Implementation of VNACCS / VCIS and Customs Risk Management

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Background – Nestor Scherbey

- Licensed U.S. Customs Broker since 1979 with National Permit and District Permits
- Foreign Trade Zone Manager, Volkswagen
- Director, Global Trade Operations, Amway
- Customs Committee Representative – AmCham Thailand
- Advised U.S. Customs on revisions of U.S. Customs Regulations governing Foreign Trade Zones and Customs Valuation
- Advised Office of U.S. Trade Representative on North American Free Trade Agreement Origin Rules (NAFTA)
- Advise USTR on TPP Customs Negotiations
- Developed Advisory Opinion documents for World Customs Organization (WCO) TCCV
- Experience with more than 100 customs audits, challenges and penalty cases in 51 countries

What are Customs and Global Trade Risks ?

- Manufacturers, importers and exporters often do not fully understand that all of their import and export transactions involve "invisible partners" – the customs and other enforcement authorities of the importing country and those in the country of export, as well as in third countries in complex transactions.

- While there is general understanding of basic customs duties, taxes, licensing and technical standards requirements, the details and extent of risks involving: HS tariff classification of goods, customs valuation, anti-dumping, countervailing duty, origin declaration, export controls and other international trade aspects are highly technical, arcane and obscure - known mainly by qualified specialists.

- It is also not generally understood that international trade risks are **retroactive**, often involving huge multimillion or even billion USD penalty cases for five or more years worth of export and import transactions and, can involve criminal penalties in addition to administrative fines or monetary penalties.

Why the change to the new e-Customs System? What are the benefits?

- To implement Vietnam's international treaty commitments relating to the WTO Trade Facilitation Agreement, ASEAN Single Window requirements and in anticipation of TPP.
- Reduce the number of physical inspections and document inspections and handling by customs – enhance Green Lane releases of shipments.
- Increased transparency of all transactions in system and elimination of face-to-face interactions with importers and agents reduces opportunities for corruption.
- System availability 24/7 increases supply chain efficiency.
- Reduce administrative burdens and expenses.

WTO Trade Facilitation Agreement Requirements

- Publish information on importing, exporting, duties, taxes, fees, laws, regulations, penalties, appeal procedures, including on the Internet and provide enquiry contact points.
- Provide opportunities to traders and interested parties to comment on proposed new or changes to laws, regulations, procedures for release or clearance of imported or exported goods, prior to entry into force.
- Provide for regular consultations between customs or border agencies and traders and other stakeholders.
- Provide for advance customs rulings to be obtained before import or export by exporters, importers of ANY person with a justifiable cause or a representative thereof.
- Separate release of imported or exported goods from Final Determination of Customs Duties, Taxes, Fees and Charges.
- Establish Post-Clearance Audit (Inspection) on the basis of risk management.
- Provide a right to administrative appeals or reviews to importers and exporters on a non-discriminatory basis.

WTO Trade Facilitation Agreement Requirements ASEAN and TPP

- Establish "Single Window" for customs and all trade agencies requirements – WTO TFA and ASEAN.
- TPP will provide for Advance Customs Rulings as in WTO TFA, including right for these for foreign producers and exporters.
- WTO TFA requires establishment of a National Committee for Trade Facilitation.
- TPP will require publication of information as in WTO TFA
- TPP will require automation of customs, import and export processes and procedures as does the WTO TFA and ASEAN.
- Implementation of risk management required by both WTO TFA and TPP.

What is VNACCS / VCIS ?

- VNACCS is the Vietnam Automated Cargo Clearance and Port Consolidated System.

- VNCIS is the Vietnam Customs Information System.

- Together, these new systems that have been developed since 2012 are to modernize Vietnam's customs processing of imports and exports by means of a new electronic system. The new systems are to replace existing systems and procedures on April 1, 2014.

Everything is Wonderful …?

Be Happy … ?

Why worry about Customs Risks?

