FACTSHEET

Consumers and modern trade

Why do trade agreements matter for consumers?

Trade has the potential to benefit consumers. Well-designed trade agreements can offer more choice at lower prices. Increased competitive pressure can lead to innovation and higher quality products. Consumers should also see other benefits, such as lower roaming charges in countries which have trade agreements in place.

But not all is rosy: if trade agreements are *not* well-designed, they risk undermining current and future levels of consumer protection. They could even affect the way law-making in the European Union (EU) works.

Here's our guide to some of the key concepts found in trade agreements. What can consumers gain from international trade? How can they be negatively affected? What are TTIP, CETA & TiSA? And what are consumer organisations' concerns?

21st century trade agreements - more than mere tariff cuts

Trade agreements have historically focused on allowing market access and cutting tariffs between countries. Tariffs are protectionist and keep domestic prices artificially high. Getting rid of them is in the consumer interest. The agreements being negotiated now go beyond this. Why? Because, in certain cases, tariffs are already low.

Nowadays, trade agreements also cover issues such as non-tariff barriers (e.g. differences in technical standards between countries) and even our very laws and regulations.

This is why consumer organisations follow trade negotiations. We remind negotiators that consumer protection laws must not be interpreted as barriers, but are there to benefit society as a whole.

To understand what this means in practice, let's look at some of the key concepts and agreements in 21st century trade.

Key concepts in modern trade

Investor State Dispute Settlement (ISDS) is a mechanism used for arbitration in trade disputes. It allows foreign investors to sue a state to obtain compensation for alleged violations of their investment rights. The EU includes this system in several trade agreements, particularly with countries that lack democratic governments. Their proposal to include ISDS in trade deals with the United States (US) and Canada resulted in a public outcry as civil society and decision-makers pointed to worrying flaws in the system. The EU Commission then proposed transforming ISDS into a more public system, the **Investment Court System (ICS)**.

The ICS proposal remains flawed. With ICS, foreign – and *only* foreign – investors can use the ICS to claim compensation if they feel their investment could be affected by a public policy measure, such as a new regulation to limit consumer exposure to a particular chemical. The threat of legal action from the investor could deter the EU and its Member States from adopting regulations that provide necessary protection for consumers.

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This is called **regulatory chill** and threatens our governments' ability to act. Their 'right to regulate' is not adequately protected in ICS. In many of the agreements currently being negotiated (EU-US, EU-Canada) both parties have strong legal systems that already provide protection for investors. Legal experts see "neither a legal basis nor a need[1]" for ICS[2].

Precautionary principle: this is the EU's risk management principle[3]. In the case of chemicals, for example, producers must prove that a chemical is safe *before* it goes to market. No proof? Then no market. This approach is welcome as it puts the burden of proof on the producer and takes a preventive approach in case of doubt on health and safety impacts.

This approach is not followed in all countries. In the US, for example, risk management follows the idea of 'reasonable certainty of no harm' where the regulator must prove a chemical presents an 'unreasonable' risk to health and the environment. If there is not enough evidence, products can remain on the market. With chemicals discussed in the EU-US trade deal, there is real concern that European protection standards could be undermined.

Regulatory cooperation means cooperation on the implementation and the *creation* of regulations. Foreign authorities, but also other stakeholders, could comment (and put pressure) on the EU legislative process, and vice versa. This can hinder or delay regulatory action by the EU or by Member States.

In contrast, 'cooperation between regulators', e.g. exchanging information on drug safety, can benefit consumers as better information is essential to better decision-making.

Transparency refers to the openness of information during trade negotiations. While we understand that some issues – e.g. tariff negotiations – remain confidential for strategic reasons, this is not the case for the bulk of the trade talks that cover rules.

In many current trade agreements, there is little or no public information on *what* is being negotiated. This makes it extremely difficult for civil society and national policy/law makers to analyse the potential consequences. It also presents European and national parliaments with the non-choice of a 'yes' or 'no' vote, rather than the ability to provide useful input.

We call for more transparency in trade deals. This does not equate giving in to a system of privileged access for trade partners and their lobbyists once the deal has been concluded. There are proposals on the table of the Transatlantic Trade and Investment Partnership (TTIP) to allow for exactly that to happen. We believe this would risk slowing down and even blocking the EU's policy processes.

[1] See e.g. the statement of the *German Magistrates Association*: http://www.drb.de/fileadmin/docs/Stellungnahmen/2016/DRB_160201_Stn_Nr_04_Europaeisches_Investitionsgericht.pdf
[2] There are also issues concerning the conflicts of interest of judges and the costs of establishing an ICS. More info here: http://www.beuc.eu/publications/beuc-x-2015-103_beucs_key_concerns_about_the_investment_court_system_proposal.pdf
[3] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Al32042

Key agreements in modern trade

Transatlantic Trade and Investment Partnership (TTIP) under negotiation between the US and EU aims to remove trade barriers in a wide range of economic sectors in order to make it easier to buy and sell goods and services between the two partners.

Key pros & cons for consumers:

- A TTIP done well should lower prices and deliver a wider variety of products to consumers. It should also bring consumers benefits such as better information and solutions if something goes wrong after a transatlantic purchase.
- Attempts to align rules on chemicals, drug pricing & reimbursement, intellectual property rights and data protection risk undermining our current and future protection standards. We want these topics excluded from the scope of any trade agreement.
- An improved dialogue between regulators could benefit consumers (though this does not need to be included in a trade agreement to be effective). In contrast, the current provisions on cooperation *on* regulations could undermine consumer protection in the long run.
- The proposed investor protection system (ICS) poses serious risks for our law-making process and should be excluded.

Comprehensive Economic and Trade Agreement (CETA) between Canada and the EU, pending ratification. Some elements could benefit consumers, e.g. a voluntary dialogue between EU and Canadian regulators on food safety. But overall, we reject CETA because it fails to meet consumer expectations.

Why we reject CETA:

- The deal fails to bring real consumer benefits. For example, there is a lack of information requirements about what to do when EU consumers buying a Canadian product encounter a problem (such as non-delivery).
- CETA contains provisions that could undermine current and future levels of consumer protection, including the opportunity for foreign investors to claim compensation through ICS.

Trade in Services Agreement (TiSA), between 22 countries and the EU, aims to make trade in services such as e-commerce, telecommunications, financial services and transport easier. Very little information is available on what's being negotiated or how it will do this. This must improve immediately to avoid public mistrust in the negotiations.

Key pros & cons for consumers:

- TiSA will directly impact the lives of consumers, ideally by bringing concrete benefits such as reduced telecom prices.
- Some TiSA parties want to make law makers comply with strict criteria and tests to show the 'need' for legislation. They also want to be able to comment on other countries' draft legislation, and to allow any interested parties to do the same. This can cause 'regulatory chill' and even prevent future laws in the public interest.

What can you do?

You can voice your concerns
by calling upon your national and
European representatives now!

In-depth info on the role of consumers in trade? Visit beuc.eu/trade

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