

**Baker  
McKenzie.**

# Customs and Key Compliance Developments

13 – 15 September 2022

**ANNUAL COMPLIANCE CONFERENCE**

# Annual Compliance Conference 2022

1

**Anti-Bribery and Corruption and Economic Crime**

6 – 8 September 2022

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2

**Customs and Key Compliance Developments**

13 – 15 September 2022

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3

**Export Controls and Sanctions**

20 – 22 September 2022

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4

**Antitrust Compliance**

27 – 29 September 2022

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5

**ESG, Supply Chain and Product Compliance**

4 – 6 October 2022

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# This week: Customs and Key Compliance Developments

## **Tuesday 13 September**

2.30 - 3.30 pm BST  
3.30 - 4.30 pm CEST  
9.30 - 10.30 am EDT

EMEA Customs and Compliance  
Trends

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## **Wednesday 14 September**

2.30 - 3.30 pm BST  
3.30 - 4.30 pm CEST  
9.30 - 10.30 am EDT

Customs Valuation: Best  
Practices and Pitfalls

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## **Thursday 15 September**

2.30 - 3.30 pm BST  
3.30 - 4.30 pm CEST  
9.30 - 10.30 am EDT

Impact of Russian Sanctions:  
Customs Considerations

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McKenzie.**

# EMEA Customs and Compliance Trends

13 September 2022, 2.30 – 3.30 pm BST

**ANNUAL COMPLIANCE CONFERENCE**

# Speakers



**Jenny Revis**  
Partner,  
London (Chair)



**Ana Royuela**  
Partner,  
Barcelona



**Virusha Subban**  
Partner,  
Johannesburg



**Arnoud Willems**  
Partner,  
Brussels



**Lionel Van Reet**  
Partner,  
Brussels



**Reggie Mezu**  
Senior Counsel,  
Dubai

# EU Focus on Enforcement

What you should know

Protecting the EU  
budget and  
prosecuting

EUROPEAN  
PUBLIC  
PROSECUTOR'S  
OFFICE



[www.eppo.europa.eu](http://www.eppo.europa.eu)

Investigating fraud  
for follow-up by  
Member States



# Customs and TP: similarities and differences

	Customs	Transfer pricing
<b>Scope - Transactions concerned</b>	<ul style="list-style-type: none"> <li>Transaction for goods only BUT services, royalties may be relevant for customs valuation of the goods</li> <li>That are cross-border</li> <li>Betw een associated enterprises OR third parties</li> </ul>	<ul style="list-style-type: none"> <li>Any type of transaction: goods, services, royalties, interests</li> <li>That are cross-border</li> <li>Between associated enterprises</li> </ul>
<b>Standard</b>	<ul style="list-style-type: none"> <li>Arm's length principle</li> </ul>	<ul style="list-style-type: none"> <li>Arm's length principle</li> </ul>
<b>Legal framework</b>	<ul style="list-style-type: none"> <li>Domestic legislation</li> <li>WTO/ WCO including WCO Guide on Customs Valuation and Transfer Pricing</li> </ul>	<ul style="list-style-type: none"> <li>Domestic legislation</li> <li>Tax treaties</li> <li>OECD transfer pricing guidelines</li> <li>United Nations Practical Manual</li> </ul>
<b>Testing</b>	<ul style="list-style-type: none"> <li>Examination of the "circumstances of sale" of the imported goods to check the relationship did not influence the invoice price</li> </ul>	<ul style="list-style-type: none"> <li>Often use of a range</li> <li>Depending on the TP method used, compliance w ith the arm's length principle can be tested on an aggregated basis / annual indicators</li> </ul>
<b>Authority</b>	<ul style="list-style-type: none"> <li>Customs administrations which are generally part of Tax administrations</li> </ul>	<ul style="list-style-type: none"> <li>Tax administrations</li> </ul>
<b>Timing of control</b>	<ul style="list-style-type: none"> <li>An import or as part of a tax audit, generally a few years after the transaction</li> </ul>	<ul style="list-style-type: none"> <li>As part of a tax audit, generally a few years after the transaction</li> </ul>
<b>Documentation requirements</b>	<ul style="list-style-type: none"> <li>Intercompany agreements</li> <li>Transfer pricing documentations (incl. benchmarks), depending on the jurisdiction</li> </ul>	<ul style="list-style-type: none"> <li>Intercompany agreements</li> <li>Transfer pricing documentations (incl. benchmarks), depending on the jurisdiction</li> </ul>
<b>Advance securitization</b>	<ul style="list-style-type: none"> <li>Advance rulings for customs valuation (not available in all jurisdictions)</li> </ul>	<ul style="list-style-type: none"> <li>Advance pricing arrangements</li> </ul>
<b>Dispute resolution mechanisms</b>	<ul style="list-style-type: none"> <li>Domestic recourses</li> </ul>	<ul style="list-style-type: none"> <li>Domestic recourses</li> <li>MAP / BAPA involving competent authorities of the concerned jurisdictions</li> </ul>

