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**Baker
McKenzie.**

Annual Compliance
Conference 2022

Customs and Key Compliance Developments

Key Takeaways from the Annual Compliance
Conference 2022

In Brief

In an ever-growing global market, it is essential for companies to remain informed about the developments surrounding the customs landscape. In the second week of our Annual Compliance Conference 2022, we dive into the trends and developments emerging in the EMEA region and what this means for businesses. While it is important to consider customs compliance risks from a technical standpoint, this week's sessions also delve into customs valuation strategy and its interaction with customs compliance programs.

Session 1: EMEA Customs and Compliance Trends

13 September 2022

Over the past few years, we have witnessed a trend in relation to customs authorities seeking to combat tax fraud particularly in the customs and VAT space. While the current picture across EMEA is of one of risks on the compliance side, there are also a number of opportunities across the region for businesses to mitigate their customs duty liability and to thrive with the proliferation of free trade agreements.

- **EU focus on enforcement:** Customs and VAT enforcement is on the rise in the EU, primarily enforced by the European Anti-Fraud Office (OLAF) and more recently by the European Public Prosecutor's Office (EPPO). OLAF detects, investigates and stops fraud in the EU by investigating based on intelligence from customs authorities. The work from OLAF requires follow-up by Member States where the fraud occurred. EPPO is a collaboration of 22 Member States established in June 2021 to protect the financial interests of the EU. OLAF's most recent reporting puts the number of enforcement actions at roughly 250 cases per year, with 50 of those involving customs, and with 20 (of the 50) going to litigation. Despite all these efforts through the years, OLAF has been criticized for failure to adopt sufficient procedural safeguards in the conduct of their investigations. Unlike OLAF, EPPO has an obligation to prosecute and during its work has to comply with the criminal and procedural laws of the Member States concerned. During the past nine months EPPO reported 567 cases. The recent collaboration agreement between OLAF and EPPO promises a still larger volume of cases in future. When dealing with an investigation with either body, it is essential to involve a legal team as soon as possible, engage with the stakeholders throughout an investigation, exercise the right to protest if necessary, and request access to investigation files to identify potential errors and ensure harmonization of approach.
- **Key risk area - Interaction between customs valuation and transfer pricing:** Now more than ever, local customs authorities in Europe are paying close attention to the interaction between customs valuation and transfer pricing. While both areas have many similarities when it comes to sales between related parties, they present enough differences to conclude that customs value and transfer pricing do not necessarily coincide. The World Customs Organization continues to call for greater alignment in the setting of customs values and transfer prices following the 2017 Hamamatsu case, which relates to the impact of making transfer pricing adjustments pursuant to an intercompany transfer pricing arrangement. In the Hamamatsu case, the Court of Justice of the European Union ruled that companies have no obligation to report transfer pricing adjustments of customs valuation, and that customs authorities have no obligation either to accept refunds of customs duties for downward adjustments based on transfer pricing purposes. The case brought concerns to companies relying on transfer pricing methodologies and confirmed that there is no common approach in Europe as regards customs valuation and transfer pricing. In light of this, it is prudent for companies to prepare their own customs studies and customs valuation and not just rely on third-party transfer pricing studies and reports.
- **Mitigating customs duty liability:** With e-commerce bringing goods across borders at a rapidly increasing rate and with companies wanting to ensure that they safeguard commercial margins, it is essential for businesses to understand the concept of "returned goods" as this can present a cash flow opportunity in difficult times. When goods are sold and then returned across borders, this concept comes into play once the goods, which should be in free circulation, are essentially re-exported from the destination country and re-imported into the original seller's country. Within a limited period, the seller can apply for exemption from payment of duties to avoid double taxation. Companies should also leverage Customs Approved Treatments by strategically structuring the flows within companies in a manner that takes optimal advantage of the bonded warehouse and inward processing relief (IPR) procedures. This may mean that companies have to work closely with their clients in understanding how they plan to further transform the products. While the processing under customs control (PCC) authorization has been merged into the IPR-S authorization since May 2016, the advantages of the PCC still remain as a release for free circulation in the EU will not give rise to a compulsory payment of compensatory interests. In this case, companies can lower their customs duties where the customs duty rate applicable to the processed products is less than the customs duty rate applicable to the imported materials. Depending on the situation, the IPR (PCC process) could also offer a faster alternative to tariff suspensions and may benefit companies via reduced import duty rates.
- **Customs and compliance trends in Africa:** Africa's customs landscape has undergone significant transformation recently, with a number of trade agreements promising upcoming changes. The African Continental Free Trade Area (AfCFTA) established the biggest customs union in the world with 54 current signatories and aims to accelerate intra-Africa trade by creating a single market for goods and services facilitated by the easy movement of people and capital. Member States have already made commitments to substantially liberalize trade and eliminate tariff lines over time. Trade between African countries is now substantially easier as a result, and promises growth across the continent. While less prominent than AfCETA, the EU-Africa Cotonou Agreement is also worth considering, as the EU recently voted to back proposals to improve on longstanding EU-Africa trade agreements, with an emphasis on skills and knowledge sharing, as well as digital cooperation. On a smaller scale, the UK-Kenya Free Trade Agreement, which entered into force in March 2021, also promises a continued relationship between the two countries post-Brexit. Despite all this, there still remain some pitfalls for companies trading in Africa to be aware of, such as a lack of transparency in customs

administrative operations, inaccessibility of laws and regulations, and potentially an uncertain trade environment. However, the introduction of 5G in certain African countries and the increasing growth in areas of manufacturing, health, and FinTech combined with e-commerce present an opportunity for companies to expand their consumer base.

- **Key customs developments in the Middle East:** There have been a number of key developments on a local level within the Middle East, as well as a new Customs Law introduced by the Gulf Cooperation Council (GCC). The UAE signed a free trade agreement with Israel in May 2022, and Dubai introduced a voluntary disclosure system in August 2022, which allows both companies and individuals to voluntarily disclose errors and omissions in submitted customs declarations. Similar to the UAE, Qatar has begun introducing free zones in logistics and light industries (Ras Bufontas Free Zone) and in heavy industries (Umm AlHoul Free Zone) to encourage trade and development, and has also introduced a new platform for the Alnadeeb system for electronic customs clearance. Egypt has introduced the Nafeza single window system to tackle the issue of slow clearance, which is aimed at facilitating manufacturing by reducing tariffs on production inputs and capital goods for factories. Finally, Saudi Arabia's customs authority (ZATCA) recently issued a decision increasing customs duties on a number of products with the aim of protecting local industries and expanding manufacturing within the country. At the GCC level, there is a new GCC Customs Law, which introduced changes to the levels of penalties and exemptions for certain personal mail and parcels. While there are no rules of origin on a GCC-wide level, Saudi Arabia has unilaterally introduced rules of origin from GCC-originating products, mainly targeted at free zones with the aim of encouraging the use of GCC nationals in the work force. While not yet finalized, free trade agreement negotiations are underway between the GCC and the UK with an agreement expected in the next year.

Annual Compliance Conference 2022

Our popular Annual Compliance Conference, which attracts over 6,000 in-house senior legal and compliance professionals from across the world, took place across five weeks from 6 September - 6 October 2022. These sessions virtually deliver our cutting-edge insights and guidance on key global compliance, investigations and ethics issues.

The sessions provided practical insights and analysis on significant developments across:

- Anti-bribery, corruption and economic crime
- Customs and FTAs
- Export controls, sanctions and foreign investment
- Antitrust and competition
- ESG, supply chain and product compliance



Watch these sessions on demand at our **Annual Compliance Conference hub**.

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