



The Consumer Voice in Europe

# Consumers at the heart of Trade Policy

**BEUC position on the Future Trade and Investment Strategy**

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## Summary

Trade liberalisation has the potential to benefit consumers where it is promoting a sustainable economy. Therefore, for the future EU Trade and Investment Strategy to deliver consumer benefits, several conditions outlined in this paper must be met.

A positive agenda for delivering consumer benefits under the future EU Trade and Investment Strategy would for instance aim at deleting caps and duties for personal imports (i.e. personal allowances) and lowering, if not eliminating, roaming fees for telecommunications with trading partners. It would also be key to protect consumers against discrimination based on their place of residence.

Transparency and openness should be a central priority of the strategy. BEUC wants consumers to be considered as a key interested party. We acknowledge the progress made in the TTIP negotiations and we call on the Commission to build its strategy on this approach and pursue its efforts. Transparency should not be limited to TTIP but should automatically be applied to existing and future trade negotiations. This is particularly important in the context of negotiations where vital issues such as consumer safety and other fundamental protections are being negotiated.

The future EU Trade and Investment Strategy must not make ISDS the norm in Free Trade Agreements, even reformed. While encouraging the reflexion of the Commission in this area, BEUC stresses that a sustainable and public solution to protect both investors and citizens must be sought and implemented in the short term. ISDS should not be used in the meantime. This strategy should build on the existing political momentum and propose innovative solutions, worthy of 21<sup>st</sup> century agreements.

Consumer protection laws are there to benefit the society as a whole. We are supportive of regulatory cooperation, when this is being done as a way to promote best practices and to improve the well-being of our citizens. However, significant bodies of legislation and regulation have been built up over the years giving EU citizens' considerable protections in diverse areas including health, safety, the environment and consumer and worker's rights. The focus of trade policy on reducing non-tariff barriers with trading partners inevitably therefore raises concerns about the possibility to reduce protections or limit the setting of higher level of protection in the future. The strategy should focus on finding the right balance between improved regulatory cooperation systems and the protection of consumer interests.

There are particularly sensitive areas such as food, e- and m-commerce, intellectual property, data protection, chemicals and cosmetics and financial services, which will also be mentioned in this paper.

## 1. Introduction

Trade liberalisation has the potential to benefit consumers where it is promoting a sustainable economy. International trade has considerably evolved in the past decades and we agree that the EU has to update its strategy in order to adapt to this new reality. **BEUC is in principle supportive of Free Trade Agreements**, but fully aware that, for them to deliver consumer benefits, several conditions have to be met.

Benefits could come from both reduced tariffs as well as eliminating non-tariff barriers through mechanisms such as **regulatory cooperation**. It is however vitally important that this is achieved without reducing existing regulatory protections in important areas such as health, safety, the environment and consumer protection.

Much stress to date has been put on the potential gains of trade agreements in terms of economic growth and jobs and this has long been the general argument in favour of trade liberalisation. However, it should not be forgotten that trade liberalisation will deliver these announced benefits only if there is consumer spending which might subsequently lead to growth and jobs. Therefore, **it is crucial that consumers are provided with the guarantees for trust in the global market**. It must be highlighted that trade policy must be in line with sustainable development, this concept including environment, health but also economical sustainability for consumers in a long term perspective.

There are direct consumer benefits that could be achieved in trade policy and that are particularly important to consumers and consumer organisations, such as diversity of products and services and lower prices. A trade agenda that focuses on opening up markets has the potential to realise such positive outcomes provided that it preserves existing consumer protections, guarantees to its signatories the **right to regulate** in the future and/or improves protections and is compatible with sustainable development.

A positive trade agenda shall look for ways to further expand **opportunities for consumers** and microbusinesses. A pro-consumer view for example should tackle duties for personal imports<sup>1</sup>. Another example would be the tackling of excessive pricing of telecommunications (roaming fees) between the EU and its trading partners that would benefit business customers and private consumers. It would also be a very strong consumer friendly signal to ban territorial discrimination towards consumers depending on their place of residence when buying online in a global context.

In addition, it is important to ensure that EU law providing consumers with strong pre-contractual and contractual rights, such as information requirements, cooling-off periods, protection against unfair contract terms or legal guarantees are also **enforceable** towards companies operating in partner countries and are not considered a barrier to trade.

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<sup>1</sup> In the United Kingdom for instance, at present the personal allowance before duties for goods from outside the EU, including the US, take effect is relatively low (£135 – [http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?\\_nfpb=true&\\_pageLabel=pageTravel\\_ShowContent&id=HMCE\\_CL\\_000014&propertyType=document#P34\\_3134](http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageTravel_ShowContent&id=HMCE_CL_000014&propertyType=document#P34_3134))

In this paper, we will provide input on **how** we think the strategy should be defined and on **what** it should focus. We will concentrate our comments on Free Trade Agreements and trade defence.

