

## Robert MacLean

### Partner

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### Languages spoken

English | French



## About Robert

Dr. Robert MacLean leads our International Trade & Foreign Investment team in Europe. Robert specialises in contentious litigation and procedures involving trade-related matters and defending his clients' interests in investigations conducted by global trade and customs regulators, particularly trade remedy investigations, customs law violations, export controls and sanctions. He is a globally recognised expert in his field. Robert has been lead counsel for his clients in more than three dozen actions and appeals to the European General Court and the Court of Justice, including several landmark cases helping to shape EU trade law and policy.

Robert has more than 30 years of experience as an international and European trade lawyer. He counsels his clients on World Trade Organization (WTO) law, as well as how to handle anti-dumping, anti-subsidy and safeguard investigations all over the world. He has been principal legal adviser for his clients in more than 100 international investigations and global trade disputes involving the investigating authorities in the European Union, the US, China and a number of Far East Asian and Latin American countries. Many of these assignments have been high profile and, in some instances, have involved litigation in the EU courts.

He is commended by his clients for his creativity and problem-solving abilities, particularly relating to successful advocacy and the relentless pursuit of his clients' economic and commercial interests. *Chambers Global* 2021 reported that his clients consider him "superb on trade issues, totally reliable to think outside the box and he knows the subject extremely well". Previous editions of the same publication identified him as "a great trade lawyer, very active on all sorts of successful projects" and that "peers single out Robert MacLean as a good example of a pure trade lawyer – he is 100% involved and clients concur that he is "an exceptional specialist"."

*Who's Who Legal* 2020 also recognises him as a global leader in international trade and customs law and says that "he has made a name in trade remedy investigations and brings decades of experience to the table."

Robert's industry experience spans a wide spectrum of global industries, ranging from electrically-produced steel, minerals and mechanical machinery to eco-friendly products such as solar glass, solar modules, conventional and electric bicycles, natural food additives and bio-degradable organic chemicals and detergents.

Robert also advises on the negotiation and implementation of free trade agreements between the EU and its global trading partners, including advocacy to improve market access and the thorny issues of rules of origin, valuation and customs facilitation procedures. In addition, he specialises in EU customs regulation, export control, sanctions and trade compliance.

His work in the area of EU and UK customs law mainly relates to investigations and audits conducted by OLAF, the French, Dutch, German and Belgian customs authorities and HMRC where he defends his clients' interests in such probes. Leveraging his many years of experience at the EU level, he is now also guiding his clients on the implementation and enforcement of the new UK customs regime and its independent trade remedy framework post-Brexit.

Robert is currently Vice-Chair of the Cross-Border Practice Management Committee, under the International Law Section of the American Bar Association, with responsibility overseeing policy matters. He is a member of the Advisory Group of the Joint UK Law Societies' Brussels Office, providing strategic advice and insights on topics and issues facing Brussels-based lawyers especially post-Brexit. He is also a member of the firm's core Brexit interest group.

Robert was the lead adviser on EU legal issues for the bi-partisan Alternative Arrangements Commission set up by Greg Hands, now Minister for State for UK trade policy, and Nicky Morgan, to develop solutions to promote seamless cross-border trade in the island of Ireland. He was also the Project Leader and author of two comprehensive policy studies for the European Commission on the effectiveness of the EU's market access strategy.

Robert's PhD in law, awarded in 1995, is in the field of WTO law and US and EU trade remedies. He is a dual qualified Scottish solicitor and Belgian avocat (List-A).

## Experience

### Landmark EU Litigation

- Currently representing Zippo, the iconic US wind-proof lighter manufacturer, in an action before the European General Court challenging the imposition of compensatory measures imposed by the EU in retaliation for increased tariffs imposed by the US administration on derivative steel and aluminium imports.
- Successfully acting on behalf of a European industry against an EU regulation failing to impose adequate levels of anti-dumping duties first before the General Court and then again more recently in front of the Court of Justice on appeal.
- Successfully supporting the European Commission in an action for annulment brought by non-European exporters to annul anti-dumping duties on imports of tartaric acid (currently under appeal to the Court of Justice).
- Four successful, separate, General Court judgments compelling the European Commission to repay anti-dumping duties to EU importers after it refused to do so, reversing three decades of precedent to the contrary, which limited effective refund payments.
- Successfully supporting the European Commission in an appeal to the Court of Justice extensively clarifying the status of China as a non-market economy country for the purposes of applying the EU's anti-dumping instrument.
- Successful appeal before the General Court for the annulment of EU anti-dumping duties imposed on a Chinese exporter on the grounds of breach of its procedural rights of defence in the administrative investigation.
- Successful appeal on behalf of a German importer for the recovery of anti-dumping duties unlawfully assessed on imports of its merchandise under an outward processing arrangement.

- Pursuing actions and appeals before the European Court against a decision on the part of the European Commission to terminate duty suspension entitlements granted to a US corporation for its manufacturing operations in Europe.

