Mixed Feelings about "*Mixed Agreements*" and CETA's Provisional Application

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I. Introduction

On 28 June 2016, the President of the European Commission (hereinafter, Commission), Jean-Claude Juncker, declared that the Commission is of the opinion that the recently concluded EU-Canada Comprehensive Economic and Trade Agreement (hereinafter, CETA) is an "*EU-only*" agreement and not a "*mixed*" agreement.[1] On 5 July 2016, the Commission officially proposed to submit CETA as a "*mixed*" agreement, thereby giving in to demands from several EU Member States and striving to avoid further internal political contentions.[2] Positions of EU Member States on this issue are still diverging, while the Court of Justice of the European Union (hereinafter, CJEU) has yet to render an advisory opinion on the "*mixed*" or "*EU-only*" nature of the EU-Singapore Free Trade Agreement, already concluded in 2014.[3] Meanwhile, another debate has arisen surrounding the issue of provisional application of the CETA.

II. Background

Competences in the EU are divided between the EU and its Member States, some policy areas falling under the exclusive competence of the EU, some being shared competences, and some being of exclusive competence of the Member States.[4] The debate about the "*mixed*" or "*EU-only*" nature of international agreements has been ongoing for a long time, but recent public debate, in particular concerning the negotiations between the EU and other major economies such as Singapore, Canada, the US and Japan, have allowed this fundamentally legal issue to turn into a very political question.

The key provision of EU law is Article 207 of the Treaty of the Functioning of the European Union (hereinafter, TFEU), which gives the EU exclusive competence regarding trade agreements. Article 207(1) of the TFEU enumerates a comprehensive list of trade issues. These are, namely, changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, 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. Recently concluded comprehensive trade and investment agreements, however, often go beyond pure trade issues and extend into the realm of Member States' competences.

On 28 June 2016, Commission President Juncker noted that the Commission remained of the opinion that, for "*legal reasons*", the CETA should be considered an "*EU-only*" agreement. He noted, at the same time, that the majority of EU Member States' Ministers in the Council of the EU considers the CETA to be a "*mixed*" agreement.[5] The Commission President said that the Commission would reflect on this issue and elaborate on the Commission's position shortly, as the Commission was expected to officially put forth its proposals for the conclusion and the provisional application of the CETA on 5 July 2015. The Commission then, likely to avoid any further debate between EU and its Member States, reversed course and pro-

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1 European Commission, European Council endorses Commission's priorities, 29 June 2016, available on the internet at <http://ec.europa.eu/news/2016/06/20160629_en.htm> (last accessed 1 September 2016).

2 European Commission, European Commission proposes signature and conclusion of EU-Canada trade deal, 5 July 2016, available on the internet at <http://europa.eu/rapid/press-release_IP-16-2371_en.htm> (last accessed 1 September 2016).

3 Opinion Avis 2/15. The request was lodged on 10 July 2015 and a hearing is now scheduled for 13 September 2016.

4 Articles 2-6 of the Treaty on the Functioning of the European Union (TFEU).

5 European Commission, President Juncker participates in the European Council (28 June) and in the Informal Meeting of the Heads of State or Government of the EU-27 (29 June), 29 June 2016, available on the internet at <http://europa.eu/rapid/press-release_MEX-16-2357_en.htm> (last accessed 1 September 2016).

posed CETA as a *"mixed" agreement*. Still, certain EU Member States had previously indicated to support the "*EU-only*" approach concerning the legal nature of the CETA. For instance, Italy had, by way of a letter to EU Trade Commissioner Malmström, on 27 May 2016, indicated that it would support the "*EU-only*" approach concerning the legal nature of the CETA.

Already in 2014, the German Ministry of Economics and Energy commissioned an advisory opinion (hereinafter, the German advisory opinion) by a renowned German trade scholar on the "*mixed*" nature of the CETA.[6] The German advisory opinion points out that, although through the implied powers of the EU (*i.e.*, Article 216(1) and 3(2) of the TFEU), certain matters may be of EU competence even though they do not fall under Article 207 of the TFEU, this may not be the case for the CETA. The opinion then reviewed the various contentious issues at stake, leading the author to conclude that CETA should be considered a "*mixed*" agreement.

