

Our international trade expertise

2021





“The lawyers from
A&O stood out
for their pragmatic
approach and drive to
really understand their
clients’ arguments.”

Chambers UK 2021



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Introduction

International trade is a complex area, and the movement of goods between jurisdictions is increasingly subject to financial and trade restrictions. Allen & Overy's International Trade team is well placed to advise corporations, governments and financial institutions on all manner of trade-related issues including how restrictions under WTO rules and free trade agreements (FTAs) can have a significant impact on regulatory developments across multiple jurisdictions.

International trade rules cover a broad range of legal areas and it is essential to understand how this complex matrix of laws fits together in practice. It requires a deep understanding of European, trade and public international law in order to fully inform commercial negotiating positions and decisions affecting the cross border flow of goods and services. Recent global political events have brought into sharp focus the need to fully understand the basis on which your cross border trade is conducted and how that may change.

Allen & Overy's International Trade Practice is a highly integrated team of specialist, commercially focused regulatory and international law experts across the world. Our team assists clients in navigating the complex and sometimes competing requirements to which they may be subject. Our work over the last decade or so has covered the following key areas:

- trade advisory work (WTO rules and FTAs);
- trade-related disputes;
- anti-dumping cases;
- advice on, and disputes under, Bilateral Investment Treaties;
- sanctions and export controls;
- advice on customs unions, customs controls, the EU Customs Code, and import/export restrictions; and
- tariffs and indirect taxes.

We also regularly participate in the annual training programme for states on the negotiation of investment treaties organised by the United Nations Conference on Trade and Development and the Islamic Development Bank.

Our specialist team is particularly well placed to advise clients on the on-going consequences of Brexit having assisted numerous clients in the lead up to the end of the UK's transitional period with the EU.

“Very good technical knowledge.”

Legal 500 UK 2021

“Commercial and responsive.”

Legal 500 UK 2021

Our expertise

International trade

We advise businesses and governments across a variety of sectors on matters relating to international trade regulation and tariffs, including **WTO rules, the terms of FTA, anti-dumping and trade disputes.**

Our experience includes advising:

- **An African state** on its negotiations with the European Union regarding a comprehensive Free Trade Agreement.
- **The Republic of Cuba** on its challenge to The Commonwealth of Australia at the WTO relating to the Australian Tobacco Plain Packaging Act 2011. The Australian act introduced stringent new measures requiring all tobacco products in Australia to be sold in standard dark green boxes and prohibited the use of logos, brand imagery and promotional text. Cuba, a major tobacco producer, challenged the Australian legislation at the WTO on the grounds that the act breached public international law. This was the first time Cuba had challenged another country's commercial legislation at the WTO, and this was one of the largest disputes brought before the WTO.
- **A WTO Member** on the legality of a specific anti-dumping measure adopted but eventually immediately suspended by China.
- **China Chamber of Commerce of Import and Export of Light Industrial Products and Arts-Crafts (CCCLA)** together with nine individual exporting producers in an EU anti-dumping proceeding concerning certain plastic sacks and bags originating in China.
- **Thailand** in its challenge to enhance bonding requirements imposed by the United States on importers of Thai shrimp. Thailand prevailed on the claims considered by the panel. The United States announced its intention to remove the measure in January 2009. Thai imports affected by the measure were worth approximately USD1 billion annually.
- **A major EU importer** (a subsidiary of one of the biggest Chinese conglomerates in the world) in an anti-dumping proceeding initiated in the EU against imports of cold-rolled stainless steel products from a number of countries, including China. The case was terminated with 0% duty.
- **Thailand** in a joint challenge, along with Brazil and Australia, to the EU's export subsidy regime for sugar. The WTO rulings led to a wide-ranging reform of the Common Market Organisation for sugar.
- **Colombia, Costa Rica, Ecuador and Guatemala** in their challenges to proposed EU import tariffs on bananas. In successive arbitrations, the tariff rates proposed by the EU were struck down. Annual Latin American exports of bananas into the EU are worth approximately EUR1.7bn.
- **Indonesia** in its challenge to anti-dumping duties imposed by South Korea on imports of paper. In a subsequent compliance arbitration, Indonesia successfully demonstrated that South Korea had failed to bring its measures into conformity with its WTO obligations.
- **A major Ukrainian exporting producer** in an anti-dumping proceeding initiated in the EU against imports of silico-manganese from a number of countries, including Ukraine. Eventually, Ukraine was awarded a 0% duty.
- **On whether tax exemptions and duty exemptions** granted to the textile sector of a major emerging economy are compatible with the WTO Agreements on Subsidies and Countervailing Measures.

