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The Consumer Voice in Europe

THE CONSUMER CHECKLIST FOR A POSITIVE EU-NEW ZEALAND TRADE AGREEMENT



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Why it matters to consumers

Free trade agreements can benefit consumers. Consumers can choose from more products and services, and when markets open up, companies may be forced to compete on price, quality and innovation. But this depends on three conditions: first, markets must be open and not restricted by unfair trade practices; second, consumers must be able to trust products and services originating from other countries live up to domestic health and safety requirements, and are supervised properly; third, global markets must become more consumer-friendly to allow consumers to experience tangible benefits.

Summary

- One root cause of public discontent with recent trade deals such as the CPTPP, TiSA, TTIP and CETA¹ 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 if not handled carefully.
- These free trade agreements (FTAs) do not give the impression to consumers that they are crafted for their benefit. One of the reasons for this is that trade deals do not have consumer protection as an overarching objective.
- The European Union (EU) and New Zealand are about to start negotiating a free trade agreement. As progressive trading partners, they have an opportunity to design a trade agreement that would protect consumers while bringing them benefits. These measures could be set out in a chapter dedicated to consumers in the trade agreement.

Our recommendations for a positive trade agreement for EU and New Zealand consumers

1. Consumers at the heart of the agreement

The EU-New Zealand trade agreement must be designed for all. The vision of trade agreements tailor made for companies and investors to boost growth and jobs is outdated.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 consumers rightly feel they are not taken care of in these agreements. Trade agreements should be more ambitious in that sense. Here are some avenues to achieve this in the EU-New Zealand agreement:

¹ CPTPP (Comprehensive and Progressive Agreement for Trans-Pacific Partnership), TiSA (Trade in Service Agreement), TTIP (Transatlantic Trade and Investment Partnership – EU & US), CETA (Comprehensive Economic and Trade Agreement – EU & Canada).

- **Define consumer protection as a key objective of the agreement:** A study² commissioned by the Federation of German Consumer Organisations (vzbv) shows consumer protection does not figure prominently in trade agreements. Explicit consumer interests, such as 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 include consumer protection in the objectives of the EU-New Zealand trade agreement. This should be done in an introductory part applying to all chapters to make sure consumer protection will be defined as a legitimate objective. Thus, the EU and New Zealand will be able to maintain their right to regulate in the public interest including on consumer protection.³ This should also be clarified in the general exceptions clauses of the agreement. 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 agreement.⁴
- **Include a consumer specific chapter:** Chapters typically negotiated as part of FTAs, such as chapters relating to sustainable development or small and medium enterprises (SMEs), show there is added value in focusing on specific economic sectors and actors. In current EU and New Zealand trade agreements, some consumer protection provisions are included in sectoral chapters such as those on telecoms, digital and financial services. In this new FTA, we recommend there should be a consumer specific chapter compiling relevant provisions and defining how the trade agreement would benefit consumers while protecting them at the same time. Such a chapter would reinforce the importance and the value of the consumer interest and avoid having it side-lined. For instance, the chapter could place 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 such as Consumer NZ and BEUC will be involved in the implementation of an agreement. To illustrate what such a chapter could look like, BEUC developed a [model consumer chapter](#) in a separate position paper.⁵

2. Reduced prices and wider choices

FTAs are generally promoted by decision makers and trade negotiators as a way to reduce prices for consumers and bring them more choice. However, in practice, trade benefits are not automatically passed on to consumers. Whether this occurs, depends on a range of factors such as the competitive pressures on the market.

Economists have recently acknowledged there is not a clear link between the reduction of tariffs and the reduction of consumer prices and enhancement of choice. Some economists are now trying to assess the link. See, for example, the recent paper from the chief economist of the directorate general for trade on consumer benefits from trade.⁶ Similar

² 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

³ This recommendation has been formulated in the study mentioned above.

⁴ Idem.

⁵ http://www.beuc.eu/publications/beuc-x-2017-096_lau_model_consumer_chapter_in_trade_agreements.pdf

⁶ [Consumer benefits from EU trade liberalization, how much did we save since the Uruguay round?](#) Cernat, Gerard, Guinea, Isella, 2018

research was conducted in the late 1990s for New Zealand's Ministry of Foreign Affairs.⁷ These studies show there is not necessarily a direct link between the reduction of import duties and a reduction of consumer prices and increased choice.

Therefore, we recommend the EU and New Zealand approach the issue of reduced prices and increased choice in a constructive way. For instance, both sides should make a commitment that their relevant authorities will supervise the competitiveness of markets affected by the trade agreement. This could help ensure reduction of costs for companies will be fairly shared with consumers.

3. Tangible benefits

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 easy for the EU-New Zealand FTA to provide consumers with better access to digital markets. These are a few ways to achieve this:

- Bring down the high cost of telecommunication services when consumers travel (e.g. roaming fees). A reference in the agreement to **reducing international telecom retail prices and roaming fees** would be a positive step to show consumers the concrete benefits of the FTA.
- **Eliminate unjustified geo-blocking.** This would mean 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.
- 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 with a purchase.

