Sometimes it is not easy to classify products as it requires to:
 - Gather the facts
 - work with others within organization (e.g., engineers, technicians)
 - review brochures, samples, photos
 - Research the laws
 - review the appropriate Chapter Notes and Explanatory Notes
 - Apply the laws to the facts

Tariff Classification May Lead to Complication

- It is not uncommon to find that the Customs authority may have different interpretation of classification during:
 - customs audit
 - customs clearance; and
 - re-assessment of declared tariff after customs clearance
- Different interpretation can cause:
 - being deemed as wrong calculation of import duty
 - underpayment of import duty
 - additional requirement for import licenses



Customs Audit

Areas of Focus and Cases

- Relevant customs offices/officials have the authority to determine object of audits
- Subjects of audits: determined by relevant authorities, based on priority scale
- Recent focus:
 - Accuracy of HS Codes (determine import tariff)
 - Costs added to transaction value (e.g. royalty, licensing fee)





Issues Related Customs Audit

- the Customs auditors request documents that are not related to the auditee itself e.g., the breakdown of the cost and production structure exporters.
- Settlement of findings can be a lengthy and time consuming process
- Findings of customs audit usually lead to change of importation lane

Potential Penalties

- Administrative sanction of minimum 100% and maximum 1000% of the underpaid import duty
- Administrative sanction in the form of Rp 75 million fines if an auditee refuses to cooperate for audits
- Directorate General of Customs and Excise has the authority to redetermine tariff and custom value



Back to Back Certificate of
Origin



Issues

- Back to back Certificates of Origin (COO) are sometimes challenged by the Customs authority during importation process.
- Customs' argument → is not sufficient for the criteria to enjoy preferential tariff under Free Trade Agreements.
- Challenges cause issuance of re-assessment letters by the Customs which usually lead to underpayment by the importers.



Issues

- Objection or appeal to re-assessment from the Customs will require the importers to first fully pay the underpayment amount.
- Objection or appeal to re-assessment can be lengthy and time consuming process.
- Change of importation lane during objection or appeal process.

Customs Valuation

Customs Valuation

- Customs valuation is also one of the elements to determine the correct import duty rate
- Customs value for calculation of the import duty is the transaction value of the imported goods
- Transaction Value → actual price paid or payable by the buyer to the seller for the relevant goods



Transaction Value

- Transaction Value includes:
 - costs payable by the buyer that are not yet included in the price
 - Value of goods and related services
 - Royalty and cost of license (often become a problem)
 - Value of each part of proceed/revenue
 - Cost of transportation
 - Cost of loading, unloading and handling
 - Insurance

Related to Transfer Pricing

- Customs authority currently sees transfer pricing study documentation as reference (not an underlying document to justify the use of the transaction value)
- Complete transactional documentation is required to support the analysis of related party pricing





Related to Transfer Pricing

- There is no publicly available guidance from the customs authority on the treatment of related party prices
- There is no voluntary correction for the change of declared customs value; however, the customs authority can re-assess the declared value until 2 years after declaration



Malaysia

Common Issues in Malaysia

Common Audit Issues

- Importers, trading company and exporters:
 - classification of goods (affects import duties, GST, excise duties, anti-dumping duties, safeguard duties);
 - valuation (also affects duties payable, particularly scrutinized between related parties);
 - industries concerned generally involve higher duty rates or licensing requirement (e.g. automotive, tobacco, liquor, consumer products, food, pharma, cosmetics).
- Manufacturers:
 - use of Free Industrial Zones, Free Commercial Zones, Licensed Manufacturing Warehouse (LMW), Bonded Warehouse;
 - Ministry of Finance (MoF) exemption on import duties on raw material, equipment, components for manufacturing

Common Audit Issues

- Authorized Economic Operator compliance:
 - audit records of company for compliance with Customs Act (shipping documents, commercial documents, import / export licenses, agreements);
 - security measures on information management (against alteration / tampering of data, access, etc.);
 - manner of communication with Customs (e.g. notification system to Customs of suspicious activities;
 - education and training for personnel (e.g. cargo security along supply chain, procedures)
- Strategic Trade Act compliance:
 - declaration of strategic goods exported;
 - compliance with export permit requirements

Recent Case Example

- Audits on ‘special status companies’
 - LMW companies and MoF companies subject to strict conditions to prevent abuse of duty free importation and ‘pilferage’ of duty suspended goods
 - Recent cases involving Customs audit for compliance with specific obligations:
 - approval for sub-contractors (in Malaysia, or to Singapore);
 - ratio of export vs domestic sale adhere to 80:20 requirement;
 - use of premises according to plans submitted to Customs authorities (e.g. prohibit use of storage area for processing, or canteen area for storage, etc.);
 - duty free goods utilized strictly for manufacturing, not for trading or sale as spare parts

Audit Issues Moving Forward

— GST compliance:

- Approved Trader Scheme (ATS) allowing duty free imports (suspended) of goods for export-based manufacturing, regional procurement and distribution activities;
- Approved Toll Manufacturing Scheme (ATMS) allowing contract manufacturers to disregard contract manufacturing fee from GST (80:20 rule);
- Sales Tax refunds claimed by companies pursuant to introduction of GST;
- supplies by companies in Free Commercial Zones, Bonded Warehouse;
- 'drop-shipment arrangement' under DG Decision 4/2015

Audit Issues Moving Forward (cont'd)

- Customs Rule of Origin compliance:
 - amendment of Customs Act to introduce specific powers for Customs to audit origin declaration in export documentation for 'self-declared' origin;
 - additional provisions relating to Customs powers to audit import declarations for preferential tariff claims



Vietnam

Customs Classification

Customs Classification

- Inconsistency between different customs departments: goods may receive different HS codes if imported into Vietnam via different border gates
- Delay in coordination between line ministries and customs authority: Goods subject to inspection of line ministries (e.g. food) have not been fully classified, causing delay in identifying if goods are subject to inspection by line ministries

Customs Classification (Cont.)

- Time delay in testing/appraisal: If customs authority does not agree with the HS codes declared by the importer, testing/appraisal will be conducted. Capacity limit of customs authority leads to considerable delay

Customs Valuation



Customs Valuation

- Royalties and license fees: interpretation can be discretionary to make it dutiable
- Expands types of goods with valuation risks: more goods are be subject to customs challenge

Customs Advance Ruling



Customs Advance Ruling

- To be conducted by the General Department of Customs, instead of local customs departments: Considerable delay in issuing the final ruling
- No retroactivity: Ruling is only effective from the date of issuance. Classification of previous consignments will not be considered as erroneous declaration
- Duty refund in case of erroneous declaration has been eliminated to align with no retroactivity rule

Certificate of Origin

Certificate of Origin

- Handling “minor discrepancies” to decide if a C/O is accepted is not consistent, leading to time-consuming appeal process;
- Delay in updates of “authorised signatories in C/O”, causing refusal of C/O: Enterprise must pay import duty at MFN rate, and has to claim the duty back once the list of authorised signatories is updated

Customs Surveillance and Audit



Customs Audit

- Trend of increasingly intensive audit due to the acceleration of customs clearance procedure;
- Three-step system is established: Consultation, Audit at Customs Authority Office, Audit at Enterprise Premise

Customs Audit (cont.)

- **Abuse of Price Consultation:** Customs authority conducts price consultation with goods that are stably imported without any volatility in price;
- **Abuse of Customs Audit:** Customs audit is made on consignments which were inspected during clearance time;
- This is a time and cost-consuming process when enterprises are requested to work with customs authorities during consultation and audit process which may last up to 20 working days



Japan

Customs Valuation

- Customs duties, consumption tax and local consumption taxes are, in principle, levied on imported goods. In this case, the base on which taxes are calculated is called the tax base and the rate of taxation is called the tax rate.
- Customs duties are, in principle, stipulated to use the price or quantity of goods at the time of import declaration as a tax base. An ad valorem rate is applied to the dutiable value of the imported goods, whereas a specific rate is imposed as a fixed sum on each article without regard to its value. And, a mixed ad valorem and specific rate is based on both value and volume.
- The value of tax base is called a taxable value and is the sum of wholesale price, freight and insurance (CIF price).

Customs Classification

- The Customs Tariff Schedules of Japan is based on the International Convention of the Harmonized Commodity Description and Coding System (HS Convention). The HS Convention came into force in January 1988 and as of May 2015, 153 countries and regions are contracting parties to the Convention. The Annex of the HS Convention is commonly known as the HS Nomenclature, and it lists commodities in order to classify all goods uniformly and systematically.

Customs Classification (cont)

- The Customs Tariff Schedules of Japan further divides the HS Nomenclature, when necessary
- Imported goods are classified based on the Customs Tariff Schedules of Japan and are systematically classified into chapters, headings, subheadings and subdivisions of the tariff schedule, by further dividing each category

Rules of Origin

- In order to apply various Customs and tariff policies, determination of the country of origin of a good is indispensable. The relevant policies include the preferential tariff treatment under Generalized System of Preference and Economic Partnership Agreements (EPAs), WTO tariff rates, or anti-dumping duties. Rules of origin are stipulated to determine the country of origin of goods for the implementation of the above mentioned policies and measures.

Rules of Origin (cont)

- In the case of EPAs, rules of origin are provided to ensure appropriate implementation of preferential tariff treatment under each agreement. A set of rules of origin for EPAs includes origin criteria, consignment criteria and procedures for certification and verification of the origin of goods.

Rules of Origin (continued)

- In order to determine the origin of a good, the good must satisfy the applicable rules of origin. For example, if production of the good is completed in a single country without using any imported materials, the good is considered as an originating good of that country. This is called wholly obtained or wholly produced goods. If more than two countries are involved in the production, the good is considered as an originating good of the country where the good underwent substantial transformation (such as change in tariff classification, specific manufacturing or processing operations).

Rules of Origin (cont)

- In principle, in order to maintain its originating status, an originating good must be transported directly to Japan. If an originating good is transshipped in a third country on the way to Japan, a through bill of lading (B/L) or other relevant documents must be presented to Customs when making a claim for preferential tariff treatment.

Rules of Origin (cont)

- In making a claim for preferential tariff treatment under each EPA, a documentary evidence of origin is required to be submitted to Customs. A documentary evidence of origin is either: a certificate of origin issued by the competent governmental authority; an origin certification document completed by the importer, exporter or producer; an origin declaration completed by the authorized exporter, etc.
- TPP allows self certificate of origin.

Q&A

Thank You





Asia Pacific

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25 May 2016

Franchising in Asia Pacific

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Summary of Topics We Will Cover

- Basic regulatory framework for franchising in your jurisdiction
- Franchising structuring issues
- Conclusion



Basic Regulatory Framework for Franchising in your Jurisdiction

Basic Questions We Will Cover:

- How do you distinguish a franchising agreement from an distribution agreement in your jurisdiction?
- What are the provisions around the termination of a franchising agreement in your jurisdiction?
- Any special treatment of goodwill?
- What are the dispute resolution mechanisms around franchising in your jurisdiction?
- What are the IP/Trademark requirements to franchise in your jurisdiction?

Australia – What is a Franchise?

- Franchising Code of Conduct regulates “franchise agreements”
- A “franchise agreement” is
 1. Written, oral or implied agreement
 2. Franchisor grants franchisee right to conduct business of offering, supplying or distributing goods or services in Australia under a system / marketing plan substantially determined, controlled or suggested by franchisor / associate of franchisor
 3. Operation of the business will be substantially / materially associated with a trade mark, advertising or a commercial symbol:
 - owned, used or licensed by the franchisor / associate of franchisor; or
 - specified by the franchisor / associate of franchisor
 4. “Franchise fee” is payable
 - Excludes some types of payments (eg, for supplies on a wholesale basis)
- Motor vehicle dealership is regulated as a franchise regardless of if it has the above characteristics

Australia – Specific Regulatory Issues

Requirement	Australian law treatment
Termination	<ul style="list-style-type: none">• No fee automatically payable to franchisee on termination• Code gives franchisee 7 day cooling off termination right• Under Code, in most cases franchisor cannot exercise a right to terminate for breach unless franchisee has been given prior notice and reasonable period to rectify• Under Code, franchisor can exercise right to terminate for breach immediately in serious breach cases (eg, franchisee fraud, insolvency)• Under Code, franchisor cannot exercise a right to terminate for convenience without giving franchisee reasonable notice and reasons for termination
Goodwill valuation protocols	<ul style="list-style-type: none">• Usually franchise agreement states franchisor will retain all rights in prior goodwill and in any goodwill generated by new franchisee
Dispute resolution	<ul style="list-style-type: none">• Code requires franchise agreement to include mandated complaint handling procedure which allows for mediation
IP/Trademark	<ul style="list-style-type: none">• Code requires relevant IP details (including trademarks) to be identified in disclosure document• Usually franchisor maintains IP registrations• Franchisor may let franchisee register business name or domain name

China – What is a Franchise

- Elements for determining a “franchise”
 - confer the right to use the franchisor’s “operational recourses” (IP, trade mark, trade name, etc.)
 - the franchisee operates its business under a “**uniform operational model**” as specified by the franchisor
 - the franchisee pays franchise fees
- “Two For One Rule” – two self-operated stores with an operational history of more than one year
- Recordal filing and pre-contractual disclosure requirements
- Subtle nuance b/w franchise agreement and licensing agreement
 - Significant weight placed on “uniform operational model”

China – Specific Regulatory Issues

- Termination of franchising agreement
 - Franchisee's statutory right to terminate without cause within a certain period of time
 - Franchisee's statutory right to terminate for false pre-contractual disclosure or material omission by franchisor
- Treatment of goodwill
 - Franchisee does not enjoy any residual right under Chinese law that survives the termination of the franchising agreement
- Dispute resolution mechanism
 - No specific rules for franchising agreements
 - Enforceability of a foreign court judgment in China
- IP/trademark requirement
 - Pre-contractual disclosure
 - Franchising recordal with the commerce authority
 - IP licensing recordal with trade mark registration authority

Taiwan – Regulatory Framework for Franchising

- Fair Trade Law, Fair Trade Commission
- **“Guidelines for Handling Cases of Operational Activities of Franchisors”** (last amended April 13, 2015)
- Franchise: trademarks or know-how license, operations assistance in exchange for payments
- Transparency and Fair → Protect Franchisees
- Transparency – Disclosure 10 days before **“Preliminary Relationship”** – non-refundable payment
⇔ MOU / Delivery of Agreements

Taiwan – Regulatory Framework for Franchising

- Need proper reasons if:
 - differentiate prices and business terms among franchisees
 - tie-in sale
 - minimum purchase and non-returnable purchase
- Termination
- Dispute Resolution
- IP/Trademark
- Often seen violations

Vietnam – What is a Franchise

- Decree 35/2006/NĐ-CP
- What is franchising?
 - The sale of goods/services is conducted under the business format of the franchisor;
 - The business is conducted by the franchisee itself;
 - The business is under the trademark and commercial symbol of the franchisor; and
 - The franchisor exhibits control and assistance to the franchisee and its management of the franchise business.
- Registration Requirement: Franchisor's obligation

Vietnam – Specific Regulatory Issues

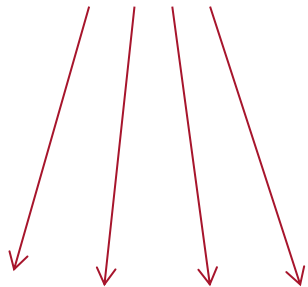
Requirement	Vietnamese law
How do you distinguish a franchising agreement from an distribution agreement in your jurisdiction	<ul style="list-style-type: none">• Share certain similarities• Franchising agreement has following features:<ul style="list-style-type: none">○ The distributor is permitted to operate under the trademarks of the company whose products it distributes;○ The distributor has to pay many kinds of fees including initial fee, on-going royalty, advertising fee etc. in addition to payment for the items it bought; and○ The seller/producer perform significant control over and give regular technical support to the business of the distributor.
Termination	<ul style="list-style-type: none">• The franchisee can unilaterally terminate the franchise agreement if the franchisor fails to fulfil its obligations regulated under the agreement.• The franchisor can unilaterally terminate the franchise agreement in very limited cases: franchisee's dissolution, license revocation, material violation of the laws, or franchisee's failure to remedy breaches of the agreement
Goodwill valuation protocols	<ul style="list-style-type: none">• Generally, the owner of the franchise system and IP will own all rights and interests in and to those, including the goodwill.• Valuation of the goodwill is a part of valuation of the IP/franchise system.
Dispute resolution	Dispute resolution mechanisms around franchising: the same as the ones for other commercial transactions, including: negotiation, mediation, arbitration, litigation (court).
IP/Trademark	IP/Trademark licensing recordal is not compulsory. However, IP/trademark licensing agreement must be recorded so as to be legally effective as against third parties.



Franchising Structuring Issues

Franchisor - Franchisee Direct Model - Australia

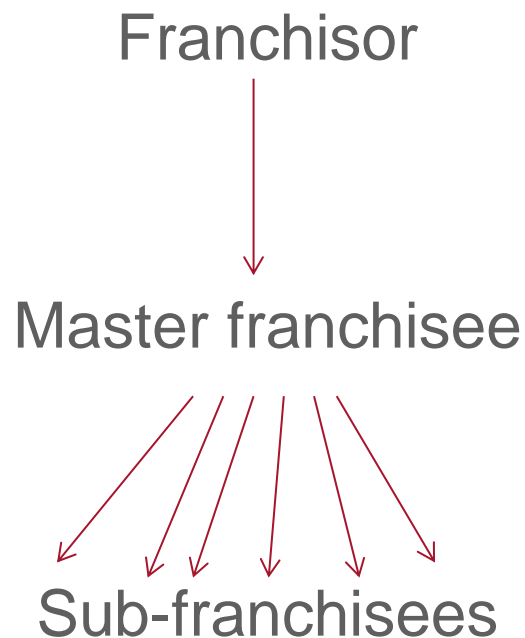
Franchisor



Franchisees

- Allows franchisor maximum control of franchisees
- No dilution of revenue to a “middle man”
- Each franchise agreement is regulated under Code
- Franchisor assumes financial risk of failing franchisees
- Likely higher management and training burden for franchisor
- Likely higher regulatory burden for franchisor if franchise is in a heavily regulated industry
- Is franchisor’s involvement in supervising franchisees “conducting a business” in jurisdiction for tax purposes?

