

The Consumer Voice in Europe

BEYOND TRADE: EU CONSUMERS IN GLOBAL MARKETS

BEUC vision



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Why it matters to consumers

Larger and international markets can benefit consumers. Consumers can choose from more products and services. And when markets open up, companies might be forced to compete on price, quality and innovation. But this depends on three conditions: first, markets must be truly open and not restricted by import tariffs and bureaucracy; second, consumers must be able to trust that products and services originating from third countries live up to their domestic health and safety requirements, and are supervised properly; third, global markets should become more consumer friendly to allow them to fully experience tangible benefits

Summary

Focus trade agreements back on trade and make them deliver to consumers

One root of public discontent with recent trade deals like CETA, TTIP and TiSA is that they touch upon issues that go far beyond tariffs and quotas. Some of these issues such as regulatory cooperation, rules on domestic regulations, data flows or substantive intellectual property rights protections, risk undermining well established consumer protections in the EU if not handled carefully. Moreover, these trade agreements do not give the impression to EU citizens that they are crafted to their benefit. One of the reasons for this is that trade deals do not have consumer protection as an overarching objective. Any EU trade agreement should bring benefits to consumers while ensuring the highest levels of protection. This could be detailed in a consumer specific chapter¹.

Address regulatory issues outside of free trade agreements

The EU and regulators of its partners should work together to better protect consumers and facilitate their lives. This can include issues such as e-commerce, telecoms, product safety, food safety, medical devices, pharmaceuticals, antimicrobial resistance, financial services, transport, chemicals and enforcement of consumer law. Such cooperation should be about exchanging information and best practices outside of technical trade talks. Cooperation between regulators should not be converted into *cooperation on regulations* i.e. on law-making, and should always uphold European standards of consumer protection. Regulatory cooperation between two or several partners outside of trade agreements could be more efficient to protect consumers while at the same time tackling impediments to trade.

¹ BEUC has developed a model of how such a chapter might look: http://www.beuc.eu/publications/beuc-x-2017-096_lau_model_consumer_chapter_in_trade_agreements.pdf

Ensure the democratisation of both processes

These two separate processes must go along with a drastic change: any regulatory dialogue and trade negotiation has to be developed in a manner that is transparent, inclusive and open to external contributions. Legislators, stakeholders and citizens must be able to monitor what is on the table and provide input. This ought to be a joint effort, meaning that all European institutions, including the Council, have to change their old habits.

1. Trade agreements should focus on core trade issues that deliver to consumers

Traditionally, agreements between trading partners focused exclusively on tariffs and quotas. New generation free trade agreements (FTAs) go far beyond these core trade issues. More and more policy areas are covered by them. They have become broad economic governance agreements, which are mainly negotiated by trade experts. The primary mission of these experts is to facilitate trade. But now that trade deals are touching upon sensitive societal issues, this approach of putting trade first has led citizens to question and even sometimes fear them. This has been aggravated by a general perception that trade agreements aim at benefiting private rather than public interests. That is why it is time to take regulatory cooperation and other economic governance issues out of trade negotiations.

Trade agreements could rather refer to existing dialogues between the trade partners' regulators. These dialogues must take place in an adequate framework and follow specific rules and come with proper democratic scrutiny.

1.1. Steps to ensure trade agreements deliver benefits to consumers

- **Focus on tariffs, rules and enforcement:** trade agreements that remove tariffs and quotas can be beneficial to consumers, providing that they are promoting a sustainable economy. Trade agreements should continue to lay down a number of necessary technical rules such as the framework under which the trading parties should define the rules applicable to sanitary conditions that must be respected when entering a market as well as on the conformity of products. However, trade agreements should not create global rules but refer to dialogues between regulators that are, or will be, created separately. This approach will contribute to shape rules in a more democratic manner. A trade agreement is not the appropriate forum to create a framework for the legislative process of the trading partners.
- **Prevent the risk of a regulatory chilling effect of dispute settlement:** investor-protection mechanisms like ISDS (investor to state dispute settlement) and ICS (Investment Court System) risk deterring the EU or Member States from adopting or enhancing laws intended to protect the public interest, and in particular consumers, public health and the environment. This is called 'regulatory chill'. Some investor-protection mechanisms allow foreign investors to claim compensation when they believe that a legislation violates their rights. Even the mere threat of a claim could create such a regulatory chilling effect. There is no empirical link between the use of such mechanisms and higher investment flows² nor evidence that they are needed. Most importantly, high doubts remain unanswered regarding

