

The Consumer Voice in Europe

## BEUC RECOMMENDATIONS TO IMPROVE TRADE POLICY

The consumer reaction to the Trade Policy Review



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## Why it matters to consumers

Trade is part of consumers' lives: many of their clothes, TVs, smartphones, food and the services they use to book their holidays would be unthinkable without it. Open trade between countries can be positive as it enhances consumer choice and can result in cheaper prices. But consumers are becoming more conscious about the impact of their shopping choices on the environment. Also, some trade rules can set conditions for how countries can regulate. For instance, when countries want to enable consumers to make the healthy and sustainable choice, they have to make sure it won't affect trade.

## Summary

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The European Commission published on 18 February 2021 the Trade Policy Review. This communication defines the new strategy of EU trade and investment policy.

### **Positive outcomes of the EU's trade policy review**

- Trade policy will support the EU's environmental and sustainability policies such as the Green Deal and upcoming legislation on due diligence.
- Trade deals will be used as a tool to spur cooperation between public authorities all over the world, whose task it is to protect the public interest. This type of cooperation can be useful to tackle the global circulation of dangerous products, or to coordinate competition and build fairer consumer markets.
- There will be more coherence between EU's internal and external policies. This will help ensure that trade interests do not inadvertently clash with other EU plans to better protect consumers in areas such as food safety, sustainability or digital.

### **What needs clarification or further work**

- There is no plan to bring simple benefits to consumers through trade policy.
- It is unclear how the EU will, in practice, help consumers make the healthy and sustainable choice. For instance, current World Trade Organization (WTO) rules are designed in a way that could lead to measures such as food labelling or right to repair being considered barriers to trade.
- The Commission should specify how its international discussions on cooperation will be made transparent. For example, the EU has not yet published its proposal to the US on creating a 'Trade and Technology Council'.
- The EU wants to use trade policy as a tool to develop global digital rules. A careful approach is needed here. For example, independent research<sup>1</sup> from the Federation of German Consumer Organisations, vzbv, found that source code clauses in EU trade deals could limit the EU's ability to regulate artificial intelligence.
- The strategy proposes a new EU model clause on data flows, based on the recent agreement with the UK. It is indispensable that the EU makes publicly available an iron-clad assessment of whether this model will preserve Europeans' data protection and privacy rights in case of a dispute with a trading partner.

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<sup>1</sup> Full study: [AI regulation in the European Union and trade law: How can accountability of AI and a high level of consumer protection prevail over a trade discipline on source code?](#)

## BEUC analysis of the EU Trade Policy Review (TPR) and recommendations for improvements

BEUC initial demands	What is positive in the TPR	What is concerning in the TPR	Recommendations to improve EU trade policy
<p><b>Serve and protect consumers</b></p>	<ul style="list-style-type: none"> <li>• The Commission commits to use trade deals to <b>enhance consumer trust online</b>.</li> <li>• The Commission aims at defending its interests and ensuring a level-playing field. This should also apply to consumer interests in global markets. Consumers rights and domestic protections must be enforced.</li> </ul>	<ul style="list-style-type: none"> <li>• The strategy doesn't plan to seek tangible benefits from trade for consumers like reducing <b>roaming</b> fees.</li> <li>• The Commission has altered the EU model clause on data flows, <b>data protection &amp; privacy</b> in trade agreements. The new model clause, based on the UK deal, could open the possibility of a legal challenge against how the EU regulates data protection and privacy, contrary to the previous one (see European Data Protection Supervisor <a href="#">opinion</a>).</li> <li>• The Commission wants to define global digital rules, including on <b>artificial intelligence (AI)</b>. A recent <a href="#">study</a> of the Federation of German Consumer Organisations, vzbv, showed that current EU trade rules to prevent forced technology transfers could limit the ability of the EU to regulate AI.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Trade deals and international cooperation must seek to bring positive changes to consumers</b> such as reducing roaming fees, preventing surprise delivery fees (VAT, duties) and teaming up with other countries to enforce consumer rights.</li> <li>• <b>The Commission should revert to the model clause on data flows, data protection and privacy agreed in 2018</b> instead of using the new wording agreed with the UK as a basis for future trade deals.</li> <li>• <b>The Commission should reinforce the level of the safeguards in its current rules on source code in trade deals</b>, in order to fully preserve the ability of the EU to regulate artificial intelligence.</li> <li>• <b>The Commission should systematically carry out independent impact assessments when proposing new trade rules to check if the EU's right to regulate is adequately preserved.</b></li> </ul>