Master Franchise Model - Australia

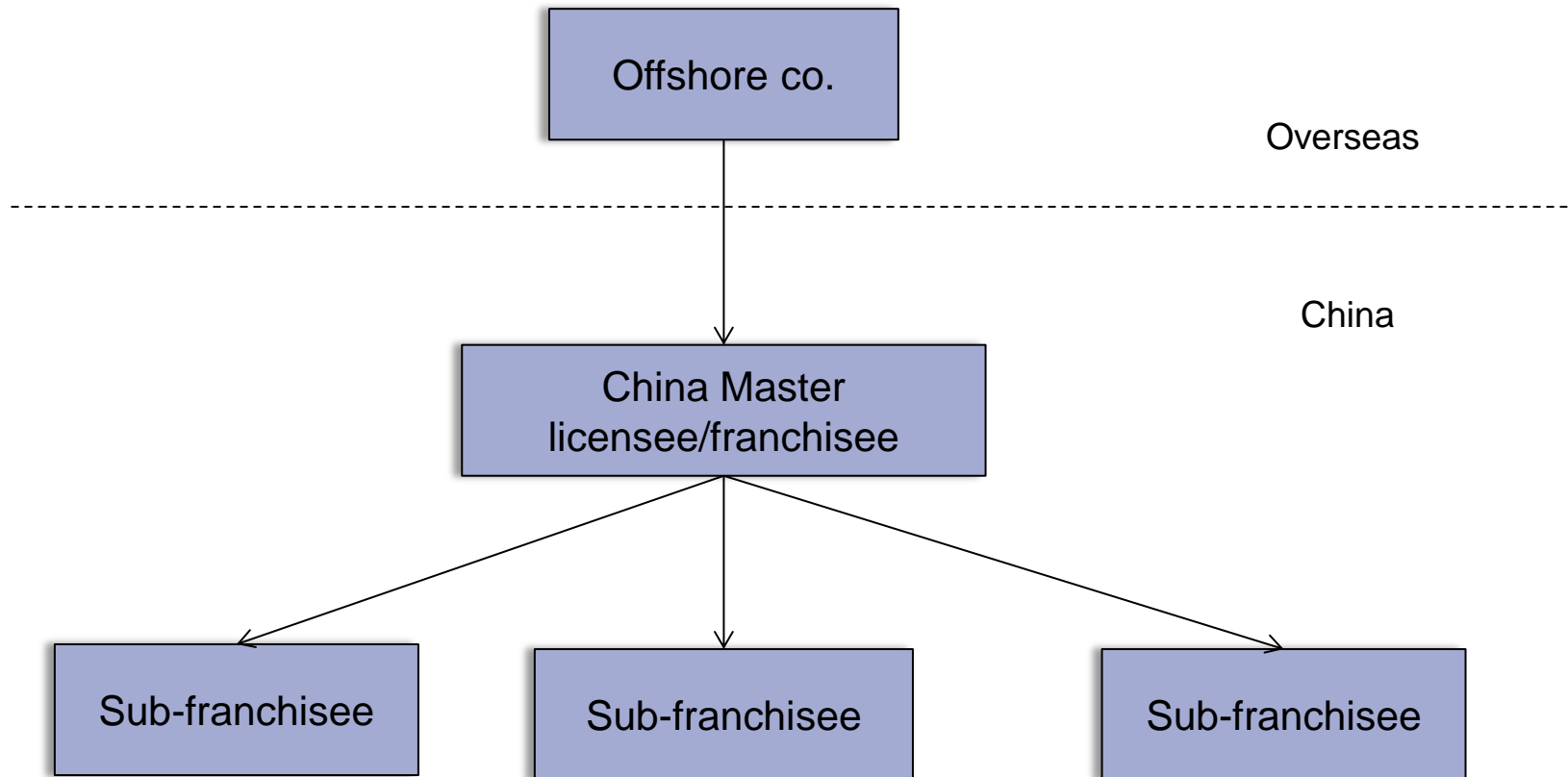


- Agreement between franchisor and master franchisee is regulated under Code
- Sub-franchise agreements are regulated under Code, but master franchisee has compliance burden
- Franchisor does not need to set up business in country
- Master franchisee will need its \$ cut
- Franchisor might have less oversight about if franchised businesses are being run properly
- Management of franchised business burden is primarily on master franchisee
- If master franchise arrangement is terminated, sub-franchise agreements automatically terminate
 - Can draft agreements to give franchisor rights to take over sub-franchise agreements

Franchising Structuring Issues - Taiwan

- No specific regulatory issues on structuring
- Mainly tax considerations
 - No Taiwan entity: withholding tax on royalties
 - With Taiwan entity: Branch v. Subsidiary
 - Subsidiary: Dividends withholding tax, retained earnings tax
 - Branch: liability insulation concern
 - Administrative matters

Franchising Structuring Issues - China



Franchising Structuring Issues - China

- Considerations for deciding the structure...licensing vs. franchising
 - Whether the “Two For One Rule” has been fulfilled
 - Burden of disclosure under the pre-contractual disclosure and recordal filing requirements
 - Whether the agreement involves not only licensing of IP, but also operational model (e.g., same design, same “look and feel”, etc.)
 - Ramification of mischaracterizing “franchising” as “licensing”
 - Fine up to RMB 500,000 and cessation of franchising operation, if the “Two For One Rule” is not fulfilled
 - Fine up to RMB 100,000 and publication of violation, if the “Two For One Rule” is fulfilled
- Tax implications of licensing and franchising are similar – 10% WHT + 6% VAT



Franchising Structuring Issues - Vietnam

- Direct Franchise and Master Franchise
- Pursuant to the Decree 35, sub-franchisees are not permitted to grant franchise.
- Foreign-invested companies face ENT issue



Conclusion



Thank You



Asia Pacific

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25 May 2016

Establishing Regional Headquarters in Asia Pacific

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Agenda

1. What is a RHQ
2. Why expand beyond Japan
3. Typical RHQ locations
 - a. Hong Kong
 - b. Singapore
 - c. Malaysia
 - d. Thailand
4. Insights from a U.S. perspective
5. Q&A



What is a RHQ?

Definition of Regional Headquarters (“RHQ”)

- Having control of stock [share] ownership and financing over regional group companies;
- Providing integrated operating functions and general business management supports (shared services) e.g.:
 - Sales;
 - Manufacturing;
 - Logistics;
 - Procurement;
 - Research & Development;
 - HR; and
 - Legal services.

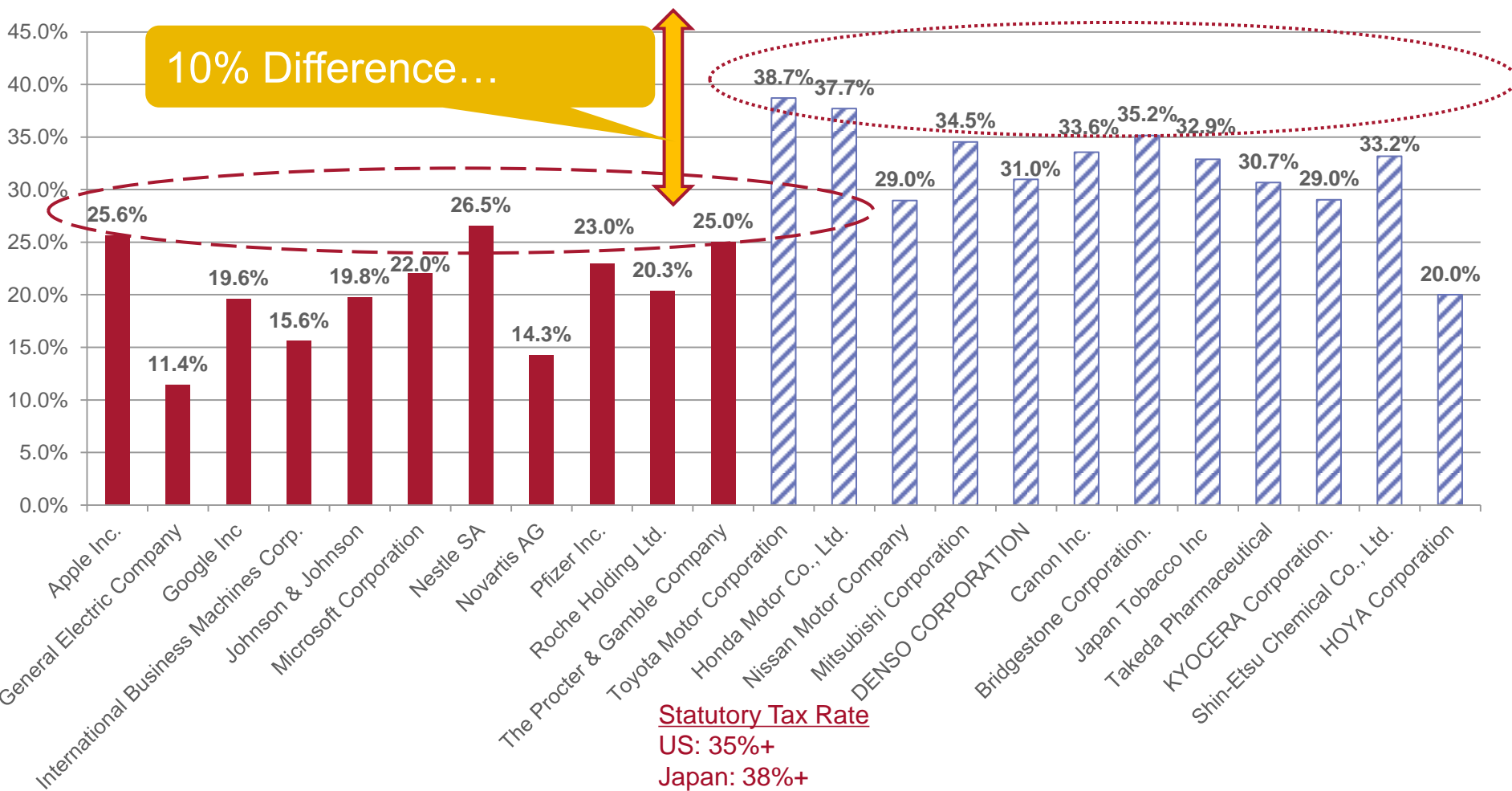


Why Expand Beyond Japan?

Reasons / Push Factors

- Proximity to actual operations
 - May be easier for Japanese company to manage offshore production, distribution, etc.
- Availability of effective local personnel
 - English language ability, international experience, etc.
- Increased international footprint in public's eye
- Japanese CFC Planning
 - Transfer of functions may allow company to qualify for exemption from Japanese CFC rules

Note Comparison of Effective Tax Rates Between Japanese and Westerners (5 Year Average)



Typical RHQ Locations

Hong Kong

Hong Kong as a Principal / IP Co location

— Why Hong Kong:

- Government support for companies e.g. incubator programs, financial aid, technology and innovation funding
- Strategic location in Asia, gateway to Mainland China
- International, transparent and efficient
- World-class business infrastructure, international logistics and shipping hub
- Strong local talent pool and business-friendly immigration policies
- Low and simple tax regime

Hong Kong as a Principal / IP Co location

- Headline tax rate: 16.5%
- Developing treaty network – 35 DTAs to date
- No tax incentives for RHQ and IP holding
 - Planning around offshore / onshore income
 - Query whether this will be sustainable in the current changing international tax landscape

Singapore



Agenda

1. Why Singapore – Singapore Fundamentals
2. Useful Facts & Figures
3. RHQ Structures in Singapore
4. Comments on RHQ Functions

Why Singapore – Singapore Fundamentals

Solid Fundamentals

— Connectivity:

- Global transportation hub;
- Country with the most extensive network of trade agreements (>20) in Asia
- World Bank ranked Singapore as No.1 Logistics Hub in Asia in the 2014 Logistics Performance Index

— Knowledge Economy

- Highly educated and productive workforce;
- English as first language – the language of international business;
- Open immigration policy for companies to source for best personnel from anywhere in the world;

Solid Fundamentals

— Quality of Life

- Recognized as one of the cleanest and greenest cities in the world;
- World-class public transport system and healthcare services;

— Rule of Law and Political Stability

- Reputed for integrity and reliable rule of law;
- Enforcement of intellectual property rights;
 - World Economic Forum's Global Competitiveness Report 2013 – 2014 ranks Singapore as having the best IP protection in Asia, and second best in the world
 - World Intellectual Property Office (WIPO) set up its first Asian regional office in Singapore in 2009

Attractive and Competitive Tax Regime

- Low headline corporate tax rate of 17%
- Extensive list of tax treaties including with Japan
- Array of Tax Incentive Schemes:

International Enterprise (“IE”) Singapore

- Global Trader Program (“GTP”) Award (for international trading companies: petroleum, electronics, agribusiness etc.)
- 5% or 10% concessionary tax rate

Monetary Authority of Singapore (“MAS”)

- Resident Fund Exemption
 - 0% (tax exemption)
- Enhanced Tier Fund Incentive Scheme
 - 0% (tax exemption)
- Financial Sector Incentive-Fund Management Award (for financial, fund management and corporate finance advisory services)
 - 8% concessionary tax rate

Economic Development Board (“EDB”)

- Regional Headquarters (“RHQ”) Award (for RHQ servicing affiliates in 3 or more countries outside Singapore)
 - 15% concessionary tax rate
- International Headquarters (“IHQ”) Award (for HQ exceeding minimum under RHQ)
 - 0% (tax exemption); or
 - 5 - 10% concessionary tax rate

Stamp Duty Relief Rules

- Stamp duty relief regime to facilitate group restructurings and establishing a Singapore RHQ

Stamp Duties (Relief from Stamp Duty upon Reconstruction or Amalgamation of Companies) Rules

Stamp Duties (Relief from Stamp Duty upon Transfer of Assets between Associated Permitted Entities) Rules 2014

- Subject to detailed qualifying conditions
- By way of application to the Singapore Commissioner of Stamp Duties

Headline Corporate Tax Rates & Average Duty Rates

Headline tax rates	%
Japan	32.11
Brunei	18.5
Cambodia	20
Indonesia	25
Laos	24
Malaysia	25
Myanmar	25
Philippines	30
Singapore	17
Thailand	20
Vietnam	22

Average duty rates	%
Japan	4.9
Brunei	2.5
Cambodia	10.9
Indonesia	6.9
Laos	9.7
Malaysia	6.0
Myanmar	5.6
Philippines	6.3
Singapore	0.2
Thailand	11.4
Vietnam	9.5

Useful Facts & Figures

Japanese Companies Recognize Singapore Fundamentals

Reason of establishing RHQ functions in Singapore

(No of companies, %)

	No of companies	%
Good location for accessing to the nearby region	82	91.1
Readily accessible to business information	55	61.1
English is widely spoken	54	60.0
Political stability	54	60.0
Well-established legal systems as well as transparent and efficient administrative procedures	47	52.2
Well-developed infrastructures such as logistics, transportations, telecommunications and etc	46	51.1
Tax incentives such as low corporate tax rate and preferential taxation system for RHQ	44	48.9
Financial advantages such as flexible financial regulation and well-established funding market	42	46.7
Availability of skilled personnel necessary for RHQ operations	39	43.3
Availability of professional business services such as legal, accounting, consulting, etc.	38	42.2
Well-established quality of life for foreigners	34	37.8
Having the largest scale of businesses or number of businesses that benefit the most from RHQ function	17	18.9
Protected environment for investment from Singapore under the investment agreement and well-established international arbitration system	14	15.6
Less affected by natural disaster	14	15.6
Readily obtainable Employment VISA for foreigners	12	13.3
Others	3	3.3
Cost of living is relatively reasonable	1	1.1

(*) Percentage is based on the total number of 90 companies with RHQ functions.

Useful Facts & Figures

- Out of 185 Japanese companies surveyed in Singapore, 90 indicated they have RHQ functions here and 52 more are considering establishing an RHQ;
- **Out of 5 Food / Beverage Japanese companies surveyed in Singapore, 4 indicated they have RHQ functions here;**
- Establishment of RHQs in Singapore rapidly increased since 2010, set to continue in 2015;
- 31.1% of RHQs in Singapore each manage more than JPY 100 billion of regional sales

RHQ Structures in Singapore

Survey of RHQ Functions in Singapore*



*Extracted from the JETRO Survey

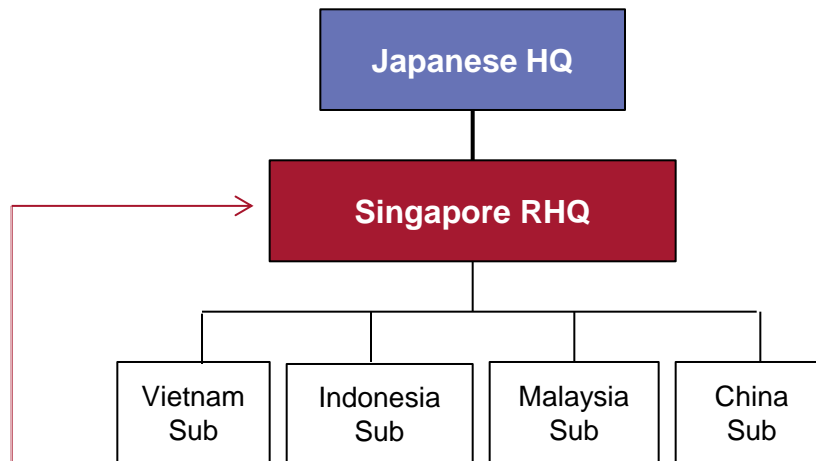


Regional Shareholding and Attributes of RHQ Representatives

- 70% of all companies surveyed own shares in regional companies
- Most of representatives of Singapore based RHQ's are at Executive Director level or Department Managers

Potential Investment Structure

Japanese HQ holds 100% shareholding in a Singapore RHQ. Singapore RHQ in turn holds subsidiaries in region e.g.: Vietnam, Indonesia, Philippines and Malaysia etc.



Singapore RHQ functions may include:

- Management of subsidiaries;
- Regional sales, marketing and brand management;
- Corporate finance / accounting;
- Strategic business planning;
- IP licensing;
- R&D;
- HR;
- Legal services.

Singapore RHQ revenues may include:

- 1) Regional management fees (from Japanese HQ and / or subsidiaries);
- 2) Revenue derived from general business;
- 3) Dividend income;
- 4) Royalties; and
- 5) Interest income.

Comments on RHQ Structures

Lessons from JETRO Survey in Singapore

- 70% respondents see RHQ performance positive
 - *“In addition to tax incentives offered by Singapore, the currency, politics, economy and other systems in Singapore are relatively stable, and we believe that Singapore is more advantageous location than other countries promoting RHQ functions such as Thailand and Malaysia.”*
- Some companies see RHQs underperforming in areas
 - Supply chain/Procurement
 - Talent management and development
 - Compliance, internal control
- Factors?
 - Chain of command between Singapore and Japan
 - Reluctance to transfer authority over strategy/personnel



Lessons from JETRO Survey in Singapore

— Other challenges

- Hiring and retaining talented personnel: lack of local talent and tightening of visa process
- Increasing employment costs
- Rise of office rent and living costs

Malaysia



Agenda

1. Malaysia - Useful Facts & Figures
2. Tax Incentives Available for RHQ and Success Stories
3. Single 'RHQ' and 'Dual-RHQ' Structures
4. Comments on Japanese investments in Malaysia

Malaysia – Useful Facts and Figures

DRIVING MALAYSIA'S GROWTH AND COMPETITIVENESS



12 National Key Economic Areas (NKEAs)



Source: InvestKL 2016



#1



Asia's Best Retirement Haven

#3



Best & Most Affordable Health Care Provider in the World

#4



Best Shopping Destination Worldwide (2014)

#113



Global Cost of Living Survey 2015 (#1 = most expensive)

55



International Schools

NKEA GREATER KL/ KLANG VALLEY

ENTRY POINT PROJECT (EPP) 1: **MNC ATTRACTION**

Anchor tenants act as **economic backbone** by generating **significant GNI**, creating large number of **jobs**, and building local **eco-system**.

**ATTRACTING AND FACILITATING 100 LARGE MNCS TO ESTABLISH THEIR
BUSINESS, INNOVATION, AND TALENT HUB IN GREATER KUALA LUMPUR**



**Grow in
ASEAN/Asia from
Greater KL**



UNDERSTANDING YOUR BUSINESS NEEDS AND DEVELOPING A COMPREHENSIVE SOLUTION FOR YOU



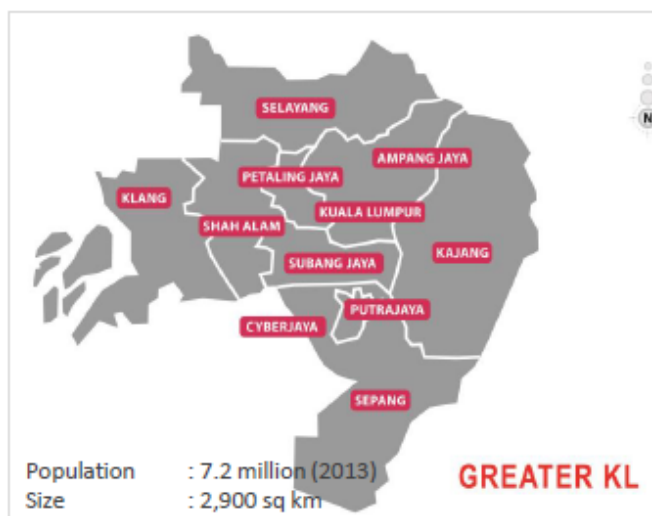
**2011-Present
Achievement**

51
MNCs
Secured

7,156
Committed
Jobs

Facilitation Services

- ✓ Incentive negotiation
- ✓ Government agency engagement
- ✓ Talent facilitation
- ✓ Establishing business



Source: InvestKL 2016

GLOBAL MULTINATIONALS ARE HERE!



Source: InvestKL 2016

ACCESS TO MARKET

MALAYSIA - GREATER KL: GATEWAY TO ASEAN



Malaysia is one of ASEAN's strongest economies and is uniquely positioned at the heart of the region.

