



Meijburg & Co
Tax & Legal

Customs law

How do you, as organization, navigate in a complex and constantly changing international trade climate?

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Organizations are increasingly finding themselves involved in tax disputes with tax authorities. This is happening in the Netherlands, but also elsewhere. Greater trade barriers and geopolitical tensions means customs law expertise is becoming more important

How do you, as organization, navigate in this complex, international environment?

A different litigation mindset

Bart-Jan Kalshoven, partner at KPMG Meijburg & Co: "Customs law is the only real EU tax. Unlike VAT or corporate income tax, customs law directly affects all 27 EU Member States." These Member States have various sources of income, such as corporate income tax, VAT and payroll tax. However, the European Union's only direct income source (traditional own resources) is import duties. For companies, this means that they are dealing with a complex system, in which Customs authorities in all Member States implement the rules, but always under the auspices of the European Commission. Bart-Jan Kalshoven: "This explains the different litigation mindset of the Customs authorities.

In contrast to other taxes, there is therefore often little room for amicable dispute resolution under Customs law. Khalid Abdullah, Senior Manager: "This is partly due to the fact that the European Commission strictly monitors the collection of taxes.

If Member States are too flexible, they will be presented with the bill – including high default interest.” Bart-Jan Kalshoven: “As a result of this we have a genuine litigation practice. For us, controversy and litigation is not a specialization; it is an inherent part of our normal work.” Kalshoven, Abdullah and their colleagues are therefore often asked by companies and KPMG member firms to provide expertise to other EU Member States. Because of their niche specialization, they are also engaged by other advisory and law firms.

Level playing field

This European dimension makes the playing field complex, something that was recently illustrated in a case involving Harley-Davidson. The case arose as a result of EU retaliatory tariffs on US products, in response to a trade conflict between the EU and the US. The conflict originated from a years-long dispute at the World Trade Organization (WTO) about subsidies in the aviation industry. As Bart-Jan Kalshoven explains: “The WTO, of which about 90% of all countries are members, has to ensure there is a level playing field in world trade. If a country thinks there is no longer a level playing field, it can initiate arbitration proceedings in Switzerland. It is there that a decision is then made as to who is right.” What if a country wins the case? Then it can impose countermeasures, such as additional import duties.

Harley-Davidson, the US motorcycle manufacturer, is an example of a party that was subject to hefty duties as a result of such arbitration. To avoid this, the company moved part of its production to Thailand. The European Commission then responded with anti-abuse measures.

And were successful in this: the Court of Justice of the European Union recently ruled in the European Commission’s favor. There is a clear tendency perceptible where measures against abuse, avoidance and fraud are being applied more frequently. Khalid Abdullah: “Where fraud is suspected, OLAF, the European Anti-Fraud Office, will start an investigation. We are then engaged to review whether additional tax assessments were rightly imposed and, if necessary, to challenge them in objection and appeal proceedings. A lot is often at stake here, with European, international and national regulations converging.”

New wave of Customs litigation

The WTO is not the only road to take with regard to trade policy measures. In the case of Chinese electric cars, the EU opted for direct action. Khalid Abdullah: “There were huge conflicting interests between the EU Member States. For example, France wanted Chinese cars to be subject to anti-subsidy measures in order to protect its own industry. The Germans didn’t, because much of their production takes place in China. Normally, it is the industry itself that must file a complaint for such measures. But because of the dissension among the EU Member States, this didn’t happen. The European Commission then initiated its own official investigation. This was partly due to previous experience with the European solar panel industry, which in connection with alleged government subsidies was entirely taken over by Chinese companies. By the time anti-subsidy measures were introduced, it was too late – there was very little left of the solar panel industry in Europe.”





The result for the automotive sector: duties ranging from 7 to 37% on Chinese brands that are a serious competitor to established US and European brands. Bart-Jan Kalshoven: “We’ll really only notice the impact of these measures in a few years’ time. Enforcement and ensuing disputes always lag three to five years behind these kinds of political decisions. We are convinced that there will be more of these developments. This has only been the tip of the iceberg.” It’s therefore a good idea for companies to already start taking account of future tax assessments and inspections arising from current trade measures. Khalid Abdullah: “You’ll fairly quickly land up on our doorstep.”

Transparent approach

Meijburg’s Customs practice is not quick to litigate merely for the sake of litigating. Meijburg is transparent about a client’s chances of success in litigation proceedings. Khalid Abdullah: “For us, it’s not necessarily about winning or losing, but achieving the best result for a client within the existing possibilities.” That transparent approach works: if Meijburg is involved with a file, then when the Customs authorities next have to take a decision they pay closer attention to the positions they took in previous cases.

This is moreover an invaluable approach with regard to economic customs arrangements, where the combination of benefits and strict conditions often leads to complex disputes. Bart-Jan Kalshoven: “If you achieve a benefit, you also have to make sure you’ve dotted all the i’s and crossed all the t’s. Companies sometimes underestimate their responsibilities after

implementing such an arrangement.” It’s often difficult to avoid disputes within Customs law. Companies can however request binding information beforehand about certain areas, such as tariff classification, origin and customs value. Obtaining information on time means the risk of disputes can be lessened as much as possible.

Increasing challenges

There is an increasing need for specialist Customs expertise. A major change is imminent: Customs law reform. Khalid Abdullah: “The idea that there will be one EU Customs authority that can use central risk models to carry out more targeted audits, based on data from Customs declarations.” This will likely result in more additional tax assessments – although it will be another 10 years or so before that happens.

The capacity of Customs will also be enlarged. Bart-Jan Kalshoven: “After years of being understaffed, a lot of new Customs officials will be employed.” This is a double-edged sword. “It can be frustrating, because new officials are often less experienced and consequently have difficulty dealing with the subject matter and are less able to make connections. Dealing with an experienced official means you can often take the sting out of the tail.” Nevertheless, Bart-Jan believes it’s also good for the Customs practice. “We always have a good relationship with our opposite party; there is very little animosity.” Khalid Abdullah confirms this: “Sparks can fly with regard to matters of content, but our professional relationship with Customs helps us resolve matters quickly.” This is all the more important, because Customs cases often have a major operational impact

The best result

Increasing trade barriers and geopolitical tensions mean Customs litigation is becoming more complex. Bart-Jan Kalshoven: "The annoying thing is that any movement of goods may cause problems. That's often difficult for companies to manage." That's precisely why specialist Customs expertise is indispensable. Khalid Abdullah: "You try to get the best result for a client based on the facts and legislation and regulations. Whether that's through litigation or through constructive consultation, we always seek out the best path to take."

The Tax Controversy & Litigation practice of KPMG Meijburg & Co is made up of a specialist and international team of tax professionals and lawyers. Together, they combine their expertise to find the most appropriate approach for their clients.

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