Public international law

Allen & Overy regularly advises on both contentious and non-contentious aspects of public international law, a field in which we are recognised as a leading practice. Our clients are multinational corporations, sovereign states and international organisations, engaged in cross-border trade, projects and business cooperation.

Our expertise in this field has been recognised on numerous occasions and we are currently ranked in Tier 1 for Public International Law by Legal 500 UK 2021.

Our experience includes advising:

- **An EU Member state** on issues of public international law, including treaty interpretation, in relation to the negotiation of the European Stability Mechanism treaty.
- **The French Republic** in connection with its brief as *amicus curiae* in support of Argentina’s petition for a writ of *certiorari* (judicial review) before the U.S. Supreme Court on *pari passu* clauses in the context of national debt restructurings in connection with the Republic of Argentina v. NML Capital, Ltd. litigation.
- **An Asian state** on its potential accession to the Energy Charter Treaty.

“The team has incredible breadth and expertise in public international law. I have always been impressed by the quality of their work and their excellent reputation is well deserved.”

Legal 500 UK 2021 (Public International Law)

“Allen & Overy are excellent in terms of their strength and depth in this area, and their willingness to assist junior lawyers to expand their knowledge to assist clients better. They are completely reliable, have a great depth of knowledge and are able to see alternative arguments in a dispute.”

Legal 500 UK 2021 (Public International Law)

Investment treaties

Allen & Overy's arbitration specialists are recognised as market leaders in enforcing and defending rights arising under public international law instruments, including trade, multilateral and bilateral investment treaties.

Our experience includes advising:

- **The investment arm of a Middle Eastern state** on that State's draft bilateral investment treaty with a Central American State.
- **A Central Asian state** on the drafting of a bilateral investment treaty that it was negotiating with a European counterparty.
- **An Asian state** on its negotiation of two bilateral investment treaties with North American counter-parties.
- **An EU Member state** on issues of public international law, including treaty interpretation, in relation to the negotiation of the European Stability Mechanism treaty.
- **JKX Oil & Gas plc** in three investment treaty claims, including one under the ECT, against Ukraine in respect of JKX's investments in a local oil and gas production company.
- **Deutsche Bank** in its claim against Sri Lanka, under the Germany-Sri Lanka bilateral investment treaty, for interfering with obligations in an oil hedging agreement between the bank and a state-owned oil company.
- **The Republic of Poland** in defending investment treaty arbitration proceedings under the UNCITRAL Arbitration Rules.
- **The Islamic Republic of Pakistan** in successfully defending two investment treaty claims for USD575 million.

“The sheer calmness and professionalism of the team was just outstanding. They were able to quickly identify the key legal issues in a complex dispute in a difficult territory, and provided full confidence to us as the client.”

Legal 500 UK 2021 (International Arbitration)

Sanctions and export control

We have a team of market leading experts advising a wide range of international banks, investors, governments and corporates on the sanctions and export/import control regimes of the United Nations, European Union, United States, United Kingdom and many other jurisdictions. Our experts are based across the world in Europe, the UK, the U.S., Asia and the Middle East.

Our ability to provide integrated cross-jurisdictional advice on international sanctions and export control is unmatched by any of our peer firms.

Our experience includes advising:

- Numerous major financial institutions such as **Goldman Sachs, Deutsche Bank, HSBC, JP Morgan, ING** and **ABN AMRO** on international sanctions.
- **A range of international corporate clients** on potential investments into Iran following the JCPOA.
- **An oil major** on exiting certain investments in Russia following the imposition of EU and U.S. sanctions.
- **A large multinational food corporation** in connection with OFAC sanctions and the exportation (direct and indirect) of food to Iran.
- **A major pharmaceutical client** on the impact of Russian sanctions on their supply and distribution contracts in the region.
- **A global financial institution** on applicable export control regulations for software being exported from the UK to China.
- **A private equity firm** on an internal investigation at one of its portfolio companies regarding compliance with export licences.
- **An international manufacturing company** on assessing the extent to which certain product lines were covered under U.S. content rules, the impact of the EU dual-use restrictions and the sale of products into Iran.

