# THE LIMITS OF THE EU'S EXCLUSIVE TRADE COMPETENCE: LESSONS FROM THE EU-VIETNAM FREE TRADE AGREEMENT

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## *ABSTRACT*

The European Union ("EU") speaks with a single voice; however, that voice does not necessarily always speak for all its 27 Member States. In international trade, the power of the EU to speak with one voice is not without limits. In the contemporary era, international trade agreements extend beyond tariffs and market access. They simultaneously address investment, labour standards, environmental protection, digital trade and other arenas that may implicate the domestic authority of the Member States of the EU. Such expansion ultimately leads to a fundamental question: how far can the EU act as a sole authority in concluding international agreements? The EU-Vietnam Free Trade Agreement ("EVFTA") provides an essential lens to see through this question. Although the EVFTA is primarily under the exclusive competence of the EU under the Common Commercial Policy ("CCP"), Member States must participate in and ratify the Investment Protection Agreement ("EVIPA") that goes along with it.

This article, with a bird's-eye view, examines the scope and practical limits of the EU's exclusive competence under the Common Commercial Policy, using the EVFTA framework, the CJEU's jurisprudence and the emerging EU-Mercosur arrangement as the linchpin of its case study.


Keywords: **Exclusive Competence; Common Commercial Policy; EU-Vietnam Free Trade Agreement; Mixed Agreement; Investment Protection; EU-Mercosur**

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## I. INTRODUCTION

The Trade for All strategy, adopted in October 2015 by the European Commission, was intended to advance a more responsible trade and investment policy and was further reinforced by the Commission in the 2021 trade policy review.[1] At the institutional level, the EU's exclusive competence over the CCP is important to its global trade policy since it differentiates the Union's position from that of its Member States on trade issues. This competence can be traced back to the **Treaty of Rome** in 1957 and was further expanded with the inclusion of trade in services, commercial aspects of intellectual property ("IP") and foreign direct investment ("FDI") through the **Lisbon Treaty** of 2009.[2] It is primarily governed by Articles 3(1)(e) and 207 of the **Treaty on the Functioning of the European Union** ("TFEU").[3]

The Trade for All strategy can play a significant part in strengthening the EU's relationship with Southeast Asia. The Association of Southeast Asian Nations ("ASEAN") is the EU's third-largest trading partner outside of Europe, and the EU also remains a major investor in the region.[4] The EU has signed trade agreements with Singapore and Vietnam, concluded negotiations with Indonesia in September 2025, and is also in talks with Thailand, the Philippines, and Malaysia. The agreements with Singapore and Vietnam are each accompanied by a separate investment agreement. These can be read as steps towards an EU–ASEAN agreement.[5] The EVFTA, which came into force on 1 August 2020, is highly regarded for

[1] Commission Communication, *Trade for All: Towards a More Responsible Trade and Investment Policy*, COM(2015) 497 final (Oct. 14, 2015); Commission Communication, *Trade Policy Review—An Open, Sustainable and Assertive Trade Policy*, COM(2021) 66 final (Feb. 18, 2021).

[2] Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11; Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Dec. 13, 2007, 2007 O.J. (C 306) 1 (entered into force Dec. 1, 2009).

[3] Consolidated Version of the Treaty on the Functioning of the European Union arts. 3(1)(e), 207, Oct. 26, 2012, 2012 O.J. (C 326) 47 [hereinafter TFEU].

[4] *Association of Southeast Asian Nations (ASEAN),* Eur. Comm'n, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/association-south-east-asian-nations-asean_en (last visited Oct. 1, 2026) (archived at https://perma.cc/5AC2-PWNJ).

