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„Legal problems involving signing and implementing

Free Trade Agreement between EU and Singapore.“

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Contents

Abbreviations

Advocate General – AG

Association of South East Asian Nations - ASEAN

Association Agreement – AA

Appendix – app

Article/Articles – Art/Arts

Cambridge International Law Journal - CILJ

Comprehensive Economic and Trade Agreement – CETA

Common Commercial Policy - CCP

Central European Free Trade Agreement – CEFTA

Chapter/Chapters – c/cc

Custom Union – CU

Directive – Dir

European Union - EU

European – Eur

Exclusive – Exc

Edition - edn

European Commission – EC

European Economic Area – EEA

European Economic Community – EEC

European Free Trade Association – EFTA

European Court of Justice – EUCJ, The Court

EU – Singapore Trade and Investment Agreement - EUSFTA

Economic Partnership Agreements – EPA

Free Trade Agreement/Agreements – FTA/FTAs

General Agreement on Tariffs and Trade – GATT

Geographical Indications - GI

International – Intl

Intellectual Property – IP

International Trade Agreements – ITA

Member States - MS

North American Free Trade Agreement - NAFTA

Paragraph/Paragraphs – Para/Paras

Regulation/Regulations – Reg/Regs

South Afrika - SA

Trade Policy Commettee – TPC

Treaty on the Functioning of the European Union – TFEU

United Kingdom – UK

United States of America – USA

Introduction

Through the history, trade has always had an important role. Dating from the ancient time, trade was a connection between countries. Moreover, at the beginning, people used to barter, a 'system of exchange where goods or services are directly exchanged for other goods or services.' Later, when money was introduced as a medium, the importance of trade continued to grow. Today, in modern days, it is in the interest of countries to promote trade, and to make it more accessible. Trade is vital for every country. In order to do that, countries conclude free trade agreements with other countries.

Clearly, the European Union, as a great trade force, has concluded Free Trade Agreements with many countries. Lately, the European Union has expressed interest in Association of South East Asian Nations (ASEAN). It started negotiations with a few Asian countries in 2007, including Singapore. Negotiations with Singapore were finalized in October 2014. It should have been signed and ratified and subsequently entered into the force.[1] However, it did not yet.

Truly, the agreement between EU and Singapore has caused much attention, regarding the legal problems involved. The main question was whether the European Union has exclusive competence, or this should be shared competence between EU and the Member States.

This paper describes and analyzes all aspects of this the EUSFTA, with emphasis to the central question: Does EU has the competence to conclude the EUSFTA or should it be concluded in the ‘mixed' form, with the participation of the member states. The question whether this is a' Mixed Agreement' is so important, because, if it is ‘Mixed Agreement,' it would require ratification by the Parliaments of all Member States. In order to deal with this issue, the EU requested the opinion of the Court of Justice of the

[1] Philip Torbøl, Neil A. Baylis, Nicholas M. Hanna, Sara Aparicio Hill, ‘K L Gates', Public policy and Law alert, (14 Jun 2017), < http://www.klgates.com/the-eu-singapore-free-trade-agreements-cannot-enter-into-force-eu-court-rules-06-14-2017/ > accessed 12.09.2017

European Union (EUCJ), with a question whether the EU has exclusive competence to conclude this Agreement. The EUCJ opinion was important, not only for EU and Singapore but also for other countries, due to the fact that this opinion could affect other countries and relations.

Due to that fact, the EUCJ opinion has attracted much attention. Taking into account the relevance and the impact it will have not only on EUSFTA but also on the future agreements of, Opinion 2/15 is one of the most important parts of this thesis. 'Opinion 2/15 on the Free Trade Agreement between the European Union (EU) and Singapore (EUSFTA)' is so important because it will set a new chapter in the relationship between the EU and its Member States. Additionally, it is also destined to shape the EU's role on the international plane for years to come. Notably, the Opinion is expected to add some clarity to the scope of the CCP in light of 'new generation agreement' [2] Besides that, the EUCJ opinion especially interests the public. The interest of the public is primarily because it will affect the UK after Brexit, which is a 'burning problem' at this point. Secondly, even though good relations in trade are essential for states economy, the question remains, why the EU is so interested in signing Free Trade Agreement with Singapore. EU is a great trade force, and yet, put so much effort into negotiation with Singapore.

To summarize, it is evident that there are a lot of relevant issues regarding signing and implementation of this FTA. The Opinion of the Court was long waited and expected since it should solve many ambiguities regarding competition of the EU when it comes to the trade. Therefore, this thesis should cover all aspects of this current issue, including the history and summary of the agreement.

[2] David Kleimann and Gesa Kübek, 'The Future of EU External Trade Policy - Opinion 2/15: Report from the Hearing', EU Law Analysis (Tuesday, 4 October 2016), < http://eulawanalysis.blogspot.com/2016/10/the-future-of-eu-external-trade-policy.html > accessed 30 December 2017

Chapter I

Free Trade Agreements in general

Under the term Free Trade, in modern days, we consider trade or commerce carried on without restrictions such as import duties, export bounties, domestic production subsidies, trade quotas, or import licenses. The experts argue in favor of free trade, regarding the fact that free trade is good for the economy, based on the theory of comparative advantage. According to the theory of comparative advantage, the key of economic growth is that every region concentrates on products that can be produced cheaply and efficiently in that region, and exchanged for those products, which are less profitable to that region. On the other hand, liberalization of trade can cause significant and unequally distributed losses and the economic dislocation of workers in import-competing sectors.[3]

a) Brief History of International Trade Agreements

Even though the liberalization and openness of trade have become a trend in the last few hundred years, and every day more and more of FTAs are signed, it has not always been like that. When the GATT (General Agreement on Tariffs and Trade) was introduced, there has been a trend of enhancement of multilateral trade, as well as more local trade arrangements. Thought different centuries other doctrines had shaded the idea of free trade. For example, through the sixteenth century till to the end of the eighteenth century for the most of the European powers, the chief doctrine was mercantilism. According to mercantilists, the aim was that the 'favorable' balance exists, meaning that that country's export should exceed the value of the countries import. Trade agreements between nations were discouraged because of the mercantilist trade policy. Besides this, governments imposed tariffs and quotas on imports and exports, everything in order to

[3] Matthw Johnston, 'A Brief History of International Trade Agreements' (19 January 2016), Investopedia, http://www.investopedia.com/articles/investing/011916/brief-history-international-trade-agreements.asp accessed 12 October 2017.

prevent foreign nations from competing with the domestic production of manufactured goods.[4]

During the eighteen and nineteen centuries, the influence of mercantilism started to weaken, and the free trade started gaining influence. Moreover, a big part of the 'rise' of free trade can be attributed to the writers and economists Adam Smith and David Ricardo, whose theories helped a trend towards a more liberalized trade. 'Adam Smith is known as a father of modern economics.' In his work '*Theory of Moral Sentiments'* and '*The Wealth of Nations*,' he advocates in favor of people reasonable judgment and favor of minimal government interference in the economy. According to Smith, free markets allowed the natural laws of supply and demand to function properly. Besides him, another economist who influenced liberalization of the free trade is David Ricardo. After he had read the 'Wealth of Nations' by Smith, he came up with his first publication '*The High Price of Bullion, a Proof of the Depreciation of Bank Notes*,' which argued for the use of metallic currency. Ricardo shared Smith's opinion that economies functioned best when they were left alone by governments, and as Smith, was also an early advocate of free trade. [5]

Great Britain was the one who led the trend towards more liberalized trade, inspired by Smith and Roberto's theories. After the Reciprocity of Duties Act passed, in 1823, it aided the British carry trade and made permissible the reciprocal removal of import duties under bilateral trade agreements with other nations. Furthermore, in 1846 the Corn Law restrictions were repealed, which was a big step in the development of free trade in Great Britain. Soon after that, in 1860, the first FTA was put in place between Britain and France, which led to successive agreements between other countries in Europe. The ***Cobden-Chevalier Treaty*** between Britain and France enacted significant reciprocal tariff reductions and included a most favored nation clause. This treaty stimulated the number of MFN treaties in Europe. Besides that, it initiated the growth of multilateral

[4] Ibid.

[5] *Patricia Chappine, 'The economists: Adam Smith, David Ricardo & Thomas Malthus' (Study.com)* <http://study.com/academy/lesson/the-economists-adam-smith-david-ricardo-thomas-malthus.html#lesson > *accessed 10 October 2017;*

trade liberalization. The ***'Cobden-Chevalier Treaty'*** between Britain and France was the first free trade agreement.[6]

However, the trend towards free trade was slowed down when world economy faced the Great Depression Great Britain was the on one who kept the adherence to free trade, while other countries coped with the crisis in other ways. For instance, Germany reverted to more protectionist policies with its 'iron and rye' tariff, and France followed with its Méline tariff of 1892. Besides that, trade liberalization that had begun in the early nineteenth century was seriously disrupted by World War I. After the World War II, free trade emerged as the dominant doctrine. On the other hand, the U.S. had a long tradition of strongly protecting its economy from free trade influences to prevent it from being exploited by other powers until the second half of the nineteenth century. Even though the U.S negotiated trade agreements under the Hull's leadership, which meant that The U.S. would reduce its tariffs, but only in exchange for partner nations reducing theirs, the U.S. was still pretty closed regarding the free trade. Therefore, the President's negotiating authority was initially limited to bilateral agreements with individual foreign nations. [7]

However, that changed after WW II. Moreover, the termination of WW II led to multilateral treaties like the GATT and *World Trade Organization* (WTO) that became the ruling regime for regulating global trade. The U.S. GATT led the creation of GATT was established in 1947 in order to rebuild the post-war economy, encourage the reduction of tariffs among member nations, and thereby provide a foundation for the expansion of multilateral trade. Great Britain and U.S came out of Second World War as the two great economic superpowers. They needed the plan to construct a plan for a more cooperative and open international system.[8]

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[6] Matthew Johnston, 'A Brief History of ITA' (19 January 2016), Investopedia, < <http://www.investopedia.com/articles/investing/011916/brief-history-international-trade-agreements.asp> accessed 13 October 2017.

[7] I.M. Destler 'America's Uneasy History with Free trade', (Harvard Business review) <https://hbr.org/2016/04/americas-uneasy-history-with-free-trade > accessed 13 October 2017;

[8] Matthew Johnston, 'A Brief History of ITA' (19 January 2016), Investopedia, <http://www.investopedia.com/articles/investing/011916/brief-history-international-trade-agreements.asp > accessed 15 October 2017.

The UN Conference on Trade and Employment had drafted a Charter for an International Trade Organization (ITO). 54 States signed it in March 1948 in Havana, Cuba. However, it has never entered into force, regarding the fact that, in the US, the majority of legislators were opposed to the ITO for a different reason. Therefore, it was never ratified by the Americans, what sealed the fate of the ITO. Nevertheless, the Member States of the UN Conference on Trade and Employment conducted simultaneously multilateral trade negotiations for the reciprocal reduction of customs tariffs and decided to put hat that part of the draft ITO charter which dealt with multilateral trade relations separately and provisionally into operation to serve as a treaty basis for the agreed tariff concessions. They named it "General Agreement on Tariffs and Trade."

The GATT established in 1947, had taken up the plan to oversee the development of a non-preferential multilateral trading order from ITO. It was attached to the Final Act of the Sessions, signed by the participating States. Furthermore, 23 signatories of the Final Act composed a 'Protocol of Provisional Application of the General Agreement on Tariffs and Trade,' which was subsequently accepted by the signatories of the Final Act. However, the GATT itself was ratified only by Haiti.[9] Its binding force rested until 1995, following the Uruguay round. The Uruguay round (1986-1994) was the most ambitious and comprehensive out of all multilateral trade rounds. It expended the multilateral trading system, and WTO (World Trade Organization) was established. Moreover, while the focus of GATT had been primarily reserved for goods, the WTO went much further by including policies on services, intellectual property rights, and strengthens the dispute settlement system. The WTO oversees the GATT, GATS (General Agreement on Trade in Services) and TRIPS (Trade-related aspects of Intellectual Property Rights) under one roof. In the meanwhile, before the Uruguay round, States had established some bilateral trade agreements. For instance, after the break-up of the Soviet Union, the EU pushed to form trade agreements with some Central and Eastern European nations, and in the mid-1990s. Additionally, the U.S. also pursued its trade negotiations, forming an agreement with Israel

[9] Peter Fisher, The Law of the World Trade Organization(WTO), LLM Program in European and International Business Law, Vienna Law School (Winter Semester 2016/2017);

in 1985 as well as the trilateral North American Free Trade Agreement (NAFTA) with Mexico and Canada in the early 1990s.[10]

In summary, the path toward free trade had been rocky and long. It took centuries for free trade to become widespread as it is today and for proper regulation of free trade to be developed. However, free trade is still in the process of thriving, and with each FTA, positive progress regarding regulating free trade was made.

b) Types of Free Trade Agreements

Countries negotiate mutually beneficial agreements with each other to simplify trade between nations, eliminate tariff and non-tariff barriers and to recognize each other's standards. Countries themselves agree on the terms of trade between them in FTAs. FTAs are very often in regulating international trade. They can be Unilateral, Bilateral and Multilateral trade agreements.