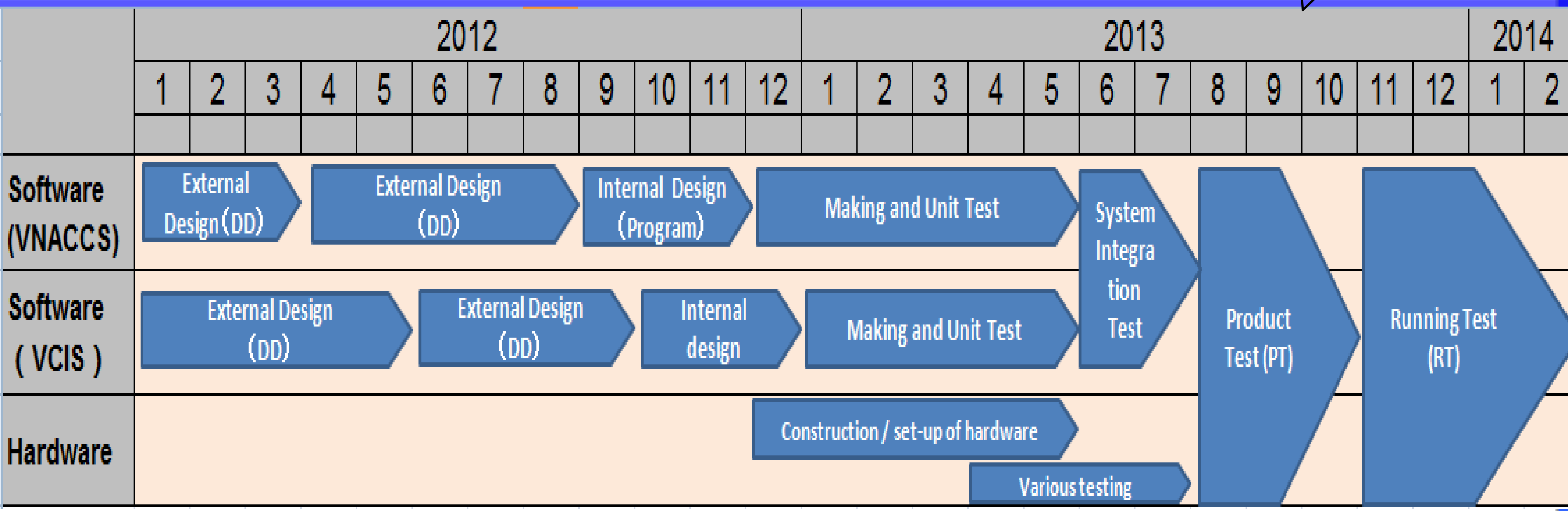
BECAUSE...

These continue whether traditional paper procedures are used or, with electronic systems and procedures. In some ways, they increase with automated procedures and especially, with risk management.