[5] *Negotiations and Agreements*, Eur. Comm'n, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/negotiations-and-agreements_en (last visited Oct. 1, 2026) (archived at https://perma.cc/N73E-8FNF); *EU-Indonesia Agreements*, Eur. Comm'n, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-

combining tariff and market access liberalisation with obligations on labour rights and environmental protection.[6] This relationship was further advanced to a comprehensive strategic partnership in January 2026.[7]

The EVFTA provides a useful perspective on the limitations of exclusive competence. The EU's authority under the TFEU is broad but not unlimited: it is restricted by the distribution of responsibilities among Member States, the interpretation of the Court of Justice of the European Union ("CJEU"), and practical obstacles in ratification and implementation. This article assesses those constraints using the EVFTA and its companion EVIPA, and tests them against the EU-Mercosur agreements of 2025-26.

## II. LEGAL FRAMEWORK OF EXCLUSIVE COMPETENCE IN EU TRADE POLICY

Exclusive competence gives the EU the power to exercise complete authority over certain areas. Under such competence, Member States are barred from acting on their own. The EU's exclusive competence arises principally from the TFEU, especially under Articles 3(1)(e) and 207.[8] These articles discuss the Common Commercial Policy ("CCP"), stating that the EU has the sole authority to act in trade-related matters. Under Article 3(1)(e), the CCP is explicitly designated under the ambit of exclusive EU competence for international agreements. With the introduction of the Lisbon Treaty, the scope of the CCP was extended under Article 207(1). The CCP covers a wide range of trade-related matters under Article 207. It covers trade in goods such as tariffs and export, services such as banking and tourism, and commercial IP, such as patents and trademarks. Through the Lisbon Treaty, Foreign Direct Investment ("FDI") was included as well, thus broadening the scope. These jurisdictions form the EU's exclusive competence in international trade agreements. Article 207(6), however, provides that its exercise must not affect the division of competence between the Union and its Member States.[9]

region/countries-and-regions/indonesia/eu-indonesia-agreements_en (last visited Oct. 1, 2026) (archived at https://perma.cc/WB6D-HJFB).

[6] Free Trade Agreement Between the European Union and the Socialist Republic of Viet Nam, June 30, 2019, 2020 O.J. (L 186) 3 [hereinafter EVFTA].

[7] *Joint Statement on Upgrading Relations Between the European Union and Viet Nam to a Comprehensive Strategic Partnership*, Eur. Comm'n (Jan. 29, 2026), https://ec.europa.eu/commission/presscorner/detail/de/statement_26_255 (last visited Oct. 1, 2026) (archived at https://perma.cc/23FK-DHYJ).

[8] TFEU, *supra* note 3, arts. 3(1)(e), 207.

[9] *Id.* art. 207(1), (6).

This leads us to ask a fundamental question: What gives this exclusive competence an upper hand? Firstly, Article 3(1)(e) keeps the Member States away from trade negotiations and agreements in economic areas. It means that the article acts as a gatekeeper and makes sure that the Member States are not stepping in unless specifically allowed by the EU. This ensures that the EU has a single voice instead of multiple ones. This practice is aided by Article 207, which authorises the EU to negotiate and conclude trade agreements. This principle is reinforced by Articles 216 and 218 TFEU. They collectively ensure that the EU maintains a unified approach to trade matters.[10] However, mixed agreements complicate this picture by creating overlapping competences. The institutional roles are defined as follows: the Commission negotiates, the Council authorises and concludes, and the European Parliament consents; the Council votes by qualified majority, save for unanimity in sensitive fields such as cultural and audiovisual services.[11]

The CJEU also interprets and clarifies the principle of exclusive competence. In *Opinion 1/75* (Local Cost Standard), the CJEU held that the CCP is exclusive in nature, so that Member States cannot act unilaterally on trade matters, including by concluding external agreements.[12] This secured a uniform trade policy across the internal market and confirmed the CCP's exclusivity. In 2017, the CJEU, through *Opinion 2/15* (EU-Singapore FTA), clarified shared and exclusive competence. It stated that trade in goods, services, and intellectual property, and the sustainable development chapter are under exclusive competence, whereas non-direct (portfolio) investment and investor-state dispute settlement ("ISDS") are under the shared competence of the EU.[13] It stands as a pivotal case, as ISDS is outside the purview of exclusive competence and will require Member State ratification. This ruling has set an important precedent to analyse trade agreements, including EVFTA. Such classification of exclusive competence turns on whether a provision has a specific link with trade. In *Opinion 1/94* (WTO Agreement) and *Opinion 2/00* (Cartagena Protocol on Biosafety), the court confined the CCP: only cross-border services and part of TRIPS then fell within it, and the Cartagena Protocol was placed under environmental policy.[14] Where it applies, the exclusivity avoids fragmentation, giving the EU a unified appearance. This will ultimately enhance the