² See the WTO staff working paper "More Stringent BITs, Less Ambiguous Effects on FDI? Not a Bit!" by Axel Berger, Matthias Busse, Peter Nunnenkamp and Martin Roy, 2010.

the compatibility of these regimes with EU law³. Therefore, such mechanisms should be excluded from trade deals.

- **Bring new opportunities for consumers and secure high levels of protection:** trade agreements must be designed for all. This was the promise of the EU's 'Trade for all' strategy⁴ and this guiding principle must now be put into practice. The vision of trade agreements tailor made for companies and investors to boost growth and jobs is outdated. It is no longer working for the simple reason that citizens rightly feel they are not taken care of in these agreements. Trade agreements should be more ambitious in that sense. This goal should be set in stone in negotiating mandates. Here are some avenues to achieve this:

A. Define consumer protection as a key objective of trade agreements: a recent study⁵ commissioned by the Federation of German Consumer Organisations (vzbv) shows that consumer protection does not figure prominently in trade agreements. Explicit consumer interests like the right to information or the right to privacy are only weakly enshrined. Furthermore, consumer protection is not listed among the explicit objectives of the latest generation of trade agreements and hence does not benefit from special attention. One way to fill this gap would be to mention consumer protection in the objectives of every EU trade agreement. This should be done in an introductory part applying to all chapters to make sure that consumer protection will be defined as a legitimate objective. Thus, the EU and its trading partners will maintain their right to regulate in the public interest including on consumer protection⁶. This should also be clarified in the general exceptions clauses of any agreement concluded by the EU. In case of disputes with trading partners, this would make it clear that regulating in order to protect consumers cannot constitute a violation of the agreement⁷.

B. Systematically include a consumer specific chapter: 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 reinforced under a common chapter. A consumer specific chapter should 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 a model chapter in a separate position paper⁸.

³ Professor Dr. Inge Govaere, Director of the European Legal Studies Department of the College of Europe, Bruges, "TTIP and Dispute Settlement: Potential Consequences for the Autonomous EU Legal Order", Research Paper in Law 01 / 2016.

⁴ See the Communication of the European Commission "Trade 4 all", October 2015: http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf

⁵ See vzbv study http://www.vzbv.de/sites/default/files/downloads/2017/03/20/17-03-18_study_vzbv_consumer_rights_in_trade_agreements.pdf

⁶ This recommendation has been formulated in the study mentioned above.

⁷ Idem.

⁸ http://www.beuc.eu/publications/beuc-x-2017-096_lau_model_consumer_chapter_in_trade_agreements.pdf

C. Provide tangible benefits to consumers: like other economic actors, consumers should be able to see the positive impacts of trade agreements in their everyday lives. For instance, it would be rather easy for trade agreements to provide consumers with better access to digital markets. These are a few ways to do so:

- Bring down the high cost of telecommunication services while consumers travel or communicate with people in trading partners' countries (e.g. roaming fees). A reference in trade deals' texts to the will to **reduce international telecom retail prices and roaming fees** would be a positive step to make sure consumer see the concrete benefits of the FTA while they travel.
- **Eliminate unjustified geoblocking** between trading partners. This would mean that consumers can purchase goods and download digital content from companies established abroad, without any discrimination on the basis of nationality, place of residence, or IP address. This should be accompanied by specific measures to reduce import tariffs for retail goods to avoid consumers facing unexpected custom duties.
- Lay down the framework that will allow consumers to be **properly informed about their rights** and be provided with solutions such as online dispute resolution mechanisms if something goes wrong after a purchase.