Firstly, a unilateral trade agreement occurs when 'a country imposes trade restrictions, and no other country reciprocates. A country can also unilaterally loosen trade restrictions, but that rarely happens. It would put the country at a competitive' disadvantage. Secondly, bilateral trade agreements are between two countries. Both countries agree to loosen trade restrictions in order to expand business opportunities between them. They lower tariffs and confer preferred trade status with each other.[11] Trade agreements are usually bilateral agreements between two countries for the abolition of trade barriers, and they contain the **most favoured clause (MFN-Clause)** as the 'golden rule.' By that clause, the parties agree to grant each other those concessions they would grant to third parties. Today, the WTO is based on that 'golden rule.[12] The goal is to

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[10] Matthew Johnston, 'A Brief History of International Trade Agreements' (19 January 2016), Investopedia, <http://www.investopedia.com/articles/investing/011916/brief-history-international-trade-agreements.asp> accessed 17 October 2017;

[11] Kimberly Amadeo, 'Free Trade Agreement: Types and Examples' (6 December 2017), The Balance, <https://www.thebalance.com/free-trade-agreement-types-and-examples-3305897 >, accessed 12 December 2017.

[12] Peter Fisher, (European Internal Market Law), LLM Program in European and International Business Law, Vienna Law School (Summer Semester 2017);

enable countries to access each other's markets and increase each country's economic growth. The third type is multilateral agreements. They are the most difficult to negotiate. Multilateral agreements are among three countries or more. More countries involved, of course, means more complicated negotiations. They are more complex since each country has its own needs and requests. Nevertheless, once negotiated, multilateral agreements are very powerful. They also cover a larger geographic area. That confers a more significant competitive advantage on the signatories. All countries also give each other most favored nation status. They agree to treat each other equally.

Besides this division, we also have different types of agreements in EU, regarding the fact, EU 'has in place, or is negotiating, trade agreements with countries and regions around the world.' They are: Custom unions, Association Agreements, Stabilization Agreements, (Deep and Comprehensive) Free Trade Agreements and Economic Partnership Agreements and Partnership and Cooperation Agreements[13] 'Custom unions(CU) is a combination of two or more States within a single customs area establishing a common external tariff (CET or CCT-Common Customs Tariff'). CU eliminates customs duties in bilateral trade and establishes a joint customs tariff for foreign importers. On the other hand, Association Agreements, Stabilization Agreements, Free Trade Agreements and Economic Partnership Agreements (EPAs) remove or reduce customs tariffs in bilateral trade. EPAs) - support the development of trade partners from African, Caribbean and Pacific countries. Free Trade Agreements (FTAs) - enable reciprocal market opening with developed countries and emerging economies by granting preferential access to markets. Association Agreements (AAs) - bolster broader political agreements. Lastly, Partnership and Cooperation Agreements provide a general framework for bilateral economic relations and leave customs tariffs as they are.

[13] Europa.eu, European Commission, 'Types of EU trade agreement,' < http://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/#_partly-in-place >, accessed 14 December 2017.

Chapter II

Singapore Free Trade Agreement

Considering that the EU manages trade relations with third countries in the form of trade agreements it is clear that the EU has signed trade agreements with many countries. They are designed to create better trading opportunities and overcome related barriers. Moreover, EU uses trade policy for the promotion of European principles and values, from democracy and human rights to the environment and social rights.[14] Therefore, we can say that trade agreements are tools used by EU to enhance trading possibilities. As a result, EU continuously works on concluding FTA-s, which means that EU network is steadily expanding.

Lately, the EU has expressed interest in Association of South East Asian Nations (ASEAN). 'ASEAN as a whole represents the EU's 3rd largest trading partner outside Europe with more than €246 billion of trade in goods and services in 2014.' Further, trading cooperation with EU is also significant for ASEAN countries, regarding the fact that the EU is the ASEAN second largest trading partner after China, accounting for around 13% of ASEAN trade. Besides the trade negotiations with the individual ASEAN Member States, the EU cooperates closely with the ASEAN region as a whole. 'Negotiations for a region-to-region FTA with ASEAN were launched in 2007 and paused in 2009 to give way to bilateral FTAs negotiations, conceived as building blocks towards a future region-to-region agreement. Negotiations with Singapore and Malaysia were launched in 2010, with Vietnam in June 2012, with Thailand in March 2013, with the Philippines in December 2015 and with Indonesia in July 2016.[15] However, the most interesting one was the FTA with Singapore, regarding the legal problems involved.

[14]Europa.eu European Council, Council of the European Union; 'EU Trade Agreements' <http://www.consilium.europa.eu/en/policies/trade-policy/trade-agreements/ >, accessed 14 December 2017;

[15]' Europa.eu, European Commission, 'Association of South East Asian Nations' <http://ec.europa.eu/trade/policy/countries-and-regions/regions/asean/ >, accessed 14 December 2017

a) History of Singapore and EU negotiations

Just like the EU Singapore is also a significant trading force. 'In 1992, Singapore signed its first free trade agreement (FTA), the Common Effective Preferential Tariff scheme with its ASEAN neighbors. Clearly, 'Singapore has benefited from its bilateral FTAs and regional FTAs. Export trade has increased significantly as a result of the reduced duties on Singaporean goods. Singaporean investors benefit from legal protection arising from the Free Trade Agreements.[16]

Today, Singapore has an extensive network of 21 implemented FTAs, with 32 trading partners. Out of 21 implemented FTAs, twelve of them are bilateral and that with: China, India, Japan, Korea, New Zeland, Panama, Peru, Australia, Costa Rica, Jordan, Turkey, and the US. Besides FTA with EU, Singapore has also FTA with Trans-Pacific Partnership (TPP), that is signed and concluded, but not ready for use. Additionally, there are also more FTAs that are in the process of negotiations.[17] Therefore, this agreement with EU is essential for Singapore as it is for the EU.

The whole Singapore-EU story had begun on 8 December 2006, when the Commission addressed a recommendation to the Council of the European Communities seeking its authorization to open negotiations intending to the conclusion of an FTA with the countries of the ASEAN. The Council acceded to the recommendation. However, the Council provided that it not be possible to conclude an agreement with all the countries that were members of ASEAN. Thus, the Council authorized the Commission to negotiate bilaterally. Next, on 22 December 2009, the Commission was authorized to negotiate bilaterally with the Republic of Singapore.[18] The negotiations finally began when EU Trade Commissioner Karel De Gucht and Singapore Minister for Trade and Industry Lim Hng Kiang met to launch negotiations for a free trade agreement officially. The first round

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[16] Singapore Business review, Edmund Sim, 'Reflecting on 20 years of Singapore free trade agreements', http://sbr.com.sg/economy/commentary/reflecting-20-years-singapore-free-trade-agreements , accessed 15 December 2017;

[17] Singapore Government, International Enterprise Singapore, 'Singapore Free Trade Agreements' < https://www.iesingapore.gov.sg/Trade-From-Singapore/International-Agreements/free-trade-agreements/Singapore-FTA > accessed 15 December 2017;

[18] Opinion 2/15 of the Court (16 May 2017), ECLI:EU:C:2017:376.

of negotiations was scheduled to take place from 8 – 12 March 2010 in Singapore. Regarding the FTA between Singapore and EU and its importance, Commissioner Karel De Gucht said:

' The proposed free-trade agreement will strengthen economic ties between Singapore and the EU, provide new opportunities for traders and consumers alike, and contribute to generating growth in our economies. For Europe, it will also mark an important stepping-stone in the EU's engagement with the ASEAN region. Minister Lim added: The EU is an important economic partner of Singapore. This FTA is a major undertaking and when concluded, will further strengthen the excellent economic relation between Singapore and the EU. Singapore looks forward to working closely with the EU to develop an ambitious agreement that will benefit businesses from both sides.'

The expectations from the FTA were 'to lower or abolish the currently existing tariff and non-tariff (i.e., regulatory and technical) barriers to trade and investment in many ASEAN markets', to further strengthen the EU's commercial ties with the dynamic ASEAN region.[19] The negotiations were conducted in consultation with the Trade Policy Committee, acting as a select committee appointed by the Council pursuant to Articles 207(3) and Article 218(4) TFEU. Further, in February 2011 the Commission addressed a recommendation to the Council seeking modification by it of the negotiating directives to include investment protection. In September 2011 the Council decided to supplement the negotiating directives to this effect. [20] Although the basic framework was finished by 2012, few issues remained.

However, geographical indications, financial services and investment rules remained controversial. In 2013, the EU and Singapore initialed the text of the FTA, which was structured as an EU-only agreement, without the participation of the Member States. The negotiations for a comprehensive free trade agreement were completed on 17 October 2014, with the remaining issues in the investment chapter finished by May 2015. The outcome was a relatively high-quality deal, with nearly all tariffs dropped between the two

[19] Europa.eu, European Commission, 'EU to start bilateral trade negotiations with Singapore' (Brussels, 22 December 2009 < http://trade.ec.europa.eu/doclib/press/index.cfm?id=519 >, accessed 15 December 2017;

[20] Opinion 2/15 of the Court (16 May 2017), ECLI:EU:C:2017:376

parties, new openings in services markets, some additional rules in areas like intellectual property rights and government procurement, and a robust investment chapter.[21] Even though it should have been signed and ratified and subsequently entered into the force, it did not. Instead, the Commission requested an Opinion from the ECJ under Article 218(11) TFEU with respect to the allocation of competence between the EU and its Member States for the conclusion of the agreement. The opinion of the Commission was that the EU is exclusively competent to conclude the whole agreement. The European Parliament shared the Commissions opinion. At the same time, the Member States and the Council refuted that point by noting that the agreement should not be concluded as an 'EU-only' agreement, as certain aspects of it fall within the shared competence of the EU and its Member States or within the latter's exclusive competence.[22]

Therefore, the question of competence brings up to the central question. Clearly, the EUSFTA cannot enter into force until all the legal problems are resolved. According to Articles 3 to 6 TFEU, there are three categories of competences: Exclusive, Shared and Areas of supporting competences. 'The Union shall have exclusive competence in the following areas: customs union, the establishing of the competition rules necessary for the functioning of the internal market, monetary policy for the Member States whose currency is the euro, the conservation of marine biological resources under the common fisheries policy, common commercial policy and conclusion of agreements in this area.' This list is exhaustive. Next, Shared competence between the Union and the Member States applies in the following principal areas: internal market, social policy, for the aspects defined in this Treaty, economic, social and territorial cohesion, agriculture and fisheries, excluding the conservation of marine biological resources, environment, consumer protection, transport, energy, area of freedom, security and justice, common safety concerns in public health matters, for the aspects defined in this Treaty etc. This list is not exhaustive. Finally, The Union shall have the competence to carry out actions to support, coordinate or supplement the actions of the Member States. The areas of such action shall, at European level, be protection and improvement of human health, industry, culture, tourism, education,

[21] Deborah Elms, 'Understanding the EU-Singapore Free Trade Agreement' < http://press-files.anu.edu.au/downloads/press/n2494/pdf/ch03.pdf >, accessed 15 December 2017;

[22] Posted by Eirini Kikarea on February 26, 2017,' EU-Singapore FTA, Mixed Feelings' Cambridge International Law Journal; < http://cilj.co.uk/2017/02/26/eu-singapore-free-trade-agreement-mixed-feelings/ >, accessed 17 December 2017;

vocational training, youth and sport, civil protection, administrative cooperation. This list is exhaustive.[23]

In brief, the question was whether the competence is: (i) within the EU's exclusive competence, (ii) within the shared competencies of the EU and its Member States, or (iii) within the exclusive competence of the Member States. Furthermore, what complicates a decision on competence is the scope of the agreement and variety of issues covered in the agreement. Considering the fact that not all issues enclosed in the agreement are all trade related, the question was raised, should the EUSFTA be concluded as a 'mixed agreement' or 'EU only' agreement, or in another word, does the EU has the power to conclude this new generation of EU FTAs?

b) Summary of the agreement

To understand the nature of the agreement, and be able to discuss it we should first make a short summary of the agreement. This first EU deal with a Southeast Asian economy is one of the most comprehensive trade agreements ever negotiated. The EUSFTA comprises 17 Chapters, one protocol, and four understandings. As already mentioned, it covers broad variety of issues including: market access for goods, trade remedies, customs & trade facilitation, trade in services and establishment, intellectual property rights, technical barriers to trade, sanitary and phytosanitary measures, electronics, motor vehicles and vehicle parts, pharmaceutical products and medical devices, as well as the renewable energy generation, government procurement, competition policy, sustainable development and dispute settlement mechanism. Additionally, it also contains Protocol I, dealing with Rules of Origin and four Understandings [24]

Chapter I contains General Definitions and Objectives of the agreement. The primary objectives are liberalizing and facilitating trade and investment between the Parties in accordance with the provisions of this Agreement. The second chapter applies to trade in goods between the Parties. It includes National Treatment, Custom Duties,

[23] **Consolidated version of the Treaty on the Functioning of the European Union (TFEU) [2008]** 2012/C 326/01.