[10] *Id.* arts. 216, 218; *see also* Case 22/70, *Comm'n v. Council (ERTA)*, 1971 E.C.R. 263.
[11] TFEU, *supra* note 3, arts. 207(3)–(4), 218(2), (6), (8).
[12] Opinion 1/75, Understanding on a Local Cost Standard, 1975 E.C.R. 1355, 1363–64.
[13] Opinion 2/15, Free Trade Agreement Between the European Union and the Republic of Singapore, ECLI:EU:C:2017:376, ¶¶ 38–70, 111–130, 155–167, 227–244, 290–293 (May 16, 2017) [hereinafter Opinion 2/15].
[14] Opinion 1/94, *Competence of the Community to Conclude International Agreements Concerning Services and the Protection of Intellectual Property*, 1994 E.C.R. I-5267, ¶¶ 42–47, 55–71; Opinion 2/00, *Cartagena Protocol on Biosafety*, 2001 E.C.R. I-9713, ¶¶ 37, 40, 42–47.

negotiating power of the EU. These provisions and judgments show the EU's strong intent for a centralised trade power, within limits policed by courts.

The EU exercises exclusive competence under the EVFTA. The agreement focuses on tariff removal, trade in services, IP rights and sustainable development.[15] Due to Article 207, these areas fall under the exclusive competence of the EU. Hence, the agreement was negotiated and concluded by the EU as a single entity in international trade.

# III. LIMITS OF EXCLUSIVE COMPETENCE IN THE EU-VIETNAM FREE TRADE AGREEMENT

## *A. THE EVFTA AS AN EU-ONLY AGREEMENT AND THE REACH OF ARTICLE 207*

The EVFTA is not a mixed agreement; the mixity lies in the EVIPA. Its main provisions are covered by Article 207, so no Member State ratification was needed. They include the elimination of approximately 99% of tariff lines by the EU within seven years and approximately 98% by Vietnam (99.8% of import value) within ten, market access for goods and services and IP protection, including geographical indications.[16] The Council concluded it under Articles 91, 100 and 207 TFEU, the transport bases reflecting *Opinion 2/15*, which excluded transport services from the scope of Article 207(5) but considered the EU's competence over them exclusive on other grounds.[17] Article 207, however, has limitations. The sustainable-development chapter (Chapter 13, referring to ILO conventions and the Paris Agreement) is within the CCP on the reasoning of *Opinion 2/15*, which treated a comparable chapter as linked to trade.[18] The "grey area" is thus smaller than is often asserted, but real: commitments beyond that link, such as general human-rights obligations, would engage shared or supporting competence and perhaps national ratification. If an agreement includes provisions outside the CCP, it must be concluded as a mixed agreement by the EU and all

[15] EVFTA, *supra* note 6; TFEU, *supra* note 3, art. 207.
[16] World Bank, *Vietnam: Deepening International Integration and Implementing the EVFTA*, World Bank (May 2020), https://documents1.worldbank.org/curated/en/866871589557725251/pdf/Vietnam-Deepening-International-Integration-and-Implementing-the-EVFTA.pdf (last visited Oct. 1, 2026) (archived at https://perma.cc/9TYE-PJGD).
[17] Council Decision (EU) 2020/753 of 30 March 2020 on the Conclusion of the Free Trade Agreement Between the European Union and the Socialist Republic of Viet Nam, 2020 O.J. (L 186) 1; *see also* Opinion 2/15, *supra* note 13.
[18] EVFTA, *supra* note 6, ch. 13; Opinion 2/15, *supra* note 13, ¶¶ 161, 166.