According to the German advisory opinion, some investment protection provisions (*i.e.*, Chapter 8 of the CETA on Investment, as well as Chapter 13 on Financial Services) extend into the scope of Member States' competences. This is mainly attributed to the fact that Article 207(1) of the TFEU expressly applies only to foreign direct investment (FDI). Conversely, other forms of investment, most notably portfolio investments, are not covered by Article 207 of the TFEU.[7] Supporting this assessment, the 2011 modification of the negotiating directives for the CETA make reference to the nature of the agreement, noting that the "*aim is to include into the investment protection chapter of the agreement areas of mixed competence, such as portfolio investment, dispute settlement, property and expropriation aspects*".[8] Furthermore, the German advisory opinion details various other investment protection aspects that do not fall under EU competences. This concerns the provisions on the termination of investment treaties that had previously been concluded by EU Member States, provisions on expropriation and property protection, as well as investment dispute settlement and the liability of EU Member States.

The German advisory opinion identifies the issue of transport as another contentious aspect. According to Article 207(5) of the TFEU, the "*negotiation and conclusion of international agreements in the field of transport shall be subject to Title VI of Part Three and to Article 218*". Chapter 14 of the CETA, on International Maritime Transport Services, includes provisions on maritime transport services and on maritime support services (Articles 14(2) and 14(3)). The EU does not have exclusive competence in this field, as Article 4(2)(g) of the TFEU provides for shared competence concerning transport. Article 3(2) of the TFEU, as well as the identical Article 216(1) of the TFEU, grant the EU the competence to conclude international agreements in certain instances, namely "*when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope*". None of those appear to justify an EU competence in the area of maritime transport services.

A further aspect concerns the mutual recognition of professional qualifications (Chapter 11 of the CETA). Key EU rules in this area are set by *Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications*.[9] According to Article 11.2(2) of the CETA, Chapter 11 "*applies to professions which are regulated in each Party, including in all or some Member States of the European Union and in all or some provinces and territories of Canada*". However, *Directive 2005/36/EC* only applies to regulated professions that are recognised in a majority of EU Member States. The German advisory opinion argues that the EU does not have the competence to conclude an international agreement that also concerns regulated professions that are not recognised in a majority of EU Member States.

Chapter 23 of the CETA on Trade and Labour contains provisions on work place safety. Labour law is currently still mostly an EU Member State competence and Article 153(2)(a) of the TFEU expressly ex-

6 Franz C. Mayer, Stellt das geplante Freihandelsabkommen der EU mit Kanada (Comprehensive Economic and Trade Agreement, CETA) ein gemischtes Abkommen dar?, 28 August 2014, available on the internet at <http://www.bmwi.de/BMWi/Redaktion/PDF/C-D/ceta-gutachten-einstufung-als-gemischtes-abkommen,property=pdf,bereich=bmwi2012,sprache=de,rwb=true.pdf> (last accessed 1 September 2016).

7 Portfolio investments are passive investments, because they do not involve any active management or control of the issuing company. Instead, the aim of the investment is purely a financial benefit. This is contrasted by foreign direct investments (FDI), which allow an investor to retain a certain degree of control over a company.

8 Council of the European Union, Recommendation from the Commission to the Council on the modification of the negotiating directives for an Economic Integration Agreement with Canada in order to authorise the Commission to negotiate, on behalf of the Union, on investment, 14 July 2011, p. 4, available on the internet at <http://data.consilium.europa.eu/doc/document/ST-12838-2011-EXT-2/en/pdf> (last accessed 1 September 2016).

9 OJ L 255/22 of 30 September 2005.

cludes harmonisation in this area. The CETA requires Parties to uphold the standards of the International Labour Organisation and Article 23.9 provides for consultations between the Parties, consultations in which the EU Member State Governments must participate due to their competences. The German advisory opinion, therefore, concludes that only EU Member States can ensure compliance with the aforementioned provisions.

Finally, the issue of good manufacturing practices (GMPs) for pharmaceuticals (detailed in a dedicated protocol to the CETA) may also require a "*mixed*" agreement, as they fall within the scope of EU Member States' competences. Article 168 of the TFEU provides the relevant rules concerning health protection, highlighting that EU action shall only complement and contribute to EU Member States' activities. Therefore, the German advisory opinion concludes that EU Member States must be involved.

