

The Consumer Voice in Europe

MODEL CONSUMER CHAPTER IN TRADE AGREEMENTS



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Summary

Chapters that are traditionally negotiated as part of FTAs, such as sustainable development or small and medium enterprises (SMEs), show that there is an added value to focus on specific economic sectors and actors.

In current EU trade agreements, some consumer protection provisions are included in sectoral chapters such as telecoms, digital and financial services but not gathered under a common chapter.

A consumer specific chapter could compile different aspects that define how the trade agreement would benefit consumers while protecting them at the same time. Such chapter would reinforce the importance and the value of the consumer interest and avoid having it side-lined.

For instance, the chapter could set the objective of protecting and benefiting consumers on equal footing with the one of liberalising trade. The chapter could also refer to ways to reinforce consumer trust, to uphold consumer protection levels and to guarantee enforcement of consumer law.

Finally, the chapter could define how the consumer interest will be evaluated in the different impact assessments. It could describe how consumer organisations will be involved in the implementation of an agreement. To illustrate what such a chapter could look like, we developed the model chapter below.

BEUC PROPOSAL FOR AN EU MODEL CONSUMER CHAPTER IN FREE TRADE AGREEMENTS

For inclusion in Agreement's preamble:

Recognizing that guaranteeing a high level of consumer protection is a general objective for the EU as defined in article 12 of the Treaty on the Functioning of the EU, and further recognizing that consumers contribute significantly to economic growth, the Parties seek to continue to support the development of a vibrant and competitive market for consumers by enhancing their ability to participate in and benefit from the opportunities created by this Agreement while maintaining their current and future levels of protection.

CHAPTER X

CONSUMERS BENEFITS AND PROTECTION

Article X.1- Objectives

In accordance with article 12 of the Treaty on the functioning of the EU which recognizes that consumer protection requirements shall be taken into account in defining and implementing other Union policies and activities, through this chapter the Parties aim to:

- a) Achieve a high level of consumer protection by means of legal safeguards, for instance on the right to regulate and the precautionary principle;
- b) Deliver tangible benefits to consumers;
- c) Foster consumer trust, including online;
- d) Promote sustainable consumption;
- e) Integrate the consumer interest in the implementation of the whole agreement.
- f) Contribute to the effective enforcement of consumer law, also in cross border situations

Article X.2 - Right to regulate and levels of consumer protection

1. Each Party ensures that its domestic policies and laws provide for and encourage high levels of consumer protection and shall strive to continue to improve those policies and laws and their underlying levels of protection.
2. The Parties recognise the right of each Party to set and regulate its levels of domestic consumer protection, and to adopt or modify relevant policies and laws accordingly in the meaning of Art. X.2.1.
3. The Parties acknowledge the importance of the precautionary principle¹ for consumer protection, as well as the consideration of the hazard based approach (*cross reference with TBT and SPS chapter*). Parties commit to respect these principles when implementing the agreement (*cross reference with SPS, TBT committees etc.*).
4. Parties commit to ensure a high level of protection for personal data and privacy of consumers² in this agreement by means of strong safeguards (*cross reference with general exceptions in the title on services, digital trade chapter, financial services and telecoms*).

¹ As referred to in Article 191 of the Treaty on the Functioning of the EU.

² For the EU: as referred to in Article 8 of the EU Charter of Fundamental Rights and the General Data Protection Regulation.

5. For the purpose of this agreement, the protection of public health and consumer interests shall be considered as legitimate reasons to regulate (*cross reference with title on goods, title on services and domestic regulation chapter*).
6. In the eventuality of a dispute, consumer protection measures can only be examined in a State to State dispute context. Claims from foreign investors related to consumer protection measures will not be admissible by the investment court (if an ICS chapter is included, *cross reference State to State dispute chapter and ICS chapter*).

Article X.3 - Upholding levels of consumer protection in a trade context

1. The Parties recognise that it is inappropriate to weaken or reduce the levels of protection afforded in domestic consumer protection laws in order to encourage trade or investment.
2. A Party shall not waive or derogate from, or offer to waive or derogate from, its consumer protection laws as an encouragement for, or in a manner affecting, trade or investment.
3. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its consumer protection laws as an encouragement for, or in a manner affecting, trade or investment.

Article X.4 - Delivering tangible benefits to consumers

1. The Parties aim at reducing tariffs and non-tariff barriers to the extent that it enhances consumer welfare. In order to ensure the transfer of benefits of the agreement to consumers, the Parties will, inter alia, take into account the recommendations of the bilateral regulators' dialogue on competition (*cross reference with voluntary competition dialogue created outside of the agreement; also citing potential already existing agreements on information sharing in competition enforcement*).
2. The Parties shall aim at delivering tangible benefits to consumers that will allow them to fully benefit from this agreement while fostering their trust³.

³ The Parties should foster sufficient political will to encourage regulatory dialogues to happen outside of the agreement inter alia on product safety (RAPEX EU-XX), food safety (RASFF EU-XX), medical devices, pharmaceuticals, telecoms (reduction of prices, better information on prices), on e-commerce (reduction of geoblocking practices, spams, redress etc.), on financial services (reduction of withdrawal and transfer fees) and transport (passenger rights).

Article X.5 - Consumer trust⁴

1. The Parties recognise the importance of maintaining and adopting transparent and effective measures that contribute to consumer trust, including but not limited to measures that protect consumers from:

- a) Unjustified geoblocking practices;
- b) Fraudulent and deceptive commercial practices when they engage in electronic commerce.

The Parties also recognise the importance for consumers to benefit from proper information regarding their rights as well as redress options and an effective cross-border enforcement of consumer rights in order to better trust cross border e-commerce.

2. To this end, each Party shall adopt or maintain measures that contribute to consumer trust, including the measures described above.
3. The Parties recognise the importance of cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to electronic commerce in order to enhance consumer trust.
4. The Parties aim at strengthening the safety of consumer products in the trade of goods and services. To this end, the Parties shall take account of the recommendations of the voluntary regulators' dialogues on product and services safety and enforcement created outside of this agreement.

Article X.6 - Multilateral consumer standards and agreements

1. The Parties commit to consult and cooperate in the context of existing agreements with respect to consumer protection and enforcement issues of mutual interest related to multilateral agreements, and in particular, trade-related issues. This commitment includes exchanging information on:
 - (a) The implementation of multilateral agreements on consumer protection and enforcement, to which a Party is party;
 - (b) On-going negotiations of new multilateral agreements;
 - (c) Each Party's respective views on becoming a party to additional multilateral agreements on consumer protection and enforcement.

⁴ This article should be referred to in any digital trade chapter included in a trade agreement.

Article X.7 - Transparency and cooperation with consumer representatives

1. The Parties stress the importance of ensuring transparency as a necessary element to promote public participation and making information public within the context of this Chapter.
2. The Parties commit to involve all stakeholders. No class of stakeholders should be accorded privileged treatment. Particular effort should be made to seek input from public interest groups.
3. The Parties shall take into consideration consumer representatives' recommendations in order to maintain the consumer perspective in the implementation of the agreement (*cross reference with institutional framework: advisory group, civil society forum*).
4. The dialogue on the consumer protection and consumer welfare related aspects of this agreement should be conducted in the framework of the Civil Society Forum (*cross reference to sustainable development chapter*).
5. The Parties shall consider the impacts on consumers notably in the framework of ex-post impact assessments. The Parties shall take into account the available data collected by consumer representatives and their recommendations in this context.

END



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