[24] Europa.eu, European Commission, ' EU-Singapore FTA. 'Authentic text as of Mai 2015' (Brussels, 29 June 2015), < http://trade.ec.europa.eu/doclib/press/index.cfm?id=961 > , accessed 20 December 2017

Reduction and/or Elimination of Customs Duties, Import and Export restrictions, Fees and Licensing. Further, it also establishes The Committee on Trade in Goods according to Article 17.2 (Specialized Committees) that shall meet on the request of a Party or of the Trade Committee to consider any matter arising under this Chapter and comprise representatives of the Parties. 'The bulk of the negotiations are focused on tariff reductions for the European side. The EU agreed to reduce its own tariff to match the levels found in the 2011 EU-Korea FTA within five years of entry into force. This included dropping tariffs to 0 on entry into force for approximately 75 percent of tariff lines. Most of the remaining lines were also scheduled to go to across a period of 3–5 years, with reductions taking place in annual installments.[25]

Based on trade patterns, in the first year, 84 % customs duties on goods of Singapore's domestic exports to the EU will be removed. In the third year, 90 % of Singapore's domestic exports will enter the EU tariff-free, and in the fifth year, all customs duties will be entirely removed. Singapore will grant immediate duty-free access for all imports from the EU. Additionally, both the EU and Singapore committed not to increase any existing customs duty or introduce any new customs duty on goods imported from the other Party, following the entry into force of the EUSFTA.

Finally, the agreement incorporates basic WTO disciplines on national treatment, prohibition of import and export restrictions, state trading enterprises, as well as the elimination of sectoral non-tariff measures on goods such as automotives, electronics, and pharmaceuticals.[26] In addition, this chapter has three annexes and one appendixes and that: Annex 2-A on 'Elimination of Customs Duties' saying that 'All customs duties by a Party on goods originating in the other Party shall be eliminated as from the date of the entry into force of this Agreement, except as otherwise provided in the respective Party's Schedules included in this Annex. The appendix is about 'Tariff Schedule of the European

[25] Deborah Elms, the text is taken from: ' *Australia, the European Union and the New Trade Agenda*,' edited by Annmarie Elijah, Don Kenyon, Karen Hussey and Pierre van der Eng, published 2017 by ANU Press, The Australian National University, Canberra, Australia.

[26] Ministry of Trade and Industry, 'A guide for Singapore-based companies to understanding the EUSFTA,' < https://www.mti.gov.sg/MTIInsights/SiteAssets/Pages/EUSFTA/EUSFTA%20Guide%20for%20SG%20Businesses.pdf >, accessed 15 December 2017

Union.' Annex 2-B: Motor Vehicles and Parts thereof that apply to all forms of motor vehicles and parts thereof traded between the Parties and falling under Chapters 40, 84, 85, 87 and 94 of the HS 2012. Singapore agrees to recognize EU standards and testing regimes for cars and cars parts. The agreement also mentioned environmentally friendly motor vehicles. Lastly, Annex 2-C: Pharmaceutical Products and Medical Devices where the primary pledge calls for greater transparency in pricing structures.

Chapter III 'Trade Remedies' has three sections: A) Antidumping and Countervailing Measures, B) Global Safeguard Measures and C) Bilateral Safeguard Clause. Chapter IV: Technical Barriers to Trade with annex about Electronics and Appendixes: Scope, Product Categories, and Definitions. Regarding the electronics, Singapore had a different policy than EU. Unlike the EU, which regulates all low voltage electrical and electronic products, Singapore only requires third-party 'certification for a short list of consumer electronics ("Controlled Goods") under the Consumer Protection (Safety Requirements) Registration Scheme (CPS Scheme)'.[27] In the agreement, Singapore agreed to gradually replace third-party testing of products (particular to accept supplier's declaration of conformity that is widely used inside of the EU).

Chapter V deals with Sanitary and Phytosanitary Measures. The EUSFTA is supposed to facilitate trade in food products between Singapore and the EU while maintaining high levels of human, animal and plant health safety. This chapter has codified that both sided could have import requirements for food and foodstuff. Notably, imports could be stopped and checked. That is,' the importing Party shall have the right to carry out import checks on products imported from the exporting Party to implement SPS measures.[28] Further, the agreement sets out a variety of committees and consultations (The Competent Authorities are set out in Annex 5-A), to deal with Sanitary and Phytosanitary issues in the future. Besides Annex 5-A, there is also Annex 5-B (Approval of Establishments for Products of Animal Origin), listing all requirements and provisions for approval of establishments for products of animal origin. Regarding the fact that one issue

[27] Ibid

[28] Europa.eu, European Commission, ' EU-Singapore FTA. 'Authentic text as of Mai 2015' (Brussels, 29 June 2015), < http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151738.pdf > , accessed 20 December 2017;

of concern for Europe was Singapore's complex system of approval for meat import, Singapore will, in order to facilitate the trade of meat and meat products, will accept pre-listing as one of the possible outcomes of AVA's verification inspection on EU establishments under the EUSFTA. This way, EU Member States will be able to export their meat and meat products to Singapore based on verifications and recommendations of their respective competent authorities that they meet Singapore's sanitary and phytosanitary requirements.

Chapter IV: Customs and Trade Facilitation states that the Parties recognize the importance of customs and trade facilitation matters in the evolving global trading environment.[29] Hence, the EUSFTA will enhance cooperation in customs-related matters that will allow businesses to export to the EU more efficiently. It will: Provide simplified import and export procedures; Pursue harmonization of documentation and data requirements; Develop effective communication of documentation and data requirements; Develop effective communication with the business community; Simplify requirements; Assist each other in matters related to tariff classification, valuation and preferential origin of goods; Promote intellectual property rights (regarding imports, exports and transit); Improve the security, while facilitating trade (for shipment imported into, transshipped through or transiting the Parties).

Chapter VII: Non-Tariff Barriers to Trade and Investment in Renewable Energy Generation says: 'In line with global efforts to reduce greenhouse gas emissions, the Parties share the objective of promoting, developing and increasing the generation of energy from renewable and sustainable non-fossil sources, particularly through facilitating trade and investment.'[30] To remain open and investor-friendly in regards investment in renewable energy generation, both parties agreed to reduce tariffs, non-tariff barriers and fostering regulatory convergence with or towards regional and international standards, what is for Singapore the first time to do so under a bilateral FTA. Hence, both sides pledged to allow renewable energy equipment to Singapore without additional conformity

[29] Europa.eu, European Commission, ' EU-Singapore FTA. 'Authentic text as of Mai 2015' (Brussels, 29 June 2015), < http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151738.pdf > , accessed 20 December 2017;

[30] Ibid.

tests, but only with national treatment meaning that foreign products will be granted the same treatment as locally produces comparable items.[31]

Chapter VIII is a very extensive chapter, regarding the fact that one of the objectives of the EU was to improve access to Singapore's services markets. Services could include, for instance, financial services, management, food and beverages, travel and tourism, architecture, etc. However, the services chapter does not cover all services. Exceptions to the agreement are audio-visual services; national maritime cabotage; air transport and mining, manufacturing and processing of nuclear materials.[32] Services were negotiated on the basis of a 'positive list', that means that only the services sectors and subsectors specifically listed are opened for competition from firms in the other partner country. Services developed in the future are not opened unless the parties specifically negotiate with them in the future. Furthermore, the agreement includes two parts. The first is a set of the rules and regulations governing the sector. On the other hand, the second one is a specific market-access promise made by each side. Nevertheless, what is also interesting is that the EUSFTA opens up competition in postal services that are often considered sensitive by many governments. Additionally, both sides agreed that telecommunications have a vital role in business today. Hence, parties agreed to respect the confidentiality of information and to require firms to provide services on non-discriminatory terms. Regarding the e-commerce, parties agreed to avoid imposing unnecessary restrictions or regulations on e-commerce activities to facilitate trade and enhance trade opportunities. Moreover, both parties agreed that the governments might not use licensing as a mechanism to obstruct entry into services market.[33] The Union's and Singapore's schedules of specific commitments are listed in annexes 8-A and 8-B.

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[31] Deborah Elms, the text is taken from: 'Australia, the European Union and the New Trade Agenda,' edited by Annmarie Elijah, Don Kenyon, Karen Hussey and Pierre van der Eng, published 2017 by ANU Press, The Australian National University, Canberra, Australia.

[32] Europa.eu, European Commission, ' EU-Singapore FTA. 'Authentic text as of Mai 2015' (Brussels, 29 June 2015), < http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151738.pdf > , accessed 28 December 2017

[33] Deborah Elms, the text is taken from: 'Australia, the European Union and the New Trade Agenda', edited by Annmarie Elijah, Don Kenyon, Karen Hussey and Pierre van der Eng, published 2017 by ANU Press, The Australian National University, Canberra, Australia.

The chapter IX, The Investment Chapter is the especially exciting while, unlike most investment agreements ratified by European countries, it is not a stand-alone investment treaty, from which parties can withdraw. The investment chapter is part of a trade agreement, from which it is near impossible to withdraw. The text contains broad investor protection rules, including the Fair and Equitable Treatment protection just like the National Treatment protection rules.[34] Besides that, this chapter is essential since the EU is Singapore's largest investor, while Singapore is EU seventh-largest investor. Around 10,000 EU companies, with an accumulated foreign direct investment (FDI) stock of S$227 billion in 2013, are established in Singapore and use it as a hub to serve the whole Asia Pacific. Thus, this part of the agreement is substantial for protection of investments. Nevertheless, the chapter contains Investment Protection provisions such as compensation for losses, expropriation (annexes 9-A, 9-B, 9-C), as well as Investor-State Dispute Settlement (Arbitration as the main, and Meditation as alternative dispute resolution). Chapter X, Government Procurement: 'As signatories of the WTO Agreement on Government Procurement (WTO GPA), Singapore and the EU already have substantive mutual commitments on government procurement. The EUSFTA's Government Procurement (GP) chapter expands these mutual commitments to include additional central and sub-central procuring entities and a lower threshold. Also, the EU will grant Singapore companies favourable consideration to access its services concession contracts in the future. Singapore companies are treated the same as EU companies when competing for procurement contracts.[35]

Chapter XI - Intellectual Property Rights; 'The provisions of this Chapter shall complement the rights and obligations of the Parties under the TRIPS Agreement and other international treaties in the field of intellectual property to which they both are parties. This chapter encompasses: copyright and related rights, patents, trademarks, and designs, layout-designs (topographies) of integrated circuits, geographical indications, and

[34] Ante Wessels, Foundation for a Free Information Infrastructure, < https://blog.ffii.org/seven-things-you-should-know-about-eu-singapore-isds/ >, accessed 28 December 2017

[35] Ministry of Trade and Industry, 'A guide for Singapore-based companies to understanding the EUSFTA', < https://www.mti.gov.sg/MTIInsights/SiteAssets/Pages/EUSFTA/EUSFTA%20Guide%20for%20SG%20Businesses.pdf >, accessed 28 December 2017

protection of undisclosed information and plant variety rights.[36] However, even though this chapter is comprehensive and includes many elements in the intellectual property rights, the focus was on geographical indications (GI). Indeed, GI is a specific type of product protection. That is, GI suggests that products are unique, due to specific geographical indications in its territory, such as specific soil, weather conditions, bottling procedures, growing traditions for categories of wines and spirits and agricultural products and foodstuffs. For example, Champagne grown in Champagne, specific region in France got the name by the region, those elements required to produce Champagne cannot be duplicated in some other country, and carry the name Champagne, they can only be called different, e.g. sparkling wine, to avoid confusing the customers. The basic problem is that EU is a firm supporter of GI, while at the same time, Singapore was not that impressed with the idea. Nonetheless, the EU has pushed the inclusion of GI in FTA and expended the list of products beyond wines and spirits.[37] On the other hand, Singapore will enhance its existing GI regime by setting up a Registry of GIs to receive applications for GI registration as soon as the Agreement has been ratified by the European Parliament. Moreover, Singapore added a side letter about sorting out the list of protected GIs.