Further individual aspects may also suggest that the CETA must be treated as a "*mixed*" agreement. The EU-Korea Free Trade Agreement[10] includes a mandatory provision on penalties in case of copyright violations, which were excluded from the provisional application because they do not fall under the exclusive competence of the EU.[11] However, the CETA only provides for a non-mandatory clause on "*camcording*" (Article 20.12 of the CETA) so that this, by itself, would not require a "*mixed*" nature. Likewise, provisions on sanitary and phytosanitary (SPS) measures involve EU Member States' administrative bodies, but the EU has regulated SPS issues based on Article 37 of the TFEU. Another aspect in favour of a mixed agreement, and, thereby, making the EU Member States Parties to the CETA, is the issue of transparency. A number of transparency provisions engages the "*Parties*" of the CETA, meaning that an EU-only agreement would only bind the Union and not its Member States individually.

III. Comment

This review of CETA provisions shows that there are most certainly provisions that suggest the "*mixed*" nature of the CETA. At the same time, several of those provisions may be interpreted just slightly differently, and thereby lead to the "*EU-only*" nature to the CETA. In particular, "*implied*" powers and unwritten competences may alter the perception by EU Member States and support the position previously held by the Commission. Cecilia Malmström, European Commissioner for Trade, when announcing the decision to propose CETA as a "*mixed*" agreement, still argued that "*[f]rom a strict legal standpoint, the Commission considers this agreement to fall under exclusive EU competence. However, the political situation in the Council is clear, and we understand the need for proposing it as a 'mixed' agreement, in order to allow for a speedy signature*".

If an agreement does not entirely fall under Article 207 of the TFEU, and is not covered by the EU's implied powers, the EU is legally not entitled to conclude the agreement by itself, and EU Member States must take part in all steps of the process. A small aspect of a comprehensive trade and investment agreement falling under EU Member State competence would "*infect*" the agreement as a whole.[12]

10 OJ L127/1 of 14 May 2011.

11 See the German draft law introduced into the German Bundestag, Gesetzentwurf der Bundesregierung, Drucksache 17/10758 of 24 September 2012, noting on page 2 that a few aspects (including penalties for intellectual property violations) are excluded from provisional application because they do not fall under EU competence: "*Von der vorläufigen Anwendung ausgenommen wurden einige wenige Bereiche, die in die ausschließliche Kompetenz der EU-Mitgliedstaaten fallen (strafrechtliche Sanktionen im Bereich des Schutzes geistigen Eigentums sowie Fragen der kulturellen Kooperation).*" The draft law is available on the internet at <http://dip21.bundestag.de/dip21/btd/17/107/1710758.pdf> (last accessed 1 September 2016).

12 This position was underlined by EU Advocate General in her opinion delivered on 26 March 2009 in Case C-13/07 Commission of the European Communities v Council of the European Union concerning the following issues: World Trade Organisation (WTO) – Accession of Vietnam – Establishment of the Community position – Choice of correct legal basis – Exclusive or shared competence – Community competence alone or requirement of involvement of the Member States – Article 133(5) and (6) EC in the version of the Treaty of Nice), available on the internet at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=78975&doclang=EN> (last accessed 1 September 2016).
The opinion reads in relevant part:
"*121. Individual aspects of an agreement for which the Community has no competence internally 'infect' the agreement as a whole and make it dependent on the common accord of the Member States. The picture created by the Commission itself in another context (71) is also absolutely true in relation to Article 133(6) EC. Just as a little drop of pastis can turn a glass of water milky, individual provisions, however secondary, in an international agreement based on the first subparagraph of Article 133(5) EC can make it necessary to conclude a shared agreement.*
122. Therefore, the Community on its own, that is to say, without the consensual involvement of the Member States in the form of a shared agreement, can conclude an external trade agreement within the meaning of the first subparagraph of Article 133(5) EC only if that agreement contains no provisions which would go beyond the Community's internal powers within the meaning of the first subparagraph of Article 133(6) EC and relates to none of the areas listed in the second subparagraph of Article 133(6) EC."