## 2. How the Future EU Trade and Investment Strategy should be defined?

The recent public mobilisation and media coverage over TTIP and CETA indicates that consumers are more and more interested in trade policy, as they realise it impacts significantly their lives. With this strategy we are not discussing a simple communication but **the definition of the trade philosophy for the years to come**. Trade does matter for consumers and BEUC will closely monitor the preparation of the EU Trade and Investment Strategy to make sure consumer interests are duly taken into consideration.

The staff working document "How Trade Policy and Regional Trade Agreements Support and Strengthen EU Economic Performance", mentions that consumers have been the big beneficiaries of trade in past decades. However, it is to be noted that in the past, trade was mostly about reducing import duties. More recently, the structure of Free Trade Agreements has significantly evolved. They have now to tackle non-tariff barriers in addition to tariff barriers. The impacts on consumers are now much more complicated to assess. **Thus, impact assessments will also have to adapt** to those changes. They must be able to measure the impacts of both tariff and non-tariff barriers reduction or elimination on consumers. Critics have emerged regarding trade impact assessments, both on the methodology and on the interpretation of data. We recommend to address these issues in the strategy as it is essential for citizens to trust impact assessments. In particular, the cost of instruments such as harmonisation, mutual recognition or other regulatory cooperation tools in terms of consumer health and safety, information rights and economic and legal protection, need to be properly assessed.

BEUC insists that existing and future regulatory protections in important areas such as health, safety, environment and **consumer rights must not be seen as barriers to trade**. We recommend that the strategy follows for example the CETA's approach which **ensures essential regulatory protections while facilitating trade**<sup>2</sup>. Indeed, facilitating trade – which can be seen as a legitimate objective – must never come at the expense of consumer protection.

Moreover, the staff working document states that it is crucial to make sure that trade agreements **deliver actual benefits** and monitor the impact effectively. BEUC welcomes this reflection as it goes in the right direction and suggests the strategy to tackle the issue of competition. Indeed, without a **strong competition framework**, trade benefits cannot be automatically transferred to consumers. It is also essential that consumers are provided with the guarantees for trust in the global market.

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<sup>2</sup> This approach can be found in the objectives of the sanitary and phytosanitary chapter of the CETA agreement. Such an approach should be applied to other agreements, in most of the relevant chapters for consumers.

Most importantly, **trade policy must be coherent with other relevant EU policies**. Public interest organisations are being criticized for asking for due consideration to environment, sustainability or consumer expectations, as this is seen as a regulatory burden. However, it is important to stress that trade is interconnected with these issues. Consistency and coherence will be key for trade to really deliver. This should be addressed in the strategy.

### **3. On what the Future EU Trade and Investment Strategy should focus?**

#### **Transparency and engagement**

The Commission has announced that transparency and involvement of civil society will be part of the strategy. BEUC welcomes this initiative and suggests to build on the efforts made within the TTIP negotiations. The enhanced communication on the content on the negotiations, the publication of the negotiating mandate, negotiating texts, position papers and factsheets led to a more fact based debate. It allowed a large variety of stakeholders to give constructive input to the negotiators on potential improvements and legitimate concerns. It showed that transparency and involvement contributes to the acceptance of trade agreements, notably by avoiding unnecessary concerns induced by secrecy.

The strategy should propose to apply the same level of transparency and engagement for **all existing and future trade negotiations**. Moreover, the strategy should propose to continue enhancing transparency and engagement in order to ensure trust in trade policy.

We deplore that the Commission did not open a **public consultation** on this strategy. We believe the Commission should engage with key stakeholders to discuss with them on the comments they submitted, in a balanced and inclusive manner, notably by offering financial support for participation if needed. Civil society dialogue meetings are a good opportunity for stakeholders to pass on general messages but are not as efficient as bilateral meetings when it comes to detailed comments. In the future, we strongly encourage the Commission to systematically open public consultations on key aspect of Trade policy, including the launch of Free Trade negotiations. In that case, we recommend to open the consultations before submitting the negotiating directives to the Council.

#### **Non-Tariff barriers and regulatory cooperation**

Recent Free Trade Agreements have focused on non-tariff barriers and regulatory cooperation. The strategy will have to assess how to ensure that the EU can be a leader in regulatory cooperation<sup>3</sup>. BEUC believes that a better regulatory cooperation between the EU and its trading partners can deliver benefits to consumers, if well designed. The strategy should therefore **determine the right balance between the need to exchange best practices to avoid unnecessary barriers and excluding any risk of regulatory chill**.