Chapter XII, '*Competition and Related Matters'* commits both parties to enforce their respective laws on competition, since both of them already have in place laws design to prevent growth and spread of monopolies. Furthermore, nothing in this chapter prevents parties from establishing or maintaining public undertakings with special or exclusive rights, as well as maintaining state monopolies. Lastly, this chapter includes provisions that clarify procedures around subsidies.[38]

Chapter XIII, '*Trade and Sustainable Development'* is usually part of all EU agreements. What is interesting about this chapter is that it has its dispute mechanism.

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[36] Europa.eu, European Commission, ' EU-Singapore FTA. 'Authentic text as of Mai 2015' (Brussels, 29 June 2015), < http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151738.pdf > , accessed 28 December 2017

[37] Deborah Elms, the text is taken from: 'Australia, the European Union and the New Trade Agenda', edited by Annmarie Elijah, Don Kenyon, Karen Hussey and Pierre van der Eng, published 2017 by ANU Press, The Australian National University, Canberra, Australia.

[38] Europa.eu, European Commission, ' EU-Singapore FTA. 'Authentic text as of Mai 2015' (Brussels, 29 June 2015).

Regarding the labour standards, the agreement gives each party the right to establish their levels of labour protection. Furthermore, both sides have the right to adopt or modify relevant laws or policies on labour. Finally, both sides committed to upholding the 1998 International Labor Organization Declaration.

Chapter XIV, '*Transparency*' cites that parties shall pursue a transparent and predictable regulatory environment for economic operators, including small and medium-sized enterprises, doing business in their territories. Next, chapter XV, '*Dispute Settlement*' deals with differences between the Parties concerning the interpretation and application of this Agreement, and spells out procedures for handling disputes. If consultations failed, complains will be handled by an arbitration panel. Moreover, the EUSFTA also sets out a strong institutional structure of committees and working group for implementation.[39]

On the other hand, chapter XVI is supposed to facilitate the finding of a mutually agreed solution a comprehensive and expeditious procedure with the assistance of a mediator. The last chapter, Institutional, '*General and Final provisions'* introduce the Trade Committee as well as specialized committees that should be established under the auspices of the TC. Furthermore, it clarifies entering into force and duration of the whole agreement.[40] Finally, the agreement has one Protocol, that deals with the '*Rules of the Origin (incl. Annexes and Joint Declaration).* The EUSFTA contains mostly product-specific ROO. The agreement includes some co-equal rules. They allow companies to utilise one type of ROO or another to qualify as an originating product, thus providing exporters with significant flexibility. Most of Singapore's key exports have co-equal rules, such as electronics, machinery, pharmaceuticals, and petrochemicals. Notably, the EUSFTA will incorporate the concept of "ASEAN cumulation" for Singapore's key exports to the EU. ASEAN cumulation allows Singapore manufacturers to include the use of raw materials and parts sourced from ASEAN Member States (AMS) as originating

[39] Deborah Elms, the text is taken from: 'Australia, the European Union and the New Trade Agenda', edited by Annmarie Elijah, Don Kenyon, Karen Hussey and Pierre van der Eng, published 2017 by ANU Press, The Australian National University, Canberra, Australia;

[40] Europa.eu, European Commission, ' EU-Singapore FTA. 'Authentic text as of Mai 2015' (Brussels, 29 June 2015);

content when determining whether their exports can meet the required ROO only products "originating" (produced or processed) in Singapore or the EU can benefit from the preferences granted under the EUSFTA.[41]

c) Estimated Benefits

Singapore is Europe's largest trading partner in the ASEAN. The recently completed European Union-Singapore Free Trade Agreement will give Singapore and EU Company's further access to each other's markets and will have significant benefits for companies exporting products or services into Singapore as well as for companies that have operations in Singapore and import products into the European Union.[42] Considering the fact that the EUSFTA is a comprehensive agreement, covering a broad variety of issues, it is expected to produce benefits for both sides. However, based on economic modeling, on the first look, the majority of the gains leans toward Singapore side. This is primarily due to the significant differences in economic size between the two parties.[43] To clarify, for the direct economic benefits scenario, the modeling predicts that over a 10-year period EU exports to Singapore would rise by some €1.4 billion and Singapore's exports to the EU by some €3.5 billion. Moreover, the real gross domestic product (GDP) in the EU could grow to by €550 million. To put it in another way, EU real GDP would grow only negligibly in percentage terms.In contrast, the Singaporean economy 'would exhibit a significantly higher real growth rate of 0.94% corresponding to an increase of €2.7 billion.'

However, economic modeling is not entirely exact, especially on a comprehensive agreement such as EUSFTA. 'Trade flows are influenced by many other parameters,

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[41] Ministry of Trade and Industry, 'A guide for Singapore-based companies to understanding the EUSFTA',https://www.mti.gov.sg/MTIInsights/SiteAssets/Pages/EUSFTA/EUSFTA%20Guide%20for%20SG%20Businesses.pdf >, accessed 28 December 2017.

[42] Roxanne Hofman, 'What are the main benefits of the EUSFTA for foreign', (Banning Legal Tax, 4th November 2016), < http://banning-legal.sg/what-are-the-main-benefits-of-the-eu-singapore-free-trade-agreement-for-foreign-investors/ >, accessed 1 Febryary 2018

[43] Deborah Elms, text taken from: 'Australia, the European Union and the New Trade Agenda', edited by Annmarie Elijah, Don Kenyon, Karen Hussey and Pierre van der Eng, published 2017 by ANU Press, The Australian National University, Canberra, Australia;

besides trade policy. It is, however, encouraging seeing that one year after the entry into force of the EU-Korea FTA, EU exports to Korea had increased by 54 %, for goods where tariffs had been eliminated, whereas for goods not liberalized growth was only 20%. [44] Although this may be true, it is to be noted that economic modeling is a useful practice and can provide information about the expected direction of economic growth, but it still has some weaknesses such as overemphasizing the importance of tariff reduction and underemphasizing the importance of services and investment changes. Moreover, firms are increasingly concerned about the proliferation of non-tariff barriers such as incompatible or complex standards, testing regimes, labeling laws etc. NTB is almost impossible to include in economic modeling, which made economic modeling harder and less accurate. Nevertheless, the real impact of the FTA can be much higher or different than economic models can foresee. Furthermore, economic modeling can easily fail to capture the potential for increased regional economic growth by European companies located in Singapore, using Singapore as a platform for further expansion into ASEAN, which represents a pattern that will probably continue and accelerate after the FTA takes effect.[45]

At the same time, The EUSFTA will be a pivotal addition to Singapore's network of over 20 FTAs and is expected to yield significant benefits for Singapore exporters and investors, as well as Singapore-based companies. It will provide greater market access and protection for Singapore exporters and investors growing their business in the EU. Singapore-based companies exporting to Europe stand to enjoy a myriad of benefits like tariff concessions, preferential access to specific sectors, faster entry into EU markets and enhanced intellectual property rights protection.[46] Furthermore, Europe and Singapore

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[44] European Commission's Directorate (The economic modelling was carried out by Zornitsa Kutlin Dimitrova and Csilla Lakatos), '*The economic impact of EU-Singapore Free Trade Agreement'; (September* 2013).

[45] Deborah Elms, text taken from: 'Australia, the European Union and the New Trade Agenda', edited by Annmarie Elijah, Don Kenyon, Karen Hussey and Pierre van der Eng, published 2017 by ANU Press, The Australian National University, Canberra, Australia;

[46] Ministry of Trade and Industry, 'A guide for Singapore-based companies to understanding the EUSFTA', < https://www.mti.gov.sg/MTIInsights/SiteAssets/Pages/EUSFTA/EUSFTA%20Guide%20for%20SG%20Businesses.pdf >, accessed 28 December 2017.

wish to strengthen their relationship further and are convinced that the EUSFTA will create a new climate for the development of trade and investment between the two contracting parties and that the EUSFTA thus enhances the competitiveness of companies in the global market.[47] After all, besides all benefits, the most considerable advantage of the EUSFTA, for the European side, is forming a base for the broader regional agreement with the ASEAN. To sum up, even though the benefits from a bilateral agreement may be lopsided for the Singapore side, the European Parliament and member states have recognized that the benefits from the expansion of an FTA to encompass all of the ASEAN will likely be substantial for the European companies.[48]

[47] Roxanne Hofman, 'What are the main benefits of the EUSFTA for foreign', (Banning Legal Tax, 4th November 2016), < http://banning-legal.sg/what-are-the-main-benefits-of-the-eu-singapore-free-trade-agreement-for-foreign-investors/ >, accessed 1 January 2018;

[48] Deborah Elms, text taken from: 'Australia, the European Union and the New Trade Agenda', edited by Annmarie Elijah, Don Kenyon, Karen Hussey and Pierre van der Eng, published 2017 by ANU Press, The Australian National University, Canberra, Australia;

Chapter III

The opinion of the Court of Justice of the European Union (2/15)

As a ‘new generation' agreement, the EUSFTA raises complex legal and political considerations. A central issue was, as already mentioned, whether the EU has the competence to conclude this agreement. The Union's institutions opinions were divided. 'The view of the Commission is that the EU is exclusively competent to conclude the whole agreement. In general, the European Parliament supports this view. By contrast, the Member States and the Council argue that the agreement should not be concluded as an EU-only agreement, as certain aspects of it fall within the shared competence of the EU and its Member States or within the latter's exclusive competence.' Thus, on 10 July 2015 the European Commission submitted the request for an Opinion from the ECJ under Article 218(11) TFEU with respect to the allocation of competence between the EU and its Member States for the conclusion of the agreement.[49]

The request for an opinion was worded as follows: ‘Does the Union have the requisite competence to sign and conclude alone the Free Trade Agreement with Singapore? More specifically,

1. Which provisions of the agreement fall within the Union’s exclusive competence?
2. Which provisions of the agreement fall within the Union’s shared competence? And
3. Is there any provision of the agreement that falls within the exclusive competence of the Member States?’ [50]

[49] Cambridge International Law Journal, Edward Elgar Publishing, and (February 26, 2017); ‘EU-Singapore FTA: “Mixed” feelings’, < http://cilj.co.uk/2017/02/26/eu-singapore-free-trade-agreement-mixed-feelings/ >, accessed 15 January 2018.

[50]Opinion 2/15 of the Court (Full Court) on the Competence for Conclusion EU-Singapore FTA (16 May 2017), ECLI:EU:C:2017:376, (Paragraph 1)

The Commissions view was that the EU has exclusive competence to sign and conclude the agreement and argue that, 'with the sole exception of those concerning cross-border transport services and non-direct foreign investment, fall within the scope of the common commercial policy as defined in Article 207(1) TFEU and, therefore, within the European Union's exclusive competence pursuant to Article 3(1) (e) TFEU. On the other hand, the Council and the Member States, contend that certain provisions of the agreement do not fall under the exclusive competence of the EU, meaning that the agreement has characteristics of a 'mixed agreement'. The Council and the Member States submitted observations to the Court concerning environmental protection, social protection and intellectual property protection, set out in Chapters 7, 11 and 13 of the envisaged agreement, should fall within the competences shared between the European Union and the Member States in those fields. Moreover, they stated that the envisaged agreement contains provisions which fall within competences of the Member States alone. Furthermore the Council and MS also claimed that FTE Treaty does not confer any competence on the EU in the field of investment[51]

1) AG Opinion in brief

Before the official ECJ opinion, on 21 December 2016, the Advocate General (the 'AG') Eleanor Sharpston QC brought some 'mixed news' for the EUSFTA. She opined that the EU does not have exclusive competence to conclude the EU-Singapore FTA, which should be concluded as a 'mixed agreement'. [52] As a matter of fact, this is not the first time the European Commission has faced this kind of situation. 'The recently ratified Comprehensive Economic and Trade Agreement between the EU and Canada (CETA) confronted a similar obstacle by acknowledging that CETA was a mixed agreement and therefore required approval from the Member States. This resulted in a political stand-off

[51] Opinion 2/15 of the Court (16 May 2017), ECLI:EU:C:2017:376, (Paragraphs 12,13,18, 19, 20)

[52] Cambridge International Law Journal, Edward Elgar Publishing, and (February 26, 2017); 'EU-Singapore FTA: "Mixed" feelings', < http://cilj.co.uk/2017/02/26/eu-singapore-free-trade-agreement-mixed-feelings/ >, based on' Opinion of Advocate General Sharpston' delivered on 21 December 2016; Opinion Procedure 2/15 initiated following a request made by the European Commission, accessed 15 January 2018;

with the little-known parliament of Wallonia (a federal region of Belgium) and various concessions being made before approval was eventually obtained.'