Population
31 million

Labor Force
13.8 million

Unemployment Rate
3.1%

GDP (2015 Estimate)
USD 376 billion

2015 GDP Growth (Forecast)
4.5% - 5.5%

Inflation Rate
2.5%

ASEAN

Central strategic location

High market potential in China, India & Middle East

Strong historical & cultural links

633 million people

Young growing population
Expanding middle class

USD 2.3 trillion GDP

>5% GDP Growth

Abundance of natural resources & biodiversity
Wide-ranging productive capacity in agriculture, manufacturing & services

Strong track record of regional cooperation

ASEAN Economic Community 2015
Regional Comprehensive Economic Partnership

TALENT AVAILABILITY

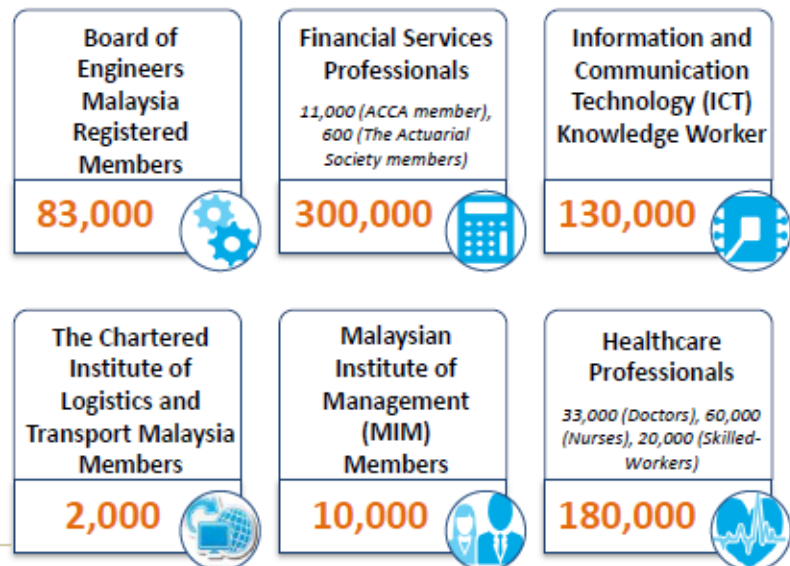
GROWING SUPPLY OF QUALITY TALENT AND A COMMITMENT TOWARDS ENHANCING TALENT POOL



NOTABLE PERFORMANCE INDICATORS



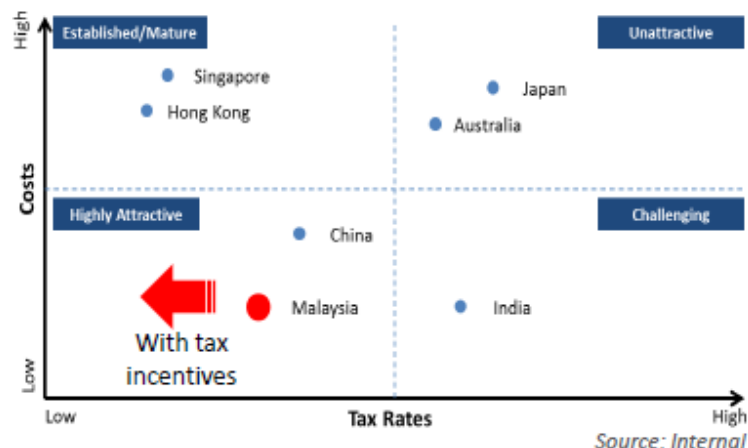
KEY TALENT SECTORS



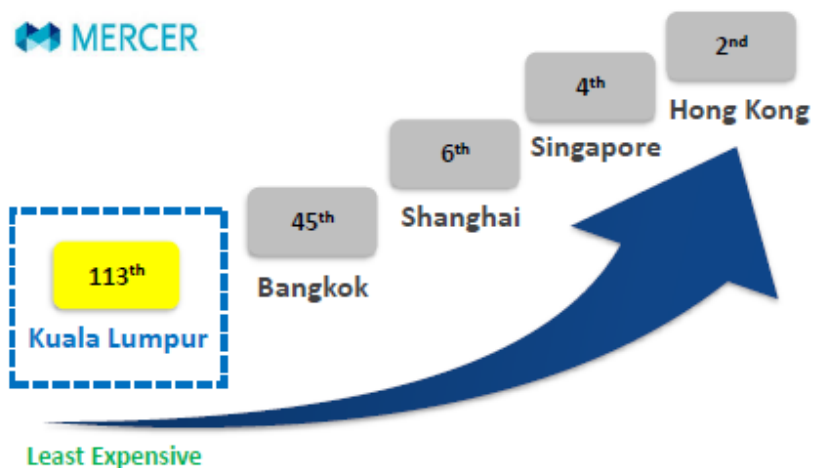
Source: InvestKL 2016

GREATER KL – COST EFFECTIVE PLACE FOR DOING BUSINESS

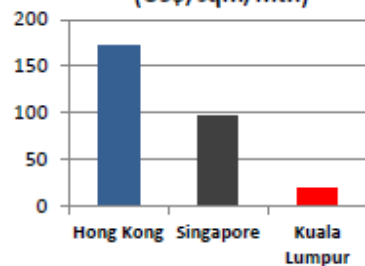
COMPETITIVE TAX REGIME



COST OF LIVING SURVEY 2015

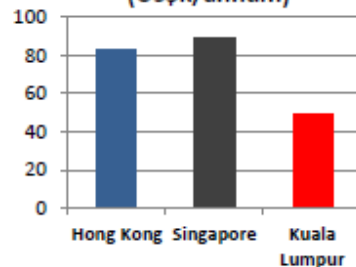


Prime Office Rents¹
(US\$/sqm/mth)



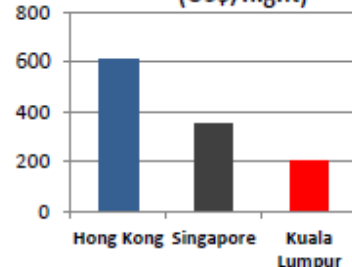
¹Source: Knight Frank Research-Asia Pacific Prime Office Rental Index Q12015

Average Cost of Talent²
(US\$/k/annum)



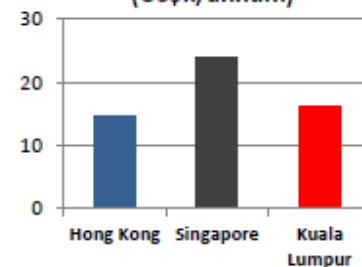
²Source: 2015 Hays Asia Salary Guide (Salary based on Finance position within an MNC)

Ritz-Carlton Room Charges³
(US\$/night)



³Source: Ritz Carlton Reservation (Nett charges based on Deluxe Room)

International School Fees⁴
(US\$/k/annum)



⁴Source: American International School Tuition Fee Schedule 2015-16 Elementary school (Grade 3-5)

CONNECTIVITY & INFRASTRUCTURE COSTS

ONE OF THE REGION'S LEADING TRANSPORT HUB

AIR

- World's 11th busiest international airport
 - ✓ 50 million passengers/ year (est. 2014)
 - ✓ 100 cities linked by >1,700 weekly flights
- World's 28th busiest airport by cargo traffic

Source: Airports Council International 2014



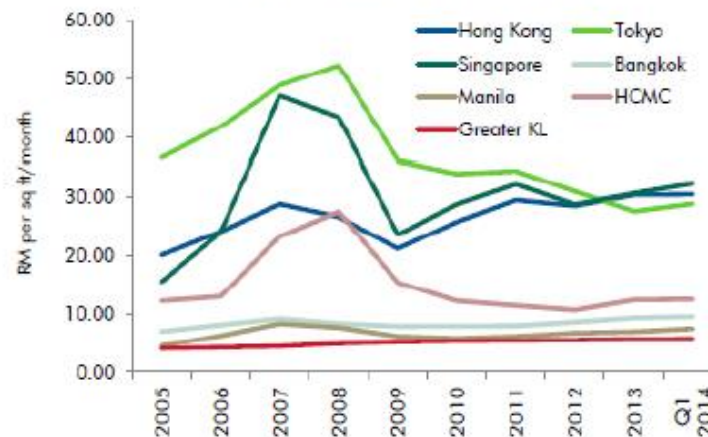
RAIL

- 350km High Speed Rail connecting Kuala Lumpur and Singapore
- 3 New Mass Rapid Transit (MRT) Lines by 2017 totaling 141 km
- 2 Light Rail Transit (LRT) extension of 34 km + existing 66km



CBRE OFFICE RENTAL RATES

Asking Gross Rents – regional comparison



Source: InvestKL 2016

Tax Incentives for RHQ Structures

INVESTKL: OUR TARGET ACTIVITIES - REGIONAL OPERATIONS

Principal Hub



A. Strategic Services

1. Regional P&L/ Business Unit Management
2. Strategic Business Planning & Corporate Development
3. Corporate Finance Advisory Services
4. Brand Management
5. IP Management
6. Senior-level Talent Acquisition & Management

B. Business Services

1. Bid & Tender Management
2. Treasury & Fund Management
3. Research, Development & Innovation
4. Project Management
5. Sales & Marketing
6. Business Development
7. Technical Support & Consultancy
8. Information Management & Processing
9. Economic/ Investment Research Analysis
10. Strategic Sourcing, Procurement and Distribution
11. Logistics Services

C. Shared Services

1. Corporate Training and Human Resource Management
2. Finance & Accounting (Transactions, Internal Audit)
3. General Administration
4. IT Services

PRINCIPAL HUB INCENTIVES

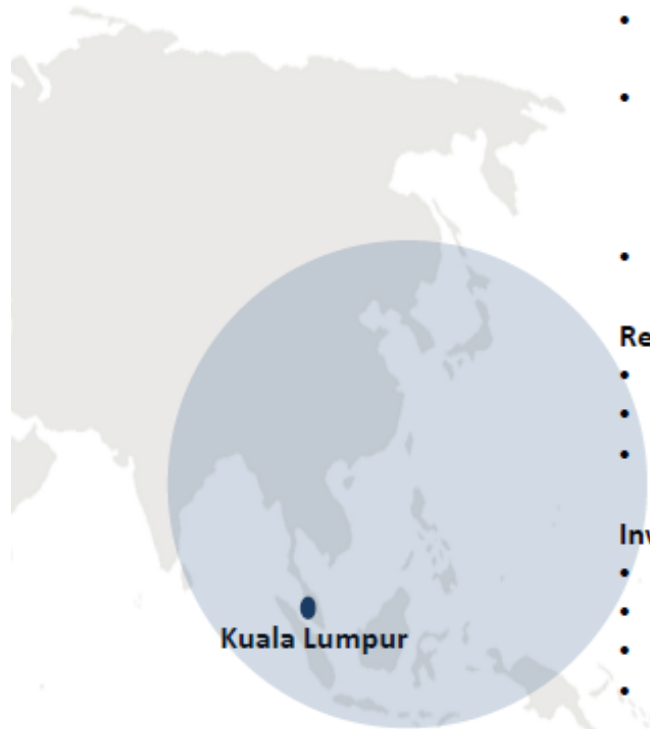
Tier	1		2		3	
Blocks (Year)	5	+5	5	+5	5	+5
Tax Rate	0%		5%		10%	
Functions	Regional P&L + 2				Strategic Services + 2	
High-Value Job ^[1] (Key Positions ^[2])	50 (5)		30 (4)		15 (3)	
	At least 50% must be Malaysians by Year 3					
Annual Business Spend	RM10M		RM5M		RM3M	
Countries Served Outside Malaysia	5		4		3	
Annual Sales	RM300M (applicable only to goods-based applicant company)					
Tax Exemption Threshold	70% outside Malaysia : 30% inside Malaysia					
Paid-up Capital	>RM2.5M					
Extension	Jobs: Base + 20% Business Spend: Base + 30%					

^[1] Jobs with minimum monthly salary requirement of at least RM5K that require higher and more diverse set of managerial/ technical/ professional skills such as management, analytics, communication, problem-solving, and proficiency in information technology.

^[2] Positions with minimum monthly salary requirement of at least RM25K with key strategic/ management positions.

Case Study 1 : Asia Pacific Supply Chain Control Tower

Fortune 500 global manufacturer of household and personal products



Project Description

- Transfer of risk and functions from company-owned manufacturing/ distribution entities in Asia to a Principal Hub located in Kuala Lumpur
- Functions performed include: Production scheduling & manufacturing, capacity risk management, procurement strategy, demand planning & sales forecast consolidation, key account management and sales & marketing strategy
- Profits/ revenue generated and booked in KL Principal Hub

Reasons for Locating in KL

- Competitive cost of doing business
- Connectivity and central location in ASEAN
- Availability of talent to support business growth

InvestKL's Facilitation

- Tax incentive negotiation with the Ministry of Finance
- Talent acquisition (expat, residence pass)
- Real estate
- Product license transfer

Benefits Enjoyed by the Company

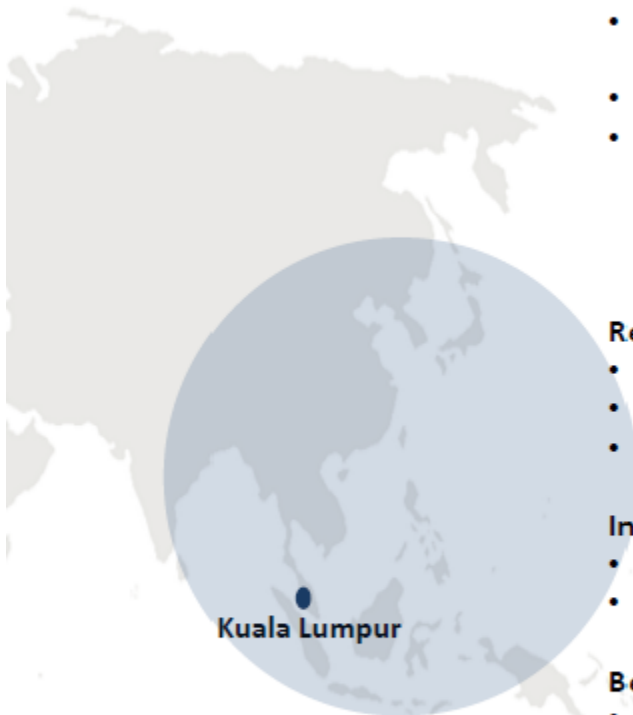
- Customized tax incentive

Source: InvestKL 2016

Case Study 2 : Asia Pacific Innovation and Management Hub

Global player and the European leader in business and payments transactional services

worldline
e-payment services



Project Description

- Worldline Malaysia expanded from being just a delivery centre in KL to being Asia Pacific's Innovation and Management hub
- Countries contending for this hub were Singapore and Hong Kong.
- Regional business functions include: Profit & loss management, bid & tender management, regional general management, strategic business planning, brand management, technical support, consulting, R&D and product development

Reasons for Locating in KL

- Competitive cost of doing business
- Connectivity to major cities in Asia
- Multilingual talent availability

InvestKL's Facilitation

- Customised tax incentive negotiation with the Ministry of Finance
- Collaboration with universities on talent development and R&D programs

Benefits Enjoyed by the Company

- Customized tax incentive

three pillars
of competences covering
payments and digital services



Merchant Services & Terminals
Leveraging the customer engagement



Mobility e-Transactional Services
Enabling strategic digital transformation



Financial Processing & Software Licensing
Industrial payment processing

Source: InvestKL 2016

Case Study 3 : Remote Operating Centre

Global Forbes 2000 (#275) industrial gas company



Project Description

- Centralised command and control centre in Greater KL for 100 plants across Asia Pacific
- Monitor performance and optimize production rate of the plants
- Pooling of expertise in command centre staffed by highly experienced engineers

Reasons for Locating in KL

- Cost of doing business
- Ease of doing business
- Limited restrictions for work permit

InvestKL's Facilitation

- Partner with MDeC for tax incentive approval

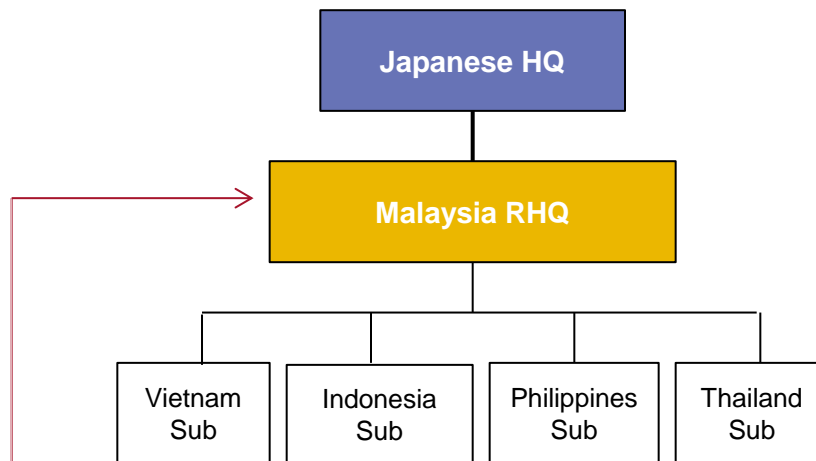
Benefits Enjoyed by the Company

- Tax incentive



Potential Investment Structure – Primary RHQ

Japanese HQ holds 100% shareholding in a Malaysia RHQ. Malaysia RHQ in turn holds subsidiaries in region e.g.: Vietnam, Indonesia, Philippines, etc.



Malaysia RHQ functions may include:

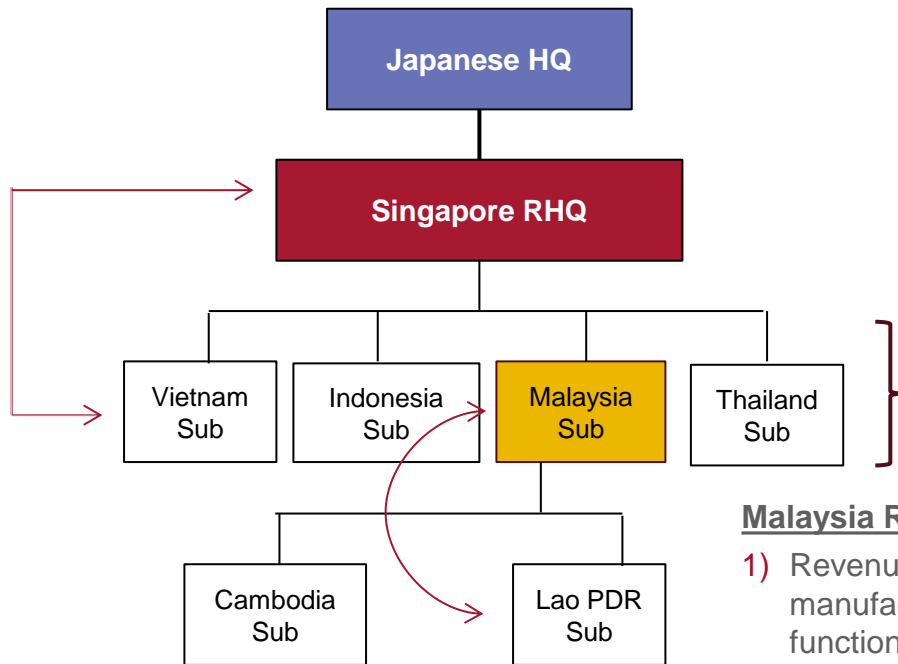
- Regional business unit management;
- Corporate finance / accounting;
- Strategic business planning;
- IP licensing;
- R&D;
- HR;
- Finance and accounting;
- IT services.

Malaysia RHQ revenues may include:

- 1) Revenue from operating business in Malaysia (e.g. manufacturing, sales, trading, procurement and distribution functions, marketing, etc.);
- 2) Management fees for regional P&L management, business planning, corporate advisory, IP management, sourcing, procurement and distribution, logistics services, shared services);
- 3) Dividend income as investment HoldCo;
- 4) Royalties (e.g. R&D activities performed in Malaysia and licensed out to Vietnam for manufacturing purposes);
- 5) Interest income (e.g. loans to subsidiaries in region)

Potential Investment Structure – ‘Dual RHQ’

Japanese HQ holds 100% shareholding in a Singapore RHQ. Malaysia is used as a ‘second’ RHQ – it may either hold other subsidiaries in the region, or hold no subsidiaries. No necessity to hold subsidiaries for it to be considered an RHQ.



Malaysia RHQ functions may include:

- Regional business unit management;
- Corporate finance / accounting;
- Strategic business planning;
- IP licensing;
- R&D;
- HR;
- Finance and accounting;
- IT services.

Malaysia RHQ revenues may include:

- 1) Revenue from operating business in Malaysia (e.g. manufacturing, sales, trading, procurement and distribution functions, marketing, etc.);
- 2) Management fees for regional P&L management, business planning, corporate advisory, IP management, sourcing, procurement and distribution, logistics services, shared services);
- 3) Dividend income as investment HoldCo;
- 4) Royalties (e.g. R&D activities performed in Malaysia and licensed out to Cambodia for manufacturing purposes);
- 5) Interest income (e.g. loans to subsidiaries in region)

Comments on Japanese Investments in Malaysia

Japanese Investments in Malaysia*

- There are more than 1,400 companies with Japanese interest in Malaysia
- Strong presence in automotive and electrical and electronics sector. Mitsubishi, Honda, Daihatsu, Nissan, Mitsui, Marubeni, Panasonic, Toshiba, Sharp, Taisei, and Ibiden are amongst the companies
- Japanese firms looking for investment and business partnerships in:
 - electrical and electronics (E&E) and aviation industries;
 - halal and food sector for entry into Middle East;
 - power plant and rail construction

*Source: Japanese Chamber of Trade and Industry Malaysia (JACTIM)

Japanese Investments in Malaysia

- Malaysia ranks high in terms of meeting Tier 1 and Tier 2 demands of Japanese supply chain, especially since China is currently facing challenges of rising labor costs
- Sony and Panasonic touted to be experiencing rising costs in China and now looking towards its Malaysian hubs
- Japanese keen on above 4% growth and country with 'pro-Japanese' affinity, language skills and infrequent natural disasters.