Member States, thus diluting exclusivity.[19] Because a mixed agreement requires ratification by each national parliament, a single regional parliament can delay or block the whole, as the Walloon Parliament's resistance to the EU-Canada Comprehensive Economic and Trade Agreement ("CETA") demonstrated in 2016.[20]

## *B. SUBSIDIARITY AND PROPORTIONALITY*

Article 5 of the Treaty on European Union ("TEU") establishes subsidiarity and proportionality.[21] While subsidiarity does not apply in areas of exclusive competence, thus not limiting the CCP and only affecting shared aspects, proportionality applies to all Union action: tariff elimination is clearly trade-related, but some broader commitments, such as labour laws and environmental laws, must be justified as necessary to achieve the intended trade objective. Rather than applying proportionality directly, the Court polices the CCP's boundary through the specific link test of *Opinion 2/15* and the aim and content test of *Opinion 2/00.*[22]

## *C. THE EVFTA-EVIPA SPLIT AND THE RATIFICATION PROBLEM*

This section clarifies the differences between the EVFTA and the EVIPA, based on the Commission's response to *Opinion 2/15.* While the EVFTA regulates trade, making the EU act alone, the EVIPA provides investment protection and dispute resolution through a court-style system that needs approval by all Member States before it can enter into force. Once in force, it will replace approximately twenty bilateral investment treaties between Member States and Vietnam.[23] Even if progress is real, it is slow: as of October 2026, twenty of the twenty-seven Member States have notified ratifications, while the remaining seven, including France, have not.[24] The EVIPA cannot enter into force until all twenty-seven Member States have notified ratification; this is the clearest practical limit on the EU's exclusive authority.

[19] *See* Opinion 2/15, *supra* note 13, ¶ 244.
[20] *Wallonia Says 'No' to CETA*, Euronews (Oct. 14, 2016), https://www.euronews.com/my-europe/2016/10/14/wallonia-says-no-to-ceta (last visited Oct. 1, 2026) (archived at https://perma.cc/VZ38-38G4).
[21] Consolidated Version of the Treaty on European Union art. 5, Oct. 26, 2012, 2012 O.J. (C 326) 13.
[22] Opinion 2/15, *supra* note 13, ¶ 37; Opinion 2/00, *supra* note 14, ¶¶ 22–23.
[23] Ulrich Jochheim, *EU-Vietnam Investment Protection Agreement*, Legislative Train Schedule, Eur. Parl. (as of Dec. 15, 2024), https://www.europarl.europa.eu/legislative-train/theme-a-stronger-europe-in-the-world/file-eu-vietnam-ipa (last visited Oct. 1, 2026) (archived at https://perma.cc/KCR6-HW7A).
[24] Council of the European Union, *Investment Protection Agreement Between the European Union and Its Member States, of the One Part, and the Socialist Republic of Viet Nam, of the Other Part* (signed June 30, 2019), Agreements Database, https://www.consilium.europa.eu/en/documents-publications/treaties-agreements/agreement/?id=2019015&DocLanguage=en (last visited Oct. 1, 2026) (archived at https://perma.cc/GKM7-YZ4M) [hereinafter *EVIPA Ratification Record*]; *see also France Takes Step Toward Ratification of EU-Vietnam Investment Protection Agreement*, VietnamPlus (Aug. 2, 2026),