# Starting Point for Customs Valuation: Transaction Value

(Plus certain additions, where not already included in the price)

## WTO Valuation Agreement (Art. 1)



The customs **value of imported goods** shall be the transaction value, that is **the price actually paid or payable** for the goods when sold for export to the country of importation [...] **provided** that [...] the **buyer and seller are not related**, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes (...)

(...) the transaction value shall be accepted provided that the **relationship did not influence the price** (...)

# What Items Should Be Added?

Items to be included as elements of the transaction value:

-  Commissions and brokerage (exc. buying comm.)
-  Cost of containers / packing
-  Materials, components, tools, dies, engineering, development, plans, sketches, etc. ("**assist**") – supplied by buyer to seller free of charge or at a reduced cost
-  **Royalties and licence fees**
-  Proceeds of subsequent sale accruing to seller
-  Delivery costs i.e., transport/insurance/loading and handling charges up to the place of importation (e.g., EU, UK) – **may vary between jurisdictions**

# Customs in Challenging Times

1

## Returned Goods

- Concept of 'Returned Goods'
- Relevance for Customs

2

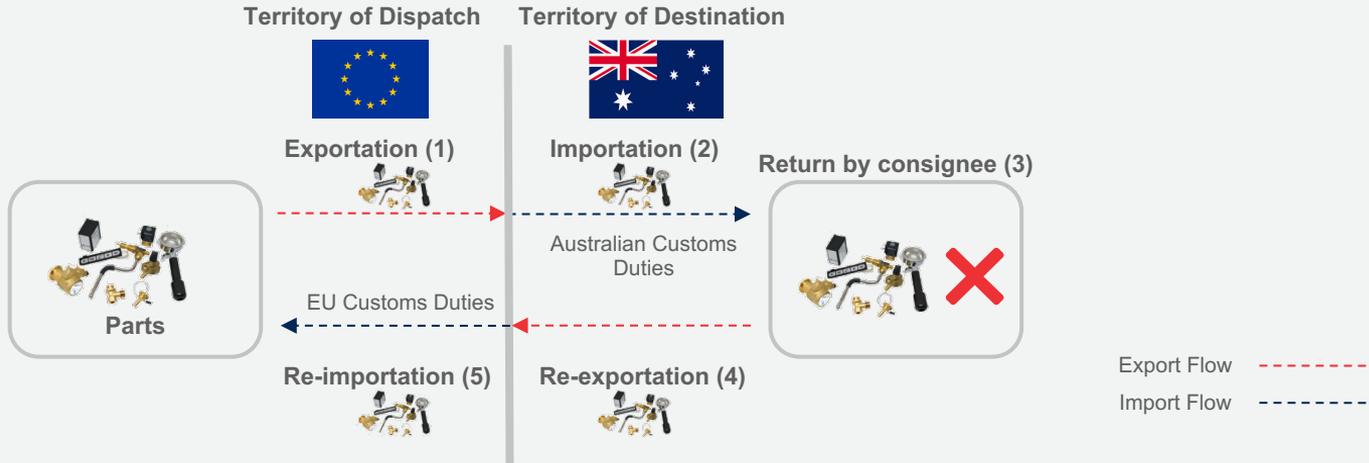
## Making best use of the Customs Approved Treatments