“Great strategic advice and leading transactions very well.”

Chambers UK 2021

Tax

As tax law and practice become increasingly complex and global in nature, businesses more than ever need high quality, innovative and solution-driven advice to help them structure their tax affairs. That is precisely what our international team of tax specialists provides.

Working in close collaboration across practice groups and jurisdictions, our team of nearly 100 specialists has the scale and experience to provide advice that is both commercial and pragmatic. Our strengths lie not only in providing an independent tax consultancy but also in helping our clients manage the often complex direct and indirect issues involved in both domestic and cross-border transactions.

Our experience includes advising:

- **An insolvent clothing retailer** in relation to customs duty and import VAT deferment issues and the provision of letters of credit to HMRC.
- **A leading international freight forwarder** on a number of tax claims issued by the Italian tax authorities in relation to VAT allegedly due on imports into Italy.
- **Dredging International**, a leader in dredging and land reclamation, on Indian import duty issues.
- **LG.Philips LCD** on tax, customs and approval issues on the proposed establishment of a manufacturing facility in Guangdong Province.
- **An electricity company** as defendant on alleged excise fraud under a gasoil sales and transport agreement.
- **A leading manufacturer and marketer of valves, actuators and controls** on a criminal investigation (and subsequently prosecution) by the Department of Customs and Excise of Hong Kong over an alleged breach of local import and export of strategic commodities regulations.
- **A representative of the global road transport industry** on taxes and duties imposed on diesel.
- **India** in its challenge to tariff preferences granted by the EU to 12 developing countries, including Pakistan.

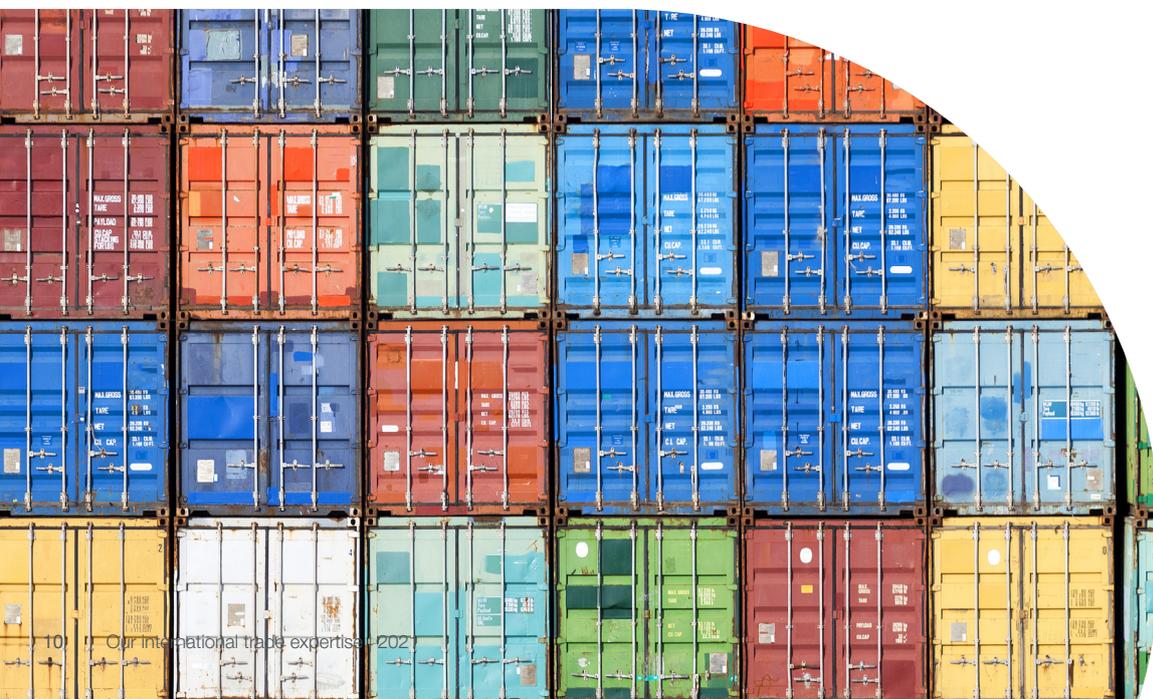
“Extremely good knowledge of the law.”