## *D. MEMBER STATE COMPETENCE, SOVEREIGNTY AND THE MERCOSUR TEST*

Can Member States claim competence over non-trade aspects and thereby undermine EU exclusivity? Following *Opinion 2/15*, the answer is yes regarding investment: the Court excluded non-direct investment and ISDS from the CCP.[25] In the EVFTA, the EU skirted the issue by defining its commitments as trade-related and separating the EVIPA. A risk remains if the Court or a Member State interprets the boundary differently. That risk is now live. In September 2025, the Commission used the same splitting mechanism to separate the EU-Mercosur Interim Trade Agreement from the mixed Partnership Agreement.[26] On 21 January 2026, the European Parliament, by 334 votes to 324, asked the Court under Article 218(11) TFEU to assess, among other matters, whether the split is lawful and whether the agreement's rebalancing mechanism constrains EU environmental legislation.[27] The Commission has nonetheless moved towards the provisional application of the interim agreement, and on 29 September 2026, the Court's Vice-President rejected Poland's request to suspend the Council decision authorising it, which Poland challenges in a separate annulment action (Case C-460/26). The interim agreement has applied provisionally since 1 May 2026, while the Article 218(11) opinion remains pending.[28] The opinion will determine whether the splitting is a lawful use of Article 207 or an attempt to circumvent national parliaments. Tensions over sovereignty may also arise if a national parliament refuses to ratify an investment chapter, which limits EU

https://en.vietnamplus.vn/france-takes-step-toward-ratification-of-eu-vietnam-investment-protection-agreement-post349357.vnp (last visited Oct. 1, 2026) (archived at https://perma.cc/HQG7-YLK6).

[25] Opinion 2/15, *supra* note 13, ¶¶ 244, 292.

[26] Gisela Grieger, *The Trade Pillar of the EU-Mercosur Partnership Agreement*, Legislative Train Schedule, Eur. Parl. (as of Feb. 20, 2026), https://www.europarl.europa.eu/legislative-train/theme-a-global-europe-leveraging-our-power-and-partnerships/file-eu-mercosur-association-agreement (last visited Oct. 1, 2026) (archived at https://perma.cc/E6TQ-FAB6) [hereinafter *Mercosur Legislative Train*].

[27] *European Parliament Freezes Mercosur Deal, Referring It to EU Court of Justice*, Euronews (Jan. 21, 2026), https://www.euronews.com/2026/01/21/european-parliament-freezes-mercosur-deal-referring-it-to-eu-court-of-justice (last visited Oct. 1, 2026) (archived at https://perma.cc/4JW7-6L29); *see also Mercosur Legislative Train*, *supra* note 26 (recording the 334–324 vote, with 11 abstentions).

[28] Case C-460/26 R, *Poland v. Council*, Order of the Vice-President of the Court (Sept. 29, 2026); Press Release No. 135/26, Ct. of Just. of the Eur. Union (Sept. 29, 2026), https://curia.europa.eu/site/upload/docs/application/pdf/2026-09/cp260135en.pdf (last visited Oct. 1, 2026) (archived at https://perma.cc/68CG-4MBC); *see also* Sara Nordin, Charles Julien & Samuel Scoles, *EU to Provisionally Apply EU-Mercosur Interim Trade Agreement Pending CJEU Opinion*, White & Case LLP (Mar. 10, 2026), https://www.whitecase.com/insight-alert/eu-provisionally-apply-eu-mercosur-interim-trade-agreement-pending-cjeu-opinion (last visited Oct. 1, 2026) (archived at https://perma.cc/SM5E-W87J).

decision-making, while WTO commitments constrain how freely the EU may draft its agreements.[29]

## IV. CRITICAL EVALUATION AND CHALLENGES

The EVFTA faces several challenges when the agreement broadens beyond trade provisions and includes sustainable development. Chapter 13 is enforced through consultations and a panel of experts, rather than trade sanctions.[30] The Court has observed that failure to comply with such commitments may constitute a material breach of the agreement, and the Commission's 2022 review proposed sanctions, as a last resort, for serious breaches of core labour and climate commitments.[31] The second problem is that EVIPA ratification remains incomplete more than seven years after signature, and this dual track hinders implementation. By October 2023, sixteen Member States had ratified it, and twenty had indicated ratification at the time of writing.[32] Additionally, although Vietnam has attempted to include labour law and environmental commitments, other non-trade demands, such as human rights, can further strain the relationship between the parties. The digital and climate-related commitments present further questions. Digital trade falls predominantly within services and IP, and hence within Article 207. Nevertheless, laws on personal data engage Article 16 TFEU and the Charter of Fundamental Rights, and *Opinion 1/15* (EU-Canada PNR) illustrates that external agreements must respect those constraints.[33]