Japanese Investments in Malaysia

- Out of 143 companies surveyed:
 - 36.7% plan to increase investment;
 - 54% plan to maintain status quo;
 - 9.4% to decrease investment (due to drop in sales).
- Fresh investments in chemical industry
- Japanese investment in Malaysia still remains high even though there are concerns of foreign labor shortage (E&E sector), rising wages, difficulty in hiring professionals and mid-level managers, retention
- Customs clearance another factor raised in terms of trade and investment issues facing Japanese companies

Thailand



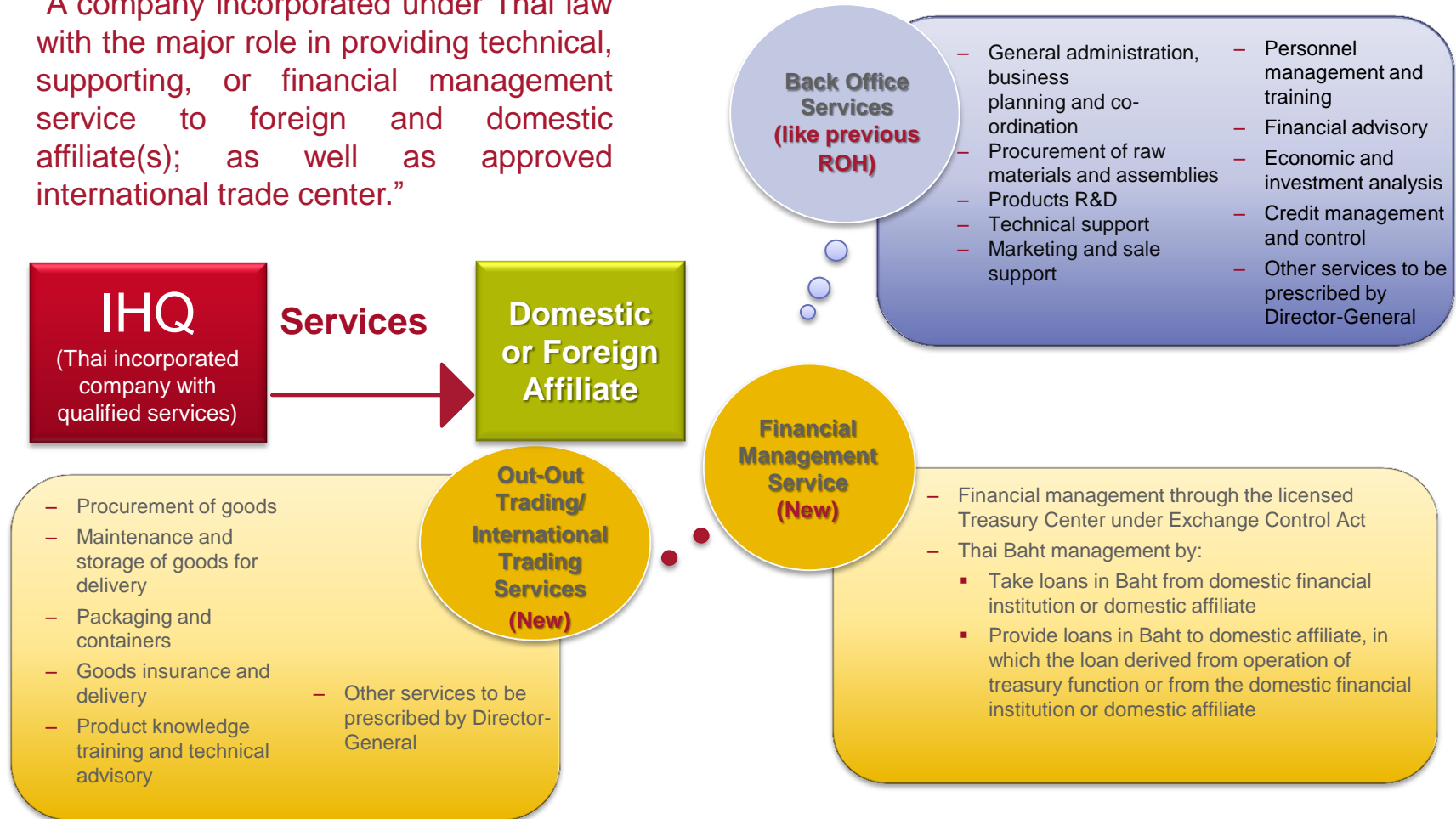
Agenda

1. International Headquarter
2. International Trading Center

International Headquarter
(IHQ)

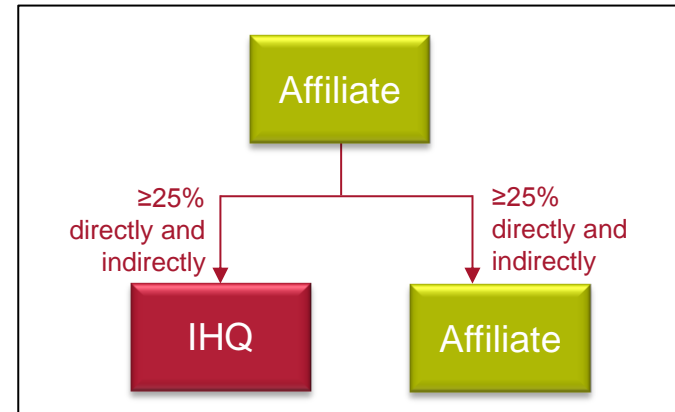
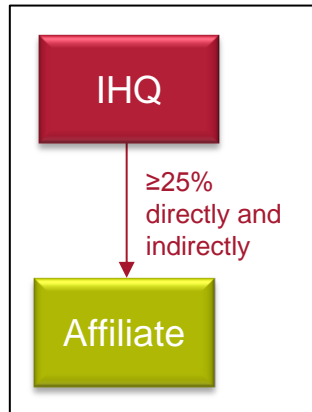
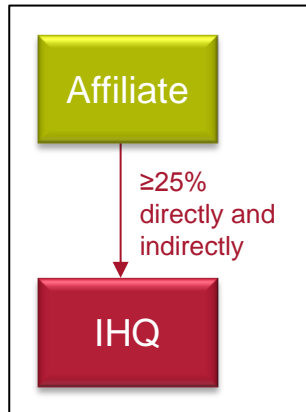
IHQ Qualified Services

“A company incorporated under Thai law with the major role in providing technical, supporting, or financial management service to foreign and domestic affiliate(s); as well as approved international trade center.”

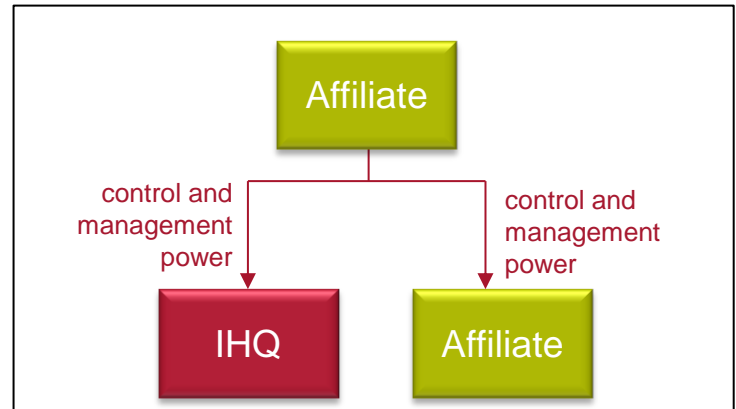
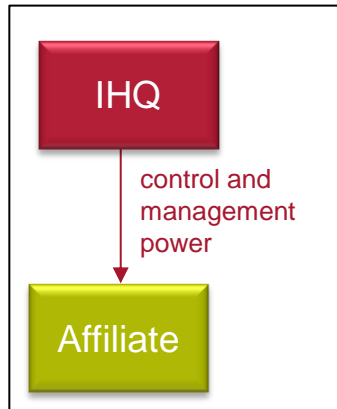
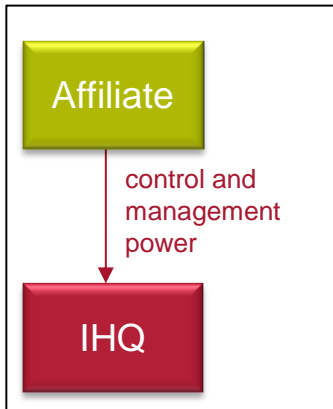


“Affiliates”

Shareholding
Threshold



Control Test



IHQ Criteria

IHQ



Paid-up capital of at least THB 10 million on the last day of each accounting period



Minimum expenditure of at least Baht 15 million paid to Thai recipients in each accounting period



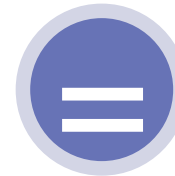
Provide qualified services to **foreign** affiliate(s) in at least **one** foreign country.



Prior approval from the Revenue Department must be granted



Other conditions to be announced by the Director-General of the Revenue Department must be fulfilled



Tax Privileges

- ✓ Tax privileges are available for 15 accounting periods, counting the first accounting period on the day after an approval is granted, or on the first day of the following accounting period.
- ✓ Tax privileges will lapse upon the lack of qualification.
- ✓ Lapse of tax privileges in any accounting period will not affect the privileges previously obtained or to be obtained in other accounting period where the qualification is satisfied.

Tax Privileges for the IHQ

1. CIT Exemption

- Income from qualified services provided to **foreign** affiliates
- Royalties from **foreign** affiliates

- Qualified dividends received from **foreign** affiliates
- Capital gains from the transfer of shares in **foreign** affiliates, subject to conditions in the Notification of the Director-General
- Income from out-out procurement services or trade profits from out-out trade transactions, provided that the trading goods are not imported into Thailand



2. Reduced CIT Rate of 10%

- Income from qualified services to **Thai** affiliate(s)*
- Royalties received from **Thai** affiliates*

*

Note the ceiling on the tax-reduced income received from domestic affiliate(s): The combined income from qualified services, and royalties received from domestic affiliate(s) to be entitled to the reduced CIT rate shall not exceed the combined income of qualified services and royalties received from foreign affiliate(s).

**

Conditions are: (i) underlying assets of a foreign affiliate in Thailand, either held directly or indirectly, have an aggregate value of not exceeding 25 percent of the total assets value of the affiliate; and (ii) investment losses from disposal of shares held in foreign affiliates are not realized as tax deductible expenses.

Examples of Reducing the Income Tax Ceiling

1. Exemption on “Foreign-Sourced Income”

- Income from qualified services + permitted treasury functions + royalties from **foreign affiliates**

2. Reduced rate of 10% on “Thai-Sourced Income”

- Income from qualified services + permitted treasury functions + royalties from **Thai affiliates**



Example 1

Baht 13 million

- CIT exemption on entire Baht 13 million



Baht 10 million



CIT reduction privilege
on entire Baht 10 million

Example 2

Baht 13 million

- CIT exemption on entire Baht 13 million



Baht 20 million



CIT reduction on only
Baht 13 million



20% CIT on remaining
Baht 7 million

- Dividend + Capital Gain + Out-Out + International Trading Service from **foreign affiliates**

CIT exemption on entire amount

Tax Privileges for the IHQ (Cont.)

3. WHT Exemption

- Dividends paid by IHQ to its foreign parent company (which does not carry out business in Thailand), only for the dividend paid out of the exempted income under item 1. above
- Interest paid by the IHQ to its foreign entities, only on the portion of loan borrowed to re-lend to its affiliates under permitted treasury functions

4. SBT Exemption

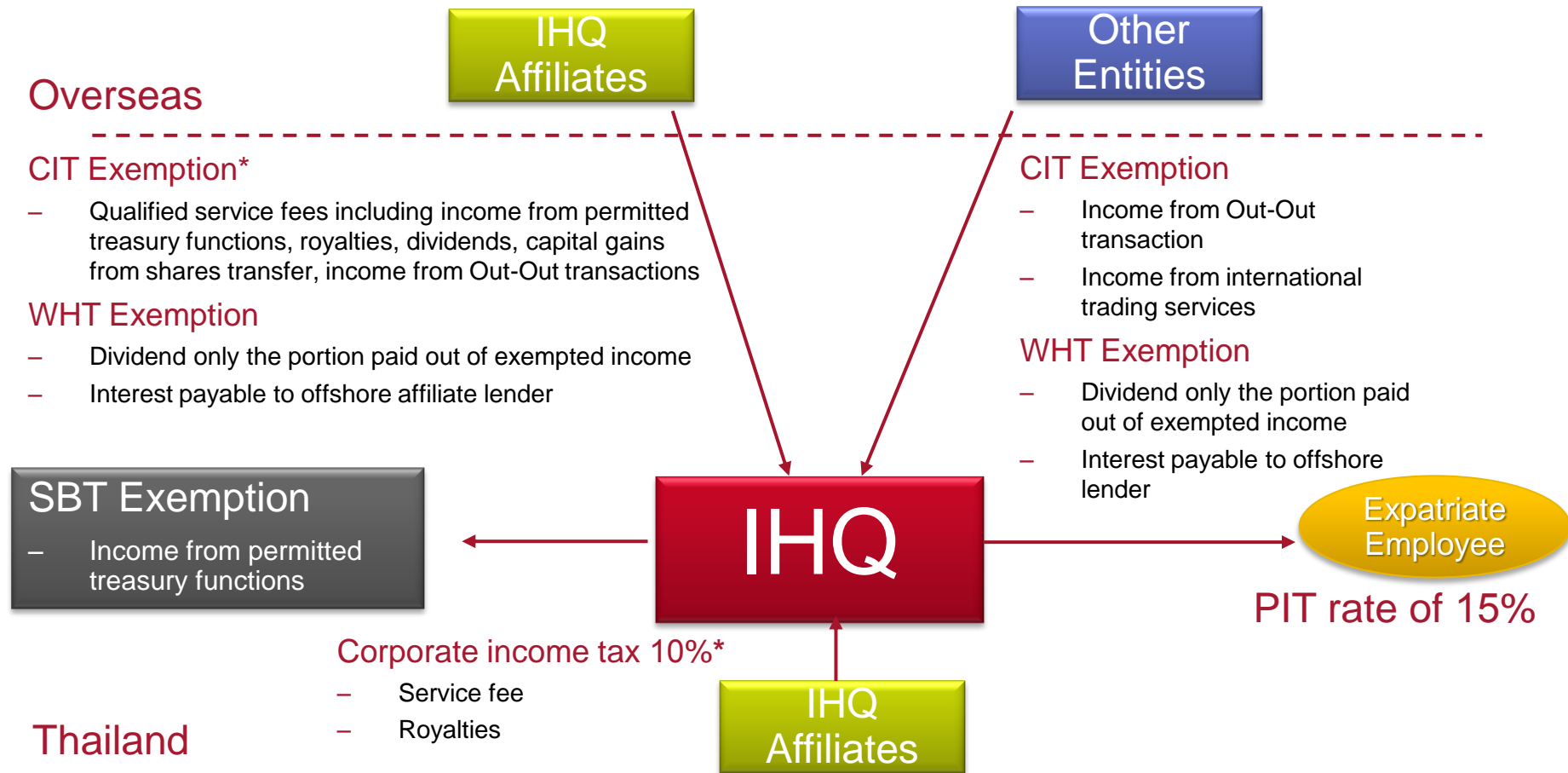
- Income from permitted treasury functions*

* **Note:** On 1 March 2016, the Cabinet recently approved to amend Royal Decree No. 586 in order to provide the additional SBT exemption for all type of income from permitted treasury functions. Currently, it is under consideration by the Council of State and is expected to be effective in the near future.

5. Reduced PIT Rate of 15%

- Expatriates working for the IHQ are entitled to maintain personal income tax (PIT) rates at 15%

Conclusion: Tax Privileges for the IHQ

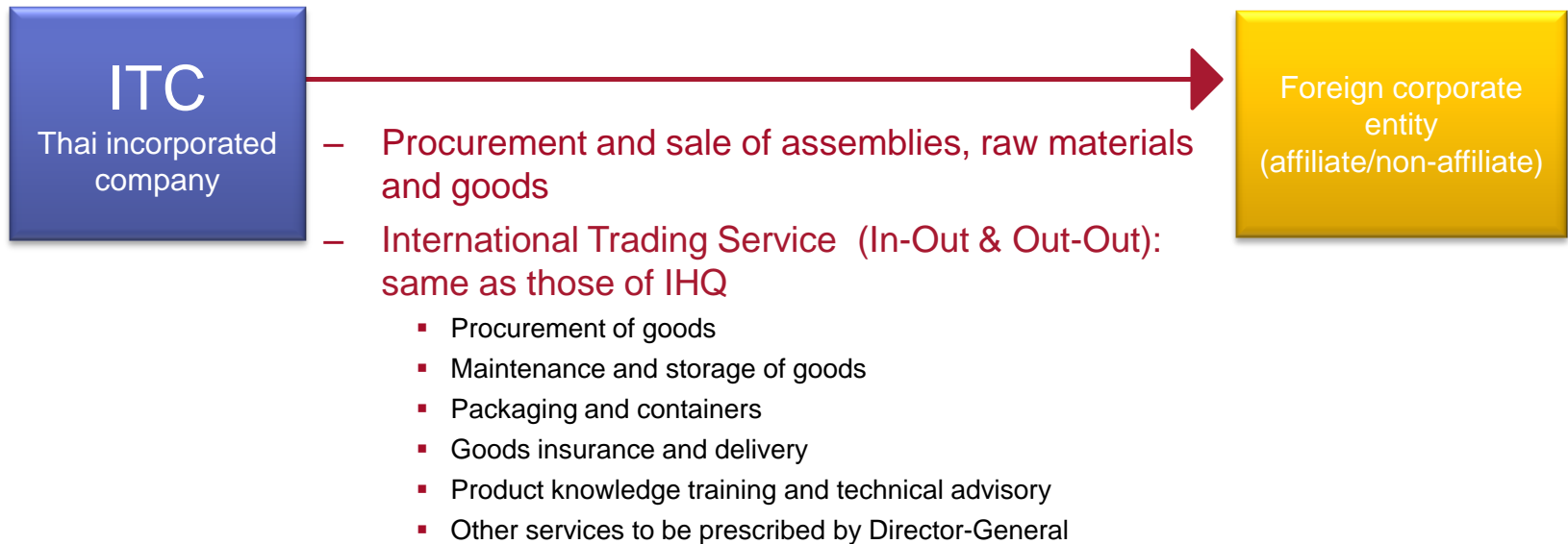


*Note the ceiling on the tax-reduced income received from domestic affiliate(s): The combined income from qualified services, and royalties received from domestic affiliate(s) to be entitled to the reduced CIT rate shall not exceed the combined income of qualified services and royalties received from foreign affiliate(s).

International Trading Center
(ITC)

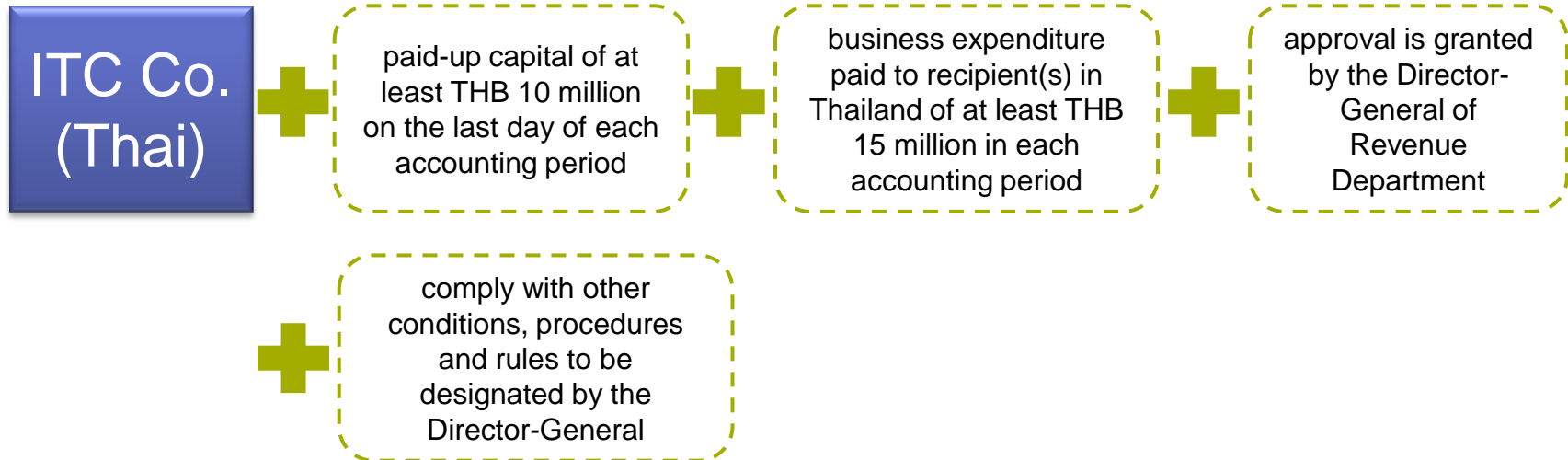
What is International Trading Center (ITC)?

“A company incorporated under Thai law with the major role in procuring and selling assemblies, raw materials and goods, as well as providing services in respect to international trading transactions to foreign corporate entity!”