The European Parliament, in the context of the Trade in Services Agreement (TiSA) negotiations⁹, has also called for tangible benefits such as those linked to roaming fees and prices of international calls and consumer protection in digital markets.

D. Better assess the impact on consumers: when it comes to consumers, EU trade impact assessments focus mostly on prices and generally disregard other indicators. Impact assessments must focus more on the other benefits that should be delivered to consumers and have more specific data on consumer choice. The impact of agreements on the possibility of the EU and Member States to adopt or modify laws should also be evaluated. Furthermore, *ex-post* evaluations of trade agreements have to be strengthened in order to give an accurate overview of the concrete effects they have had on consumer prices, product choice, health and safety. For example, this can be measured through number of incidents, on food alerts, product recalls etc.

E. Establish an EU consumer trade watchdog: the creation of an EU consumer trade watchdog would be key to better would monitor and evaluate the impact of trade agreements in force on consumers. The watchdog would also provide meaningful input to EU policy-makers and formulate recommendations to make trade better for consumers. Such watchdog could be a member of advisory groups for all ongoing trade negotiations and of bodies monitoring agreements that have entered into force. It could be set up by consumer organisations and supported by public funding following models such as that of the German Market Watch project which is financially supported by the German government and independently executed by the German consumer organisations¹⁰.

⁹ See TiSA [resolution](#) of the European parliament, February 2015, paragraphs a viii, b v, c viii and c x.

¹⁰ The Market Watcher in Germany gather the market monitors, the Consumer Center of the German Federal Association of Consumer Protection (vzbv) and 16 regional consumer centers. The initiative allows them to monitor and analyse the market in order to identify abuses early and to draw attention to faulty developments.

2. Ensure positive cooperation between regulators for consumers

The challenge today to make economic exchanges between the EU and its trading partners easier is not about reducing tariffs but eliminating 'non-tariff barriers' (e.g. measures other than tariffs that can impact trade flows). In an attempt to achieve that goal, recent EU trade agreements include chapters on so-called "regulatory cooperation", an effort that often implies having each negotiating party's regulators work closer beyond what is strictly necessary to achieve the trade deal's technical goals. This approach is problematic because it puts the facilitation of trade as regulators' primary objective, as opposed to fulfilling their public mandate of protecting consumers. In addition, there is a higher pressure on regulators to cooperate when drafting legislations as the goal is to avoid having different rules that could slow down trade. EU regulators should rather keep the full scale of their regulatory space, without any preferential treatment granted to their trade counterparts.

In many economic areas, globalised markets need global governance rules and common regulatory approaches. This is important to create a safe environment for consumers. But these global rules cannot be agreed on through trade agreements, and by trade policy experts whose main aim is to facilitate trade and not to uphold consumers' best interests. They should rather be defined and managed in adequate and separate frameworks, as outlined below.

2.1. Key recommendations for a positive cooperation between regulators

- **Cooperation between regulators yes, but not on regulations¹¹:** cooperation between regulators could be beneficial for consumers if it is designed and implemented in a careful way. Such cooperation should focus on non-regulatory acts. Policy makers should be able to keep the full scale of their powers of initiative and proposal, without any specific treatment granted to their trading partner counterparts. Regulatory authorities of trading partners should cooperate through open institutions or ad-hoc bodies. More energy and resources should be invested into cooperation entities that exist already in numerous sectors, and where necessary new ones should be created. For example, it would be interesting to reinforce the existing global cooperation on product safety.
- **Create or pursue dialogues between EU & third countries regulators primarily aiming to protect and benefit consumers:** this kind of dialogues between regulatory authorities must be organised outside of trade deals and could cover areas such as e-commerce, telecoms, food safety, product safety, pharmaceuticals, medical devices, antimicrobial resistance, chemicals, financial services and competition policy. Such dialogues must be transparent and open to scrutiny by legislators, stakeholders and the public. Agendas and minutes of the meetings should be made public.
- **Promote multilateral dialogues:** Like the EU, the European consumer movement is a supporter of the multilateral system. Multilateral dialogues between regulators are interesting in terms of efficiencies. Furthermore, they often provide public interest groups for greater possibilities to give input than bilateral dialogues.

currently regarding the digital world and financial services. The project is partly supported by the federal ministry of justice and consumer protection. See the website of Marktwächter <http://www.marktwaechter.de/digitalewelt>

¹¹ See BEUC position on regulatory cooperation in the context of TTIP.