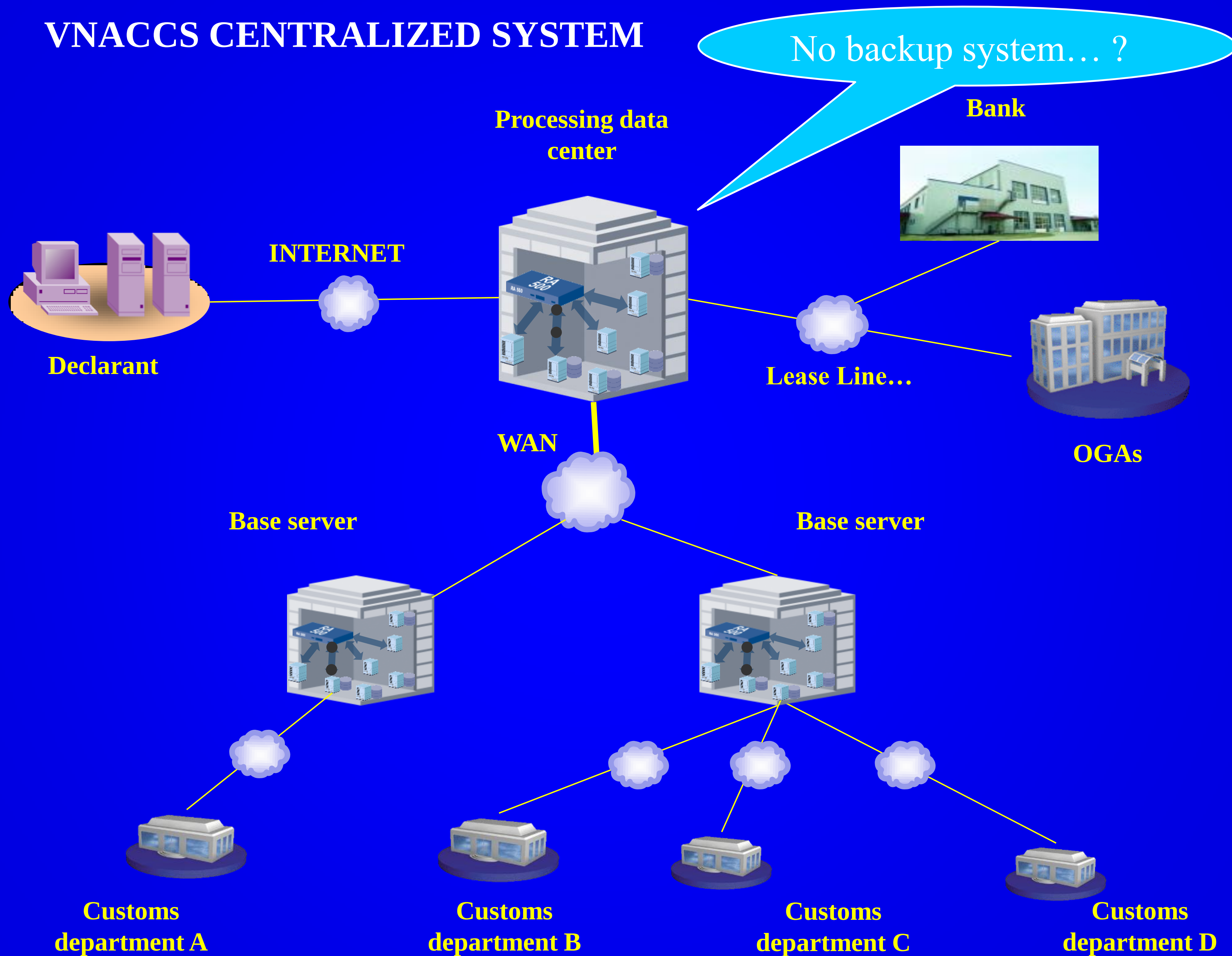
- Rushed development and implementation
- Significant changes to legal framework – new Decrees and Circulars issued and now in effect increase time periods for duties, taxes, administrative fines and penalties.
- Shift by Customs to risk management-based post-clearance inspections (audit) approach.
- Staggering new complexity of new e-declarations. Import data fields increase from 38 to 133. Export data fields increase from 27 to 109.

VNACCS IMPLEMENTATION ROADMAP

Only 6 months of testing



VNACCS CENTRALIZED SYSTEM



New Data Fields and Confusing Codes Import Declaration

- Data Field No. 7 provides 26 codes from “A11” through “H11” to declare the type of importation – be sure to choose the right one.

- Data Field No. 55 provides 17 codes for the type of payment for the import. What happens when importers and exporters use more than one type?

New Data Fields and Confusing Codes Import Declaration

- Data Field No. 57 provides for a choice of 17 invoice price INCOTERMS such as FOB, CIF, FCA, DDP.
- Are you knowledgeable about these?
- Do your terms appear on the invoice?
- Are these the same as in your product sales agreement?
- What happens if the seller does not use an INCOTERMS price term?
- INCOTERMS require a named place but, this may not be provided for in the Data Field.

New Data Fields and Confusing Codes Import Declaration

- **Data Field No. 60 could be very dangerous.**
- The importer is invited to choose from 12 customs valuation codes “in case valuation is needed?”
- Please get advice from a customs expert that has carefully reviewed your company’s “international circumstances of sale”, including contracts, licensing or royalty payments, invoice payment practices, “assists” and company relationship to the seller or parties related to the seller.

Customs Valuation Risk

- Customs authorities are not required to automatically accept prices declared upon invoices as appropriate customs values.

- In a Post-Clearance Inspection or audit, Customs will scrutinize the circumstances of trade and ownership relations between the buyer and seller, demand and review all contracts, purchase orders, proof of payment, accounting records, intercompany correspondence and other information and documents before finally accepting such prices as customs values.

- Because an exporter or importer have been invoicing prices and conducting international trade transactions for one or more years in certain ways does not mean that such transactions are "final" or that a customs valuation challenge cannot occur.

Customs Valuation Risk

- Data Field No.'s 64, 65 and 66 require choices and very detailed data concerning freight costs and,
- Data Field No.'s 67, 68, 69 and 70 require choices and very detailed data concerning insurance.
- Why?