- Strategic use of Customs Approved Treatments

# Returned goods

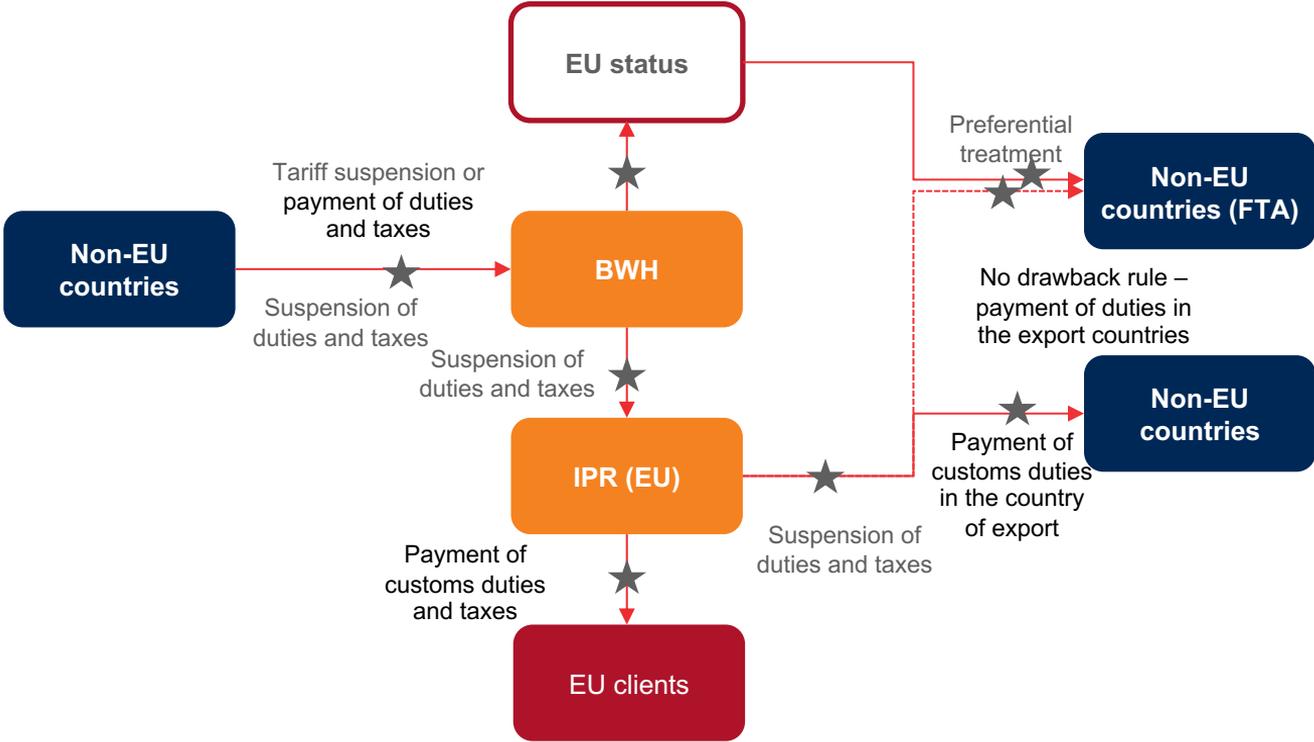
## Concept of "Returned Goods"

- Returns = Returning Goods = Returned Goods (synonyms)
- Definition: Goods that have been (1) **exported** from a customs territory (**Territory of Dispatch**) and (2) **imported** into another customs territory (**Territory of Destination**) where the goods are being (3) **returned** by the **consignee**, and consequently are (4) **re-exported** from the Territory of Destination and (5) **re-imported** back into the Territory of Dispatch
- Similar conditions to benefit from the exemption from customs duties on re-importation



# Customs in challenging times

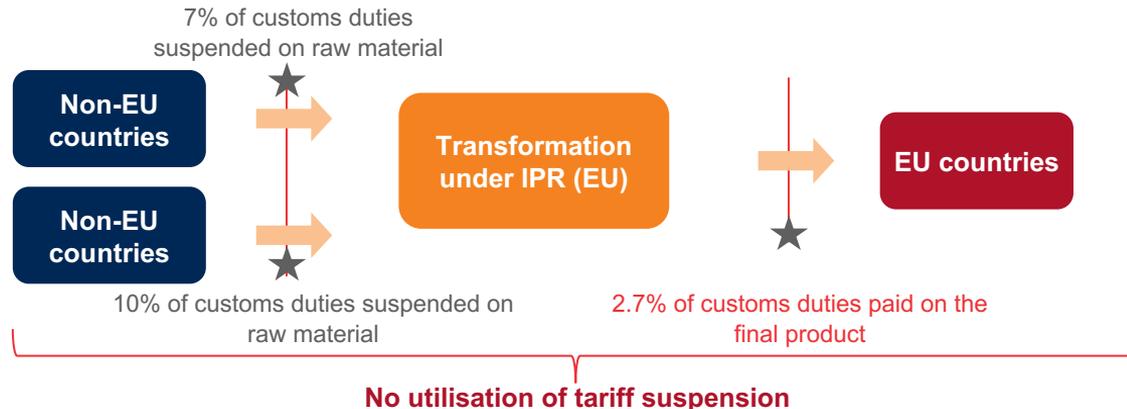
Making best use of the Customs Approved Treatments