***Note:** For purpose of tax privilege, the International Trading Center can apply for an approval to be the International Headquarters

Qualified ITC for Tax Privilege



== Tax Privilege for ITC

- tax privilege is available for 15 accounting periods, counting the first accounting period on the day after an approval is granted.
- tax privilege will lapse upon the lack of qualification.
- lapse of tax privilege in any accounting period will not affect the privilege previously obtained or to be obtained in other accounting period where the qualification is satisfied.

Tax Privileges for ITC

CIT Exemption

- Income from procuring and selling goods overseas (Out-Out transaction)
- Income from international trading services provided to foreign corporate entity

WHT Exemption

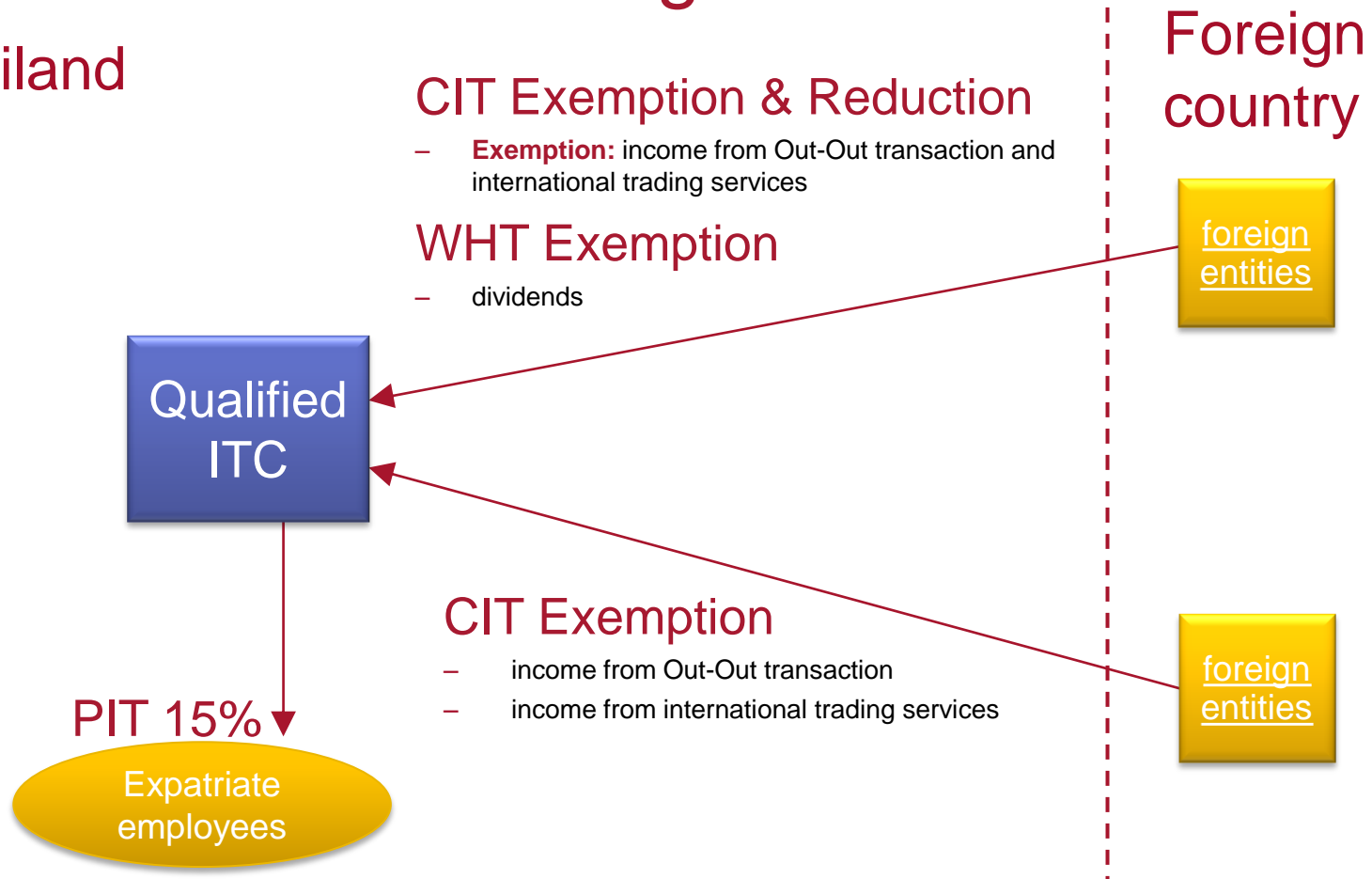
- Dividends that is paid out from the tax-exempt income to foreign corporate entity not carrying business in Thailand

Reduced PIT rate of 15%

- Income derived by an expatriate employee of ITC

Flowchart: Tax Privileges for ITC

Thailand



***Note:** For the purpose of tax privilege, the International Trading Center can apply for an approval to be the International Headquarter

Insights From a U.S. Perspective



Foreign Investment Regulations

- Ownership Limitations?
- Residency Requirements?
- National Treatment?



Open Borders/Free Trade Agreements

- Import Restrictions or Licenses?
- Preferential Duty Rates?
- Access to Regional Markets and FTAs?



Transfer of Technology Regulations

- Freedom to License?
- Registration Requirements?
- Caps or Limitations on Royalty Payments?



Exchange Control Regulations

- Any Central Bank Registration Requirements?
- Freedom to Invest Capital?
- Freedom to Repatriate Capital?
- Freedom to Distribute Profits?



Competitive Tax Rates

- Corporate Tax Rates
- Withholding Taxes
- VAT

Regional Headquarters in the U.S.: Key Considerations for Asian Companies

U.S. Market Size and Ease of Doing Business

- Dynamic Economy & Attractive Consumer Market
 - GDP of more than \$17 trillion in 2014, and a population of over 320 million
 - Per capita GDP among the highest for the world's major developed economies (\$54,340 as of 2014)
- Ease of Conducting Business
 - United States as #7 in *The World Bank Doing Business 2016 index (out of 189)*

U.S. Market Size and Ease of Doing Business

- Skilled Workforce
 - Over 57 percent over the age of 25 have completed a level of education beyond high school
- Robust Intellectual Property Protection
 - Patents, trademarks, copyrights, or other forms of IPR
- Energy Costs
 - Natural gas costs one third in the US as it compares to Asia

Considerations When Setting Up U.S. RHQ

- Harmonization through far-reaching bilateral and regional agreements and some in the horizon
 - Nafta
 - Cafta
 - Colombia, Panama and Peru
 - TPP
 - TTIP

Considerations When Setting Up U.S. RHQ

- Federalist system allows for diversity in tax structure and regulations by State
 - **Criteria to be aware of:** business cost, labor supply, regulatory environment, economic climate, growth prospects, quality of life

Forbes

Best States For Business

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#1

Utah


536061212,963,000



#2

North Carolina


5942210169,992,000



#3

Nebraska


9103133071,887,600



#4

North Dakota


1361031236744,600



#5

Colorado

391124695,397,200



#6

Texas

10821183127,187,700

Considerations When Setting Up U.S. RHQ

- Understanding regional trends
 - The tech market is exploding in Silicon Valley, but secondary markets like “silicon alley” in New York, Boston and Washington, DC are also emerging.
 - Densely populated cities, including New York and Los Angeles, are ripe for consumer product business.
 - Many states, including Indiana, Oregon, Michigan, are aggressively attracting new manufacturing jobs through a host of incentives.

Q&A

Thank You





Asia Pacific

**TRADE & COMMERCE
CLIENT CONFERENCE**

25 May 2016

Export Controls and Sanctions Developments

Led by:

Anne Petterd, Australia

Panellists:

Mina Arai-Ito, Japan

Anne Peng, Hong Kong

Thuy Nguyen, Singapore/Vietnam

Ronald Bernas, Philippines

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Introduction



Key Themes for Recent Export Controls and Sanctions Developments

- Export controls in the region are expanding
 - Controls over potentially harmful material continues to be a priority for most governments
- Less consistent approach on sanctions
 - Different approaches between jurisdictions on dealing with lifting sanctions for Iran and imposing sanctions for Russia
- Businesses need to be vigilant on keeping up to date with these changing situations



Export Controls Developments



What Does an Export Controls Regime Look Like?

Export Controls Overview

Features	Australia	China	Hong Kong	India	Japan	Malaysia	Singapore
Tangible	✓	✓	✓	✓	✓	✓	✓
Intangible	✓	✓	✗	✓	✓	✓	✓
Wassenaar Participant	✓	✗	✗	✗	✓	✗ (based on EU list)	✗ (Wassenaar generally applied)
General Licence (for some goods)	✗ (AUSGEL broad licences available)	✗	✗ (Approved-in-Principal Scheme)	✗	✓ (3 years)	✗ (30 day transit exemption)	✓ (21 or 45 days transit exemption)
Penalties (fines / imprisonment)	✓	✓	✓	✓	✓	✓ (criminal and death penalty)	✓

Export Controls Overview

Features	Taiwan	Thailand	South Korea	Indonesia	Philippines	Vietnam
Tangible	✓	✓	✓	✗	✓	Technically yes
Intangible	not enforceable	✗	✓	✗	✓	Technically yes
Wassenaar Participant	✗ (based on EU list)	✗ (Wassenaar generally applied)	✓	✗	✗ (based on EU list)	✗
General Licence (for some goods)	✓ (certain limited exemptions applicable)	✗	✓ (certain limited exemptions applicable)	✗	✗	✗
Penalties (fines / imprisonment)	✓ (criminal and administrative fines)	✓	✓ (criminal and administrative fines)	✗	✓ (criminal and civil penalties)	Technically yes



Getting Ready for a New Export Controls Regime – Philippines

Philippines - Strategic Trade Management Act

- On 13 November 2015, the Strategic Trade Management Act ("**STMA**") was signed into law
- Effective 2 December 2015
- National Security Council-Strategic Trade Management Committee
 - A permanent committee under the National Security Council
- Strategic Trade Management Office
 - Executive and technical arm
- Permit requirements for export, import, re-export, reassignment, transit and transshipment
- 10-year record-keeping obligation
- Alike other fellow ASEAN members who have implemented export controls, the new law adopts the EU control list (munitions and dual-use items) plus additional Nationally Controlled Goods

Philippines - Strategic Trade Management Act

- SMTA has the concept of deemed export
 - Face-to-face communication, demonstrations or handling over of controlled technology to foreign persons, wherever located, requires a permit
- Only exemptions for the government are available to date
- Consent of owners and carriers of strategic goods must be obtained. Owners and carriers to obtain STMO approval for movement or supply of controlled goods/technology
- Penalties: Up to 12 years imprisonment, fines up to 5 million pesos
- Where corporations are criminally charged, managers who “consent to” or “tolerate” may also be charged as co-principals



Updates to Export Controls



Australia

2 April 2016 changes

- New offences if do any of the below with controlled materials without a permit / approval

	Military	Dual-use
Supply	Permit required	Permit required
Publishing	Defence Minister approval required	No approval (unless subject to notice)
Brokering	Permit required	No permit (unless for a WMD or military end-use)

What Issues Have Businesses Needed to Understand Regarding Intangible Supplies?

Are cross-border projects and data transfer impacted?

- Intangible supply is regulated if there is cross-border provision of access to another person
 - Emailing controlled technology to yourself and accessing it outside Australia later is not regulated. No “supply” to another person occurs
 - An Australian business storing technology using a cloud service hosted outside Australia is not regulated if only the Australian business has access. No “supply” to another person occurs
 - However, if the Australian business sends a password to a person outside Australia to permit access to the controlled technology stored in the cloud, that is regulated. Cross-border supply to another person occurs
- No deemed export / re-export concept
- Oral communication for civilian purposes is generally exempted



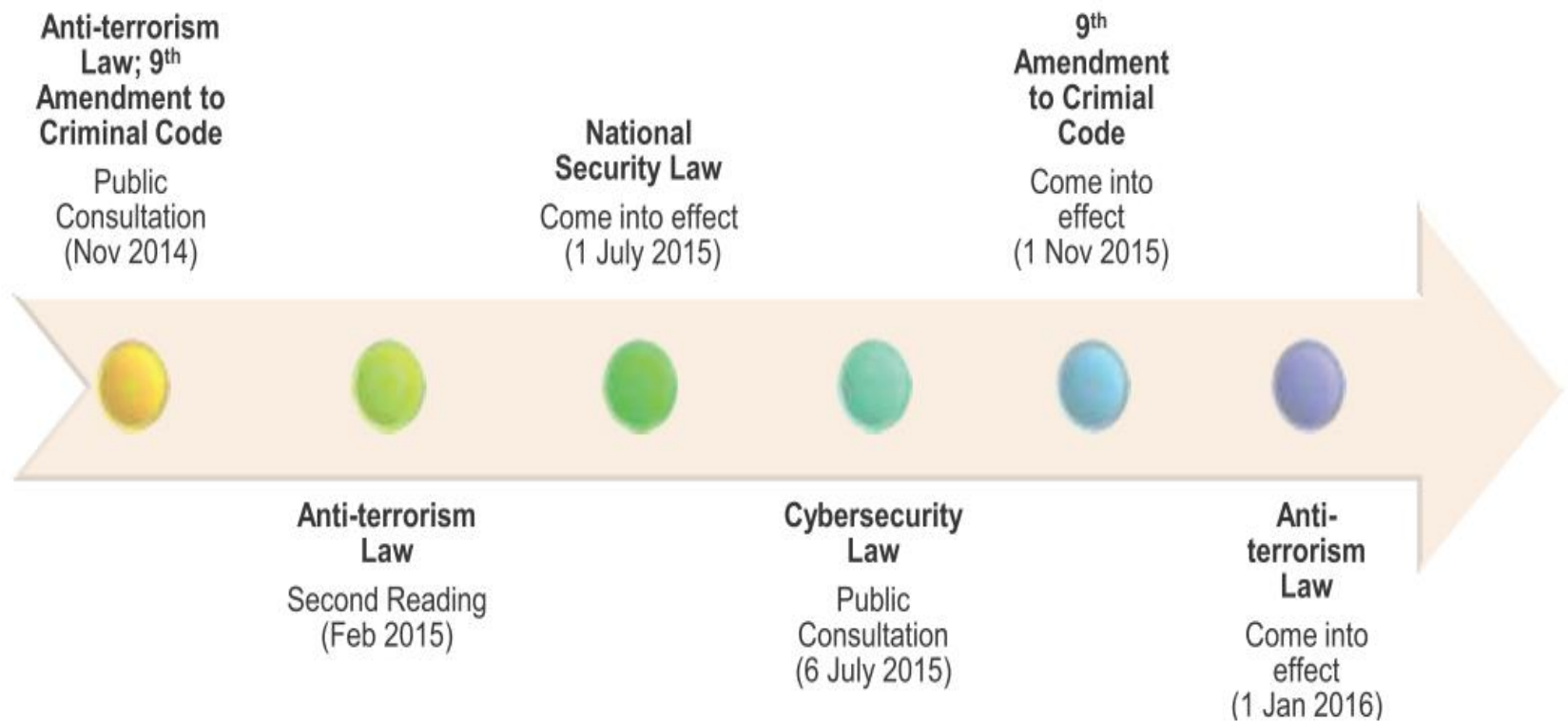
China



Keeping Up to Date with Changes to Export Controls

- China's Emerging Cyber Security Regime
 - National Security Law
 - Anti-terrorism Law
 - Draft Cyber Security Law

Fast Pace on Security Law-making



Draft Cyber Security Law

- A companion to the *National Security Law*, in response to the needs to ensure “**safe and controllable**” systems and data security in critical infrastructure. Published for soliciting opinions from the public on 6 July 2015
 - If key information infrastructure operators violate the law, store network data outside of the territory of PRC, or provide network data to overseas organizations or individuals without security assessment, the violators will be subject to:
 - a warning
 - being ordered to correct
 - confiscation of the illegal income
 - a fine from RMB 50,000 to RMB 500,000 imposed on the entity
 - suspension of the business or close of the site
 - revocation of its business license
 - a fine from RMB 10,000 to RMB 100,000 imposed on the directly responsible personnel

Criminal Liabilities for Jeopardizing Cyber Security

- According to the *9th Amendment to the Criminal Code*, network service providers may be exposed to criminal liabilities, if they:
 - (a) fail to comply with network security management obligations, causing large-scale dissemination of illegal information or other serious results (Article 286)
 - (b) knowingly provide technical support (such as Internet access, server hosting, network storage or communications transmission) to aid crimes committed through information networks (Article 287)
 - In both cases, the offence will lead to up to 3 years' imprisonment or criminal detention, and/or fines. In case the offender is an entity, personal liabilities will be pursued against the “persons directly in-charge” and “other persons directly liable”



Hong Kong

Revised Control List for Strategic Commodities

- Although Hong Kong is not a member of Wassenaar Arrangement, as Hong Kong enjoys relatively free access to the Wassenaar Arrangement controlled dual-use goods and technology, the Hong Kong government is committed to enforcing controls of the Arrangement
- Pursuant to Strategic Trade Controls Circular No. 8/2015 published by the Trade and Industry Department, the Import and Export (Strategic Commodities) Regulations (Amendment of Schedule 1) Order 2015 came into effect on 20 April 2015
- This effectively revises Hong Kong's control list for strategic commodities to bring it in line with the practice of international non-proliferation regimes (as reflected in their respective control lists)
- Introduced, *inter alia*, two new types of export-regulated software:
 - Intrusion software:
 - IP network surveillance systems (5. A. 1. j.)



Singapore

Strategic Goods (Control) Order 2015

- A new Strategic Goods (Control) Order (“**SGCO**”) 2015 was introduced to replace SGCO 2013, with effect from 2 November 2015, bringing Singapore Strategic Goods Control List up to date with
 - the 2014 Wassenaar Arrangement Munitions List
 - the 2014 European Union’s List of Dual-Use Items
 - the recent changes to the Wassenaar List of Dual-Use Goods
- Key features of SGCO 2015
 - Major De-controls under Information Security category (Category 5, Part 2)
 - New Controls on Items with intrusion and interception capability (Category 4 and Category 5, Part 1)
 - Multiple De-controls and New Controls under categories 2 (Materials Processing) and 3 (Electronics)
 - Consequential changes to the legislations on brokering, transshipping, and bringing in transit of strategic goods



Vietnam

Vietnam Law on Online Information Security

- Adopted on 19 November 2015
- Effective on 1 July 2016, overriding current regulations under Decree No. 73
- Governing, among others, import and export of cyber information security (“**CIS**”) products and services
- CIS products include
 - civil encryption products (“**CEPs**”)
 - products for cyber information security testing and evaluation
 - products for cyber information security surveillance
 - anti-attack and anti-hacking products
 - other products to be promulgated by the Government
- CEPs include “encryption documents, and encryption professional and technical equipment used for information protection out of the scope of State secret”

CEPs Import / Export Controls

- Trading in the CEPs which are included in a list to be issued by the Government will require a business license
- Import and export of the CEPs which are included in a list to be issued by the Government will require an import / export permit
- The issuance of an import / export permit for CEPs requires the following:
 - The applicant must be the holder of a GCC Business License,
 - The CEPs must obtain applicable type-approvals, and
 - The CEPs' end-use and end-users must not cause harm to national defence, national security, and social safety and order

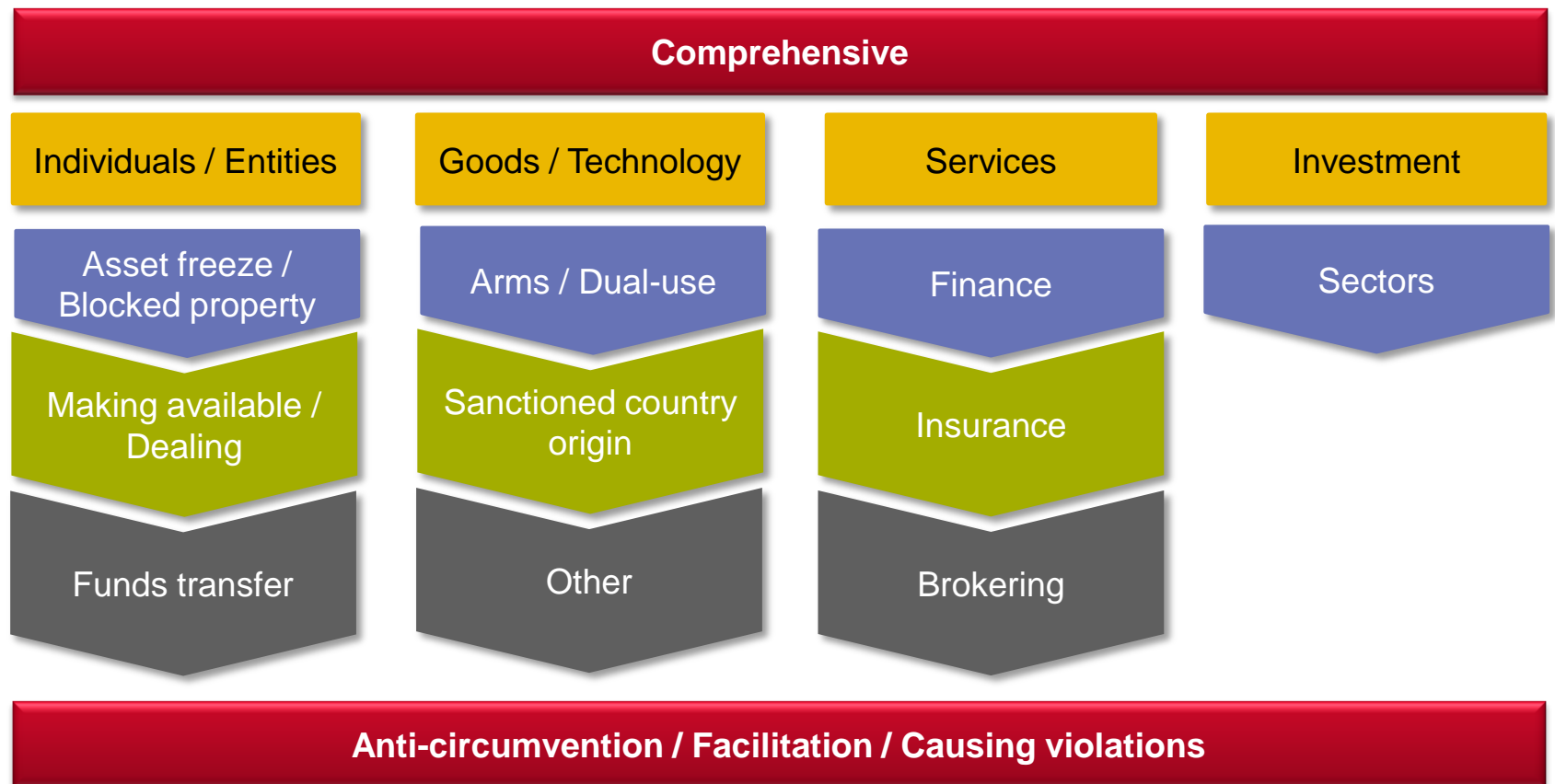


Sanctions Developments



What do Sanctions Regulate?