Customs Valuation Risk

- **Date Field No. 71 could be very dangerous.**
- There are 16 codes that require decisions about whether or not there are dutiable “adjustments” such as commissions, “assists”, amounts paid “at the request of the seller”, license and royalty fees and others.
- These may not be included in prices yet, **may or may not** have to be declared for customs value purposes.
- Please get advice from a customs expert before answering these.

Customs HS Classification Risk

- Data Field No. 104 requires declaration of the HS code or, tariff classification of the goods. This determines the customs tax rate(s) that will be applied to calculate the duties and taxes for the imported goods. The Vietnamese tariff is based on the WCO Harmonized System (HS) as in the majority of countries.

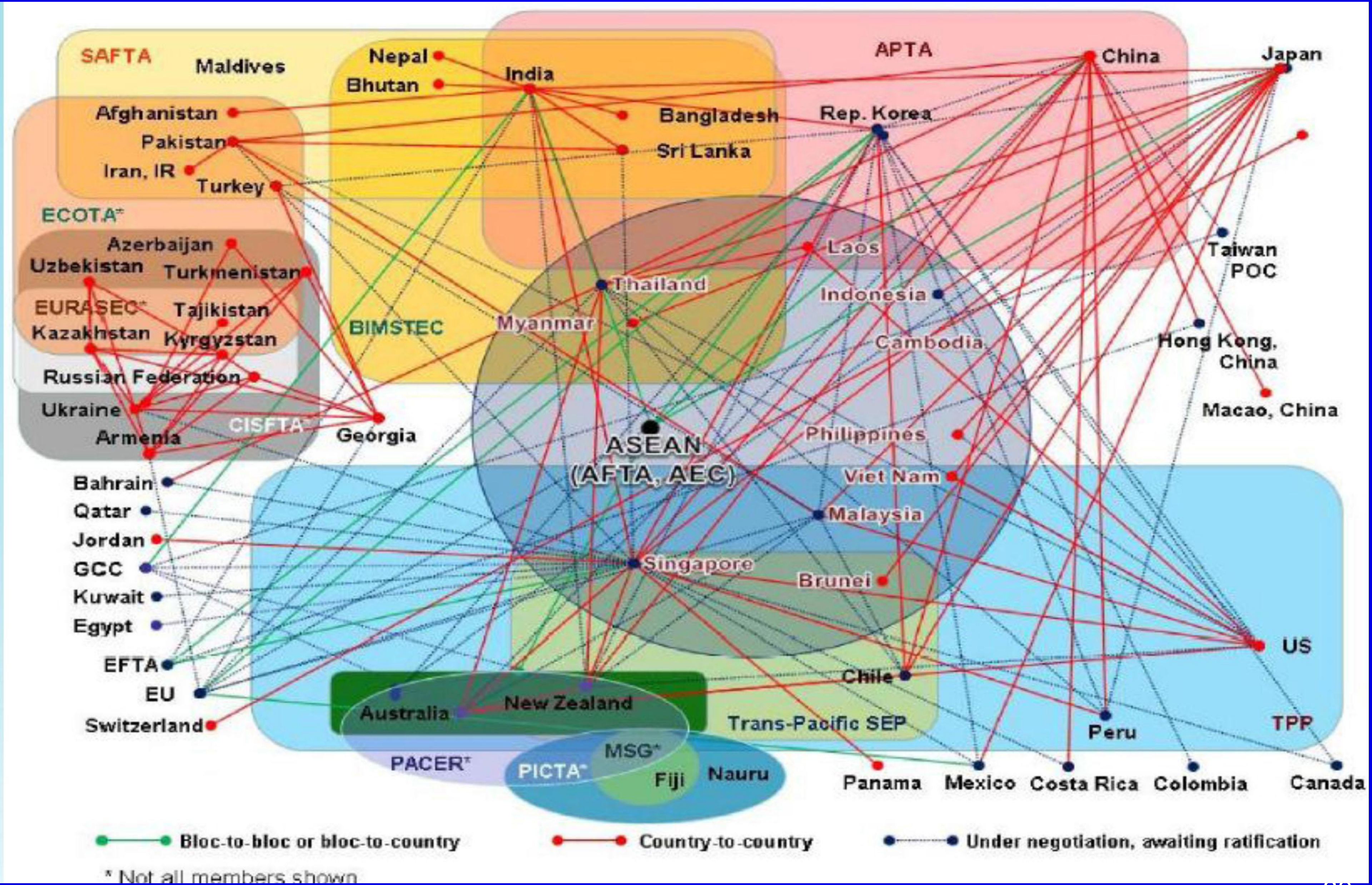
- Please consult a customs expert for advice about the appropriate HS code because complex rules are used to determine this accurately.