According to the AG, the EU should conclude the FTA jointly with its Member States, as several parts of the agreement fall within the sphere of their shared competence.' Moreover, The AG generally agreed with the Member States and the Council and held that the EU-Singapore FTA should be concluded as a ‘mixed agreement' and not as an ‘EU-only' agreement.' The AG pointed out that the EU may conclude agreements on its own in the areas of its exclusive competence and jointly with the MS when the competence is shared or remains with the Member States. As regards trade agreements, it should be noted that trade policy falls within the exclusive external competences of the EU under Article 207 TFEU relating to common commercial policy. Accordingly, competence to conclude a pure trade agreement with a third state lies within the EU. However, often the exclusive competence of the EU does not cover the entire scope of the agreement. That is a particular case in the new generation of FTAs which do address not only trade-related issues but also enclose a variety of concerns, ranging from sustainable development to labor rights and investment protection. In these cases, the use of the mixed form is unavoidable.

The AG analyses the chapters of the agreement one by one and asses with a review of the legal framework regulating the division of competences. She addresses the allocation of competences in detail and identifies components of the agreement that falls within the exclusive competences of the EU, the EU's shared competences with its Member States, and within the Member States' exclusive competences. She stated that for the most of the chapters of EUSFTA the EU has exclusive competence, except for: (i) trade in air transport services, marine transport services, and transport by inland waterway, including related services; types of investment other than foreign direct investment; government procurement pertaining to transport and related services; (iv) non-commercial aspects of IP rights; (v) fundamental labour and environmental standards; (vi) dispute settlement, mediation and transparency mechanisms, where the EU has shared competence with the member states.

Therefore, she concluded that since not all provisions fall within the EU's exclusive competence, the agreement must be concluded jointly by the EU and its Member States.[53]

However, the distinction between EU-only and mixed agreements is significant not only for the relations between the EU and its Member States, but also for their relations with third states. Even though the AGs opinion is not binding, ECJ usually takes a similar approach to the AG.

2) EUCJ analysis of the Commitments

On 16 May 2017, the Court finally delivered the opinion. The opinion relates only to whether the envisaged agreement can be signed and concluded by the EU alone, or should it be concluded as a 'mixed agreement' by EU and each of its MS. 'It is submitted that the provisions relating to the field of transport contained in Chapter 8 of the envisaged agreement fall within the common transport policy. Contrary to the assertions of the Commission and the Parliament, those provisions, for the most part, cannot affect common rules or alter their scope, within the meaning of Article 3(2) TFEU. They therefore fall not within the exclusive competence of the European Union referred to in that provision of the FEU Treaty, but within a competence shared between the European Union and the Member States according to Article 4(2)(g) TFEU.[54]

Nevertheless, it must be examined whether the provisions of the envisaged agreement fall within the exclusive competence of the European Union, a competence shared between the EU and the MS, or competence of the Member States alone. The opinion of the Court is related only to the question of competence, it is entirely without prejudice to the question whether the agreement's content is compatible with EU law. Additionally, it should be examined to what extent the agreement's provisions fall within the exclusive competence of the EU. [55] According to Article 3(1) (e) TFEU, the European

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[53] CILJ, Edward Elgar Publishing, and (February 26, 2017); 'EU-Singapore FTA: "Mixed" feelings', < http://cilj.co.uk/2017/02/26/eu-singapore-free-trade-agreement-mixed-feelings/ >, based on' Opinion of

[54] Ibid

[55] Opinion 2/15 of the Court (16 May 2017), ECLI:EU:C:2017:376;

Union is to have exclusive competence in the area of the common commercial policy. Moreover, as set out in Article 207(1) TFEU, the common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Unions external action. [56] Thus, it must be established whether the commitments contained in that agreement are intended to promote, facilitate or govern such trade and have direct and immediate effects on it, since only the parts of the envisaged agreement that display a specific link with trade between the European Union and the Republic of Singapore fall within the field of the common commercial policy.[57] The CJEU started its analysis by examining what parts of the EUSFTA fall within the common commercial policy, defined in Article 207(1) of the TFEU, which, pursuant to Article 3(1) (e) TFEU, belongs to the (explicit) exclusive competence of the European Union.[58]

The commitments contained in the envisaged agreement relate to:

- Market access
- Investment protection
- Intellectual property protection,
- Competition and
- Sustainable development.

[56] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU) [2012] C 326/01;

[57] Opinion 2/15 of the Court (16 May 2017), ECLI:EU:C:2017:37.

[58] Van Bael & Bellis, Client Alert Memorandum (17 May 2017), < https://www.vbb.com/media/Insights_News/VBB_Memorandum_-_Opinion_2-15.pdf > accessed 1March 2018;

Regarding the first question, contained in the request for the opinion, which provisions of the agreement fall within the Union's exclusive competence, the Court established:

a) Regarding the market access

'Chapter 2, 'National Treatment and Market Access for Goods' is composed of 'tariff and trade [commitments] relating to trade in goods', within the meaning of Article 207(1) TFEU. It therefore falls within the exclusive competence of the European Union pursuant to Article 3(1) (e) TFEU.[59] The Article 3(1) (e) states that the Union shall have exclusive competence in the following areas:

- customs union;
- the establishing of the competition rules necessary for the functioning of the internal market;
- monetary policy for the Member States whose currency is the euro;
- the conservation of marine biological resources under the common fisheries policy;
- Common commercial policy.[60]

The Court concluded that chapter 3, 'Trade Remedies' relates to 'measures to protect trade', within the meaning of Article 207(1) TFEU. It therefore also falls within the exclusive competence of the European Union referred to in Article 3(1) (e) TFEU. Moreover, the Court stated chapters 4 and 5 entitled 'Technical Barriers to Trade' and 'Sanitary and Phytosanitary Measures' are specifically intended to facilitate trade in goods between the European Union and the Republic of Singapore. Furthermore, the provisions of these two chapters and the specific commitments, which are annexed there to ease the conditions considerably for the import of those goods and as such, have direct and immediate effects on international trade. Consequently, these chapters satisfy the criteria

[59] Opinion 2/15 of the Court (16 May 2017), ECLI:EU:C:2017:37;

[60] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU) [2012] C 326/01.

recalled in paragraph 36 of this opinion and fall within the exclusive competence of the European Union pursuant to Article 3(1) (e) TFEU.[61]

Chapter 6, entitled ‘Customs and Trade Facilitation' is essentially intended to facilitate trade in good between parties. Therefore, it satisfies criteria and falls within the exclusive competence of the European Union pursuant to Article 3(1) (e) TFEU. Chapter 8, entitled ‘Services, Establishment and Electronic Commerce' is principally intended to open up the Singapore market, to a certain extent, to EU service providers, and vice versa. It is therefore intended to promote, facilitate and govern trade. However, this chapter was a controversial issue in the proceedings, concerning the extent to which the commitments (services, establishment and electronic commerce) fall entirely within the common commercial policy.[62] While trade in services in general is a matter that is expressly identified in Article 207(1) TFEU, the CJEU observed that all four modes of services, corresponding to the classification used by WTO covered by the World Trade Organization (WTO) agreements: 'the supply of a service from the territory of one WTO Member into the territory of another Member, the supply of a service in the territory of one Member to a consumer of another Member, the supply of a service by a service provider of one Member through commercial presence in the territory of another Member, supply of a service by a service provider of one Member through presence of natural persons of a Member in the territory of another Member. - all fall within the common commercial policy.[63] (Opinion 1/08 (*Agreements modifying the Schedules of Specific Commitments under the GATS*) of 30 November 2009, EU: C: 2009:739, paragraphs 4, 118 and 119).

Notwithstanding, the competence of the EU to approve Chapter 8 of the envisaged agreement cannot be covered by Article 3(1) (e) TFEU alone. 'Even after the entry into force of the Treaty of Lisbon and the widening of the definition of the CCP resulting from that treaty amendment, Article 207(5) TFEU continues to exclude international agreements

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[61] Opinion 2/15 of the Court (16 May 2017), ECLI:EU:C:2017:37;

[62] Ibid.

[63]' Van Bael & Bellis, Client Alert Memorandum (17 May 2017), < https://www.vbb.com/media/Insights_News/VBB_Memorandum_-_Opinion_2-15.pdf > accessed 1March 2018.

in the field of transport from the scope of the common commercial policy.[64] Indeed, the concept of services ‘in the field of transport' encompasses "not only transport services in themselves, but also other services, that are inherently linked to a physical act of moving persons or goods from one place to another by a means of transport. "In the present instance, the services consisting in moving persons or goods from one place to another are listed in point 11 of Appendices 8-A-1 and 8-B-1 and point 16 of Appendices 8-A-2 and 8-A-3 in the annexes to Chapter 8 of the envisaged agreement. They relate to international maritime transport, rail transport, road transport and internal waterways transport; on the other hand, domestic and international air transport services are not covered by the agreement, as stated in Articles 8.3(c) and 8.9(e) thereof.[65]

Further, CJEU found that 'aircraft repair and maintenance services during which an aircraft is withdrawn from service, the selling and marketing of air transport services, and computer reservation system services do not fall within the scope of the transport exception and therefore belong to the common commercial policy. Since aircraft repair and maintenance services during which an aircraft is withdrawn from service, the selling and marketing of air transport services and ‘computer reservation system services consequently do not fall within Article 207(5) TFEU, they are among the services covered by Article 207(1) TFEU.[66]

To sum up, the Court stated that, according to the provisions 50-68 of this opinion Chapter 8 of the envisaged agreement falls within the common commercial policy, except in so far as the commitments which it contains relating to the services listed in points 11 and 12 of Appendix 8-A-1, points 16 and 17 of Appendices 8-A-2 and 8-A-3 and point 11 of Appendix 8-B-1 in the annexes to that chapter.

Nevertheless, as regards other transport and transport related services, it was not possible to conclude that those parts of chapter 8 fall within the exclusive competence of the EU, when it comes to common commercial policy. In particular, the CJEU examined

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[64]' Ibid

[65]" Opinion 2/15 of the Court (Full Court) on the Competence for Conclusion EU-Singapore FTA (16 May 2017), ECLI:EU:C:2017:376, (Paragraphs 61, 62).

[66]' Opinion 2/15 of the Court (Full Court) on the Competence for Conclusion EU-Singapore FTA (16 May 2017), ECLI:EU:C:2017:376, (Paragraphs 64, 68).

whether, pursuant to Article3 (2) TFEU, the provisions of the EUSFTA relating to international maritime transport services, rail transport services, road transport services, internal waterway transport services, and services are inherently linked to transport services fall within the EU's (implied) exclusive competence on the grounds that those provisions, in essence, affect the common rules adopted by the European Union as regards those services. Taking into account the previous case-law, the CJEU concluded that, as regards international maritime transport services, rail transport services and road transport services, the European Union had already adopted and largely cover those common rules. Additionally, the CJEU added that the commitments concerning internal waterways transport are of such limited scope that they should not be taken into account when it comes to deciding on the allocation of competences with respect to Chapter 8. As regards the commitments in the EUSFTA relating to public procurement in the sector of transport services, the CJEU also found that those commitments fall, on the same basis, within the exclusive competence of the European Union.[67]

Lastly, the market for goods in the envisaged agreement is also governed by Chapters 7 and 10. Chapter 7 'Non-Tariff Barriers to Trade and Investment in Renewable Energy Generation' is intended to govern and facilitate market access in the sector of energy generation from sustainable non-fossil sources. In other words it is intended to open up the market of each of the parties. 'Therefore, it falls within the exclusive competence of the EU pursuant to Article 3(1) (e) TFEU. Chapter 7'Non-Tariff Barriers to Trade and Investment in Renewable Energy Generation' falls within the exclusive competence of EU since it opens up the market of each of the Parties and has a direct and immediate effect on trade in goods and services between EU and Singapore.[68] Chapter 10, 'Government Procurement' also falls within the exclusive competence of the EU in as regards the common commercial policy. However, the exclusive competence is limited to

[67] Van Bael & Bellis, Client Alert Memorandum (17 May 2017), < https://www.vbb.com/media/Insights_News/VBB_Memorandum_-_Opinion_2-15.pdf > accessed 1March 2018;

[68]' Opinion 2/15 of the Court (Full Court) on the Competence for Conclusion EU-Singapore FTA (16 May 2017), ECLI:EU:C:2017:376, (Paragraphs 74, 77).

the commitments under Chapter 10 of the EUSFTA that do not concern transport services falling outside the scope of the common commercial policy.[69]

b) Regarding the commitments relating to investment protection

To begin with, this chapter was the most interesting one, since it is apparent from the Art 9.2 in Chapter 9 that this chapter relates to both direct and to any other type of investment. According to Art. 207(1) TFEU, EU acts concerning the 'foreign direct investment' certainly does fall within the common commercial policy. Consequently, that means that the EU has exclusive competence, pursuant to Article 3(1) (e) TFEU, to approve any commitment vis-à-vis a third State relating to investments made by natural or legal persons of that third State in the European Union and vice versa which enable effective participation in the management or control of a company carrying out an economic activity.[70] Nevertheless, the CJEU interpreted, that, by the framers of the EU Treaty, the inclusion of "foreign direct investment" in the definition of the common commercial policy did not intend to include other types of foreign investment in the common commercial policy.[71] The Council and some of the Member States submitted observations to Court that Chapter 9 cannot fall within the common commercial policy, given that that chapter concerns only the protection of direct investments and not their admission, even if it relates only to the direct investment.

