

The Consumer Voice in Europe

TRADE POLICY REVIEW

BEUC response to the public consultation



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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. As the EU is about to review its trade policy, it will have to find a way for trade to serve and protect consumers, while becoming more sustainable.

Summary

BEUC welcomes the possibility to provide feedback on the public consultation. In our reply, we address the questions which are related to the consumer interest and BEUC priorities. Our reply complements the recommendations sent to the Commission last year: ['5 keys to make EU trade strategy work for consumers'](#).

Question 1: How can trade policy help to improve the EU's resilience and build a model of open strategic autonomy?

The COVID-19 crisis has shown that **the EU is sometimes too dependent on other countries** as sources of import for essential goods. This is notably the case for medicines, personal protective equipment and basic goods. Trade policy could help by providing tools for companies to **diversify** their import sources and ensure a more predictable environment for consumers. This can be achieved by eliminating tariffs in bilateral or plurilateral agreements, for example on medical goods. It can also be done by defining clear rules on temporary export restrictions.

In some cases, there could be a value in bringing the production of certain goods closer or even enable more domestic production. This would for instance make sense for **essential medicines**. There, the role of trade policy will be to make sure that trade rules would not prevent such effort to increase the EU's **resilience**, while making sure the EU remains open to free, fair and sustainable trade.

In the **food sector**, the COVID-19 crisis has highlighted the limits and weaknesses of globalised and intricate food supply chains. Over-specialisation of agricultural production leaves countries more vulnerable to trade restrictions and sudden shifts in demand. While the EU is very much dependent on imports to meet its plant protein needs (especially soy), export restrictions – whether related to a crisis such as COVID-19 or trade frictions – can quickly lead to oversupply situations in markets for products such as wine, cheese, or even fries. To make the EU food system more resilient in the future, **there is a need to**

diversify some productions while promoting local production and shorter food supply chains. As such, it is vital that the EU's trade policy does not run counter to the EU's efforts to bring the 'farm' closer to the 'fork' in a bid to achieve a more resilient and sustainable food system.

At the same time, supporting an increased EU industrial capacity should not come at the expense of consumer protection and competition in the Single Market. For example, measures to increase EU production of **essential chemicals** should not lead to a **deregulatory trend** in order to enable EU producers to better compete against their foreign rivals. This would prevent the EU from protecting its citizens against harmful chemicals.

The EU concept of 'open strategic autonomy' should imply **reciprocity**. Foreign producers and service suppliers should comply with the same rules as EU ones. This is not the case today for specific social, environmental, animal welfare or state aid rules. Trade policy will not be able alone to fix this problem. The failure to regulate Substances of Very High Concern (SVHCs) in imported goods is for example a clear regulatory gap that not only misleads consumers but also puts the EU industry at competitive disadvantage. Introducing REACH restrictions that apply equally to EU-produced and imported goods offers one solution. A more effective response would be to extend the authorisation provisions to regulate SVHCs in imported goods. Expanding the scope of the foreseen due diligence proposal to foreign producers could also be an answer.

A **carbon border adjustment measure** could help ensure a level playing field. The Commission should conduct a mapping exercise to identify existing direct and indirect 'carbon reduction support systems' on a Member State level in order to prevent over-subsidisation of undertakings. Therefore, this mapping exercise should include exemptions from energy taxes, the allocation of CO₂ allowances under the EU Emissions Trading Scheme (ETS) as well as state aid granted under the Guidelines on State aid for environmental protection and energy 2014-2020. The Commission should also examine the effects of a border adjustment mechanism on consumer prices. It should pay particular attention to the economic effects on low-income consumer groups and assess distribution effects between consumer groups (e.g. households vs industrial consumers)¹ The revenues coming from the carbon border adjustment mechanism should then be steered towards households and/or earmarked for sustainable investments to support the shift towards a low-carbon society and an inclusive energy transition.

Finally, the model of open strategic autonomy should focus on **international cooperation and coordination**. In the past, trade policy has looked at limiting regulatory divergences to facilitate trade instead of promoting a more positive and strategic cooperation. The model of open strategic autonomy should look at how countries could enhance their strategic autonomy, while working together to better protect their citizens. For instance, the COVID-19 crisis has shed light on the problem of drug shortages and lack of compliance of products sold online such as masks. Any health initiative at the World Trade Organization (WTO) should include a cooperation dimension to ensure the availability of medicines and means to ensure their affordability, for example by sharing best practices on, and encouraging the use of, available intellectual property flexibilities that facilitate generic medicines competition. Likewise, the WTO e-commerce initiative should lead to an improvement of the cooperation between consumer protection, market surveillance, customs and competition authorities.