Customs Origin Declaration Risk

- The origin of imported goods is most often the country of manufacture or growth of goods.

- However, free trade agreements, bilateral trade agreements and circumstances of multiple countries being involved with manufacture of goods make this a topic of risk because, duty free or preferential tax status may be wrongly obtained through errors or falsity. As a result, it is a risk in customs inspection audits if appropriate records to certify or prove origin are not maintained.

- TPP will require a five-year period of recordkeeping by manufacturers (producers) or exporters, subject to verification (audit) visits by foreign TPP customs service officers at producer locations.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Egypt
EFTA
EU
Switzerland
US
Chile
Australia
New Zealand
Trans-Pacific SEP
Peru
TPP
PACER*
PICTA*
MSG*
Fiji
Nauru
Panama
Mexico
Costa Rica
Colombia
Canada
Bloc-to-bloc or bloc-to-country
Country-to-country
Under negotiation, awaiting ratification
* Not all members shown

U.S. Style FTAs Differ From ASEAN and Asian Agreements

- *ASEAN and other Asian FTA's, Bilateral and Multilateral trade agreements operate through **official issuance** of Certificates of Origin under relatively simpler rules. Capacity Utilization – from 10% to 29%.*
- U.S. – style FTAs such as NAFTA, KOR-US and others will have more complex Rules of Origin that require specialist customs expertise.
- TPP will be similar to KOR-US and NAFTA. Rules of Origin determined by HS Codes and RVC of materials and products.
- TPP will allow "Self-Certification" by producers and exporters – issuance of Certificates of Origin by producers or exporters, subject to verification audits by foreign customs officers.
- ***NAFTA Capacity Utilization – in excess of 90%. USD 1 trillion per year in trade between U.S., Canada and Mexico.***

New Time Limits And Fines

- New Decree No. 127/2013/ND-CP "On Penalties for Administrative Violations and Enforcement of Administrative Decisions Pertaining to Customs Controls" of October 15, 2013 took effect on December 15, 2013.

- This new Decree provides that the time limit for imposing penalties for customs tax evasion or fraud that is not subject to criminal prosecutions is 5 years from the date the violation is committed and, the taxpayer is also liable for duty and tax arrears for a period of 10 years from the date of violation.

New Time Limits And Fines

This means that the importer or exporter is subject to additional customs tax impositions for a 10 year period and, to an additional fine or penalty that can range from 10%-20% of the amount underpaid up to an amount equal to the total amount of customs tax evaded for a period of 5 years from the date of violation(s), increased further if "aggravating factors" are found.

New Time Limits And Fines

The new Decree provides for an elaborate schedule of fines for a host of violations including:

- late fulfillment of customs procedures;
- failing to provide correct information with customs declarations about the descriptions, quantities, categories, weights and origins of goods;
- for untimely re-exports or re-imports;
- **for declaring false increases of the intended quantities of processed products or intended quantities of products made of imported materials or supplies of the export processing company.**

New Time Limits And Fines

- Even seemingly "minor" administrative customs fines can be significant to a company's operations. New Circular No. 128/2013/TT-BTC conditions an importer's or exporter's right to apply for customs tax payment guarantees upon the taxpayer not having experienced more than two administrative customs fines over a 2 year period.

- In addition the 275 day "grace period" for export processing companies to export products made with imported materials and obtain a customs tax refund or timely cancellation of the customs tax obligation for the imports depends upon the taxpayer not having more than two customs administrative fines in the 365-day period preceding the company's application for this privilege.

What Should Companies Do?

- Be proactive – get help from a qualified customs professional and carry out an internal self-assessment of the customs compliance status of their imports and exports.

- Carefully prepare for the new e-Customs system.

- Support AmCham and other business organizations in Vietnam in winning a postponement of implementation and getting a "grace period" on administrative fines and penalties.

Thank You!
For assistance, please contact:

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