Indeed, the only substantive provisions of Chapter 9 are contained in Sector A entitled 'Investment Protection' relating only to the treatment of investments after their admission under the legislation in force in the Republic of Singapore or the EU. After all, according to Art. 9.2 Thereof, the admission of investments falls outside the scope of the envisaged agreement. Furthermore, in so far as the provisions of Section A of Chapter 9 of

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[69] Van Bael & Bellis, Client Alert Memorandum (17 May 2017), < https://www.vbb.com/media/Insights_News/VBB_Memorandum_-_Opinion_2-15.pdf > accessed 1March 2018;

[70] Opinion 2/15 of the Court (Full Court) on the Competence for Conclusion EU-Singapore FTA (16 May 2017), ECLI:EU:C:2017:376, (Paragraph 82).

[71] Van Bael & Bellis, Client Alert Memorandum (17 May 2017), < https://www.vbb.com/media/Insights_News/VBB_Memorandum_-_Opinion_2-15.pdf > accessed 15 March 2018; Opinion 2/15 of the Court (Full Court) on the Competence for Conclusion EU-Singapore FTA (16 May 2017), ECLI:EU:C:2017:376, (Paragraph 85, 86, 95)

the envisaged agreement relate to direct investment, they are such as to have direct and immediate effects on trade.[72] To sum up, the provisions of Section A of Chapter 9 of the agreement fall within the common commercial policy in so far as they relate to foreign direct investment between the European Union and the Republic of Singapore.

However, regarding the Section B that relates to the non-direct investment the Court found the findings not sufficient to conclude that the EU has the competence. Since the Commission's view was that the EU should have exclusive competence, the Commission had argued that the EU should have exclusive competence on the basis of Article 3(2) TFEU, in particular on the same ground on which the CJEU concluded that the European Union enjoys excl competence as regards the commitments in, in particular, Chapter 8 of the EUSFTA on transport and transport related services.[73] However, the Court has rejected the Commission's interpretation. To clarify, the Commission's understanding was that EU would enjoy excl competence because the commitments under the EUSFTA regarding non-direct investment would affect the "common rules" in Article 63 TFEU concerning free movement of capital. Basically, the Commission was relying mostly on the case-law[74], according to which, even if there is no contradiction with common EU rules, an agreement concluded by the EU may 'affect' those rules, within the meaning of Article 3(2) TFEU, the Commission submits that Section A of Chapter 9 of the envisaged agreement may affect Article 63 TFEU and accordingly falls within the exclusive competence of the EU referred to in Article 3(2) TFEU. In contrary, Council and the MS have submitted observations to the Court, that case-law cannot be applied to a situation where the EU rule referred to is a provision of the FEU Treaty and not a rule adopted on the basis of the FEU Treaty.[75]

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[73] Van Bael & Bellis, Client Alert Memorandum (17 May 2017), < https://www.vbb.com/media/Insights_News/VBB_Memorandum_-_Opinion_2-15.pdf > accessed 15 March

[74] Opinion 1/03 (*New Lugano Convention*) of 7 February 2006, EU: C: 2006:81, paragraphs 143 and 151 to 153; Opinion 1/13 (*Accession of third States to the Hague Convention*) of 14 October 2014, EU: C: 2014:2303, paragraphs 84 to 90; and judgment of 26 November 2014, *Green Network*, C-66/13, EU: C: 2014:2399, paragraphs 48 and 49).

[75] Opinion 2/15 of the Court (Full Court) on the Competence for Conclusion EU-Singapore FTA (16 May 2017), ECLI:EU:C:2017:376, (Paragraph 82).

In brief, since the case-law[76], which requires a rule of primary EU law cannot be applied in this case due to the fact that the term "common rules" had previously been interpreted as, in essence, secondary law adopted on the basis of the Treaties and not primary law. Moreover, since the conclusion of the agreement is not capable of affecting EU acts or altering their scope, the Court states in its opinion that the EU does not have exclusive competence.[77] However, 'the Court did accept that such commitments fall within the shared competences of the European Union because the conclusion of an international agreement relating to non-direct investment may prove necessary in order to achieve, within the framework of the European Unions policies, the establishment of free movement of capital and payments.[78] To conclude, this chapter had been the most interesting but, at the same time, the most controversial one. Given these points, the Court decided that the EU had the competence regarding the Sector B (direct investments), but does not have the excl. competence regarding Sector A (non-investment investments).

c) The commitments relating to intellectual property protection

CJEU gathered that the provisions in that chapter relating to copyright and related rights, trade marks, geographical indications, designs, patents, test data and plant varieties consist of both existing multilateral international obligations and bilateral commitments between the EU and Singapore. ‘The provisions of Chapter 11 are designed to ensure entrepreneurs of the EU and Singapore to enjoy, in the territory of the other Party, standards of protection of intellectual property rights displaying a degree of homogeneity

[76] *Commission* v *Council* (22/70, EU: C: 1971:32), judgment of 31 March 1971 that provisions of secondary law which the Community, now the European Union, has progressively laid down are ‘common rules’ and that, when the European Union has thus exercised its internal competence, it must, in parallel, have exclusive external competence in order to prevent the Member States from entering into international commitments that could affect those common rules or alter their scope.

[77] The Court of Justice of the European Union, Press release No 52/17, Luxemburg, 16 May 2017, < https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-05/cp170052en.pdf>

[78] Van Bael & Bellis, Client Alert Memorandum (17 May 2017), < https://www.vbb.com/media/Insights_News/VBB_Memorandum_-_Opinion_2-15.pdf > accessed 1March 2018.

and contribute to their participation on an equal footing in the free trade of goods and services between the European Union and the Republic of Singapore.'[79]

Moreover, this conclusion applies also to the provisions of the EUSFTA obliging the parties to the EUSFTA to provide for certain categories of procedures and civil judicial measures enabling persons concerned to rely on and enforce their IP rights just as on the provisions of the EUSFTA requiring each party to that agreement to establish methods for identifying counterfeit or pirated goods by the customs authorities and to provide for the possibility for holders of IP rights to obtain suspension of the release of those goods if infringement or piracy is suspected.[80]

Finally, it is clear that the protection of IP rights plays in trade in goods and services in general, and in combatting unlawful trade in particular, the provisions of Chapter 11 of the envisaged agreement are such as to have direct and immediate effects on trade between the European Union and the Republic of Singapore.[81] As regards moral rights, the CJEU came to the conclusion 'that the reference in the EUSFTA to multilateral agreements including moral rights is insufficient to conclude that moral rights form, in their own right, a separate component of the EUSFTA'. Because of that, the Court did not reach any separate conclusions on the allocation of competences with respect to moral rights. Therefore, the entire chapter of the EUSFTA on intellectual property protection falls within the European Union's exclusive competences.

d) The commitments regarding competition

When it comes to the competition chapter, both Parties are obliged, by Art 12.1.2 to maintain legislation which effectively addresses agreements between undertakings, decisions by associations of undertakings and concerted practices having as their object or effect the prevention, restriction or distortion of competition, as well as abuses of dominant

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[79] Opinion 2/15 of the Court (Full Court) on the Competence for Conclusion EU-Singapore FTA (16 May 2017), ECLI:EU:C:2017:376, (Paragraphs 121,122)

[80] Van Bael & Bellis, Client Alert Memorandum (17 May 2017), < https://www.vbb.com/media/Insights_News/VBB_Memorandum_-_Opinion_2-15.pdf > accessed 1March 2018;

[81] Opinion 2/15 of the Court (Full Court) on the Competence for Conclusion EU-Singapore FTA (16 May 2017), ECLI:EU:C:2017:376, (Paragraph 127)

positions and concentrations between undertakings resulting in a substantial lessening of competition or significantly impeding it, in so far as those agreements, decisions, practices, abuses and concentrations affect trade between the European Union and the Republic of Singapore.[82] The CJEU found that this Chapter, that also includes provisions of subsidies, forms a liberalisation of trade between the EU and Singapore. Taking this all into account, the CJEU held that that entire chapter falls within the exclusive competence of the European Union with respect to the common commercial policy.

e) The commitments concerning sustainable development

Chapter 14 is one of the crucial chapters in the envisaged agreement, since, as the Parliament pointed out, the aim is that this agreement be a ‘new generation' trade agreement that will, in addition to classical elements in trade agreements (such as reduction o tariff and non-tariff barriers to trade in goods and services), encompass other relevant, or even essential aspects to international trade. Even more, the CJEU emphasized that in Art 207(1) TFEU expressly provide that ‘the common commercial policy shall be conducted in the context of the principles and objectives of the Unions external action', which include principles and objectives relating to sustainable development linked to the preservation and improvement of the quality of the environment and the sustainable management of global natural resources, specified in Art 21(1) and (2) TFEU. Consequently, the CJEU found that the objective of sustainable development forms an integral part of CCP. In conclusion the Court held that covers, in particular, environmental protection and social protection of workers, and also the interpretation, mediation and dispute resolution of the commitments found in that chapter, fall within CCP.[83]

[82] Opinion 2/15 of the Court (Full Court) on the Competence for Conclusion EU-Singapore FTA (16 May 2017), ECLI:EU:C:2017:376, (Paragraph 132).

[83] Opinion 2/15 of the Court (Full Court) on the Competence for Conclusion EU-Singapore FTA (16 May 2017), ECLI:EU:C:2017:376, (Paragraphs 140, 142, 147).

f) Competence to approve the institutional provisions of the envisaged agreement

The Court came to the conclusion that the institutional provisions of the EUSFTA on: exchange of information, notification, verification cooperation, mediation, decision-making power and transparency, in the EUSFTA cannot have an effect on the nature of the competence of the European Union to conclude that agreement, since such provisions are ancillary to the substantive provisions which they accompany. Hence, when it comes to the allocation of competences to these provisions, it must be settled in parallel with the conclusions on the exclusive or shared competence with respect to those substantive provisions. That conclusion also applied to the EUSFTA provisions on investment.[84]

g) Dispute settlement

Article 9.11.2 (a) states that not only EU, but also MS of the EU can be parties to disputes. Thus, the Court addressed the provisions on dispute settlement between the EU and Singapore (as distinct from the provisions on investor-state dispute settlement) separately. Accenting that the conclusions as regards those provisions concerned only the allocation of competences and not their material compatibility with the Treaties, the CJEU confirmed that the competence of the EU in the field of international relations and its capacity to conclude international agreements necessarily entails the power to submit to the decisions of a court, which is created or designated by such agreements to interpret and apply their provisions.[85] Considering that the provisions on investor-state dispute resolution, remove disputes from the jurisdiction of the courts of the Member States or EU, they cannot be established without the MS's consent. Moreover, concerning the fact that Section B of Chapter 9 includes a provision under which the host State irrevocably consents to international arbitration, rather than the jurisdiction of the domestic courts, means that the Member 'States must provide their express approval. The fact that any such

[84] Van Bael & Bellis, Client Alert Memorandum (17 May 2017), < https://www.vbb.com/media/Insights_News/VBB_Memorandum_-_Opinion_2-15.pdf > accessed 1March 2018.

[85] Ibid.

disputes would concern provisions that are within the exclusive competence of the EU did not mean that the dispute resolutions provisions were purely ancillary.[86]

Finally, that means that approval of Sector B of Chapter 9 falls not within the exclusive competence of the European Union, but within a competence shared between the European Union and the Member States.[87] Additionally, the Court highlighted that it had not considered the compatibility with EU law of investor-State dispute mechanisms more generally, since the request for an Opinion from the European Commission did not include this question and so it was not within the scope of the issues to be determined.

h) Summery on the Conclusions for the Opinion 2/15

With regard to all considerations, the Court decided that the envisaged agreement falls within the exclusive competence of the EU, with the exception of the following provisions, which fall within a competence shared between the European Union and the Member States:

- the provisions of Section A (Investment Protection) of Chapter 9 (Investment) of that agreement, in so far as they relate to non-direct investment between the European Union and the Republic of Singapore;
- the provisions of Section B (Investor-State Dispute Settlement) of Chapter 9; and
- the provisions of Chapters 1 (Objectives and General Definitions), 14 (Transparency), 15 (Dispute Settlement between the Parties), 16 (Mediation Mechanism) and 17 (Institutional, General and Final Provisions) of that agreement, in so far as those provisions relate to the provisions of Chapter 9 and to the extent that the latter fall within a competence shared between the European Union and the Member States.[88]

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[86] Baker & McKenzie, 'EU Court Thwarts Prompt Ratification of EU-Singapore Free Trade Agreement' (22 April 2017), < http://www.bakermckenzie.com/en/insight/publications/2017/05/eu-court-thwarts-prompt-ratification/ > accessed 2 May 2018.