¹ See also the feedback from BEUC member vzbv on the carbon border adjustment measure public consultation: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12228-Carbon-Border/F510027>

Question 2: What initiatives should the EU take – alone or with other trading partners – to support businesses, including SMEs, to assess risks as well as solidifying and diversifying supply chains?

The EU could take initiatives which could prevent disruption of product supply and choice for consumers. For instance, a **health initiative at the WTO** could contribute to address the issue of shortage of medicines for EU citizens and prevent market disruptions. A plurilateral agreement between WTO members could eliminate tariffs on medical goods such as medicines, vaccines and medical devices. It could set clear rules to make sure that in times of pandemics, countries would only apply trade restrictions that are temporary, targeted, proportionate and transparent. It would also be important to look into ways to boost the diversification of production of active pharmaceutical ingredients and medicines. Such initiative should strengthen international cooperation and take into account the role to be played by the World Health Organisation (WHO). Countries could exchange information on drug shortages and conduct joint investigations. They could also cooperate to facilitate research and development in health technologies and ensure availability and affordability of medicines. In addition, countries could coordinate initiatives on stockpiling.

Question 3: How should the multilateral trade framework (WTO) be strengthened to ensure stability, predictability and a rules-based environment for fair and sustainable trade and investment?

Consumers need to rely on stable and predictable global markets. Clear rules regulating **export restrictions** defined at WTO level could contribute to prevent negative impacts for consumers on prices and choice. This is particularly important for sectors such as food and pharmaceuticals.

Another key point for consumers' legal certainty is to know that foreign traders will comply with their **domestic rules**. If we look at the COVID-19 crisis, we have seen how dependent we can become on online shopping. But with the rise of online sales came an increase of online scams, non-compliant products (such as face masks) and even unsafe products such as toys. This is a forgotten area of the WTO reform. This is a reality that the consumer movement has been showing in the past years, notably when the WTO e-commerce initiative started.

What we need is to have clear rules to enable consumers to **fully trust online shopping**. On top of rules such as clear information for consumers and easy access to redress, we need a better cooperation between consumer protection authorities. WTO agreements have the power to trigger the necessary political will to materialise such cooperation. This power needs to be used as often as possible. We need authorities to investigate cases of unsafe products such as toys or face masks sold around the globe. The WTO needs to go one step further here: having a voluntary provision saying that authorities should cooperate is a positive step, but it needs to be followed up.

The **WTO should better cooperate with other international organisations** to better understand what is making the global market unpredictable and unsafe for consumers. A formal cooperation should be established between the International Consumer Protection and Enforcement Network (ICPEN), the World Trade Organization (WTO), the Organization for Economic and Development Cooperation (OECD), the United Nations Conference for Trade and Development (UNCTAD) and with the World Customs Organization (WCO). All of these organisations are working on similar issues but do not always talk to each other.

This is something that we have witnessed with the numerous parallel discussions on consumer trust in the online world². In the WTO for example, there is a very low awareness about the mere existence of ICPEN.

Moreover, **the reform of the WTO must include a sustainability angle**. The EU should use the opportunity of the WTO reform to recommend discussions in its Sanitary and Phytosanitary (SPS) and the Technical Barrier to Trade (TBT) committees about making trade compliant with the Sustainable Development Goals and the Paris Agreement. This should include a **reflection about reviewing the TBT and SPS agreements**. 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 information on software updates) will not be accused of being barriers to trade by our partners. Moreover, the EU should call for a more efficient dialogue between the WTO, the UN and other international organisations to **make the SPS and TBT agreements fit for the sustainability challenge**.

Finally, members should also look at the space they provide to stakeholders. A good example is the statement of the Ottawa group in June 2020³, calling to enhance the engagement with stakeholders. The statement only referred to businesses and SMEs, not to public interest groups. There has recently been a change of culture in the WTO secretariat to give more space to these groups. For instance, DG Roberto Azêvedo supported the creation of a WTO consumer dialogue, to mirror the WTO business dialogue. As the EU is willing to lead the WTO reform, it should share its best practices of engagement with civil society with other WTO members, to **give more space to all actors of civil society**.

Question 4: How can we use our broad network of existing FTAs or new FTAs to improve market access for EU exporters and investors, and promote international regulatory cooperation –particularly in relation to digital and green technologies and standards in order to maximise their potential?

Recent trade agreements such as those with Canada and Mexico have shown the potential for **voluntary cooperation between regulators**. This is notably the case for product safety: CETA encouraged cooperation between **market surveillance** authorities in order to enhance consumer protection. As a result, the market surveillance authorities in the EU and Canada have signed a memorandum of understanding⁴ in 2018. This arrangement enables them to exchange information about dangerous products on the market. They are even planning to conduct joint investigations about the safety of products sold online.