Despite these challenges, the EVFTA highlights the strengths of the EU's exclusive competence, particularly in the elimination of tariff barriers and the EU functioning as a unified bloc. This enhances the global influence of the EU by acting as a single entity, boosting its bargaining power and helping it diversify its trading partners as global tariff tensions rise. The Commission's impact assessment predicted that EU exports to Vietnam would increase by about 29% (more than €8 billion) by 2035, while a Vietnamese ministry predicted GDP growth

[29] *See* General Agreement on Tariffs and Trade 1994 art. XXIV, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187; General Agreement on Trade in Services art. V, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183.
[30] EVFTA, *supra* note 6, ch. 13.
[31] Opinion 2/15, *supra* note 13, ¶ 161; Commission Communication, *The Power of Trade Partnerships: Together for Green and Just Economic Growth*, COM(2022) 409 final (June 22, 2022).
[32] *EU-Vietnam Investment Protection Agreement*, *supra* note 23 (reporting sixteen Member States as of October 2023); *EVIPA Ratification Record*, *supra* note 24.
[33] TFEU, *supra* note 3, art. 16; Charter of Fundamental Rights of the European Union, Oct. 26, 2012, 2012 O.J. (C 326) 391; Opinion 1/15, *Agreement Between Canada and the European Union on the Transfer and Processing of Passenger Name Record Data,* ECLI:EU:C:2017:592, ¶¶ 125–126 (July 26, 2017).

of 4.6% by 2030.[34] These are projections, not results. Actual trade has increased from €45.6 billion in 2019 to €67.1 billion in 2024,[35] although unevenly, with Vietnamese exports to the EU increasing much faster than EU goods exports to Vietnam.

As discussed, the mixed agreement, by contrast, creates tension between the EU and its Member States. This may create fragmentation. Moreover, the CJEU handles these matters on a case-by-case basis, which leads to slow decisions and uncertainty. Even though the trade sector is flourishing, human-rights concerns, media suppression, and lack of political freedom remain key concerns raised by civil society groups.[36] Before the Parliament's approval in February 2020, numerous civil-society groups advocated for a delay so that the EU would not lose power over human-rights standards.[37] Finally, micro, small, and medium-sized firms (MSMEs) continue to struggle with utilising preferences, and ensuring that rising trade volumes do not undermine environmental commitments of Chapter 13 remains an issue.[38]

The EVFTA may serve as a model for future agreements because of its inclusion of labour and environmental principles. It allows the EU to maintain its autonomy while respecting the say of Member States in matters of investment. However, such inclusion may also lead to several disputes in the near future, questioning the authority of the EU in non-trade matters. Hence, even though the EVFTA offers some practical solutions, it may not resolve all ongoing issues.[39]

## V. RECOMMENDATIONS

To address the challenges, first, the EU should adhere to the split model, but seek an opinion from the Court under Article 218(11) TFEU in cases of uncertainty about competence, as in Mercosur, instead of litigating after signing.[40] Second, the Council and the Commission, to