[87] Opinion 2/15 of the Court (Full Court) on the Competence for Conclusion EU-Singapore FTA (16 May 2017), ECLI:EU:C:2017:376, (Paragraphs 298, 304).

[88] Ibid

Chapter IV

How will this Opinion affect future Agreements?

As already mentioned, EUSFTA is a ‘new generation agreement' since it encompasses a large area of topics, which were not a part of the regular FTA's before (for instance Investment). That is one of the main reasons why this agreement and Opinion of the Court on the matter are so important. Furthermore, even before the Court finished the Opinion, it was obvious that this Opinion will affect any future FTA, and that the consequences of the Opinion will go far beyond EUSFTA. In addition, what added the importance to this Opinion, it the fact that after the Brexit, a similar agreement should be signed. The Court's decision will take a great impact on the signing and implementation of this EU and UK agreement. Even though the Opinion does not address the issue of material compatibility of the provisions of EU-Singapore FTA (such as the investor-state dispute settlement mechanism) with EU Treaties, this Opinion gave directions for dealing with comprehensive trade agreements in future. With regard to the Opinion, that this agreement should be concluded as a ‘mixed' agreement and that certain part of the agreement requires the participation of the MS, we can say that this Opinion will determine the path of future agreements. In fact, the joint conclusion of future FTAs will render the negotiations with third states more cumbersome and time-consuming.[89] Considering how many MS will have to ratify the agreement, it is obvious that the agreement will need more time to enter into force.

Furthermore, each MS will, 'in essence, be able to "block" the finalization of the agreement, especially in view of the fact that each Member State will need to separately ratify the treaty in accordance with its own internal procedure, which may include a referendum or ratification by all federal states'. Notwithstanding, the participation of Member States will certainly enhance compliance with the agreement and lead to its smoother implementation of the agreement. Considering that the process of ratification and

[89] Cambridge International Law Journal, Edward Elgar Publishing, and (February 26, 2017); ‘EU-Singapore FTA: "Mixed" feelings,' < http://cilj.co.uk/2017/02/26/eu-singapore-free-trade-agreement-mixed-feelings/ >, based on’ Opinion of Advocate General Sharpston.

implementation of the agreements will be complicated and slow, there is also a presumption that EU will be prone to conclude less ambitious agreements in the future in order to avoid the mentioned complications. Since this new generation treaties contain a handful of provisions that are not related to trade, including environmental and labour standards, whose provisions fall within the EU's shared competences with its Member States, it is very possible that 'EU will limit itself to the conclusion of pure trade agreements in order to avoid the negative consequences of mixity.[90] Notwithstanding, on the question

'**Will the Commission use this possibility to split trade agreements to avoid submitting them to national ratification?** The Commission's answer was:

'No. Trade agreements are made with citizens and their representatives, Parliaments –not against them. 'The EU process for trade agreements is fully democratic, and the European Commission has over the past two years taken big leaps forward to make the negotiating process of trade agreements much more transparent and inclusive, involving national Parliaments and civil society. The process is now comparable to the process used for adopting EU regulations or directives for the EU single market. Even in the case of these EU-only trade agreements, ministers representing their Member State in the Council are fully accountable to their national Parliaments in accordance with the Constitution of the Member State concerned. National governments are free to decide how to ensure that their own legislatures are adequately involved in such negotiations in accordance with their own national rules and procedures. The Commission encourages all Member States to involve their Parliaments in the EU decision-making process for trade policy as early as possible in the process.'[91]

Essentially, when it comes to the question in what direction will the architecture of trade agreements go, whether this 'new generation' agreements will gain more popularity,

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[90] CILJ, Edward Elgar Publishing, and (February 26, 2017); 'EU-Singapore FTA: "Mixed" feelings,' < http://cilj.co.uk/2017/02/26/eu-singapore-free-trade-agreement-mixed-feelings/ >, based on' Opinion of Advocate General Sharpston

[91] European Commission; 'The Opinion of the ECJ on the EUSFTA and the Division of Competences in Trade Policy' (Factsheet) September 2017, < http://trade.ec.europa.eu/doclib/docs/2017/september/tradoc_156035.pdf >

regardless of more complicated ratification process or EU will try to conclude less ambitious agreements in the future in order to avoid complications, it is still left to see. That is to say, as the Commission said:

'Following the Court's Opinion, the debate on the best architecture for EU trade agreements and investment protection agreements is ongoing. The collective aim of the European Institutions (the Commission, the Council, and the European Parliament) will be to continue this discussion and jointly find the best solution to this question.'[92]

a) Impact of the Opinion on the future EU-UK agreement after Brexit

Nevertheless, what is intriguing at this point is the effect of the Opinion to an agreement with the UK after the Brexit negotiations. It would be hard to conceive that UK will avoid entering into the FTA with EU, since they are connected in every way, and taking into consideration the membership in EEA or EFTA. Moreover, the UK convey that trade agreement should be put in place relatively quickly to avoid disruption to business and allow trade to continue to flow between the UK and EU.

When the UK eventually decide to pursue the conclusion of a 'new, comprehensive, bold and ambitious' free trade agreement with the EU, that will also have to be concluded in mixed form if it contains similar elements with the EU-Singapore FTA. If that happens, and UK and EU decide to compose agreement such as EUSFTA it is clear that the negotiations will be intense and burdensome.[93] In fact, the ratification process could easily be prolonged up to a year. Additionally, what complicates the ratification, is the highlighted role of national parliaments as veto players in future Brexit negotiations. 'If only one Member State put a veto, the entire agreement making a swift negotiation process very unlikely as all 27 Member States would need to have agreed to the terms for it to have any chance of being approved', which is not impossible. For example, only recently, the Belgian region of Wallonia's Parliament held hostage the Comprehensive Economic and

[92] European Commission; 'The Opinion of the European Court of Justice on the EUSFTA and the Division of Competences in Trade Policy' (Factsheet) September 2017, < http://trade.ec.europa.eu/doclib/docs/2017/september/tradoc_156035.pdf >

[93] IBID

Trade Agreement between the EU and Canada. However, FTA is not the only option for the solvation of trade relations between EU and UK. Another option would be continued internal market membership through the EEA or an equivalent agreement.

Nonetheless, on the positive side, a clarification on which areas EU has exclusive competence, and which areas are mixed competence, will increase legal certainty for the negotiation of any future mixed trade agreements. When it comes to the possible EU-UK agreement, it is important that the Opinion states that matters purely related to trade should be within the exclusive competence of the EU. Because of that, many areas relevant 'to both the EU and the UK, such as access to the single market or customs duties, can be negotiated directly between the EU and the UK without Member State interference'. This means that it is possible that an FTA could be drafted to avoid the need for Member State approval, which would result in faster process and most likely a more commercially viable agreement. [94] Similarly, after the Opinion was released, the question arose whether this difficult ratification process pushes Brexit negotiators on both sides towards concluding a trade deal within the confines of the EU's exclusive competence in the hope to avoid vetoes from either national governments – much of the CCP can also be agreed by a qualified majority vote rather than unanimity – or their national parliaments. Still, whatever happens, one thing is sure - , the future EU and UK trade agreement is is going to be unique, not only due to highly politicised context of Brexit, but also because that will be the first time the EU works on an agreement with a party, who is such a close trading partner, and with almost identical rules and trading standards. The close relations could make negotiations. In contrast, the political climate, the willingness of both parties and the conditions under which the UK will leave the EU could influence on the approach to, and the extent and depth of, a future trade agreement.

In brief, even though the EU does not has exclusive competence regarding certain matters, it still has the competence to the great extent of matters which could form the

[94] Philip Torbøl, Neil A. Baylis, Nicholas M. Hanna, Sara Aparicio Hill, K&L GATES, 'The EU Singapore Free Trade Agreements Cannot Enter Into Force, EU Court Rules' (14 Jun 2017), < http://www.klgates.com/the-eu-singapore-free-trade-agreements-cannot-enter-into-force-eu-court-rules-06-14-2017/ >, accessed 2 May 2018

basis for an ambitious Brexit trade deal following the UK's withdrawal from the EU.[95] Moreover, it is also not unimaginable for EU and UK to conclude parallel BITs on investment and investor-state dispute resolution, in order to avoid difficulties with ratification. All things considered, there are many solutions to for the EU and UK after Brexit situation, and these solutions are widely discussed. However, that is not the topic of this thesis. Hence it is enough to say that this Opinion had an impact on Brexit, and give the EUSFTA positive publicity.

b) Why is EU interested in Singapore?

The FTA with Singapore was a comprehensive, new generation agreement that caused many difficulties for the EU, but at the same time much attention. Therefore, a few questions arise – First, *Why did the Commission choose the agreement with Singapore?* The Commission gave the following answer:

'The EU-Singapore agreement was the first EU trade agreement after the entry into force of Lisbon Treaty for which a complete draft text was available. It is a comprehensive agreement that included the trade policy areas on which the Commission and the Member States had differences of opinion with regard to competence. The European Union and Singapore concluded their talks on protection of investments on 17 October 2014. This completed the negotiations for the EU-Singapore Free Trade Agreement after its other parts were initialed already in September 2013.'[96] Moreover, next question- *Why is this agreement so important to EU, that the EU put so much effort first in negotiations, and later resolving legal issues*? In order to answer this question, first, we need insight into the EU-ASEAN trade picture. To begin with, the EU is actively engaged with the South East Asian region. The cooperation between EU and ASEAN dates back to 1972. Indeed, trade relations, as well as the economic, political and cultural between these two regions, are enhanced every year. 'Cooperation between the two

[95] Brexit time, Blog at WordPress.com, 'Brexit Implications of Opinion 2/15', < https://brexittime.com/2 017/05/16/brexit-implications-of-opinion-215/ >, accessed 1 May 2018

[96] European Commission; 'The Opinion of the European Court of Justice on the EU-Singapore Trade Agreement and the Division of Competences in Trade Policy' (Factsheet) September 2017, < http://trade.ec.europa.eu/doclib/docs/2017/september/tradoc_156035.pdf >

regions is framed by a biannual ASEAN-EU Trade and Investment Work Program, which is articulated along the following activities:

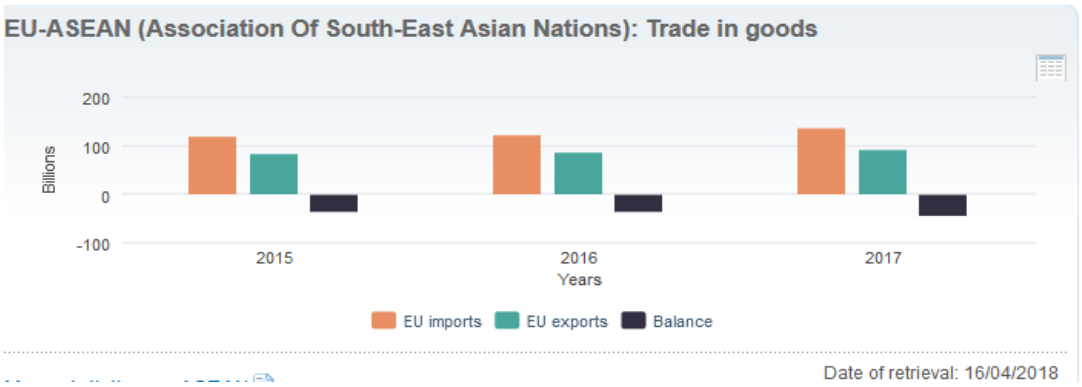
- an EU-ASEAN dialogue, which includes discussions on trade and investment issues at ministerial and senior economic officials levels;
- bi-regional expert dialogue groups;
- cooperation activities;
- Regular organization by the business of ASEAN-EU Business Summits.'[97]

As trading partners, ASEAN and EU are extremely valuable to each other. This is primarily because ASEAN is a 3rd largest trading partner for EU, outside Europe (after the US and China). For instance, the trade in goods and services in 2014 has overcome €246 billion. Meanwhile, the EU is ASEANs 2nd largest trading partner after China, accounting for around 13% of ASEAN trade. Even more, the EU is by far the largest investor in ASEAN countries accounting for 22% of total FDI inflows in the region. EU companies have invested an average €19 billion annually in the region (2012-2014). When it comes to the export, what EU's exports mostly to ASEAN are: chemical products, machinery, and transport equipment. The main imports from ASEAN to the EU are machinery and transport equipment, agricultural products as well as textiles and clothing. In the following picture, on EU-EUSFTA trade in goods, we can see that the trade between two regions is more intense every year. [98]

For example, in the picture below, it is noticeable how important trade between EU and ASEAN is.