Sanctions Toolbox



What Sanctions Could Apply?

- United Nations Security Council (UNSC) sanctions
 - Implemented under local country laws
- Autonomous sanctions set by your government
- Sanctions set by another country's government that impact your activities
 - For example, US sanctions often restrict dealing in US Dollars which most banks use
- Sanctions can change quickly in response to the changing political climate
 - Iran – some sanctions recently lifted
 - Russia – sanctions being imposed



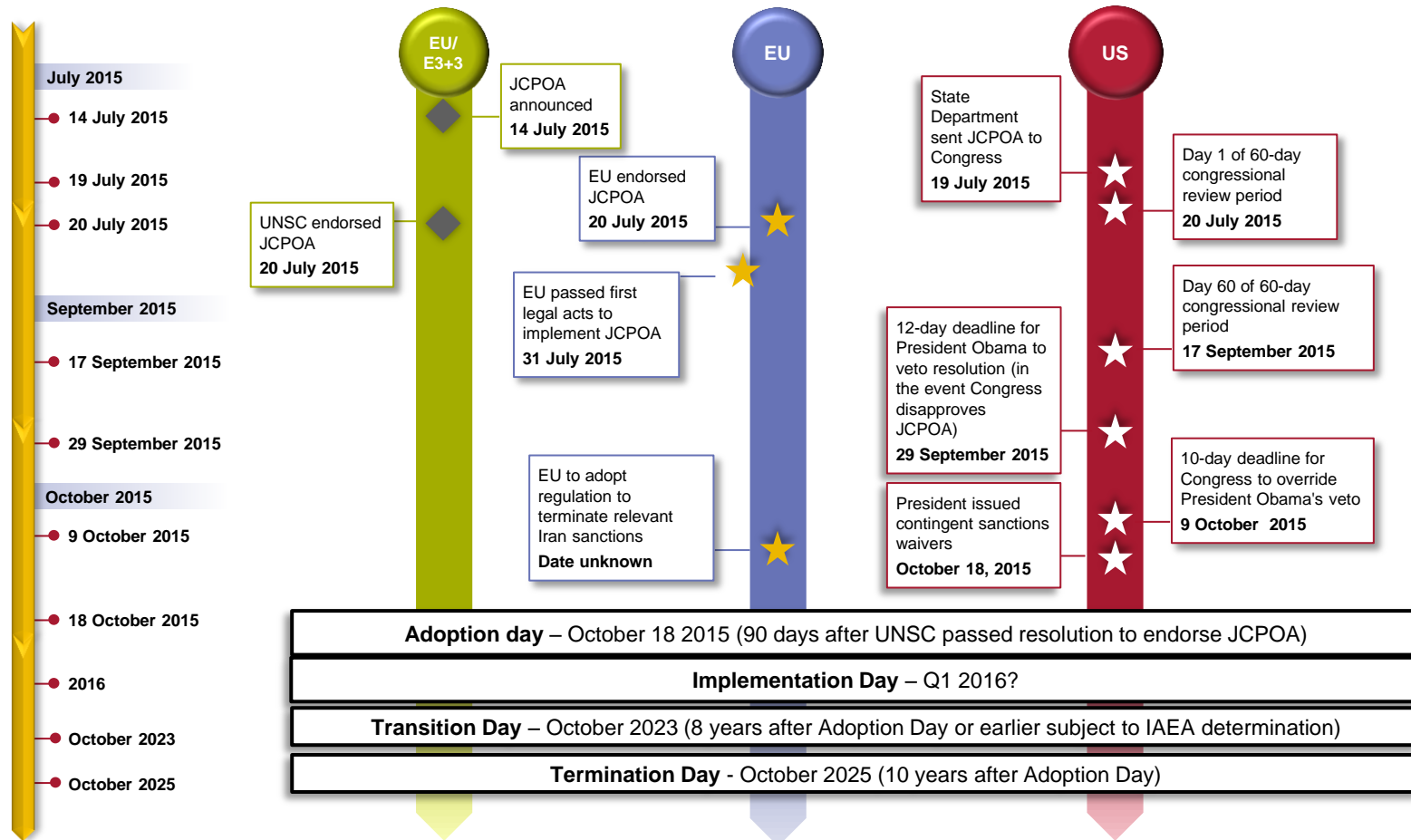
Responding to Lifting of Limited Sanctions - Iran

JCPOA | Overview of Sanctions Relief

- **14 July 2015:** EU/E3+3 (China, France, Germany, Russia, the UK, the US, and the EU) and Iran announce agreement on a Joint Comprehensive Plan of Action (“JCPOA”)
- Comprehensive lifting of all nuclear-related UNSC sanctions and multilateral and EU/US national sanctions
- Sanctions relief only commences once IAEA verifies Iran has implemented its commitments under the JCPOA (2016)
- Various stages of sanctions relief over course of next 8 years
- US non-nuclear sanctions will remain in full force
- **22 January 2016:** Japan lifted many of its sanctions
- If Iran violates the JCPOA, there is a 65-day process under which UN, EU and US sanctions could “snap back”
- Pre-existing JPOA Temporary Sanctions Relief still applicable



JCPOA | Timeline for Sanctions Relief





Singapore

Singapore Sanctions Approach for Iran

- 28 January 2016: Cancellation of MAS Notice on “Prohibition on Transactions with the Iranian Government and with Iranian Financial Institutions” dated 18 June 2012
- 29 February 2016: Singapore and Iran signed a Bilateral Investment Treaty
- Some questions remain about JCPOA and existing sanctions regulations concerning Iran maintained by Singapore

Singapore Enforcement of Sanctions

- 29 January 2016: S\$80,000 fine was imposed against Chinpo - a Singapore shipping company - for facilitating a shipment of arms to North Korea in July 2013
- 28 August 2015: Singapore Customs Circular regarding Obligations to Combat Terrorism Financing and Proliferation Financing - highlighting strict penalties against violations of UN Act regulations and its implementing regulations



China

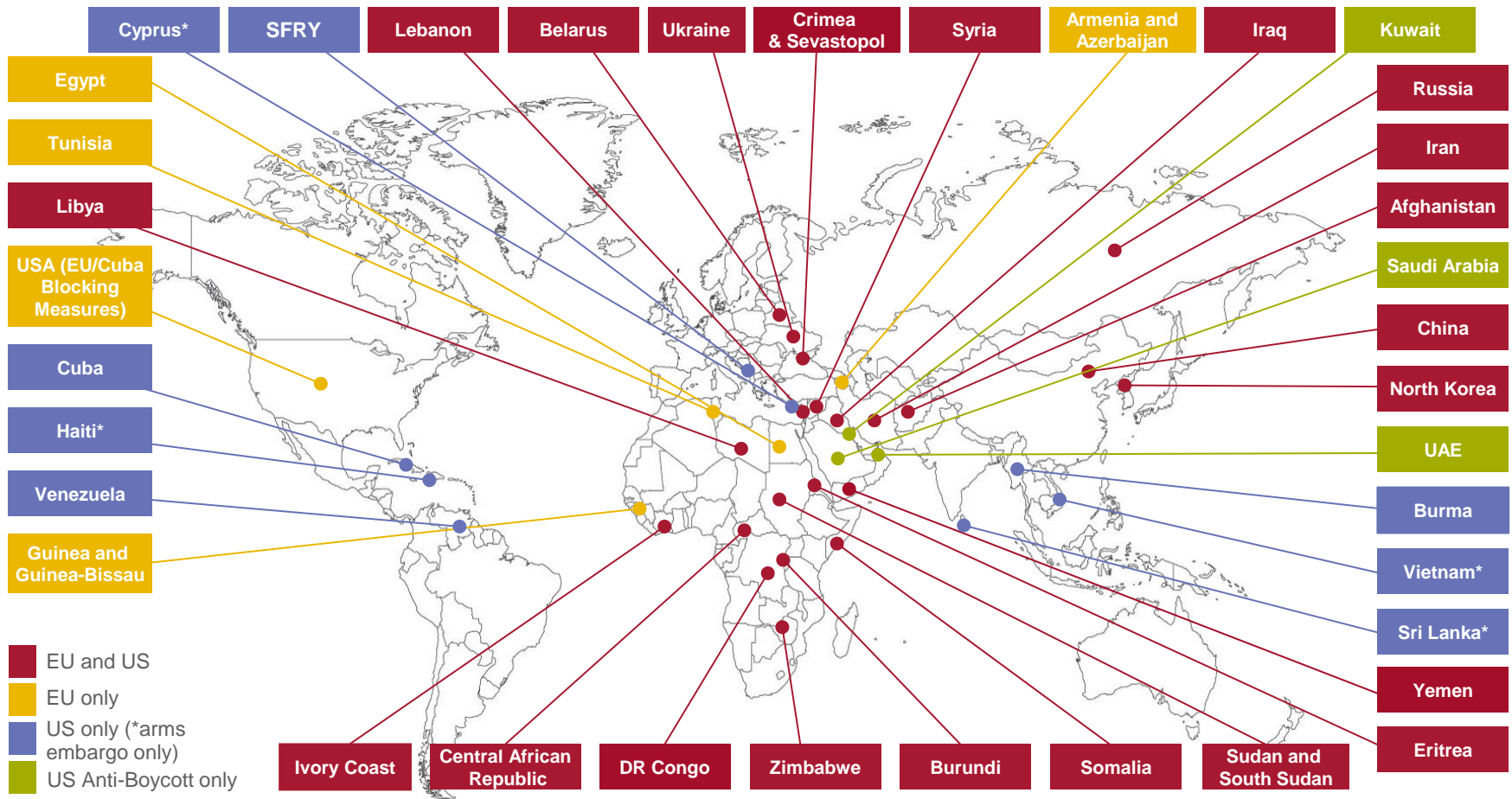
US Placed Restrictions on ZTE to Enforce Iran Sanctions

- On 7 March 2016, the U.S. Government imposed export restrictions on ZTE, a Chinese telecommunications giant and its three affiliate companies for re-exporting US controlled items to Iran
- As a result, ZTE's shares listed in Hong Kong and Shenzhen were suspended on 7 March, pending a resolution of the situation
- ZTE has been in active, constructive discussions with the US Department of Commerce
- As part of the effort to resolve the matter, and based on the binding commitments that ZTE has made to the US government, the US Department of Commerce temporarily lifted the export restrictions it imposed on ZTE in April 2016
- ZTE replaced three top executives on 4 April 2016



Ongoing Impact of United States and European Union Sanctions Regimes

US and EU Sanctions Programs



Broad Jurisdictional Scope of US Sanctions





Conclusion



Asia Pacific

**TRADE & COMMERCE
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25 May 2016

Plenary: 360 View of Supply Chain Compliance

Led by:

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Panellists:

Frank Pan, China

Kana Itabashi, Japan

Thuy Nguyen, Singapore

Zhixiang Ke, Singapore

Mattias Hedwall, Sweden

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Agenda

1. What is supply chain compliance?
2. Identifying needs and vetting potential partners
3. Due diligence
4. Contracting
5. Auditing
6. Conclusion and Q&A



What is Supply Chain Compliance?

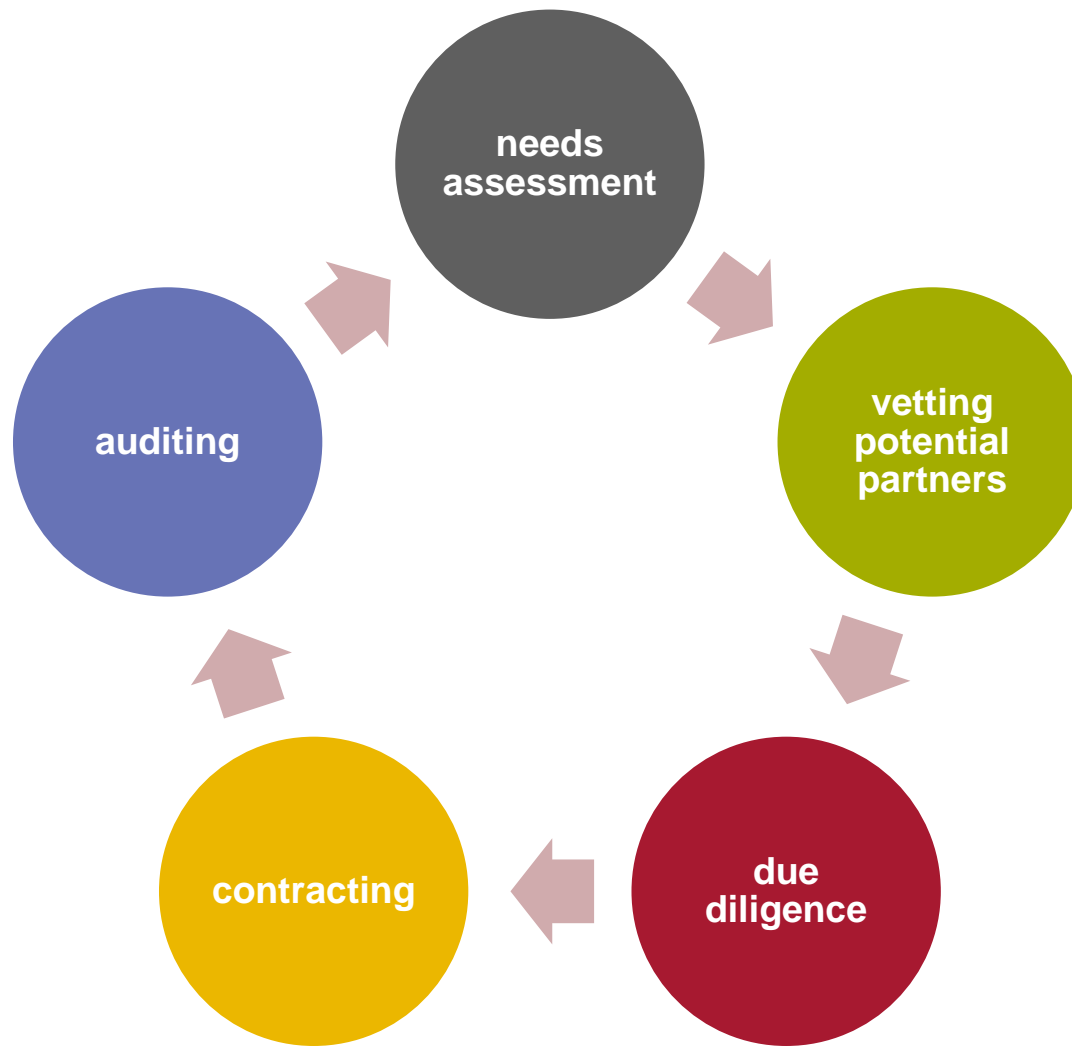
What is Supply Chain Compliance?

- Globalization, previously discussed as a “trend” has been a reality for some time in the supply chain space
- The World Economic Forum has pointed out that supply chains form the backbone of the global economy
- Corporate boards are increasingly aware of and being held accountable for several areas of organizational risk, in particular, those risks posed by the supply chain
- According to a survey of thousands of MNCs conducted by the World Economic Forum, more than 90% indicated that supply chain risk management has become a greater priority in their organization during the past few years
- The global supply chain of many MNCs has resulted in their reliance on thousands of independent suppliers and partners located in many countries.

What is Supply Chain Compliance? (cont'd)

- Risks emerge at every stage in the supply chain, from raw material supply to the end use at the destination of goods and services
- Varied in forms and measures depending upon the organization's business sector and the nature of activities, supply chain compliance mainly covers two streams of efforts:
 - To effectively mitigate operational, legal and business continuity risks in the transactions and customer/supplier relationships arising from supply chain operations, and
 - To establish robust self-policing mechanisms to ensure conforming conduct both internally and at third-party business partners.
- Careful evaluation and picking the right third-party partner is the essential first step in mitigating the risks and ensuring compliance with regulatory demands and ethical policies

A 360 View of Supply Chain Compliance





Identifying Needs and Vetting Potential Partners

Third Party Screening

– Key Considerations

- *Necessity*
 - Do we need the third party?
- *Qualification*
 - Is the third party qualified / competent / experienced?
 - What is the business track record of the third party?
- *Reasonableness of the compensation*
 - How do we pay them / are we paid?
 - Is the compensation in line with the services provided?
 - How does the compensation compare to other benchmarks, such as industry practice or our practice in comparable situations?
- *Integrity*
 - Who is the third party?
 - Who are the beneficial owners?
 - What does the third party request?



Third Party Screening (cont'd)

- Request for Proposals (RFPs)
 - Ensuring bids are structured to include compliance and ethical requirements
 - Reference should be made to your expectations, policies and vendor manuals
 - Response to bid should affirm bidder's intention and willingness to comply

Delivering an Effective Third Party Vetting Process

- Process must be clearly defined
- Consider who needs to input, ownership and structure of the process
 - Business
 - Legal / Compliance
 - Finance
- Ensure consistent application of standards within the organization
- Defined process for monitoring and reviewing/auditing third party relationships
- Thorough documentation of process
- Effective verification of payments to third parties through back-end financial controls
- Support through training and periodic evaluation

Why Focus on Choosing Your Partner? (cont'd)

- Third-party relationships can be a source of cost-savings and greater efficiency, but also of stress.
 - More than 90% of the FCPA actions brought by the US Department of Justice involve misconduct by a company's third party partner – Global Fraud Survey by Ernst & Young
 - One of the greatest challenges of managing a global supply chain is knowing who you are doing business with and how they operate.
 - Companies that seek to implement or expand compliance programs in jurisdictions other than their home country face significant transparency, accountability and partnership hurdles.
 - The risks of using third-party suppliers may be higher in emerging markets, due to increased concerns with corruption and political and legal instability.