<p><b>Break the silos between EU policy areas</b></p>	<ul style="list-style-type: none"> <li>• The Commission recognises that there needs to be a better <b>alignment between internal and external policies</b> of the EU.</li> <li>• Trade policy must be aligned with the EU Green deal and support upcoming legislation such as due diligence.</li> </ul>	<ul style="list-style-type: none"> <li>• The strategy rightly addresses the need to break the silos between policy areas. However, it mostly focuses on sustainability and digital. A lot could have been said on other policies. Product safety is a great example of how trade policy can help promote EU's internal policies abroad.</li> </ul>	<ul style="list-style-type: none"> <li>• The Commission should focus on health, sustainability and digital in trade policy. However, it should not lose sight of other important internal policies such as <b>consumer protection</b>.</li> </ul>
<p><b>Develop global synergies</b></p>	<ul style="list-style-type: none"> <li>• EU will have a more strategic approach on <b>international regulatory cooperation</b>.</li> <li>• Cooperation between regulators will be voluntary and managed outside of trade agreements. Regulators will be in the driving seat.</li> <li>• EU will enhance the cooperation with third countries and private sector on <b>access to medicines and vaccines</b>. Cooperation could focus on crisis preparedness, stockpiling, fostering production and investment.</li> </ul>	<ul style="list-style-type: none"> <li>• The Commission does not say how regulatory cooperation will be governed: who will represent the EU, what will be the level of transparency for the scrutiny of the dialogues?</li> <li>• The Commission wants to explore the possibility of a closer regulatory cooperation on digital trade with like-minded partners. There is no reference to what kind of safeguards will be put in place to preserve the EU's right to regulate. The Commission fails to mention that several international dialogues on digital already exist at international level (data protection, AI, net neutrality and cybersecurity). It would be more efficient for the EU to focus on these, instead of duplicating cooperation dialogues.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>The Commission must adopt a governance policy for its new strategic approach to regulatory cooperation:</b> <ul style="list-style-type: none"> <li>○ Consumer protection and consumer welfare are an overarching objective of the cooperation, at least on equal footing with the objective of trade facilitation.</li> <li>○ The different cooperation dialogues are transparent: the public is aware of who takes part in the discussions, the agendas and minutes of meetings are published in a timely manner. The Commission regularly informs civil society of the state of play and is open to stakeholder input.</li> <li>○ The relevant regulators and sector specialists are in the driving seat.</li> <li>○ Safeguards are put in place to prevent any regulatory 'chilling effect': the cooperation is conducted on a voluntary basis; regulators are not obliged to disclose draft laws nor to reply to comments from stakeholders.</li> </ul> </li> </ul>

<p><b>Prevent obstacles to healthy and sustainable consumer choice</b></p>	<ul style="list-style-type: none"> <li>• Trade policy must be aligned with the <b>sustainable development goals</b> (SDGs).</li> <li>• Paris agreement to be an essential clause of trade deals.</li> <li>• Trade policy to support <b>sustainable corporate governance</b> (due diligence) and deforestation legislations.</li> <li>• A public consultation will be launched to reform the trade and sustainable development (TSD) chapters of trade agreements. The Commission is open to explore the idea of sanctions, if partners do not comply with sustainability and climate change rules in trade deals.</li> <li>• EU to promote sustainability and climate change in the WTO. EU proposal for a WTO trade and climate initiative to come soon.</li> <li>• The Commission says that imports must comply with EU regulation and standards and safeguard countries' right to regulate in line with their societal preferences. It confirms that it is legitimate to have production requirements designed to protect the environment and address ethical concerns, as long as they comply with WTO rules.</li> </ul>	<ul style="list-style-type: none"> <li>• EU will put lots of efforts to reform the WTO but will not seek to modernise the old deals on food safety and technical barriers to trade. Trading partners could continue to criticise or even attack measures like food labelling (such as Nutriscore) and the right to repair. This could create a regulatory chilling effect.</li> </ul>	<ul style="list-style-type: none"> <li>• The EU should use the opportunity of the WTO reform to recommend discussions in the SPS and TBT committees of the WTO on making trade compliant with the Sustainable Development Goals and the Paris Agreement. This should include a reflection about <b>reviewing the TBT and SPS agreements</b>. Such review should make sure that tools designed to allow consumers to make the healthy and sustainable choice (e.g., Nutriscore label, lifetime information for products, reparability and updates information) will not be accused of being barriers to trade by our partners.</li> <li>• Chapters in EU trade agreements related to sanitary and phytosanitary measures (SPS), technical barriers to trade (TBT) and trade and sustainable development (TSD) in EU trade deals should contribute to achieve the SDGs.</li> <li>• <b>TSD chapters of EU trade agreements should:</b> <ul style="list-style-type: none"> <li>○ Include the word 'sustainability' in the right to regulate article, next to labour and environment.</li> <li>○ Condition trade preferences (e.g., quotas) on our partners respecting their environmental, sustainable development goals and labour rights commitments. The removal of preferences would intervene if no amicable solution has been found during the mediation process.</li> <li>○ Incorporate a suspension clause. Any serious injury to the environment and labour rights from trading partners should trigger a</li> </ul> </li> </ul>
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	<ul style="list-style-type: none"> <li>• Future EU trade deals will include a <b>chapter on sustainable food systems</b>. More information on this would be interesting.</li> </ul>		<p>suspension of the whole agreement. The Chief Trade Enforcement Officer should make sure that that the removal of trade preferences and, if necessary, a full suspension, will happen in a timely manner.</p> <ul style="list-style-type: none"> <li>• The <b>general exceptions</b> of EU trade agreements should refer to measures contributing to achieve the SDGs and comply with the Paris Agreement.</li> </ul>
<p><b>Be transparent and involve consumer organisations</b></p>	<ul style="list-style-type: none"> <li>• Domestic Advisory Groups tasked to monitor the implementation of trade deals will cover all chapters, not only the trade &amp; sustainable chapters. Positive but again, already announced before.</li> <li>• EU plan to reform the WTO include the need to better <b>involve NGOs in WTO</b> decision making and improve transparency. This is very positive.</li> </ul>	<ul style="list-style-type: none"> <li>• The renewal of the EU Expert group on trade agreements put in place by Commission Malmström is not mentioned, The Commission is still thinking about it. The Commission will only continue to ask feedback from all stakeholders through usual channels.</li> </ul>	<ul style="list-style-type: none"> <li>• The EU should provide <b>adequate funding</b> to allow public interest groups to participate actively in domestic advisory groups.</li> <li>• <b>The Commission should renew the EU Expert group on trade agreements.</b></li> </ul>



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