

# Our international trade expertise

2022





“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. The movement of goods between jurisdictions is increasingly subject to financial and trade restrictions and national security-related foreign direct investment controls are proliferating. Allen & Overy's International Trade team is well placed to advise corporations, governments and financial institutions on all manner of trade and investment-related issue, including how restrictions under World Trade Organization (WTO) rules and free trade agreements (FTAs) can have a significant impact on regulatory developments across multiple jurisdictions.

International trade and foreign investment 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 domestic, EU and public international law in order to fully inform commercial negotiating positions and decisions affecting the cross border flow of goods, services and investment.

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.

A&O's International Trade and Regulatory Law Group 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;
- foreign direct investment 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 the UK's departure from the European Union having assisted numerous clients in the lead up to the end of the UK's transitional period with the EU.

“Allen & Overy has a strong team with a lot of good subject matter knowledge and expertise on technical regulatory issues.”

Chambers USA 2022

“Extremely generous with their time and support. Very knowledgeable about the latest trends and developments. Able to provide solid and commercial advice.”

Legal 500 UK 2022

# Our expertise

## International trade

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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

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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.

“Extensive global expertise which they are able to quickly leverage to provide a very strong global solution.”

Chambers Global 2022 (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

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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 controls

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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 corporates and financial institutions** on the impact of international sanctions, including recent sanctions brought against Russia, including risk management, operational restructuring and M&A.
- **IMI**, a major international manufacturer and supplier of valves and other specialist engineering technology, in relation to ongoing sanctions and trade related advice. We have also advised IMI on sanctions issues in connection with the divestment of its Russian business to its local management team.
- **A consumer company** on U.S. and EU sanctions issues relating to operations in Syria and on OFAC sanctions regarding Cuba.
- **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.

### Runner-up: Sanctions Law Firm of the Year – Europe

WorldECR Awards 2021

“Great strategic advice and leading transactions very well.”

Chambers UK 2021



## Foreign direct investment restrictions

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Our team has significant experience advising on foreign direct investment FDI regulations across the globe, including:

- advising on foreign investment in the U.S., including in particular in connection with contemplated transactions that may impact U.S. national security;
- evaluating transactions to determine if they necessitate a filing with CFIUS, developing strategies for approaching CFIUS, and assisting in the transaction review process which CFIUS may conduct;
- advising on the UK’s new national security-related FDI regime contained in the National Security and Investment Act 2021 (NSIA), as well as advising clients on the application of the UK’s current Enterprise Act 2002 regime, and conducting multi-jurisdictional FDI control-related reviews; and
- advising on multiple European foreign direct investment regimes, supporting clients to get clearances for transactions where necessary.

We have advised investors from all over the world (including Europe, China, India and other parts of Asia, Australia, the Middle East, Canada and Brazil) as well as target businesses in a broad range of industries, including telecommunications, consumer electronics, mining, defence, aerospace, energy and infrastructure, financial services, and health care. Some matters have involved 100% acquisitions; others have involved minority investments, joint ventures, or minor asset acquisitions (such as particular customer contracts or intellectual property).

Our work spans the spectrum of regulatory advice and counselling. We work closely with both investors and targets, as applicable, to prepare filings and to advocate on our clients’ behalf during the relevant review process to transaction clearance. We also work with clients who are deciding whether or not to file, helping them weigh the benefits of certainty and transparency that regulatory clearances can bring against the potential costs and complexities that filing can entail, including among other things the detailed disclosures that regulators can require and the potential delays that filings can create.

Our experience includes advising:

- **A UK private equity group** on a number of substantial multi-jurisdictional reviews of FDI-controls relating to its potential acquisition of a number of businesses operating in the inspection and assurance sectors.
- **A large Scandinavian manufacturing company** on the application of the NSIA and the FDI-controls in a number of European and Asian jurisdictions to a potential acquisition of a packing company.
- **A U.S. private equity group** on the application of the NSIA to its potential acquisition of a business in the renewables energy sector.
- **A leading defence company** on the interaction of the NSIA with the UK's export control regime.
- **A significant telecommunications company** on the interaction of the NSIA with the power proposed in the UK's Telecommunications Security Bill.
- **A major publicly-listed Asian tech company** on its USD1.4bn acquisition of a U.S. automated manufacturing and distribution technology solutions company. Our team's integral role centered on evaluating and navigating U.S. regulatory risks, including U.S. export controls and foreign investment into the U.S. in relation to the transaction. We negotiated the relevant aspects of the transactional documents and prepared and filed a Joint Voluntary Notice with CFIUS.
- **Koninklijke KPN NV**, a telecommunications company, on the sale of its U.S.-based subsidiary iBasis, leading player in the international wholesale voice market, to Tofane Global. We advised on CFIUS matters, including: analysis of prospective CFIUS concerns and strategy; drafting and compilation of the CFIUS filing and appended materials; and engaging with CFIUS directly to facilitate its review and ultimate clearance of the transaction.
- **A global investment management organisation** on a proposed investment in a European renewables company with significant U.S. footprint and on potential risk of national security review and CFIUS concerns on various proposed investments and transactions.
- **The U.S. Department of Energy** on CFIUS matters relating to a major U.S. chemicals project.
- **A number of international clients** on multi-jurisdictional national security review considerations across a range of highly confidential matters.

## The EU-UK Trade and Cooperation Agreement

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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



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## Global presence

Allen & Overy is an international legal practice with approximately 5,600 people, including some 580 partners, working in more than 40 offices worldwide. A current list of Allen & Overy offices is available at [www.allenoverly.com/global\\_coverage](http://www.allenoverly.com/global_coverage).

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