Why Focus on Choosing Your Partner? (cont'd)

- Choosing your partner can mean the difference between having a significant asset or a major liability. Recent examples of third-party partners' compliance scandals include:
 - Major retailers face public scrutiny after factory fires and building collapse in Bangladesh,
 - Multinational technology manufacturer named in news report for alleged breach of environmental regulations
 - Fortune 500 company suffered massive data breach as a result of third party security hack (hack was believed to have occurred at a third party partner)
 - Major retailer enterprise had to issue major food recall after test results showing food contamination
- Moving the compliance management upfront to the stage of vetting and selecting third-party partner gives the company greater bargaining power to secure compliance commitments from your partner that address your major legal risks while the process is still competitive



Due Diligence

Risk Rating

The Third Party:
Sales agent, distributor,
supplier, reseller,
consultant, service
provider, customs broker,
JV Partner

**Transaction
Specifications:**
Size or value of the deal,
structure of the contract or
transaction, scale of
cooperation, time and
scope of operations

Countries:
Third-party risk is rated as
highest in **China**, followed
by India, Africa, Russia,
South America and the
Middle East.* (Source:
B&M Global Supply Chain
Survey 2013)

Business Sectors:
Mining, oil & gas,
pharmaceuticals,
electronics,
food/beverage, luxury and
fashion brands, hospitality,
entertainment

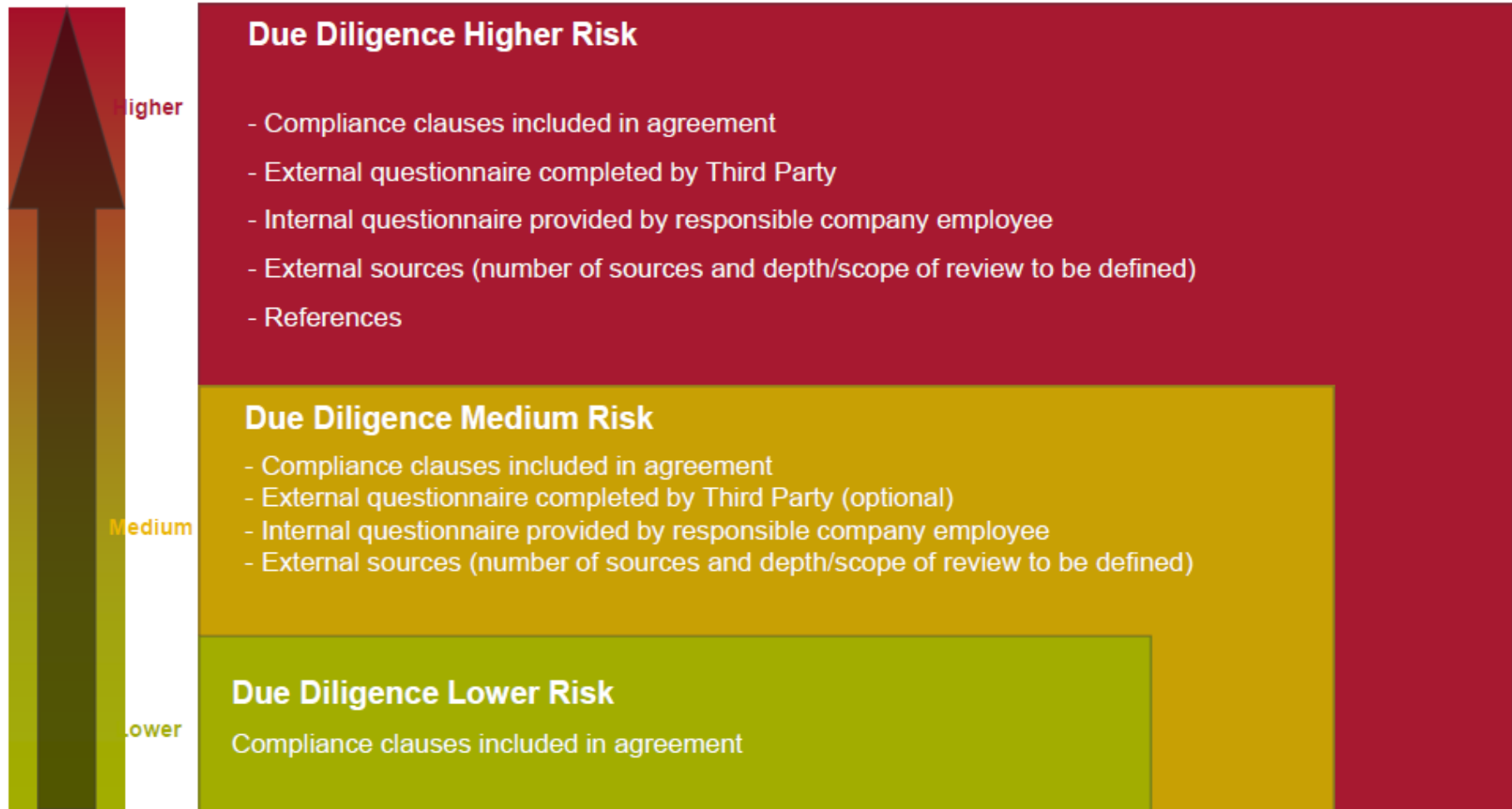
Risk Rating



Due Diligence

- All about know your counter party; but do it smart based on risk
- Use relevant tools:
 - Questionnaires, RFI, interviews
 - Screening, public searches, internet and social media
 - Other references and information from business partners
 - Geopolitical analysis
- Assess the risk; document, follow-up and audit

Example



US Compliance Issues

– Counterparty due diligence

- Several restricted parties list (SDN List, SSI List, Entity List, etc.) to be considered
- 50% or more owned by parties on SDN List or SSI List?
- Transaction otherwise indirectly benefits SDN?
- Different levels of due diligence for different types of counterparties
 - Distributors/agents v. retail customer
- Keep records of counterparty due diligence

Third Party Dealer Tax Due Diligence

- To be performed on dealers in the region;
- Depending on jurisdiction, the specific tax documents to be reviewed and issues to be considered may be different:
 - Example of documents required for Cambodian tax due diligence:
 - Tax Identification Card
 - Patent Tax Certificate / VAT certificate
 - Annual Tax on Profit return and receipt of tax payment (if any)
 - Monthly tax returns – VAT, Tax on Salary, WHT and Prepayment of Tax on Profit
 - Financial statements, note to accounts
 - Required of a Real Regime taxpayer.
 - Estimated tax regime was abolished from 1 January 2016.



Contracting



Contract Provisions

- Representations and warranties, undertakings and indemnity
 - Compliance in various areas (e.g, anti-bribery, antitrust, anti-money laundering)
 - Accurate records and internal control
 - Compliance training for employees and agents
 - Local law requirements
- Audit right
- Termination right
- Compliance certificate

Contract Provisions

- Indirect tax, customs & import duties, direct tax implications arising from:
 - Transfer of title clause
 - INCOTERM
 - Reservation of rights to direct sales clause
 - Constructive retention of title clause
 - Payment of taxes clause
- Therefore need to review contractual provisions to consider potential tax exposures.

Issues

– Contractual provisions

- Force majeure clauses
 - Often do not address or encourage sanctions or export control compliance
 - May only be useful in worst-case scenario
 - Jurisdictional issues may arise
- Specific trade compliance clauses can be more effective
 - Encourage compliance
 - Impose requirement to follow US and/or EU standards

Issues (cont'd)

– Contractual provisions

- Export controls
 - Supply chains involving US-origin items or non-US items with more than *de minimis* US content should have measures to comply with US export controls
 - US export controls apply to such items wherever located in the world, regardless of whether a party is US or non-US
 - Measures even more significant if US-origin/content items are “controlled” under US export controls



Supplier/Vendor Compliance Policies

- A must to have in the agreements and should give a right to terminate if breached
- Should be a living document and implemented in the vendor selection and request for offer process
- Structured follow-up process
- Training together with the supplier/vendor
- Create a mutual understanding of the importance



Auditing



Auditing

- Periodic/routine auditing programs
- Triggers for targeted auditing
 - Whistle-blower reports
 - Red-flags identified from various sources
 - Routine check
- Scope of auditing
- Auditing process
 - Interviews / document review (e.g., invoices and receipts)
 - Document the auditing process and results
- Evaluate risks and consider follow-up action

Corrective Action

- Factors to consider:
 - Nature and cause of breach, quantum of penalties
 - Local laws (e.g. mandatory vs voluntary disclosure?)
 - Internal policies
 - Mitigation points
 - Others (e.g. whistleblower risk)
- Generally
 - Review risk and weight up factors accordingly
 - Seek legal counsel internally and externally if required
- Implementation
 - Settle on timeframe for implementation



Whistle Blowers

- Management acceptance
- Clear escalation policy
- Training
 - understanding what to look out for
 - understanding when to report
 - language issues
- Feed-back
- Ensure legal under local law

Whistle Blowers (cont'd)

- Increase in whistle blower reports
 - Growth of compliance knowledge
 - Diversified motivation
 - More channels to file the whistle blower reports
- Internal whistle blower reports go “external”
 - Regulators are likely to act upon substantiated whistle blower reports
 - Incentives to file whistle blower reports to regulators
- How to manage the internal whistle blower reports poses challenges to companies

Investigation

- Why conduct an internal investigation?
 - Gather information for "responses"
 - Determine the risk exposure... criminal or administrative
 - Identify and discipline employee wrongdoers
 - Cooperate with regulators as necessary
- Who should investigate?
 - Key factors to consider... significance of alleged misconduct, cost, need for credibility when dealing with enforcement authorities
- Who should be the corporate decision maker?
 - Potential options: Audit Committee, Board, CEO, GC, HR, Ad hoc committee

Investigation (cont'd)

- Collect and review documents
 - Define the scope
 - Preserve the evidence
 - Data collection issues – privacy / state secrets
 - Who will host the data and run the searches
- Interview witnesses
- Responses
 - Impose disciplinary actions
 - Enhance compliance control
 - Consider voluntary disclosure?



Conclusion

5 Elements of Corporate Compliance



Leadership

- Tone at the Top – but not only the Board
- High ranking compliance officers with authority and resources
- Compliance officers should report to Board directly
- Quarterly presentations to Board recommended
- Have compliance officers in high-risk markets (Asia!)
- Periodic training for Board and C-Suite
- Commercial side needs to get involved – share “ownership” of Compliance with the business

Risk Assessment

- Regular assessments of risk of criminal conduct
- Proactive, not reactive
- Built into Compliance programmes
- Scrutinise new business partners & third –party agents
- Update policies based on trends
- Annual reports

Standards and Controls

- Demonstrates that compliance programme is not empty words
- Clear and stringent third-party controls – background checks, third party warranties and covenants
- Accurate accounting records
- Gift & hospitality guidelines
- Clarity essential

Training and Communication

- Annual, risk-based training plans
- Live training for country managers
- Live training in high-risk markets
- Train the right people – sales force, intermediaries who have direct contact with government officials, managers in high-risk jurisdictions
- Be conscious of cultural influences!
- Update training regularly



Monitoring, Auditing and Response

- Difference between monitoring and audit
- Robust programs should have both
- Regular compliance reports required
- Pay attention to what employees say!
- Test and verify
- Remediate quickly

Central Legal Strategy: Comprehensive Cross-Border Supply Chain Solutions

Structuring & Strategy

- Planning
- Structuring
- Country Selection
- Investment Opportunity
- Investment Protection

Establishing Global Manufacturing Operations

- Foreign Direct Investments
- Green field Projects
- Cross-Border M&A
- Joint Ventures
- Restructuring & Integration

Design, Production & Sourcing

- Research & Development
- Joint Development
- IP Licensing
- Trade Secret Protection
- Patent / Trademark Protection & Enforcement
- Product Safety
- Outsourcing Arrangements
- Supply Agreements
- Purchasing Agreements
- Contract Manufacturing
- Tool Manufacturing

Import / Export & Cross-Border Transit

- Customs & Import Duties
- WTO/ Free Trade Agreements
- Export Controls & Trade
- Export Controls & Trade Sanctions
- Anti-boycott Controls
- Anti-dumping/ Section 337 Cases
- INCOTERMS
- VAT/Indirect Taxes

Downstream Distribution, Logistics and Sales

- Agency, Reseller Distribution & Franchise Agreements
- Logistics Contracts
- Anti-Counterfeiting Protection and Enforcement

Advertising, Marketing & Promotions

- Packaging & Product Labeling
- Advertising Agreements
- Data Privacy
- Consumer Protection

Post-sales

- Product Recall and Liability
- Intellectual Property Litigation
- Warranty/ Repair
- Maintenance & Support
- Recycling & Disposal
- Waste Management

Commercial, Compliance & Risk Management

- Tax Compliance
- Third Party Due Diligence
- Third Party Compliance Training
- Environmental Compliance
- Competition Law Compliance
- Labor & Employment Practices
- Regulatory Approval & Public Procurement
- Foreign Direct Investment Compliance
- Industry Specific Standards
- FCPA/ Anticorruption

Resolving Disputes

- Arbitration
- Litigation
- Mediation
- Enforcement



Questions



Thank You



Asia Pacific

**TRADE & COMMERCE
CLIENT CONFERENCE**

25 May 2016

What the New Era of Free Trade Agreements Means for Japanese Companies

Led by:

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Panellists:

Miguel Noyola, Americas

Anne Petterd, Australia

Anne Peng, Hong Kong

Junko Suetomi, Japan

Meng Yew Wong, Malaysia

Thuy Nguyen, Singapore

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Summary of Topics we Will Cover

- Introduction – what do these mega-regional trade agreements mean for Japanese companies?
- Customs throughout the region
- Regional headquarters in Asia Pacific
- Supply chain operations and compliance
- Franchising
- Conclusion (in Japanese)



What do These Mega-Regional Trade Agreements Mean for Japanese Companies?

Trend of Mega Regional Trade Agreements

More progressive in terms of both scope and scale, enabling deeper integration:

- More participants
- Lower tariff and non tariff barriers
- Higher foreign ownership percentage
- Better access to government procurement
- Greater protection of IP
- Better investment protection mechanism
- Improved mobility for business persons
- Better regulatory environments and business environment in overall

Companies' current thinking about TPP and RCEP

Transpacific Partnership Agreement (TPP) and Regional Comprehensive Economic Partnership (RCEP)

Membership of TPP expected to offer member countries in ASEAN a competitive advantage over non-signatories in terms of attracting inward investment

77% expect these to improve the business environment

74% think they will help to increase Asia's share of global revenues

TPP and RCEP are expected to drive economic integration in ASEAN

56% think they will give greater protection of IP rights

65% think these will increase demand for their products or services

TPP will necessitate significant upgrades to national regulatory environments and ultimately facilitate a much enhanced business environment

Customs Throughout the Region

AEC, RCEP and TPP on Customs and Trade Facilitation Issues

Overview

- Japan has been at forefront of promoting trade and investment with ASEAN (through ASEAN-Japan FTA, and bilateral FTAs with 7 ASEAN countries)
- Japan also keen on TPP, RCEP and China-Japan-Korea FTA primarily for diversity of supply chain base and markets for its exported goods (e.g. 25% tariff on automobiles in China)
- Uniform standards under AEC, RCEP and ‘high-standard’ TPP will be beneficial for Japanese businesses. Japan understands this and continues to help develop ASEAN capability in various areas

AEC - Key achievements on Goods and Trade Facilitation

Tariff reduction

- ASEAN Trade in Goods Agreement (ATIGA)
- 95.99% of tariffs eliminated (CEPT & ATIGA)
- ASEAN Self-Certification Project



Non-tariff barriers (NTBs)

- Steps taken toward full elimination of NTBs
- List of NTBs collated and countries are formulating commitments to eliminate the NTBs



Trade facilitation measures

- ASEAN Trade Facilitation Work Program formed
- ASEAN Trade Repository to be set up
- ASEAN Agreement on Customs signed in 2012
- Protocol on Legal Framework to Establish ASEAN Single Window (ASW) signed in 2015 – 5 members have connected their National Single Window systems to the ASW
- Three sectoral Mutual Recognition Agreements signed
- ASEAN Framework Agreement on Facilitation of Goods in Transit, 4 protocols came into force by mid 2015
- ASEAN Framework Agreement on the Facilitation of Inter-State Transport, signed in 2009, in force in 5 countries
- ASEAN Framework Agreement on Multimodal Transport, signed in 2005, in force in 5 countries

AEC Blueprint 2025

A. Key focus areas outlined in the 2025 AEC Blueprint:

- full roll out of National Single Windows and expansion of the ASEAN Single Window beyond the Form D;
- wider implementation of trade-facilitating initiatives such as the Authorized Economic Operator (AEO) program and Self-Certification program;
- further elimination of Non-Tariff Measures

B. How will this affect customs in the region?

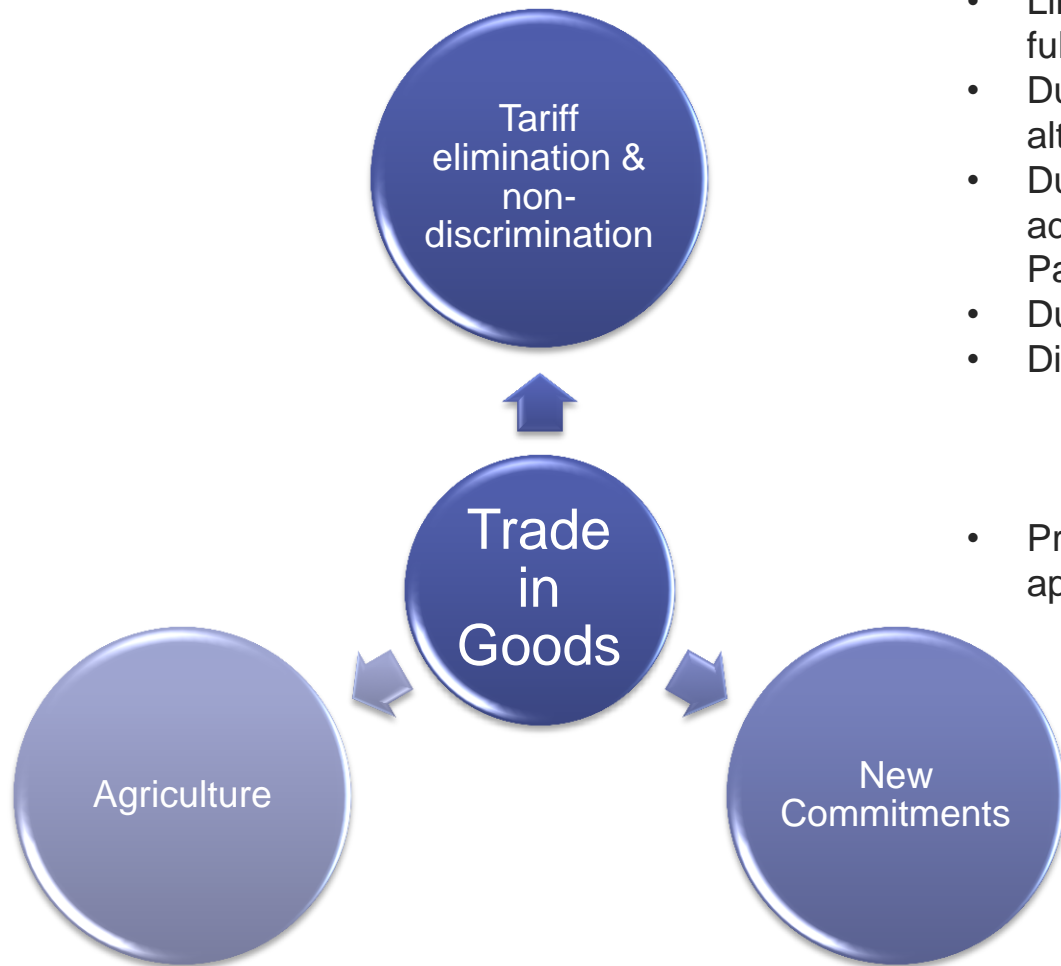
- the AEC is a continuous work in progress. AEC 2025 is expected to bring institutional reforms at regional level addressing customs issues;
- Expected to further strengthen ATIGA by eliminating remaining tariff, introduce priority product-specific RoO, streamline origin determination process and minimize NTBs

Trans-Pacific Partnership Agreement

Key highlights in relation to customs and trade facilitation

- call for transparent rules through online publication of customs regulations and procedures (e.g. rulings);
- introduction of customs penalties discipline to ensure proportionate and predictable penalties;
- co-operation between TPP parties to counter smuggling and duty evasion;
- self-certification rules but more extensive to include importers, exporters and producers;
- AEC has two (2) methods of calculation, TPP has four (4) and a chapter dedicated to textiles;
- net effect of promoting freer flow of goods