# Customs in challenging times

## Making best use of the Customs Approved Treatments

- As from 1 May 2016, the PCC authorisation will be merged into the IPR-S authorisation. Nonetheless, the **advantages of the PCC will remain under the IPR-S authorities**, since a release for free circulation in the EU will not give rise to a compulsory payment of compensatory interests.
- Companies would be able to **lower the amount of customs duties** when the goods would be released for free circulation in case the **duty rate applicable to the processed products is less than the rate applicable to the imported products**.
- Depending on the situation, **IPR (PCC process) could offer an alternative to tariff suspensions**. Moreover, considering the time necessary to obtain a tariff suspension decision (approximately 6 months), Companies could use IPR (PCC regime) to already benefit from reduced import duty rates.



# Customs and compliance trends in Africa



## Trends in Africa

1

### The African Continental Free Trade Area (AfCFTA):

- Aims to accelerate intra-Africa trade, an engine of growth and sustainable development. A liberalised single market for goods and services facilitated by the easy movement of people and capital.
- Launched a digital platform to ease trade.

2

### EU-Africa trade agreement Cotonou Agreement (2000):

- In June, the EU Parliament voted to back proposals to improve on longstanding EU Africa trade agreements, emphasis on skills and knowledge sharing and "digital cooperation".

3

### UK/Kenya Free Trade Agreement:

- Entered into force in March 2021. Kenya is a major exporter to the UK and EU of agricultural products including tea, coffee, cut flowers, fruits and vegetables.



### Other issues:

- Lack of transparency in customs admin operations;
- Laws and regulations not easily accessible;
- Limited trade competition due to inefficient customs procedures;
- Uncertain trade environment(s);
- The introduction of 5G to Africa is positive for manufacturing, health, transport, and utility; and
- Africa's fintech ecosystem has continued to grow despite the impact of the pandemic (Covid-19).



Distribution Concerns



Vaccine Vulnerabilities



Lack of IT Investments



# Customs and compliance trends in Africa



## Distribution of Products in Africa – Consumer Goods

### Fast-Moving Consumer Goods:



- Africans are generally highly brand-loyal consumers. Fast-moving consumer goods—low-cost products with a short shelf life that are constantly in high demand—present the opportunity for existing brands to strengthen their consumer base with unique advertising and expansion of distribution.

### Luxury Goods:



- One in five of the world's consumers will live in Africa by the end of the next decade, and more and more will fall under the category of affluent or middle-class.
- Growing discretionary incomes will lead to higher demand for high-quality, niche, and foreign-produced goods.

### Online Retail Or E-Commerce:



- Africa is currently the fastest-growing mobile telecom market in the world. Since 2000, an annual increase of approximately 30 % in mobile phone connections has led Africa to become the world's second-largest mobile market behind Asia.
- Almost half of all Africans report going online on a daily basis, and the general spread of information and communications technologies (ICTs) provides new avenues for consumer spending and marketing.

# Middle East Country Updates

Country	Recent Developments
 Saudi Arabia	ZATCA issued Decision No. 59334 increasing customs duties on a range of products, mainly agricultural products, to protect local industries.
 UAE	Free trade agreement signed with Israel in May. Dubai Customs voluntary disclosures system introduced in August. Companies and individuals may apply through the Customs portal to voluntarily disclose errors and omissions in submitted customs declarations.
 Qatar	Ras Bufontas Free Zone (mainly logistics and light industries) and Umm AlHoul Free Zone (heavy industries) established. New platform for the Alnadeeb system for electronic customs clearance
 Egypt	"Nafeza" single window system introduced to facilitate quick clearance of goods. Reduced tariffs on production inputs and capital goods for factories; agricultural machinery and equipment; and medicines and medical supplies.

# The Gulf Cooperation Council (Customs Union)



- New GCC Customs law introduced; largely the same as the previous law. Main changes are to the levels of penalties and exemptions for certain goods such as personal mails and parcels meeting certain conditions.
- Saudi Arabia unilaterally introduced rules of origin from GCC originating products, mainly targeted at free zones and to encourage use of GCC nationals work force.
- Free trade agreement negotiations launched with the UK.

# Questions



# Tomorrow's session

## Customs Valuation: Best Practices and Pitfalls

Wednesday 14 September

2.30 - 3.30 pm BST

3.30 - 4.30 pm CEST

9.30 - 10.30 am EDT





## **Baker McKenzie helps clients overcome the challenges of competing in the global economy.**

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