2.2. Concretely, how could that work outside of trade deals?

Dialogues between regulators that take place outside trade agreements already exist today. For example, the EU **financial regulatory cooperation framework** with the US exists since 2002 and was updated and improved in 2016. The European Commission considers these improvements as a positive evolution to make regulatory dialogues more efficient¹². Early 2017, EU and US regulators agreed to **recognise inspections for medicines manufacturers** conducted in their respective territories¹³. This means that the EU will not have to systematically inspect US plants to verify if they comply with rules on good manufacturing. Instead, the EU will rely on US inspections, and vice-versa. This will ensure a better use of scarce human and financial resources. In these cases, trade negotiations between the EU and the US contributed to these improvements by giving a political impulsion. However, it also demonstrates that regulatory cooperation can be improved outside of trade.

Similar examples exist in the field of **product safety** and **cosmetics**. For example, there is an **International Cooperation on Cosmetics Regulation (ICCR)** group. It is a voluntary group of regulatory authorities whose purpose is to maintain the highest possible global level of consumer protection, while minimising barriers to trade. One of the laudable features of this group is that its primary objective is to protect consumers while still facilitating trade. This is in line with BEUC's view on regulatory cooperation in trade. It stands in stark contrast to having a dialogue between regulators that is defined first to facilitate trade and second to protect consumers. Yet due to the fact that this group is not open enough for consumer groups, it is not the ideal template to draw inspiration from. However, it gives an indication of what kind of improved dialogue would be beneficial for consumers. Indeed, consumers across the globe need a multilateral effort to eradicate chemicals and pollutants that risk harming consumers or the environment. To make this happen it is important to have a long-term policy strategy and not only short-term trade expansion goals like it can often be the case in the trade context. The EU should take a leading role in global cooperation and foster its "rules shaping power" in instances like the United Nations (UN) and the Organisation for Economic Co-operation and Development (OECD).

Other examples demonstrate how positive regulatory cooperation can contribute to safeguard consumers' benefits outside of a trade framework. For instance, consumer protection authorities cooperate through the **international consumer protection and enforcement network (ICPEN)**¹⁴. [ICPEN](https://www.icpen.org/) is a very valuable cooperation framework. The network is now looking into possibilities to engage in coordinated enforcement actions in the future. This is important as consumer problems are increasingly cross-border in today's globalised markets. Consumer organisations encourage the EU to provide the necessary means to ICPEN to strengthen enforcement cooperation. We would gladly contribute to the effort. This would allow the EU to export its values on consumer protection and inspire its partners.

¹² See the EU-US joint statement on the improvements in U.S.-EU Financial Regulatory Cooperation https://ec.europa.eu/info/file/69641/download_en?token=fAEIOBj5

¹³ See the mutual recognition agreement between the EU medicine agency and the US Food and Drug Administration: http://trade.ec.europa.eu/doclib/docs/2017/february/tradoc_155398.pdf

¹⁴ See ICPEN website: <https://www.icpen.org/>

Furthermore, inspiration can be drawn from structures that already exist within the EU and export those internationally. An example would be the creation of systematic and effective **rapid alert systems for unsafe food and consumer products**, inspired by the principles of the EU [RAPEX](#)¹⁵ and [RASFF](#)¹⁶ systems. An interesting initiative has already been launched by the OECD: the *Global Recalls portal*¹⁷. This portal gathers information on product recalls being issued around the world on a single platform. This is the type of cooperation that the EU should encourage to expand internationally and to replicate in the field of food safety.