### **Complex Anti-dumping and Anti-subsidy Investigations**

- Lead counsel for a mandatory respondent Chinese exporting producer in the ongoing investigation into imports of graphite electrode systems.
- Lead counsel for the EU polyvinyl alcohol industry in a successful complaint and subsequent investigation to counteract dumped imports from China.
- Lead counsel for the EU solar glass industry in the expiry review investigation to extend anti-dumping measures on imports of solar glass from China.
- Representing the EU association of e-bike importers in an EU anti-dumping and anti-subsidy investigation into imports of electrical bikes from China.
- Acting for EU ProSun Glass, the EU solar glass manufacturers association, in a rare EU anti-absorption investigation that led to the doubling of the anti-dumping duties on imports of solar glass.
- Successfully representing an association of Italian and Spanish distilleries in extending the EU anti-dumping measures on imports of Chinese tartaric acid and having them increased.
- Advising a US-based multinational corporation on the application of WTO law in an anti-dumping investigation started by one of its manufacturing subsidiaries in a Far East Asian country.
- Successfully representing Baosteel and the China Iron and Steel Association (CISA) in an EU anti-dumping investigation concerning grain-oriented electrical steel, obtaining the lowest anti-dumping duty rate for the client and convincing the European Commission to accept minimum price undertakings instead of definitive duties.
- Defending Ta Chen, the largest Taiwanese producer of welded pipes and tubes against allegations of dumping and obtaining, by far, the lowest duty rate, thereby giving our client a significant competitive advantage.
- Advising a major Taiwanese bicycle and e-bike manufacturer on its investment in a new EU production site and successfully navigating the legal requirements for obtaining a licence for importation of parts and components free from EU anti-dumping duties.
- Successfully securing a retroactive amendment to the product scope of an EU anti-dumping regulation thereby saving the client from having to pay several million euros in unlawful duty assessments made by the German and Dutch customs authorities.

### **Export Controls, Economic Sanctions and Anti-corruption Compliance**

- Advising on the impact of EU and UK sanctions on doing business and trading with non-European sanctioned entities and their affiliates.
- Advising multiple clients on the practical implications of Brexit as it affects their long-term strategic planning to ensure the future provision of services and the continuation of manufacturing activities, as well as the optimisation of logistical and supply-chain management post-Brexit.
- Advising on witness statements for potential prosecution of the customer of a UK-based company who attempted to export controlled devices without procuring a valid export licence.
- Advising on product classification and characterisation under the EU's dual use regulations.
- Advising on the UK and EU blocking statutes forbidding compliance with US extraterritorial trade restrictions.

- Lodging and pursuing complaints to OLAF, the EU Anti-Fraud Office, to prevent circumvention of EU anti-dumping duties imposed on certain compressors from China.
- Advising a US technology company on the EU regulations on the modification of machinery equipment to allow it to supply added-value IT control systems to complex production equipment.
- Successfully obtaining binding customs rulings for Russian fertiliser products, confirming their exclusion from the scope of EU anti-dumping measures.
- Advice on proper labelling of medical supplements under EU regulations and proper classification of these substances under the EU's customs rules.
- Assessment of country of origin status for imports such as complex mechanical equipment, and food additives made from materials sourced from a large number of different countries, as well as solar panels and wafers.

#### **EU Customs Duties Reduction and Recovery Projects**

- Advising multiple EU importers on tactics and strategies to defend against retroactive payment demands from EU customs authorities for anti-dumping and anti-subsidy duties imposed on steel pipes, air compressors, foodstuffs, e-bikes, bicycles and electronic parts and components.
- Successfully developing and deploying a duty reduction programme involving multiple duty suspensions applications for chemical substances for a US-based corporation to reduce its raw material costs by obtaining relief from the EU customs duties on imported raw materials resulting in substantial cost savings for its European operations.
- Securing an annual tariff-free quota for a chemical commodity product, which has been successfully rolled over for the last 10 years.
- Significant retroactive recovery of past EU customs duty payments for a French-based petroleum refinery through reclassification of its imports.
- Successfully obtaining definitive country of origin EU customs rulings for an Israeli biotechnology company, allowing it to continue to export its products duty free despite a significant change in their raw material sourcing.
- Advising a multinational company making sophisticated IT products in Europe on the reduction of its EU customs duty liabilities for its manufacturing operations in Italy and the Slovak Republic.

#### **Market Access and WTO Advice**

- Project Leader and author of "Final Report on the Evaluation of the European Union's Market Access Strategy", for DG-Trade of the European Commission.
- Project Leader and author of "Final Report on the Evaluation of the European Union's Trade Barrier Regulation (TBR)", for DG-Trade of the European Commission.
- Author, "The EU Trade Barrier Regulation – Tackling Unfair Foreign Trade Practices" (Sweet & Maxwell, Second edition 2006).

## **Credentials**

### **Education**

- University of Glasgow, Ph.D., WTO law, US and EU trade remedy laws, 1995
- University of Alberta, LL.M., International Law, 1988
- University of Glasgow, Diploma in Legal Practice, 1986
- University of Glasgow, LL.B. (Hons.), Public International law, 1985

### **Admissions**

- Belgium, 2002
- Scotland, 1994

## Memberships & Affiliations

- Member of the American Bar Association (ABA), International Law Section
- Member of the International Bar Association (IBA), International Trade Committee

## Recognitions

- Recognised in *Chambers Global and Europe-wide* 2010-2021 (double-ranked) as a leading international expert on international trade.
- Recognised in *Who's Who Legal* 2010-2021, as a Global Leader in trade and customs.
- Recommended in *Legal 500 EMEA* 2010-2020 for trade, WTO law, anti-dumping and customs.
- Recognised in *Expert Guide to the World's Leading Lawyers* chosen by their peers 2010-2021 for International Trade & Shipping Law.
- Recognised by *Best Lawyers* in Belgium for international trade law 2010-2021.

## Expertise

### Services

- International Trade & Foreign Investment

## About our firm

One of the world's strongest integrated law firms, providing insight at the point where law, business and government meet. We deliver commercially focused business solutions by combining our legal, lobbying and political capabilities and invaluable connections on the ground to a diverse mix of clients, from long-established leading corporations to emerging businesses, startup visionaries and sovereign nations. More than 1,500 lawyers in over 40 offices across four continents provide unrivaled access to expertise.