TPP Commitments

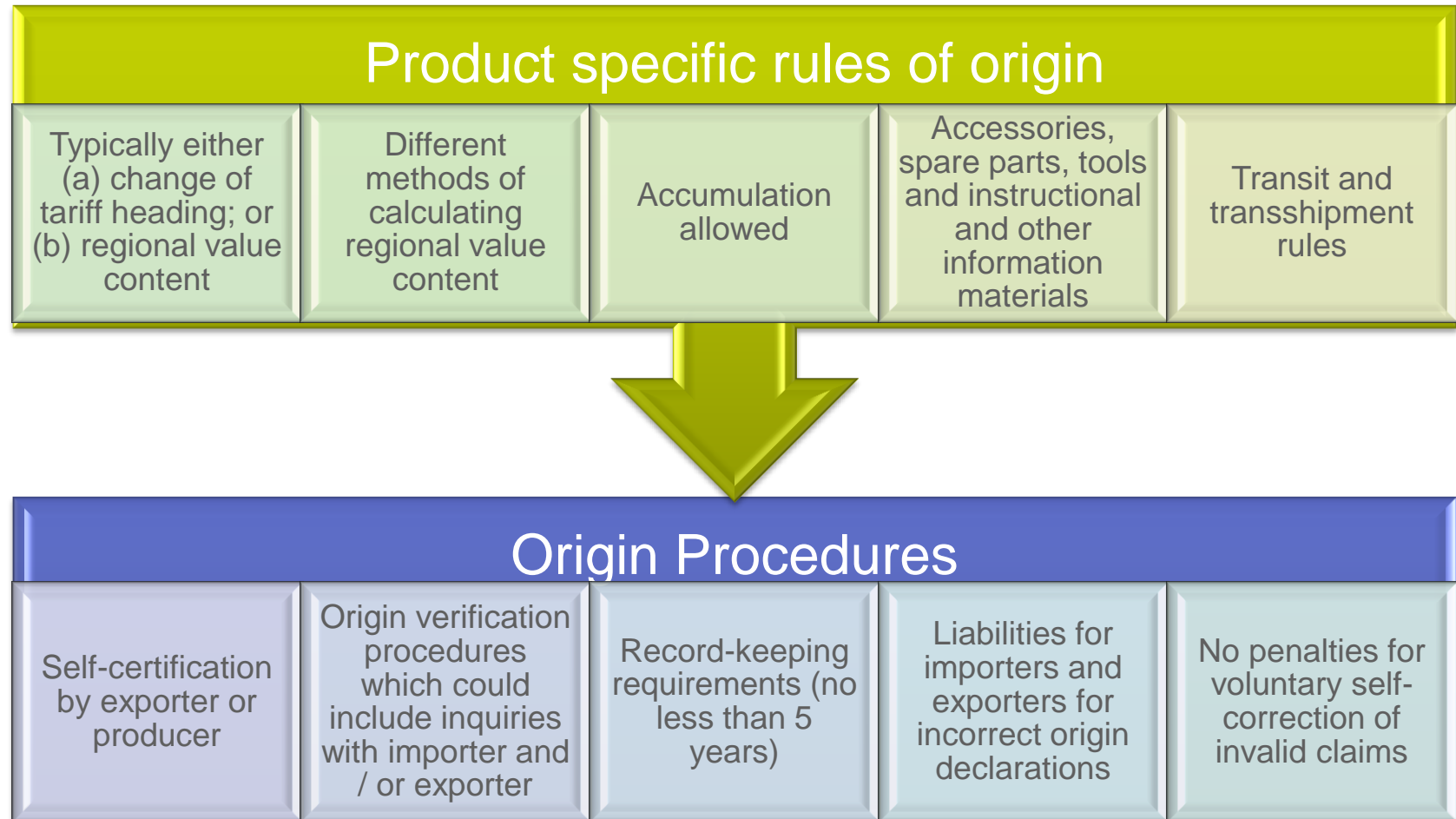


New commitments

- Limitation on waiver of customs duties based on fulfilment of performance requirements
- Duty free re-importation of goods after repair or alteration in another Party
- Duty free entry of commercial samples and advertising materials imported from another Party
- Duty free temporary imports
- Disciplines on import / export restrictions
 - commercial cryptographic goods
 - no requirement to appoint distributor as condition of importing goods
- Prohibitions on import of used goods shall not apply to remanufactured goods
 - Disciplines on import and export licensing, and administrative fees and formalities
 - Elimination of export duties, taxes, or charges unless reserved
 - Disciplines on Tariff Rate Quotas



Rules of origin (Ex-Textile and Apparel, Automotive Goods)



Other Disciplines on Trade in Goods

Customs
administration &
trade facilitation

Trade remedies

Sanitary &
phytosanitary
measures

Technical
barriers to trade

Example on Utilization of Customs Chapters

Import duty applicable to ABC commercial samples of negligible value and printed advertising materials

Chapter 2: National Treatment (NT) and Market Access for Goods

Advance rulings on HS classification of ABC

Chapter 5: Customs administration and trade facilitation chapter

Import duties applicable to ABC

Chapter 2; Annex 2-D: Vietnam General Notes to Tariff Schedule, and Vietnam Tariff Elimination Schedule

Rules of origin applicable to ABC and Certificate of origin requirements

Chapter 3: Rules of Origin and Origin Procedures Chapter; Annex 3-A: Other Arrangements; Annex 3-C: Minimum Data Requirements, Annex 3-C: Exceptions to the De Minimis Rule; Annex 3-D : Product Specific Rules of Origin

Technical regulation conformity procedures applicable to ABC

Chapter 8: Technical Barriers to Trade

Duty or import restrictions on ABC exported to Malaysia for repair and maintenance, re-imported back to Vietnam

Chapter 2; Annex 2-A: NT and Import and Export Restriction; and Annex 2-B: Remanufactured Goods

Similar products produced in Vietnam and Vietnam initiates anti-dumping investigation against ABC

Chapter 6: Trade Remedies

Key Takeaways

- Different agenda under AEC, RCEP and TPP make integration of rules ‘inherently difficult’
- Existing ‘spaghetti bowl’ of East Asia bilateral FTAs complicate trade for Japanese businesses going outbound and in fully utilizing the available FTAs
- Therefore, broader regional integration framework is desirable to ensure consistent rules and opportunities for Japanese businesses
- Although RCEP and TPP are too different to be merged into one another, China may be drawn closer to the TPP if Korea and more ASEAN members sign up to the ‘open architecture’ TPP

China and Hong Kong Perspective

- RCEP and AEC will boost inter-regional trade and investment
- In addition to RCEP and AEC, China has also actively participated in FTA negotiations
- Existing Japanese companies in China can still gain benefit from RCEP, AEC and various FTAs
- As a result, there will be more rules of origin issues from a customs perspective
- It is much easier for Hong Kong where only few goods are subject to import duties

China and Hong Kong Perspective

- Under the TPP, Japanese companies may move the manufacture of some electronic components, textiles and clothing, etc., from China to Malaysia and Vietnam, which will reduce the export portion of China products
- Japanese companies have been seen leaving China in the past three years due to various reasons
- In 2015, Japanese investment in China dropped 25.2% to US\$3.21 billion

Regional Headquarters in Asia Pacific

Definition of Regional Headquarters (“RHQ”)

- Having control of stock [share] ownership and financing over regional group companies;
- Providing integrated operating functions and general business management supports (shared services) e.g.:
 - sales;
 - manufacturing;
 - logistics;
 - procurement;
 - research & development;
 - HR; and
 - legal services.

Purpose of Establishing an RHQ

- Most companies cited strengthening governance as the purpose in establishing RHQ functions:
 - Companies that cited “To strengthen management control over the regional group companies” as the purpose in setting up RHQ functions comprised the largest at 77.8%
 - 66.7% cited “To enhance business relationships for promoting sales with the regional group companies”

The ASEAN opportunity



ASEAN FDI inflows

overtook China in

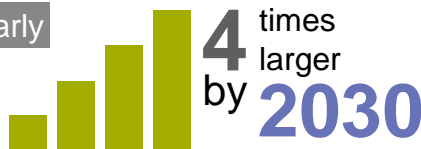
2013

ASEAN's economy could exceed

US\$4 TRILLION

by **2020** (roughly that of Germany in 2013)

and nearly



Home to nearly



10% of the world's population

Will rank as

5th LARGEST ECONOMY BY **2018**

Annual average growth of

5.6% for the **NEXT 5 YEARS**

More than double the USA, triple that of the EU

Demographics are positive and hugely advantageous to growth – young labour force.



2014 Between **2018**
AND
the region's labour force will expand
BY **1.7%** (adding 28m new workers).

Will be the world's

3rd LARGEST EXPORTER BY **2018**



ASEAN consumerism

is set to grow

EXPONENTIALLY

Productivity is creating a giant middle class.

Middle Class



Middle class households

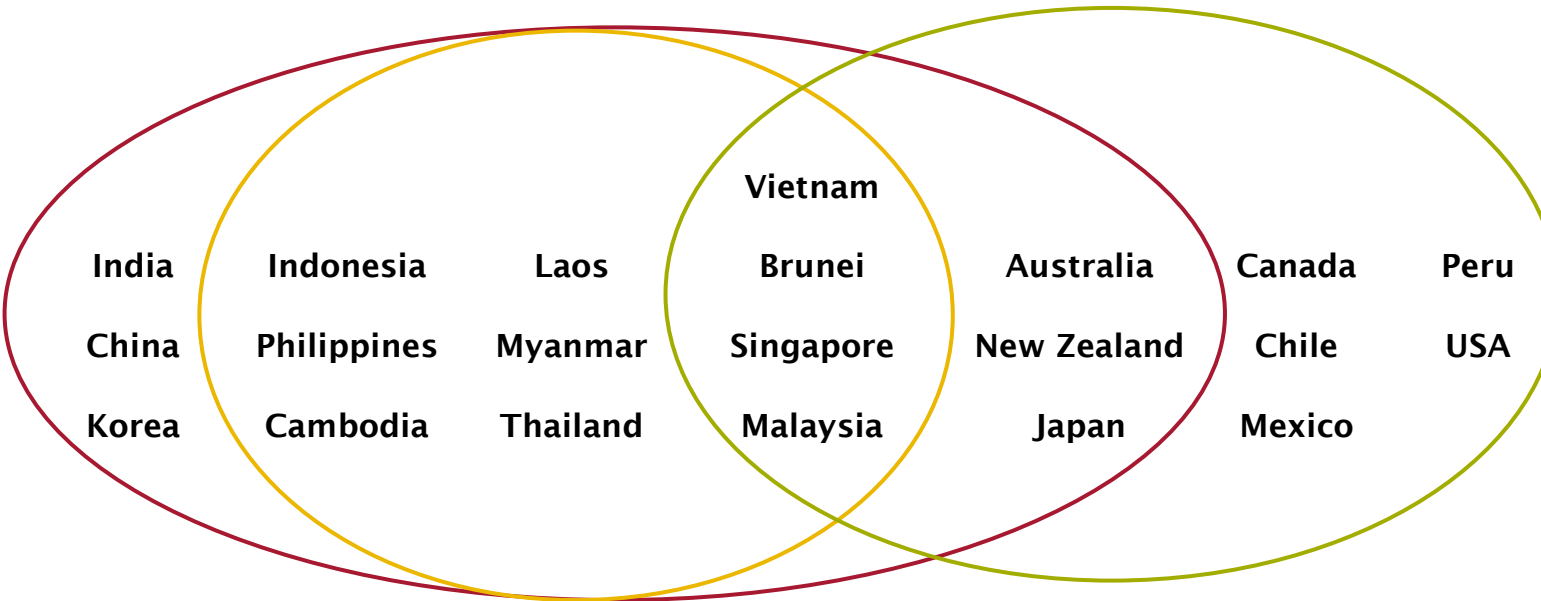
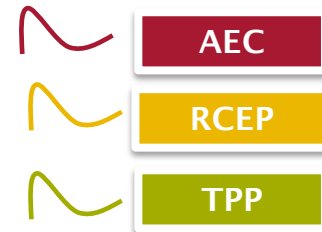
will more than double BY **2018** TO **80m**

Significant opportunities for

retailers, luxury market, manufacturers, auto industry, IT industry, healthcare, financial services and more



Asia's Major Regional Trade Initiatives



**Compelling Reasons for an
Asia Pacific RHQ**

Tips for Japanese Companies

Expect more choices for RHQ locations

Re-examine supply chain to optimize use of FTAs preferential treatment regimes

Consider any BEPS implications from fragmentation of supply chain activities between related parties

Supply Chain Operations and Compliance

What Does this Mean for Japanese Companies?

Mega regional trade deals will give Japanese companies additional options for expanding, managing, and structuring or restructuring their businesses

Mega regional trade deals will be an influential factor to companies' decision in structuring and optimizing their regional supply chain:

- Regional head quarter location;
- Entity structuring – expansion of business where higher foreign ownership is allowed;
- Input sourcing and output distribution – more trade where FTAs are available with lowest import duties and least non-tariff barriers to trade; and
- Easier to send business persons across borders – more responsive to partners and customers' requests.

Knock-on effect: Non members of regional trade deals will become less attractive to regional trade and investments and will face with two choices to become competitive:

- joining existing trade deals; or
- self reforming

One Tip for Japanese Companies

- The next trend: More post audits regarding trade compliance
- Compliance to be the top priority



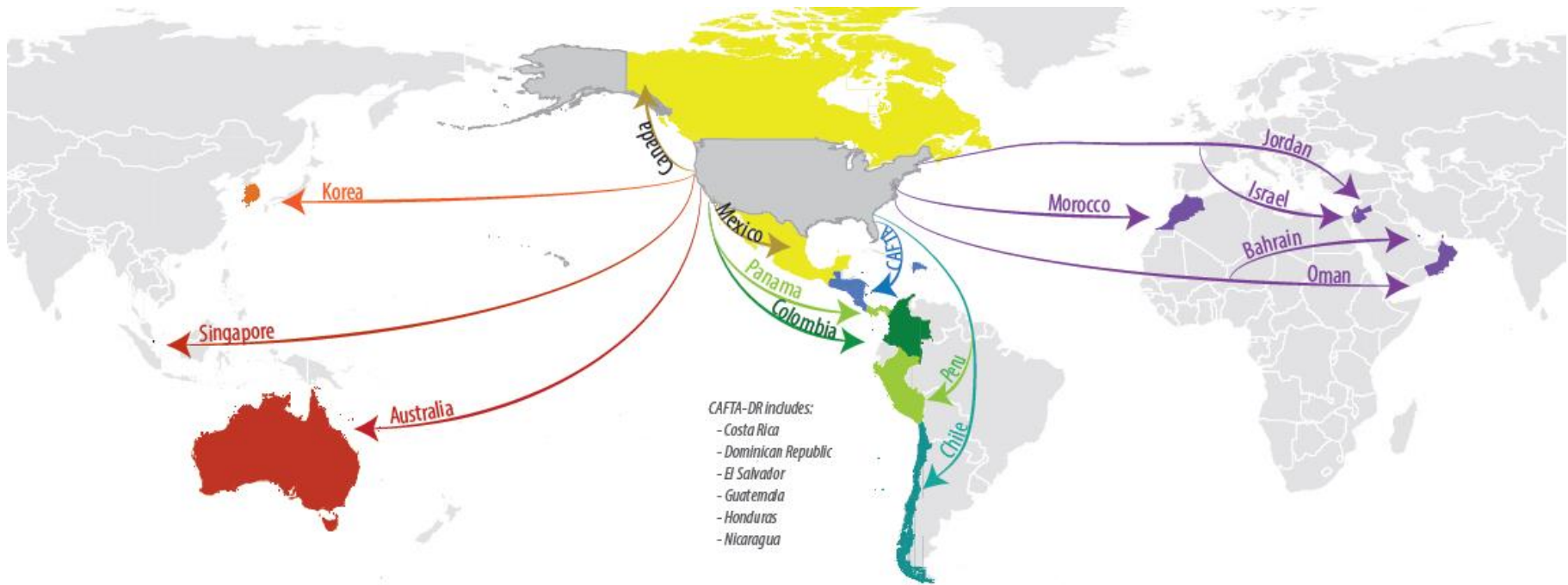
New Era of FTAs and What it Means to Japanese and AP Companies – Leveraging the US and it's FTAs

U.S. Total Trade Flows



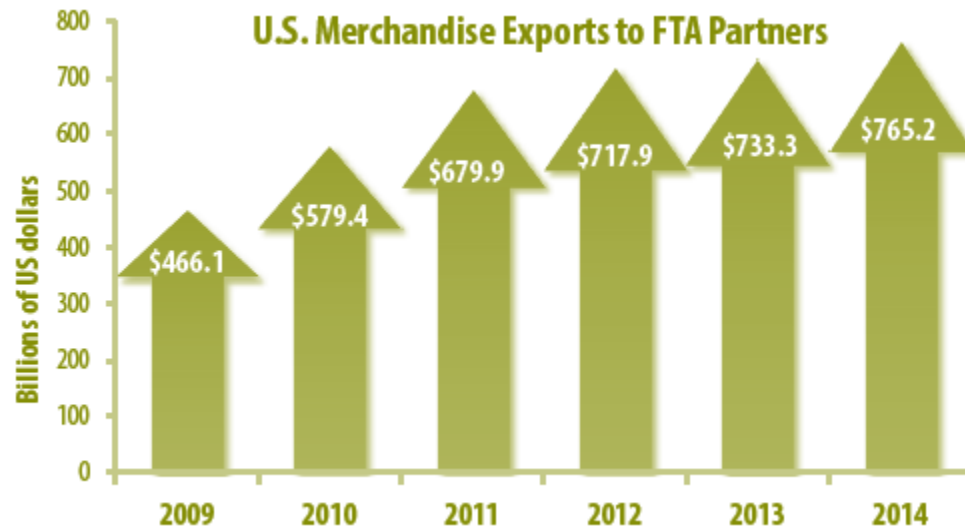
U.S. Free Trade Agreements

- FTAs in force with 20 markets



Impact of FTAs – U.S.

- Exports to FTA partners are up 64% since 2009

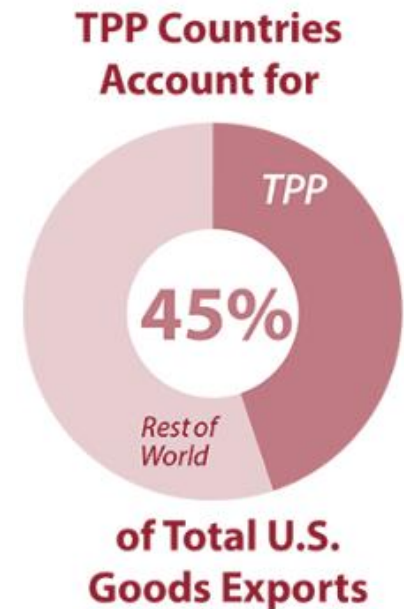


47%
of U.S. goods exports go to our
trade agreement partners

Source: International Trade Administration,
U.S. Department of Commerce

Benefits of TPP – U.S. Perspective

- Pivot to Asia - platform for engagement and growth in AP region; establishes US as a leader
- Open substantial new trade and investment opportunities
- Promote job growth
- Made in America – duty free access to previously restricted markets
 - Elimination of 18,000+ taxes
- Increase FDI



International Trade Administration,
U.S. Department of Commerce

Benefits of TPP – U.S. Perspective (con't.)

- Strengthens worker and environmental protections
- Promotes e-commerce and digital trade and preserves an open internet
- Levels the playing field vis-a-vis SOEs
- Prioritizes good governance and fighting corruption
- Includes first ever chapter on development and capacity-building



Benefits of TPP – U.S. and Mexico Perspective

- With TPP, each of the U.S. and Mexico
 - Reaffirms its commitment to free trade and a rules-based system with its commercial partners
 - Builds on its path-setting FTAs with commercial partners in NA, Europe, LatAm and Asia
 - Strengthens its ties with its Pacific Alliance partners in South America (Chile, Colombia, Peru)
 - Opens new markets to key sectors, including
 - Vehicles and autoparts
 - Aerospace
 - Medical devices
 - Electronics
 - Beer
 - Fruits and vegetables
 - Positions itself as a manufacturing hub for international investors

Franchising

New Franchising Opportunities for Japanese Companies in APAC?

- The new mega-trade initiatives will provide additional opportunities for establishing in the region
 - Franchises
 - Distributor / dealer agreements
 - Agency agreements
 - Company-owned stores
- But different APAC franchise rules will remain
 - Franchising is regulated quite differently across the region
 - The new trade initiatives do not require harmonisation of franchise laws

More Choice and Information for Franchisors

- TPP brings enhanced intellectual property protections
 - 10 year trade mark minimum protection
- TPP requires governments to be more transparent about regulations and proposed changes to law
 - Franchisor can do more due diligence online about franchise regulatory requirements and changes
- Changes to visa requirements will make it easier to do in-person due diligence and manage foreign franchise operations
- New trade initiatives will make foreign investment and operating through a foreign company easier
 - Gives a Japanese company more choice on business set-up
 - For example, a company-owned store, franchise, dealer or agency arrangement may each be a viable option
- Tip: Explore all the options

Conclusion



Key Points

- These mega-trade agreements do indeed have the ability to shape trade and investment in the region
- Companies need to begin thinking now of how to best benefit from the TPP, AEC and perhaps down the road RCEP
- Re-cap of key tips for Japanese companies previously stated by panel

Re-cap:

How to best benefit from the TPP and AEC?

- Removal of Tariffs
 - Auto parts, home electronics, ceramics and etc.
- Cost Reduction / Seamless Logistics
 - Unification of rules of origin
 - Each exporter may issue certificates of origin
- Market Liberalizations in Service Industries Areas
 - Countries with large impact: Vietnam, Malaysia and etc.
 - Financial industries, Retails (e.g., Convenience stores)
- Government Procurement & State-Owned Enterprises (SOEs)
 - Access to large government procurement markets through transparent, predictable, and non-discriminatory rules
 - SOEs make commercial purchases and sales on the basis of commercial considerations, in principle
- Utilizing ISDS (Investor-State Dispute Settlement)



Thank You



Asia Pacific

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25 May 2016