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<sup>3</sup> Explanation given by DG Trade during the civil society dialogue meeting of 8 May 2015.

Regulatory cooperation should not lead to an increase of the administrative and economic burden by creating complex structures. To be efficient, regulatory cooperation should focus on technical procedures and be limited to sectors covered in the different agreements negotiated and identified on a case by case basis.

In detail, principles such as mutual recognition or equivalence must be handled with utmost care, as it can also lead de facto to deregulation. The model could work in some areas and it is worth exploring to identify examples of rules or requirements that are genuinely duplicative. That said, there will also be areas of law where mutual recognition or equivalence will not be suitable with some trading partners, such as food, chemicals or financial service. In the case of food safety legislation in Europe for instance, decisions are inspired by the so-called **farm-to-fork approach** and based on the **precautionary principle**<sup>4</sup>, allowing the provisional prohibition of certain substances or processes in the face of a possible danger to human health. While the WTO SPS agreement permits the taking of provisional measures when scientific evidence is insufficient to permit a final decision on safety, the extent to which it is applied by the EU's trading partners may vary. This stems from the level of health protection applicable in each country and must remain free to determine. It can result in differences in regulations that cannot be reconciled with mutual recognition or equivalence.

### **Investment protection**

The future EU Trade and Investment Strategy **must not make ISDS the norm in Free Trade Agreements, even reformed**. While encouraging the reflexion of the Commission in this area, BEUC stresses that a sustainable and public solution to protect both investors and citizens must be sought and implemented in the short term. ISDS should not be used in the meantime. The concept paper "Investment in TTIP and beyond – the path for reform" fails to address the fundamental flaw of this mechanism which is the discriminatory character of these tribunals. They remain available only to foreign businesses, thereby giving them greater rights than domestic companies, public interest organisations or citizens.

This strategy should build on the existing political momentum and propose innovative solutions, worthy of 21<sup>st</sup> century agreements. Indeed, we believe the strategy is an opportunity, not to be missed, for the EU to reflect upon this new competence and become a global leader by proposing a fair and public mechanism of dispute settlement.

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<sup>4</sup> The precautionary principle is detailed in Article 191 of the Treaty on the Functioning of the European Union (EU). It aims at ensuring a higher level of environmental protection through preventive decision-taking in the case of risk. However, in practice, the scope of this principle is far wider and covers consumer policy, European legislation concerning food and human, animal and plant health. The precautionary principle may be invoked when a phenomenon, product or process may have a dangerous effect, identified by a scientific and objective evaluation, if this evaluation does not allow the risk to be determined with sufficient certainty ([http://europa.eu/legislation\\_summaries/consumers/consumer\\_safety/l32042\\_en.htm](http://europa.eu/legislation_summaries/consumers/consumer_safety/l32042_en.htm)).

## Financial Services

From the consumer perspective, Free Trade Agreements are not the right place to pursue regulatory convergence in financial services<sup>5</sup>. Convergence in financial regulation is a good objective in interconnected financial market places and there are already international bodies with mandates that include regulatory convergence, such as the FSB, BCBS and IOSCO<sup>6</sup>. **The future EU Trade Strategy should promote efforts in regulatory convergence at international level.**

## E-commerce, m-commerce, intellectual property rights

The last few years have seen a rapid growth worldwide in e/m-commerce activities and an expansion in both applications and platforms (e.g. eBay, Amazon) for this to happen. However, there is still much that could be done to further deliver its full potential. Free Trade Agreements offer an opportunity to expand this in a way that **allows consumers to access a broadened digital market**. For example, it would be a huge win for consumers if agreements could be reached on mechanisms to allow EU consumers to download digital products, movies, music or e-books from trading partners and vice versa, without any discrimination on the basis of nationality, place of residence, IP address or use of particular websites.

Bringing down the high cost of telecommunications between the EU and its trading partners (e.g. roaming fees) could also provide a significant boost and a direct consumer benefit.

Related to this is the important issue of intellectual property (IP) and the balance that needs to be struck between protection of IP, innovation and access to information. This is an important consumer issue – as we have witnessed in the context of ACTA – which is linked partly to e/m-commerce but also to health and pharmaceuticals.

A broad range of other questions aimed at building consumer trust online could be addressed in the strategy. We recommend the communication to include issues like reducing online fraud, tackling unfair practices and improving access to information about consumer rights and to tools to facilitate consumer redress. Indeed, the market is increasingly becoming interconnected, which requires to anticipate future disputes and therefore effective tools to ensure that they will be handled properly.

Also, finding ways to give access to a wider set of compatible and secure payment mechanisms are essential conditions to safeguard consumer trust in a wider market.