Chambers Global 2020 (Tax)

Trade and commodity finance

Our Trade and Commodity Finance team can translate complexity and the increased scrutiny of security structures into practical and efficient solutions. Our in-depth knowledge of the sector and track record in documenting trade and commodity financings, and our litigators' experience of advising on a large number of disputes in the trade and commodity sector allows us to identify and solve any issues upfront, providing our clients with both practical and commercial advice.

We are committed to supporting our trade and commodity finance clients across the full range of their business. Our trade finance practice covers all aspects of the sector from advice on vanilla trade instruments and UCP rules, bilateral trade and receivables financings, pre-seller and post-import facilities, through to innovative domestic and global supply chain finance programmes, trade risk distribution structures, structured commodity financings and the most complex trade financing restructurings seen in the market.



Our experience includes advising:

- **Standard Chartered Bank**, as mandated lead arranger, on various financings for Sonangol (the Republic of Angola’s state-owned national oil company) including the 2015 USD1bn syndicated facility and USD2.5bn and USD1bn secured borrowing base syndicated debt facilities.
- **The Security Agent and the Receivers** in relation to the USD700m borrowing base facilities for OW Bunker & Trading A/S in connection with the global insolvency of OW Bunker Group. OW Bunker – the second-largest listed company by revenue in Denmark – is owed USD1.4bn. It went into liquidation after its banks refused to extend credit following revelations of a USD125m fraud at Dynamic Oil and a USD150m risk management loss. Around USD600m is owed by its two Singapore entities, USD330m by OW Bunker Far East and USD270m by Dynamic Oil. A USD700m facility extended by a syndicate of banks to OW Bunker & Trading and OW Supply & Trading (OW Bunker Denmark) gave the lending syndicate claims over certain assets of various OW Bunker entities around the world, including the two Singapore subsidiaries.
- **TA syndicate of international and Kenyan banks** on a long-term USD350m facility for Kenya Pipeline Company to finance a new 450km multi-product fuel pipeline from Mombasa to Nairobi to replace the existing 35-year-old fuel pipeline. Euromoney Trade Finance Deal of the Year 2015.
- **A vertically integrated steel and iron ore producer** and one of the largest Ukrainian companies, on its c.USD2.2bn financial restructuring, involving a combined bank and bond scheme of arrangement.
- **Banco Rabobank International Brasil S.A.** as lead arranger and administrative agent on the USD140m soybeans and soy by-products pre-export financing extended to ABC Indústria e Comércio S/A – ABC Inco, a Brazilian soybean producer and crusher. The facility will be guaranteed by Algar Agroalimentar S.A. Global Trade Review Best Deal of 2014.
- **The lenders** on multiple prepayment facilities (totalling approximately USD2bn) in favour of Glencore Energy UK Ltd for advance payments for crude oil purchases from SHT, the Chadian national oil company. This deal was awarded TRF Deal of the Year Awards 2014 and has been described in the Financial Times as “transformational” for the Republic of Chad and SHT.
- **A syndicate of banks** on USD460m Off-Balance Sheet Instruments revolving credit facilities for Gunvor Group Ltd, arranged by ABN AMRO Bank and ING Bank. First structured in 2014, the original transaction won Trade and Forfaiting Review deals of the year awards 2014 – highly commended.

Brexit

The UK's relationship with the EU is now governed by the terms of the EU-UK Trade and Cooperation Agreement (the TCA). This agreement, which runs to over 1,200 pages, focuses on the trade in goods, where zero tariffs or quotas are imposed on goods traded between the UK and the EU, provided that they meet the applicable rules of origin. In many areas though, it is essentially a framework under which further agreements and arrangements will be put in place going into the future.