An important factor in the debate is the political dimension, including the indication that the CETA ratification and its nature may provide in view of the future ratification of the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the US, which follows a similar structure as the CETA. While the arguments are based on legal considerations relating to the competences attributed by the TFEU, the objective is mostly a political one. Recent negotiations of international trade and investment agreements have been heavily debated in EU Member States. EU Member States' Parliaments are taking varying approaches and are involved in EU trade policy to varying degrees.[13] A core argument by certain EU Member States, echoed by various non-governmental organisations (NGOs), has been that any final agreement would have to be ratified by the national parliaments of the EU Member States in order to give the people a final say over the respective agreements.[14] In fact, this appears to be the main argument that is being put forth when EU Member States publicly call for the qualification of trade and investment agreements as "*mixed*" agreements. However, while the political implications and public acceptance of such agreements are of great importance, such decisions and determinations should not be based on political opportunism, but on facts and a solid legal basis.

The now necessary national ratification by all EU Member States will considerably prolong the period of time until the entry into force of the CETA, and possibly of other future agreements. Additionally, there exists a risk of non-ratification by individual EU Member States, and, depending on domestic constitutional provisions, even by individual sub-entities of EU Member States. For example, recent votes in Belgian regions already indicate potential problems in view of the CETA ratification. Most notably, on 27 April 2016, the Parliament of the Belgian Walloon region voted in favour of a resolution requesting that the regional government not grant full powers to the Belgian Federal Government to sign the CETA.[15] In addition, the Dutch Government still struggles with the implications of a 6 April 2016 *referendum* against the approval act of the Dutch Parliament regarding the EU-Ukraine Association Agreement.

After ratification by the EU, and until the completion of ratification in all EU Member States, the parts of "*mixed*" agreements, that are deemed to be of EU-competence, are usually provisionally applied.[16] Article 218(5) of the TFEU expressly provides for this step of the process.[17] Previous free trade agreements, such as the EU-Korea Free Trade Agreement and the EU-Colombia/Peru Free Trade Agreement, were also provisionally applied. In fact, the agreements with Colombia and Peru, signed in June 2012, are currently still only provisionally applied (with Peru since 1 March 2013 and with Colombia since 1 August 2013), with three EU Member States not yet having ratified those agreements.[18]

However, even this approach appears now to being put into question. On 28 April 2016, the Parliament of the Netherlands appears to have rejected "*automatic*" provisional application and requested that the Dutch Government present a proposal to the Dutch Parliament before it would take any position on the CETA, should the Commission put forth a pro-

13 *See* for example, COSAC, Twenty-third Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny, 6 May 2015, pp. 42, available on the internet at <http://www.cosac.eu/documents/bi-annual-reports-of-cosac/g2%20Twenty-third%20BAR-final-June%202015-rev-CLEAN%20Oct%202015.pdf> (last accessed 1 September 2016).

14 *See* for example Cécile Barbière, Member states claw back control over CETA, EurActiv.com, 6 July 2016, available on the internet at <https://www.euractiv.com/section/trade-society/news/member-states-claw-back-control-over-ceta/> (last accessed 1 September 2016).

15 Walloon Parliament, Résolution sur l'Accord économique et commercial global (AECG) (Resolution on the Comprehensive Economic and Trade Agreement (CETA)), 27 April 2016, available on the internet at <http://nautilus.parlement-wallon.be/Archives/2015_2016/RES/212_5.pdf> (last accessed 1 September 2016).

16 *See* the Proposal for a Council Decision on the provisional application of the Comprehensive Economic and Trade Agreement between Canada of the one part, and the European Union and its Member States, of the other part, COM(2016) 470 final, 2016/0220 (NLE) of 5 July 2016, available on the internet at <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-470-EN-F1-1.PDF> (last accessed 1 September 2016). *See* also European Commission, DG Trade, Trade negotiations step by step, p. 7, available on the internet at <http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc_149616.pdf> (last accessed 1 September 2016); Transport and Environment, Briefing on the life cycle of EU trade agreements, 2 February 2016, p. 7, available on the internet at <http://www.s2bnetwork.org/wp-content/uploads/2015/09/2016-03-02-briefing-on-the-life-cycle-of-eu-trade-agreements-coll-en.pdf> (last accessed 1 September 2016).