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<sup>5</sup> This view is not shared by the UK consumer organisation Which?. Their analysis leads to a more positive assessment of the potential of reinforcing financial rules due to the exchange of best practices between financial regulators provided consumer protections are safeguarded.

<sup>6</sup> Financial Stability Board, Basel Committee on Banking Supervision, International Organisation of Securities Commissions.

## Data protection and data flows

A particularly important „digital“ issue relates to data protection and data flows. We would like to see trade negotiators remove any restrictions to the free flow of information on the Web, notably in the TiSA negotiations. As part of this, **data protection should be left out of any trade negotiations** as the regimes in the jurisdictions of the EU and its trading partners are often fundamentally incompatible. In addition, EU regulations must still be allowed to apply within the European system. We recommend the strategy to ensure the respect of EU data protection legislation in Trade and Investment Policy.

## Food

Food is a particularly important sector. Here, there are a number of areas in which cooperation with trading partners could lead to consumer benefits. Firstly, we would like to see a global system for food alerts. At present, the EU uses the Rapid Alert System for Food and Feed (RASFF), which is not recognised by all EU partners. An effective and collaborative rapid alert system that disseminates information about serious risks detected in the food supply chain and effectively communicates those risks to the public would benefit consumer health protection in times when food is traded across the world. We would also like to see cooperation on strengthening traceability and ensuring food authenticity. Improved labelling to inform consumers on food's origin and provide at-a-glance nutrition information could also be an area where progress could be achieved.

As well as these potential benefits, we also see some risks in the food area, as some of the EU's trading partners may have set a different level of public health protection or may have a different approach to food risk analysis. On food standards, we would not want trade deals that prevent EU countries from applying standards that give higher protection than that agreed under any treaty. This means equivalence will be unlikely to be an acceptable compromise in most areas. An example is that in Europe, Genetically Modified (GM) foods must be labelled as such, whereas in most partner countries they don't. The strategy should promote EU regulations and allow the EU to continue prohibiting the use of veterinary drugs (hormones, beta-agonists and antibiotics) for growth promotion, but also the import and sale of foods from animals that have been undergoing such treatments.

We would like the strategy to mention that the EU should maintain the use of the **'precautionary principle'** as enshrined in the Lisbon Treaty. The strategy should also stress the need to respect wider risk management criteria – for instance the EU recognises that food regulations should be based also on a broad social, ethical, environmental and economic dimension (in addition to scientific risk assessment)<sup>7</sup>. The strategy could for example set as a priority the promotion of the precautionary principle and of the consideration of other legitimate factors at multilateral level, including at WTO and Codex level.

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<sup>7</sup> Examples might include the ethics of cloning, consumer expectations regarding animal welfare or the desire to make decisions based on the origin of a product.



### **Chemicals and cosmetics**

BEUC recommends that the communication underlines that trade agreements shall preserve the right of the EU to follow a hazard-based approach, when it comes to chemicals authorisation and the use of chemicals in key consumer products with which we come in frequent and close contact such as cosmetics, toys, textiles and furniture. Deviating from a **hazard based approach** through trade policy would mean to give up core principles of democratically agreed legislation in the EU such as the biocides and pesticides legislation and the REACH Regulation which all provide for a very strong focus on a hazard based approach. It would also undermine safety of consumers and the environment in Europe.

Within the TTIP negotiations, an incompatibility of the EU and US chemicals legislation as well as the impossibility of mutual recognition of consumer products such as cosmetics was unanimously highlighted by public interest organisations as a major threat to the EU's safety regulatory framework. We call on the Commission to ensure a same level of attention with other trading partners. Indeed, more than 1,300 substances are prohibited in cosmetics in the EU, which is not the case in most regulatory frameworks of our trading partners.

### **Other issues**

In addition to these priority issues, there are a number of other topics that are of great importance for us, such as sustainability, energy, pharmaceuticals, medical devices and product safety. We recommend that the strategy should tackle these issues.

### **Trade defence**

The future strategy will also have to make sure EU partners play by the rules, especially in a global context where the tendency to use protectionist measures remains strong. We understand the necessity for the Commission to reflect upon its trade defence tools but we underline the **need to take into account consumer interests**. Indeed, targeted products in anti-dumping and anti-subsidies cases are very often directly used by consumers.

BEUC has been an interested party in several anti-dumping and anti-subsidy investigations because of the **impact of countervailing duties on prices, quality and choice available to European consumers**. For instance BEUC contributed to the investigations regarding imported farmed salmon in 2002 and imported Vietnamese and Chinese shoes in 2006. BEUC opposed the imposition of antidumping duties on those products because it artificially inflated consumer prices and affected the most vulnerable consumer groups. Therefore, we call on the Commission to better involve and take into account the consumer interest while assessing the EU's interest in its investigations.

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