From the UK's perspective, the TCA sits alongside the UK's rights and obligations under the WTO agreements to which it is a party and a growing network of free trade agreements that the UK has either "transitioned" from its time as an EU Member State or has separately negotiated.

The impact of these agreements on the UK's trading relationship with the world is profound and our expert, multi-disciplinary teams are ready to advise you on what Brexit means for your business, whether in the UK, another EU country or outside of Europe.



Our experience includes advising:

- **A major investment manager** whose platform includes multi-billion Euro AIFs and UCITS in Luxembourg and Ireland on its Brexit-related restructuring.
- **A global paper product company** on its Brexit contingency planning in a worst and realistic-case basis.
- **A UK retail and wholesale bank** on its business impacts and access options, including EU27 advice and jurisdiction-specific bespoke solutions.
- **A UK clearing bank** on their EU Exit planning, including advice on potential locations for EU-based entities.
- **The investment banking division of a European bank** on whether its London branch will continue being able to provide services into the EU.
- **An EU-based public lending institution** on various transactional issues arising from EU Exit as well as the possible impact on its standard form documentation.
- **A global investment bank** on its EU Exit contingency planning for its lending and markets business lines. This mandate has involved significant business model analysis and engaging with counsel and regulators in a number of key EU financial centres.
- **The European operations of a Japanese banking group** on its implementation project, including extensive analysis of potential holding company models.
- **A U.S. insurer** on a planned reorganisation of its EU business (including extensive transfers of staff), which is being adapted to take account of EU Exit.
- **A UK headquartered insurer** on the treatment of certain cross-border insurance services under EU FTAs with South Korea, Japan, Singapore and Canada.
- **A U.S. insurer** on potentially establishing an insurer in a EU27 country as a hub for its EU operations post-EU Exit (including extensive transfers of staff).
- **A number of UK insurers** on their EU Exit implementation projects.
- **Hiscox** with the reorganisation and capitalisation of its insurance business in the EEA and consolidating its EEA insurance activity into a new entity in Luxembourg through two cross-border mergers, a Part VII transfer and a reorganisation by business sale.
- **Nomura** (including Nomura International and Nomura Asset Management) on its Brexit contingency planning including building out an existing Nomura French credit institution and establishing and licensing a new investment firm entity in Germany.
- **BNP Paribas** on its Brexit contingency planning and repapering project, with particular focus on no-deal Brexit planning and the role of the London branch and other UK subsidiaries post-Brexit.
- **A market leading TMT client** in relation to the potential risks and impact of Brexit on its business operations.
- **A worldwide leader in IT and networking** on the business and regulatory impacts of Brexit.
- **A major European airline** on its contingency plans for a hard Brexit.

Your core contacts



Matthew Townsend
Partner and Global Co-Head
of International Trade and
Regulatory Law Group
Tel +44 20 3088 3174
Mob +44 79 0968 4728
matthew.townsend@allenoverly.com



Kenneth Rivlin
Partner and Global Co-Head
of International Trade and
Regulatory Law Group
Tel +1 212 610 6460
Mob +1 973 477 6977
ken.rivlin@allenoverly.com



Kate Davies
Partner
Tel +44 20 3088 2090
Mob +44 73 4188 7893
kate.davies@allenoverly.com



Francois Renard
Partner
Tel +852 2974 7110
Mob +852 9858 1929
francois.renard@allenoverly.com



Dirk Arts
Partner
Tel +32 2 780 2924
Mob +32 496 27 91 77
dirk.arts@allenoverly.com



Niels de Ru
Partner
Tel +31 20 674 1135
Mob +31 653 38 08 19
niels.deru@allenoverly.com



Andrew Denny
Partner
Tel +44 20 3088 1489
Mob +44 79 0968 4969
sophie.orwell@allenoverly.com



Lydia Challen
Partner
Tel +44 20 3088 2753
Mob +44 79 6734 2416
lydia.challen@allenoverly.com



Jodi Norman
Partner
Tel +44 20 3088 4259
Mob +44 74 6937 7663
jodi.norman@allenoverly.com