17 Article 218(5) of the TFEU reads "*5. The Council, on a proposal by the negotiator, shall adopt a decision authorising the signing of the agreement and, if necessary, its provisional application before entry into force.*"

18 See the relevant website of the Council of the EU concerning the ratification process of both agreements: http://www.consilium.europa.eu/en/documents-publications/agreements-conventions/agreement/?aid=2011057 (last accessed 1 September 2016).

posal on the provisional application of the CETA.[19] Reportedly, some EU Member States now consider that even the provisional application of the CETA should depend on prior approval by national parliaments. Provisional application, a tool that allows for the swift application of parts of an agreement, while EU Member States ratify said agreement, could therefore be considerably delayed, adding another step to the already cumbersome process.

Independently from the debate on the CETA, the CJEU has been tasked to determine if such provisions do indeed lead to a "*mixed*" agreement. On 10 July 2015, the Commission lodged an application initiating proceedings within the CJEU for a Court opinion on the EU competence to sign and ratify the Agreement, in order to legally determine the legal nature of the EU-Singapore Free Trade Agreement, concluded on 17 October 2014.[20] The request included one general and three specific questions. From a general point of view, the Commission asked if the Union has "*the requisite competence to sign and conclude alone the Free Trade Agreement with Singapore*." From a specific point of view, the Commission asked three questions about the various degrees of the division of competences between the EU and its Member States: 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) if there are any provisions of the agreement that fall within the exclusive competence of the EU Member States. The first and the last question are of prime importance for the EU and its Member States. The decision by the CJEU is still pending.[21] A hearing has been scheduled for 13 September 2016, and the Opinion is expected to be issued at the end of 2016 or in early 2017.[22]

On 5 July 2016, the Commission published two proposals for Council Decisions concerning, on the one hand, the conclusion of the CETA and, on the other hand, the provisional application of the CETA.[23] However, the debate on the CETA does not appear to be over yet. Reportedly, and only at the EU Trade Policy Committee of 15 July 2016, several EU Member States still suggested amendments or reserved the right to request further changes to the CETA.[24] Belgium may be impeded to take a position, due to opposition in its Walloon and Flanders regions. At the same time, Romania and Bulgaria put forth the issue of visa travel that they aim to have resolved before signing the CETA. These and other issues may prevent a Council Decision that requires consensus, though a blockage may be avoided through abstention votes. In Germany, various legal actions have been lodged before the German Constitutional Court. On 31 August 2016, a third complaint was lodged by 125,000 German citizens, filed by various non-governmental organisations.[25]

These issues aside, the current timeline suggests that the Council of the EU will take up the issue in its meeting scheduled for 20-21 October 2016 and that CETA will then be signed shortly afterwards during the EU-Canada Summit scheduled for 27-28 October

19 Motie van de Leden Grashoff en Jan Vos, Tweede kamer der Staten-Generaal, 28 April 2016, available on the internet at <https://es.scribd.com/doc/310772482/Aangenomen-Motie-Voorlopige-Toepassing-Van-CETA> (last accessed 1 September 2016).

20 Official Journal of the European Union, Opinion 2/15: Request for an opinion submitted by the European Commission pursuant to Article 218(11) TFEU, 10 July 2016, available on the internet at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=uriserv%3AOJ.C_.2015.363.01.0018.02.ENG> (last accessed 1 September 2016).

21 Information on the case and the anticipated ruling by the CJEU can be consulted trough the following link: <http://curia.europa.eu/juris/fiche.jsf;jsessionid=9ea7d0f130d50ed0005419f94d49aaaeb99ed13ede84.e34KaxiLc3eQc40LaxqMbN4Pa38Me0?id=C%3B2%3B15%3BAVIS%3B1%3BP%3B1%3BC2015%2F0002%2FP%2F1&pro=&lgrec=en&nat=or&oqp=&dates=&lg=&language=en&jur=C%2CT%2CF&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&num=2%252F0&td=%3BALL&pcs=Oor&avg=&mat=or&jge=&for=&cid=170611> (last accessed 1 September 2016).

22 *See* the comment in European Parliament, Is CETA a mixed agreement?, 1 July 2016, available on the internet at <http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/586597/EPRS_ATA(2016)586597_EN.pdf> (last accessed 1 September 2016).