4. High levels of consumer protection

The EU-New Zealand trade agreement must uphold existing consumer protections. There should be **no trade-offs in the margins of the talks** on food, safety standards, cosmetics, financial services or access to medicines. The EU and New Zealand have an opportunity to demonstrate that their FTA will not result in lower consumer protection standards.

From a European perspective, one way of ensuring this would be to state clearly in the agreement that the EU can maintain the use of the **precautionary principle**. There should also be recognition of the need to respect wider risk management criteria. For instance, the EU recognises that food regulation should be based also on a broad social, ethical and economic dimension (in addition to scientific assessment).⁸ The EU-New Zealand FTA should also preserve the right of the EU to follow a **hazard-based approach**, when it comes to chemicals, cosmetics and other key consumer products. Deviating from a hazard-based approach through this trade agreement would mean giving up core principles of democratically agreed legislation in the EU. It would also undermine the safety of consumers and the environment in Europe.

⁷ Trade liberalization in New Zealand, effects on consumer welfare, NZIER, 1999.

⁸ Examples might include the ethics of something like cloning or the desire to make decisions based on the origin of a product.

5. Secured data protection and privacy rights

The EU and New Zealand determined in their adequacy agreement that they offer an adequate level of data protection for their respective citizens. Therefore, there is **no need to further discuss the issue of data flows** in the trade agreement.

If the EU and New Zealand decide otherwise, despite our recommendation, then they should only use the recent **EU horizontal approach on data protection and trade**⁹ in their agreement, not the CPTPP text. The European Commission recently endorsed this approach for cross border data flows and for personal data protection in trade agreements. It provides a necessary safeguard to ensure the privacy rights of EU and New Zealand citizens will be fully protected in the FTA. The CPTPP model, on the other hand, is too weak to fully preserve EU and New Zealand citizens' fundamental right to data protection and privacy.

6. Consumer protection preserved from foreign investors attacks

Investor-protection mechanisms such as Investor to State Dispute Settlement (ISDS) and the Investment Court System (ICS) risk deterring the EU and New Zealand 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 law violates their rights. Even the mere threat of a claim could create a regulatory chilling effect. There is no empirical link between the use of such mechanisms and higher investment flows¹⁰ nor evidence that they are needed. Most importantly, questions about the compatibility of these regimes with EU law remain unanswered.¹¹ Despite the fact the EU plans to find partners for the establishment of a multilateral investment court (MIC), the risks for consumers remain unchanged. Therefore, **such mechanisms should be excluded from any investment deal** between the EU and New Zealand, negotiated in parallel of the trade deal.

7. Positive and voluntary regulatory dialogues to protect consumers

Cooperation between regulators in the EU and New Zealand could be beneficial for consumers if it is carefully designed and implemented. Such cooperation should focus on dialogue and exchange of information between regulators but should not be a cooperation on regulations i.e. actual laws. Policy makers should be able to keep the full scale of their powers of initiative, without any specific treatment granted to their trading partner counterparts. **Regulatory authorities in the EU and New Zealand should cooperate through open institutions or ad-hoc bodies, rather than through committees established in the trade agreement.** To achieve a positive outcome for consumers on both side, we recommend the following:

⁹ http://trade.ec.europa.eu/doclib/docs/2018/may/tradoc_156884.pdf

¹⁰ 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.

¹¹ 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.

- **Create or pursue dialogues between EU and New Zealand regulators primarily aiming to protect and benefit consumers:** This kind of dialogue must be organised outside of the trade deal 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.

In any form, regulatory cooperation between EU and New Zealand must respect these conditions:

- **Prevent any regulatory chill effect:** Any type of regulatory cooperation should be voluntary and accompanied by guarantees to prevent delays, notably through abuse of commenting opportunities.
- **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 the relevant directorate general in the EU Commission and ministries in the New Zealand government.
- Issues related to **good regulatory practices and impact assessment** of regulations should not be tackled as they need to be dealt with in the appropriate context.

8. Transparent negotiations

We see significant potential for improving transparency in the upcoming negotiations between the EU and New Zealand, especially as both sides are in the process of increasing transparency in their trade policies. New Zealand was the first country to publish the final text of the CPTPP. The EU is now systematically publishing negotiating texts during negotiations. The EU and New Zealand should be leaders in transparency in global trade by:

- **Publishing negotiating proposals** during the rounds.
- **Debriefing stakeholders** after each round.
- Setting up or using existing advisory groups to **allow input from stakeholders**, for instance the EU expert group on free trade agreements.
- **Publishing consolidated texts.** This would be a first in EU and New Zealand FTA history. It would be a very positive action to reinforce the democratization of trade agreements. It could encourage other trading partners to do the same in their respective negotiations and allow the EU and New Zealand to pursue their transparency efforts.

END



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