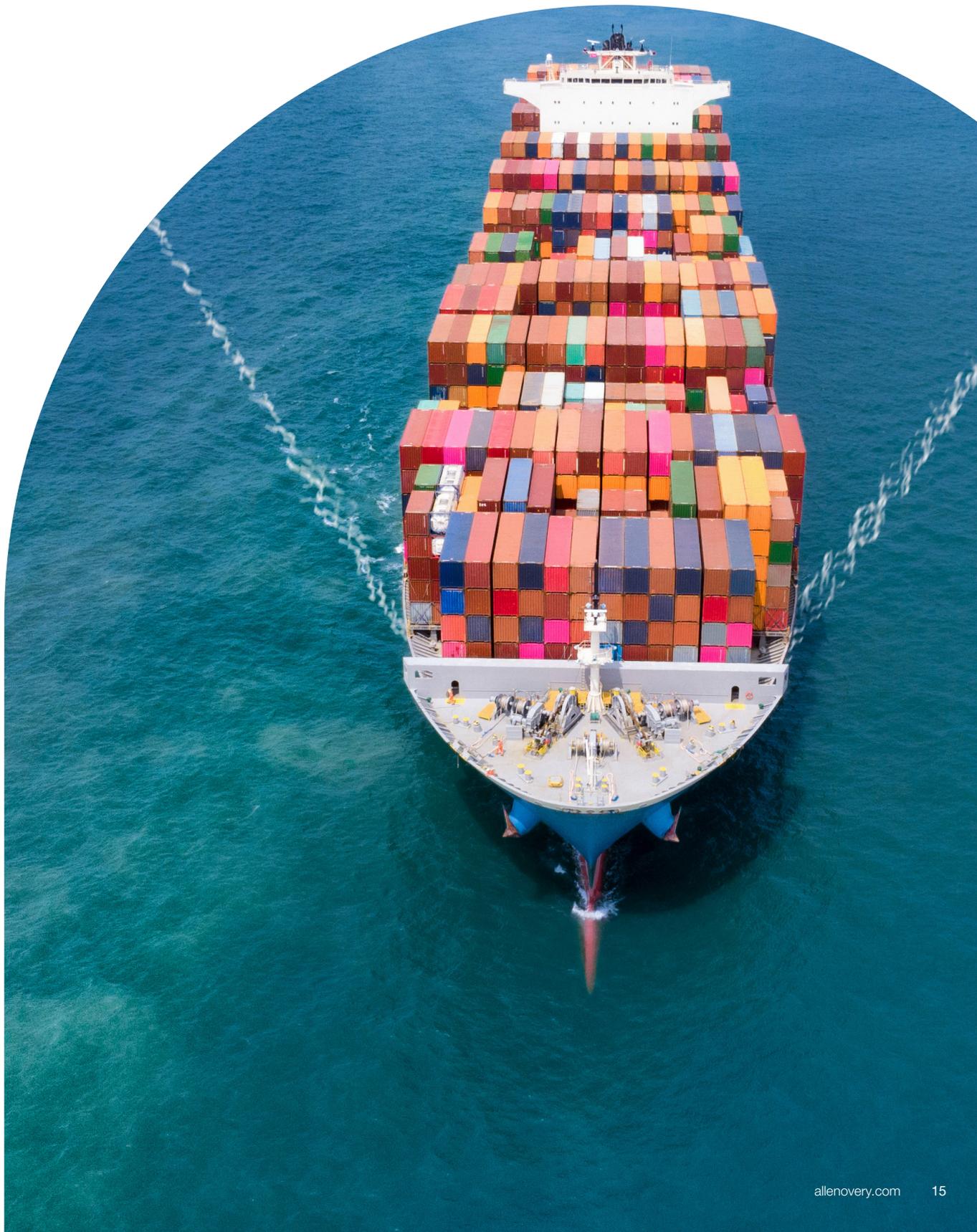
Jonathan Benson
Senior Associate
Tel +44 203 088 1321
Mob +44 77 9907 4387
jonathan.benson@allenoverly.com



Oonagh Harrison
Senior PSL
Tel +44 20 3088 3255
Mob +44 78 8103 8125
oonagh.harrison@allenoverly.com



David Gabathuler
Senior Trade Consultant
Mob +32 485 42 20 18
david.gabathuler@allenoverly.com



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