23 Proposal for a Council Decision on the conclusion of the Comprehensive Economic and Trade Agreement between Canada of the one part, and the European Union and its Member States, of the other part, COM(2016) 443 final, 2016/0205 (NLE) of 5 July 2016, available on the internet at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2016:0443:FIN> (last accessed 1 September 2016); Proposal for a Council Decision on the provisional application of the Comprehensive Economic and Trade Agreement between Canada of the one part, and the European Union and its Member States, of the other part, COM(2016) 470 final, 2016/0220 (NLE) of 5 July 2016, available on the internet at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1472718571072&uri=CELEX:52016PC0470> (last accessed 1 September 2016).

24 Janyce McGregor, CBC News, EU members unsure how to apply CETA, 2 months from signing, available on the internet at <http://www.cbc.ca/news/politics/canada-european-union-ceta-trade-provisional-application-1.3715488> (last accessed 1 September 2016).

25 Reuters, German activists take EU-Canada trade deal to Constitutional Court, 31 August 2016, available on the internet at <http://uk.reuters.com/article/us-eu-canada-trade-germany-idUKKCN1161P4> (last accessed 1 September 2016).

2016 in Brussels.[26] After the official signing of the CETA, the Council will submit it and the draft decision for its conclusion to the European Parliament. After the European Parliament gives its consent, the CETA can be provisionally applied. It is currently unclear which specific areas will be excluded from the provisional application, but reports indicate that EU Member States still have diverging views on this issue.[27] Reportedly, Canada identified a short list of issues that would be excluded from provisional application, a list largely reflecting the aforementioned aspects mentioned in the German advisory opinion and encompassing the issues of maritime transport rules, the mutual recognition of professional credentials, some labour, environmental and fishing provisions, and the investment provisions. The Commission and EU Member States must agree on the issues to be excluded from the provisional application. A decision on those issues must be based on the legal interpretation of the CETA rather than on political considerations.

IV. Conclusion

On 31 August 2016, the European Parliament's Committee on International Trade (INTA) held its first exchange of views on the CETA and thereby started the ratification process. However, considering the various contentious issues that are still not settled, the chances of the CETA entering into provisional application in the nearest future appear uncertain. The CETA is the most far-reaching trade agreement that the EU has ever concluded with another major economy and public debate is necessary in such undertakings. At the same time, the waiting period for the advisory opinion by the CJEU on the EU-Singapore Free Trade Agreement has already considerably prolonged the period between its conclusion and its subsequent entry into force. The debate on the CETA ratification has only just begun, but may continue and considerably delay the start of the implementation process. Still, trading partners must be assured of a clear and swift path to ratification and implementation, once negotiations are concluded.

This situation of legal and political uncertainty must be resolved and should not be a cause for concern for each and every agreement anew. Current and future negotiations by the EU should not be endangered by continuous controversies concerning ratification, leading to a situation of legal uncertainty that would have negative effects on the EU and on its important trading partners, as well as on the businesses anticipating the application of the agreements. Interested parties should closely monitor these developments and take necessary action. The debate regarding "*mixed*" and "*EU-only*" agreements looks poised to significantly prolong the ratification process of the trade deals already concluded (*i.e.*, the EU-Singapore Free Trade Agreement, the EU-Viet Nam Free Trade Agreement and the CETA), as well as of those currently being negotiated. The debate about the nature of the EU's comprehensive trade and investment agreements is far from over, but despite the important political considerations, sound legal interpretation must prevail and inform all negotiations and processes of ratification and implementation.

26 Janyce McGregor, CBC News, EU members unsure how to apply CETA, 2 months from signing, available on the internet at <http://www.cbc.ca/news/politics/canada-european-union-ceta-trade-provisional-application-1.3715488> (last accessed 1 September 2016); European Commission, Press Release of 5 July 2016, European Commission proposes signature and conclusion of EU-Canada trade deal, available on the internet at <http://europa.eu/rapid/press-release_IP-16-2371_en.htm> (last accessed 1 September 2016).

27 Janyce McGregor, CBC News, EU members unsure how to apply CETA, 2 months from signing, available on the internet at <http://www.cbc.ca/news/politics/canada-european-union-ceta-trade-provisional-application-1.3715488> (last accessed 1 September 2016).