[97] Europa.eu, European Commission, 'Association of South East Asian Nations (ASEAN), < http://ec.europa.eu/trade/policy/countries-and-regions/regions/asean/>, accessed 2 May 2018

[98] Ibid



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To summarize, from all above, we can deduct that EU and ASEAN are tremendously connected, especially when it comes to trade. Hence, a trade agreement was undoubtedly prerequisite. Indeed, negotiations with ASEAN started in 2007. However, negotiations were paused, since they comprehended that an agreement with ASEAN as a whole, due to various reasons, such as human rights concerns related to Myanmar/Burma and the lack of consensus among ASEAN members in areas other than trade, was not achievable in the short-term. Thus, European Commission instead chose to focus on an agreement with Singapore and negotiations for a region-to-region FTA with ASEAN were launched. [100]

After all, the question was why Singapore of all ASIAN countries? To begin with, EU and Singapore trade is at a high level, and it is increasing every year. 'For example, in 2016, Singapore was the EU's 16th largest trading partner in goods, with a1.5% share in EU trade. Meanwhile, the EU stands as Singapore's second largest trading partner, after China, representing 11.2% of Singapore's global trade. Total trade in goods between the two countries accounted for €50.8billion in 2016. In 2015, the EU exported €25.6 billion worth of services to Singapore, while imports of services from Singapore amounted €21.5billion. Moreover, Singapore is among the top 10 countries regarding both inward and outward EU FDI stocks. Singapore held €57 billion inward FDI stocks in the EU, for instance in the

[99] The picture was taken from Europa.eu

[100] Baker & McKenzie, 'EU Court Thwarts Prompt Ratification of EU-Singapore Free Trade Agreement' (22 April 2017), < http://www.bakermckenzie.com/en/insight/publications/2017/05/eu-court-thwarts-prompt-ratification/ > accessed 1 May 2018

financial sector, constituting approximately 1% of total extra-EU inward stocks in 2015.'[101] Besides this trade picture, and the fact that there are many more reasons why EU decided that first comprehensive, new generation agreement will be with Singapore. Some of them are:

- Singapore is a prime location for trade and finance activities, in Asia and worldwide.
- Over 11 000 European companies are established in the country, the majority of which use it as a regional hub. Furthermore, Singapore also had a key position in Global Value Chains (GVCs)
- It had already concluded an FTA with the USA
- Lastly, but one of the most important ones, Singapore is the most developed county among ASIAN members.[102]

Finally, among all the reasons listed above, we can conclude that Singapore is not only 'entrance to the ASEAN market' but also the country that is in the process of developing. The trade and economy of this county grow every year. Additionally, many EU companies are located there, and it is successful in the world market. Hence, Singapore, as a developed and promising county, is an excellent choice for first comprehensive FTA, that is going to change the way we see free trade agreements

[101] Author: Kristina Binder, European Parliament, 'Briefing; International Agreements in Progress, EU-Singapore FTA - Stimulus for negotiations in the region ' (June 2017), < http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/607255/EPRS_BRI(2017)607255_EN.pdf >

[102] Author: Kristina Binder, European Parliament, 'Briefing; International Agreements in Progress, EU-Singapore FTA - Stimulus for negotiations in the region ' (June 2017), < http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/607255/EPRS_BRI(2017)607255_EN.pdf

Conclusions

Firstly, it is clear that the EUSFTA caused much confusion and yet, at the same time, much intention. Even though it was initially meant to be only a ‘passage' to the ASIAN, it ended up being a lot more than that. In fact, it became ‘the agreement' that is going to determine the direction of the future agreements of the EU. EUSFTA was a first of ‘new generation agreements,' and as such, it pawned the path for the others agreements to come. ‘As a 'new generation' trade agreement, the EUSFTA in many aspects goes further than current World Trade Organization (WTO) commitments. Moreover, not only does the agreement provide improved access to the Singaporean market, but it is also beneficial for European companies operating from Singapore across the Southeast Asian region.' [103] Furthermore, thanks to this agreement the CJEU delivered the Opinion that solved many legal uncertainties when it comes to the EU exclusive competence. The Opinion and its potential negative impact on future treaty-making reveal that the position of the EU in the international scene is more complex than ever. Indeed, the requirements to conclude EU FTAs in mixed form will lead to lengthier and more demanding trade negotiations with third states, particularly given the Member States’ *de facto* ‘veto’ powers. All these difficulties probably will not bypass the agreement that will probably take place after Brexit, except if EU and UK decide to for separate bilateral agreements.

Moreover, taking into the consederation that the ratification by the Parliaments of all MS is required, and thereby a layer of complexity to the ratification process is added, the possibility that EU will resort to the conclusion of less ambitious trade agreements in the future, excluding provisions related *inter alia* to environmental and labour standards, is not excluded. This would probably result in faster process and most likely a more commercially viable agreement.

It is also important to realize that the EUCJ Opinion relates only to the nature of the competence of the European Union to sign and conclude the envisaged agreement. It is

[103] Author: Kristina Binder, European Parliament, ‘Briefing; International Agreements in Progress, EU-Singapore FTA - Stimulus for negotiations in the region ’ (June 2017), < http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/607255/EPRS_BRI(2017)607255_EN.pdf

entirely without prejudice to the question whether the content of the agreement's provisions is compatible with EU law, that means that this question remains open.

In essence, the CJEU emphasized the areas in which the EU's external competence is exclusive. This is the case in matters such as:

- access to the EU market and the Singapore markets for goods and services;
- Protection of direct foreign investments of Singapore nationals in the European Union (and vice versa);
- intellectual property rights;
- competition matters (combating anti-competitive activity, and laying down a framework for concentrations, monopolies, and subsidies); and
- sustainable development
- the rules relating to an exchange of information and obligations governing notification, verification, cooperation, mediation, transparency and dispute settlement between the parties, unless those rules relate to the field of non-direct foreign investment.

Conversely, the EU is not endowed with exclusive competence, in the field of:

- non-direct foreign investment ('portfolio' investments made without any intention to influence the management and control of an undertaking)
- the regime governing dispute settlement between investors and States
- the rules relating to the exchange of information, and to the obligations governing notification, verification, cooperation, mediation, transparency and dispute settlement, as regards non-direct foreign investment.

However, it is important to note that the CJEU did not consider investment protection per se to fall outside the EU's exclusive competence. Its legal justification focused on the inclusion of non-direct investments and investor-State dispute settlement provisions. In general, the Opinion 2/15 strengthens the European Commission's efforts in linking trade and sustainable development inside and outside the WTO.

While Opinion 2/15 promotes a unified approach in negotiating and concluding international agreements relating to trade and trade-related matters. It also suggests that it

might be preferable to negotiate and conclude investments agreements separately from trade agreements.[104]

Regarding reasons why Singapore, it is important to realize that the EU recognized the potential of Singapore, as a growing market with great potential. Further, Singapore is the first step toward ASIAN, that is connected with EU in many ways.
After all, the EU-Singapore FTA is one of the first in a "new generation" of agreements by the EU that seek to combine trade, investment, and other economic provisions into a single treaty. As such, it represents a significant step in the future trade.

[104] Van Bael & Bellis, Client Alert Memorandum (17 May 2017), < https://www.vbb.com/media/Insights_News/VBB_Memorandum_-_Opinion_2-15.pdf > accessed 25 May 2018.

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Abstract in German

Der freie Handel ist ein sehr wichtiger Faktor im Prozess des Wachstums und der Entwicklung der Wirtschaft und der staatlichen Beziehungen. Darüber hinaus ist es ein Anreiz für die Erhöhung des nachhaltigen Wachstums und der Schaffung von Arbeitsplätzen. Wie in dieser Arbeit erwähnt, asiatischen ist wichtig für die EU, unter Berücksichtigung der Menge, des Handels und der Beziehungen zwischen der EU und Asien. Singapur stellte sich heraus, dass ein großes Potenzial für Entwicklung und Fortschritt zu haben. Außer, dass es ist ein "Gateway" auf dem asiatischen Markt. Aus diesem Grund hat die EU Verhandlungen mit einigen asiatischen Ländern im Jahr 2007, darunter Singapur. Dennoch, Verhandlungen mit Singapur wurden im Oktober 2014 abgeschlossen, und das Abkommen sollte unterzeichnet und ratifiziert werden und in Kraft getreten. Aber auch rechtliche im Hinblick auf Kompetenz zu schließen Vereinbarung erschien. Im Wesentlichen stellte sich die Frage, hat die EU die ausschließliche Zuständigkeit für die Vereinbarung unterzeichnen, oder die Zuständigkeit zwischen EU und Mitgliedstaaten aufgeteilt werden soll, als "gemischter Abkommen". Folglich ersuchte die Europäische Kommission die Meinung des Gerichtshofs. EUSFTA hat eine Menge gemeint, nicht nur, weil es hilft, die Tür zu öffnen, um für Europa zu den ASEAN-Markt und umgekehrt, aber auch, da es sich um eine "neue Generation" Handel, Investitionen und viele andere Aspekte, die nicht Teil der regulären Freihandelsabkommen und geht über die WTO-Verpflichtungen angezogen. Die EUCJ lieferte die Stellungnahme am 16. Mai 2017. Die Stellungnahme bezieht sich darauf, ob das Abkommen unterzeichnet und von der EU allein abgeschlossen werden können, oder sollte man es als "gemischter Abkommen" der EU und ihren einzelnen MS abgeschlossen werden. Der EUGH analysiert jedes Kapitel des EUSFTA zu prüfen, welche Teile im Rahmen der gemeinsamen Handelspolitik fallen, die in Artikel 207 Absatz 1 AEUV, die gemäß Artikel 3 Absatz 1 Buchstabe e) des Vertrags über die Arbeitsweise der Europäischen Union, und welche nicht definiert. In der Stellungnahme 2/15, die EUCJ EUSFTA erklärt, die in der ausschließlichen Zuständigkeit der Europäischen Union fällt, mit Ausnahme der folgenden Bestimmungen, die innerhalb der Kompetenzen zwischen der Europäischen Union und der Mitgliedstaaten fallen und dass die Bestimmungen von Abschnitt A (nicht-direkten Investitionsschutz) des Kapitels 9, den Bestimmungen von Abschnitt B (Investor-State Streitbeilegung) des Kapitels 9; und die Vorschriften für den Austausch von Informationen, Einhaltung der Verpflichtungen,

die für die Benachrichtigung, Verifikation, Zusammenarbeit, Mediation, Transparenz und Streitbeilegung, in Bezug auf die nicht direkte ausländische Investitionen. Diese Stellungnahme wird wahrscheinlich auf die künftigen Abkommen, wie zum Beispiel EU-britischen Abkommen nach Brexit und es ist eine erste 'neue Generation'-Vereinbarung, die Spielfigur einen Weg für künftige Vereinbarungen zu.

Abstract

Free trade is a significant factor in the process of growth and development of state's economy and relations. Moreover, it is an incentive for increasing sustainable growth and creation of jobs. As noted in this thesis, ASIAN is essential to the EU, taking into account the quantity of trade and relations between EU and ASIAN. Singapore turned out to have excellent potential for development and progress. Besides that, it is a ‘gateway' to the ASIAN market. For this reason, the EU started negotiations with a few ASIAN countries in 2007, including Singapore. Nevertheless, negotiations with Singapore were finalized in October 2014, and the agreement was supposed to be signed and ratified and subsequently entered into force. However, legal issued regarding competence to conclude agreement appeared. In essence, the question arose does the EU has the exclusive competence to sign the agreement, or the competence should be shared between EU and Member States, as a ‘Mixed Agreement.' Consequently, the European Commission requested the opinion of the Court of Justice. EUSFTA has attracted a lot of intention, not only because it will help to open the door for Europe to the ASEAN market and reverse, but also since it is a ‘new generation’ trade agreement, that includes investment and many other aspects that are not a part of regular free trade agreements and goes beyond WTO commitments. The EUCJ delivered the opinion on 16 May 2017. The opinion relates to whether the envisaged agreement can be signed and concluded by the EU alone, or should it be concluded as a ‘mixed agreement’ by EU and each of its MS. The CJEU analyzed every chapter of the EUSFTA to examine what parts fall within the common commercial policy, defined in Article 207(1) of the TFEU, which, according to Article 3(1) (e) TFEU, and which ones does not. In the Opinion 2/15, the EUCJ stated that the the EUSFTA falls within the exclusive competence of the European Union, with the exception of the following provisions, which fall within a competence shared between the European Union and the Member States and that: The provisions of Section A (non-direct Investment Protection) of Chapter 9, the provisions of Section B (Investor-State Dispute Settlement) of Chapter 9; and the rules relating to exchange of information, to the obligations governing notification, verification, cooperation, mediation, transparency and dispute settlement, as regards non-direct foreign investment. This Opinion will probably affect future agreements, such as EU-UK agreement after Brexit and it is a first ‘new generation’ agreement that is going to pawn a way for future agreements