This is a very positive example of voluntary regulatory cooperation. This should become a precedent for future agreements, and also be applied to the existing EU FTAs. This does not require amending any agreement. The EU could just suggest to trading partners to build on the existing technical barriers to trade commitments to enable their respective authorities to cooperate on product safety. The same logic applies to the **competition** dialogue with Mexico⁵ and the dialogue to fight antimicrobial resistance with Mercosur⁶.

² Several events about online consumer trust were organized during the 2018 and 2019 e-commerce week of UNCTAD and WTO public forum, OECD toolkit for the G20 to protect consumers online.

³ https://trade.ec.europa.eu/doclib/docs/2020/june/tradoc_158777.pdf

⁴ https://ec.europa.eu/info/sites/info/files/sqned_agreement_en_0.pdf

⁵ https://europa.eu/rapid/press-release_IP-18-4042_en.htm

⁶ https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157956.pdf

Other areas where the EU should use its existing FTAs to promote cooperation between authorities to better protect consumers are **enforcement of consumer rights, food safety and customs**.

Several international cooperation fora already exist in various **digital trade** areas. They constitute effective ways to cooperate at international level and with adequate multi-stakeholder engagement. They touch upon the most important aspects discussed in the digital trade debate, such as:

- **Data protection and privacy:** The Council of Europe's Convention 108+, which is the only binding international instrument on data protection and data flows. The Convention has been recently modernised and more and more countries are adhering to it. In addition, the Global Privacy Assembly⁷ is another important forum for strengthening international dialogue and cooperation. Discussions are also happening at the OECD, which has guidelines on privacy and cross-border data flows.⁸ A trade agreement is not an appropriate tool to address data protection and privacy because its primary objective is to facilitate trade, not to protect fundamental rights of citizens. The aforementioned fora can better balance both interests.
- **Net neutrality:** Net neutrality and internet governance-related matters should be addressed via open, multi-stakeholder processes to ensure a meaningful participation by civil society. Telecom regulatory authorities are best placed to discuss the technicalities and implementation of corresponding rules.
- **Cybersecurity:** Sound technical standards require dynamic and participatory discussions leading to consensus from a variety of stakeholders, a process that is inherently not possible through a trade deal. The technical aspects are better discussed in standardization bodies, such as the International Telecommunication Union (ITU), the International Organization for Standardization (ISO) or the Internet Engineering Task Force (IETF).
- **Artificial intelligence (AI):** The OECD already adopted its 'Principles on Artificial Intelligence'⁹, the first international standards agreed by governments for the responsible stewardship of trustworthy AI, including concrete recommendations for public policy and strategy. In addition, the Global Privacy Assembly has adopted its own Declaration on Ethics and Data Protection in Artificial Intelligence¹⁰.

We recommend focusing efforts and resources on these, instead of duplicating dialogues via trade agreements. Trade agreements are not the appropriate tools to cooperate on sensitive digital matters.

⁷ <https://globalprivacyassembly.org/>

⁸ <https://www.oecd.org/internet/ieconomy/oecdguidelinesonthe protectionofprivacyandtransborderflowsofperson aldata.htm>

⁹ <http://www.oecd.org/going-digital/ai/principles/>

¹⁰ http://globalprivacyassembly.org/wp-content/uploads/2018/10/20180922_ICDPPC-40th_AI-Declaration_ADOPTED.pdf

Question 8: How can trade policy facilitate the transition to a greener, fairer and more responsible economy at home and abroad? How can trade policy further promote the UN Sustainable Development Goals (SDGs)? How should implementation and enforcement support these objectives?

Trade agreements can be used by the EU as a tool to promote its sustainable values. However, we cannot ignore the fact that a good that travelled across oceans and was made with weak labour and environmental standards is not sustainable. In the 2019 trade Eurobarometer, 50 % of citizens surveyed think that one of the priorities of EU trade policy should be to ensure that environmental and health standards of the EU are respected.

In 2018, 73% of global consumers declared they would change their consumption habits to reduce their impact on the environment¹¹. There is also a growing pressure on them to make more sustainable choices. For instance, one of the **sustainable development goals**¹² (SDGs) of the United Nations is '**responsible consumption and production**'. To achieve this goal, consumers will need key information: *Where does the product come from? How has it been produced? How long will it last? Is it repairable? Can it be updated?* Today in Europe, consumers have already some tools at their disposal to try to make the right choice. They can rely on voluntary labels such as the **EU ecolabel**¹³ to choose goods and services that have less impacts on the environment. Yet, as there is no compulsory, trustworthy label which would provide for transparency on a product's sustainability across its lifecycle, consumers are in most cases not able to reward those companies who take sustainability more seriously than others.