[34] Commission Proposal for a Council Decision on the Conclusion of the *Free Trade Agreement Between the European Union and the Socialist Republic of Viet Nam*, COM(2018) 691 final (Oct. 17, 2018).
[35] Camille Brugier, *Review of the EU-Vietnam Free Trade Agreement 5 Years On*, Upply Market Insights (Sept. 25, 2025; updated Nov. 5, 2025), https://market-insights.upply.com/en/review-of-the-eu-vietnam-free-trade-agreement-5-years-on (last visited Oct. 1, 2026) (archived at https://perma.cc/N95A-7YJF).
[36] *World Report 2026*: *Vietnam*, Hum. Rts. Watch (Feb. 4, 2026), https://www.hrw.org/world-report/2026/country-chapters/vietnam (last visited Oct. 2, 2026) (archived at https://perma.cc/XYR6-M2CV).
[37] *NGOs Urge European Parliament to Postpone Consent to EU-Vietnam Trade Deals*, Hum. Rts. Watch (Feb. 4, 2020), https://www.hrw.org/news/2020/02/04/ngos-urge-european-parliament-postpone-consent-eu-vietnam-trade-deals (last visited Oct. 2, 2026) (archived at https://perma.cc/JK6Z-TA2F).
[38] VNA, *Free Trade Agreements Give Vietnam's Exports Powerful Boost*, VietNamNet Global (Aug. 3, 2026, 10:58 PM), https://vietnamnet.vn/en/free-trade-agreements-give-vietnam-s-exports-powerful-boost-2541774.html (last visited Oct. 2, 2026) (archived at https://perma.cc/RB6B-XNG7).
[39] *Exclusive EU Competence*, LexisNexis UK Glossary, https://www.lexisnexis.co.uk/legal/glossary/exclusive-eu-competence (last visited Oct. 1, 2026) (archived at https://perma.cc/GQ3V-CE5X).
[40] TFEU, *supra* note 3, art. 218(11); *see also Mercosur Legislative Train*, *supra* note 26.

make the delay politically visible, should publish an annual scoreboard for mixed investment agreements and agree on a ratification timetable. Third, the EU should build on the 2022 approach to Chapter 13, which considers sanctions as a last resort for breach of core ILO and Paris commitments, and provide unions and civil society with a formal complaint route.[41] Fourth, human-rights conditionality should remain in the mixed Partnership and Cooperation Agreement, rather than be extended into Article 207, which would keep the EVFTA under exclusive competence. Fifth, the EU and Vietnam should include a digital trade protocol with data-protection safeguards under Article 16 TFEU and use the Trade Committee to address unilateral EU measures such as the carbon border adjustment mechanism and the deforestation regulation, so as to avoid escalation into trade disputes.[42] Sixth, dedicated small business provisions, a shared information portal, inclusive development reaching rural as well as urban areas, a joint research fund for technologies such as AI and renewable energy, and public consultation before negotiations would spread the benefits beyond large firms and improve transparency. Seventh, cultural and audiovisual cooperation, such as film and music, could be added, bearing in mind that such services require unanimity in the Council under Article 207(4).[43] These measures would make the EVFTA a comprehensive partnership, not merely a trade deal.

## VI. CONCLUSION

Exclusive competence in international trade will continue to evolve. The TFEU provides the EU with a strong foundation to act as a single actor, particularly in trade. The following five developments will shape the trajectory of exclusive competence. First, the new generation of trade agreements includes non-trade clauses on human rights, sustainability, and digital trade. This will test the scope of Article 207. Second, the delay in the ratification of EVIPA highlights the practical limit. Since trade agreements include investment and dispute settlement clauses, Member State approval will be required. Third, the EU-Mercosur referral will set a precedent for extending the EVFTA-style split to broader association agreements. Fourth, the growing

[41] Commission Communication, *The Power of Trade Partnerships: Together for Green and Just Economic Growth, supra* note 31.
[42] Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 Establishing a Carbon Border Adjustment Mechanism, 2023 O.J. (L 130) 52; Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the Making Available on the Union Market and the Export from the Union of Certain Commodities and Products Associated with Deforestation and Forest Degradation, 2023 O.J. (L 150) 206.
[43] TFEU, *supra* note 3, art. 207(4).

trade in digital commerce, artificial intelligence and climate-focused policy will test a CCP that was not written with such areas in mind. Finally, the geopolitical changes and the nationalist sentiment within the Union will continue to shape the limits of exclusive competence. The Court's forthcoming opinion on Mercosur may prove consequential for the next decade, as *Opinion 2/15* was for the last.