2.3. In any framework, regulatory cooperation must respect the following conditions:

- **Consumer protection and consumer welfare** should be defined as an **overarching objective** of the cooperation, at least on equal footing with the objective of trade facilitation.
- Any regulatory cooperation dialogues must **involve the relevant regulators and sector specialists** such as DG Justice & Consumers and DG Santé.
- Trade partners should not be obliged to follow each other's **good regulatory practices such as impact assessment procedures**.

Prevent regulatory chill effects: regulatory cooperation should never impede parties' authorities from fulfilling their mandates and shall be accompanied by **guarantees** to prevent delays in legislating in the public interest.

3. Ensure the democratisation of trade talks and cooperation between regulators

Globalised markets and FTAs spark fears and suspicion amongst many citizens and consumers. Doing whatever it takes to ensure transparency, multi-stakeholder participation and accountability is essential to create the necessary consumer trust. The European Commission recently published a reflection paper on globalisation¹⁸ which describes the problem but fails to provide a concrete action plan on issues such as transparency and accountability. Several private and public interest groups in the EU are developing alternative or positive agendas to bring answers. For example, the Transatlantic Consumer Dialogue (TACD) published its own positive vision for trade earlier this year¹⁹. European consumer organisations also want to provide concrete proposals to increase consumer trust in both trade and cooperation between regulators.

¹⁵ RAPEX is the EU rapid alert system for dangerous non-food product:

http://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/repository/content/pages/rapex/index_en.htm

¹⁶ RASFF is the EU rapid alert system for food and feed safety: http://ec.europa.eu/food/safety/rasff_en

¹⁷ See the website of the Global Recalls portal of the OECD:

http://globalrecalls.oecd.org/Content.aspx?Context=AboutThePortal_Introduction&lang=En

¹⁸ See the European commission reflection paper on harnessing globalisation: https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-globalisation_en.pdf

¹⁹ See [TACD's positive consumer agenda: new rules for the global economy](#)

3.1. Key recommendations to democratise both processes

- **Rethink the drafting of trade mandates:** mandates are the guidelines given by Member States (Council) to the European Commission to negotiate trade deals. There must be a joint discussion between these two institutions but also with the European Parliament, stakeholders and citizens. The European Commission recently opened public consultations prior to drafting trade mandates. This should be done systematically. The Council and Member States governments should also help create consensus by consulting with regional and national parliaments, civil society and citizens prior to the adoption of trade mandates. A mandate that has been openly and widely debated in parliaments and in the public realm will lead to a more consensual ratification process. Moreover, the Council must systematically authorise the Commission to publish negotiating mandates. Finally, the Council should place consumer protection as a key objective to achieve in trade mandates.
- **Increase transparency:** any regulatory cooperation dialogue and trade negotiation must be fully transparent. Agendas of the meetings and rounds must be available as well as negotiating documents and minutes of meetings and rounds. For trade negotiations, the EU should follow the principle of *reciprocity in transparency*. The EU now makes public most of its trade proposals during negotiations. Its trading partners should be required to do the same as a pre-condition to launch talks. As a result, the EU could publish proposals all along the process, not only the first versions.
- **Involve consumer organisations to understand consumer concerns and needs:** the objective of delivering and protecting consumers must become a reality, not remain a mere goal on paper. Engaging and involving consumer organisations will help regulators and negotiators better understand what is at stake and achieve better results for all. For instance, a discussion could be planned once a year between consumer organisations and regulators. The same should be organised with trade negotiators. Furthermore, stakeholder events should be organised during each trade negotiating round. Special effort should be made to ensure a balanced participation of both public interest groups, such as consumer organisations, and private interest groups.
- **Improve communication at all levels:** opposing facts and myths has been a mistake in the recent trade debate. Communication must change to stop the polarisation of the debate. Regulatory dialogues as well as trade agreements should not only be about making things easier for companies but for citizens as well. On the EU side, this is not only the role of the European Commission, Member States have a crucial role to play enabling citizen and parliamentary debates.

END



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