

May 2017 - European Court of Justice says EU – Singapore FTA requires national approval

Summary

About two and a half years after the European Union (EU) – Singapore Free Trade Agreement was concluded and initialled, the European Court of Justice of the EU (“ECJ”) issued Opinion 2/15 on 16 May 2017 that rules that this agreement requires ratification by all the EU member states and relevant regional parliaments to fully enter into force. This ruling cannot be appealed. Full text of the ruling can be found here:

http://curia.europa.eu/juris/document/document.jsf?docid=190727&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&d_oclang=EN&cid=529746

Pertinent details

The ECJ has found that some of the provisions envisaged in the agreement fall within competencies shared between the EU and its member states, hence the deal cannot be concluded by the EU alone. However, there are only two aspects of the agreement highlighted by the ECJ as being outside the sole competency of the EU, being:

- the field of non-direct foreign investment; and
- the regime governing dispute settlement between the investors and member states.

The ECJ has clarified that other aspects of the agreement do fall within the sole competency of the EU, notably including:

- access for goods and services;
- public procurement;
- protection of direct foreign investments;
- intellectual property rights;
- combatting anti-competitive activity;
- sustainable development;
- exchange of information.

Implications

The ECJ ruling will have an impact on the implementation of the EU – Singapore FTA as well of future agreements that the EU negotiates.

For the EU - Singapore FTA, which has already been agreed, it is not likely that the EU will seek a re-negotiation of the agreement to bring it fully within its own competency. It is more likely that it will look to implement the parts of the agreement that already fall within its competency on a provisional basis, while awaiting the ratification of the full agreement by the relevant national and regional bodies.

For other, future agreements, given the limited areas that the ECJ has ruled to be outside the EU's sole competency, it may well be that the EU will seek to negotiate agreements that omit these parts. The attractiveness of entering new trade agreements, both for the EU and its dialogue partners, could easily off-set the slightly narrower scope of agreements that ensue.

Let's talk

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