In May 2020, the European Commission published its '**Farm to Fork**' Strategy¹⁴ for shifting EU food production and consumption onto a more sustainable path. The Strategy sets the EU on the right track to greener and healthier food, but for it to deliver, greater coherence is required across all policies affecting food – including trade policy. The latter needs to be an enabler, and not create obstacles to, the EU's journey towards food sustainability.

Indeed, a big chunk of the EU's food-related environmental impacts is 'embodied' in the agricultural and food products it imports from third countries (so-called 'trade footprint'¹⁵). As such, it is not enough for the EU to strive for sustainable food production at home while at the same time it continues importing products that do not meet our requirements for environmental protection, animal welfare, etc. **Ensuring that all food that is imported into the EU complies with all our regulations and standards** would also create a level playing field for EU farmers, many of whom are dragging their feet to move towards more sustainable production practices because they fear they might be exposed to unfair competition from third countries.

¹¹ <https://www.nielsen.com/us/en/insights/article/2019/sustainability-continues-to-drive-sales-across-the-cpg-landscape/>

¹² <https://sustainabledevelopment.un.org/?menu=1300>

¹³ <https://ec.europa.eu/environment/ecolabel/>

¹⁴ European Commission. '[Farm to Fork](#)' Strategy for a fair, healthy and environmentally friendly food system. May 2020.

¹⁵ European Commission Joint Research Centre, Indicators and assessment of the environmental impact of EU consumption, 2019.

A survey of European consumers on attitudes towards sustainable food published by BEUC¹⁶ found that **consumers expect the EU to continue to lead on food sustainability**, regardless of whether other world players are doing the same or not. To achieve that, the EU trade policy must go beyond cooperation and dialogue to effectively ensure that trading partners wanting to export food into the EU abide by the same rules as those that apply to EU farmers and food producers. An example to follow is the EU legislation on veterinary medicinal products, which will oblige third country producers exporting animal products to the EU to follow our rules and restrictions in terms of the **prudent use of antimicrobials** in farmed animals. Yet, some trading partners have criticised this move¹⁷ on the ground that the measures “are likely to have an unnecessary restrictive impact on international commerce”¹⁸. It is likely that similar concerns would be voiced if the EU were to introduce rules to make the healthy choice easier for consumers (by mandating simplified nutrition labelling on the front-of-pack, e.g. via the use of Nutri-Score as BEUC is calling for¹⁹).

With regards to products, consumers have no information about their **durability**²⁰. They also do not know before buying whether **spare parts** and **updates** are available. As the EU works toward achieving the SDGs, regulatory adjustments will have to be made. **EU trade policy needs to be an enabler, not create obstacles in the EU’s journey towards sustainability**. Some trading partners are already criticising the EU’s present sustainability measures such as the Ecodesign directive and the EU Ecolabel. Some even criticise EU rules to make products last longer or to provide more information to consumers on their durability. As the EU currently considers stepping up its regulatory framework on sustainable production and consumption in the context of the European **Green Deal** and the new Circular Economy Action Plan, it is likely that further criticisms will arise. That is why the future EU trade policy must guarantee that trade will not limit the ability of the EU to become more sustainable and better inform consumers. **The new paradigm should be to make trade compliant with the SDGs, not the other way around**. This should be the number one goal of the Chief Trade Enforcement Officer.

Concretely, for EU trade policy to promote the SDGs:

- The EU Commission **Green Deal team** should provide guidance to the Trade Commissioner, the Chief Trade Enforcement Officer and DG Trade.
- DG Trade should ensure that EU trade policy is compliant with the Paris Agreement and the Sustainable Development Goals (SDGs). The **Chief Trade Enforcement Officer** should ensure that this approach is properly implemented in EU trade agreements through the following measures:
 - **(TBT)** and trade and sustainable development **(TSD)** in EU trade deals should contribute to achieve the SDGs.
 - **TSD chapters** of EU trade agreements should:
 - Include the word ‘*sustainability*’ in the right to regulate article, next to labour and environment.
 - 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.

¹⁶ BEUC. *One bite at a time: consumers and the transition to sustainable food*. Analysis of a survey of European consumers on attitudes towards sustainable food. June 2020.

¹⁷ https://www.wto.org/english/news_e/news18_e/sps_12jul18_e.htm

¹⁸ https://www.wto.org/english/news_e/news18_e/sps_12jul18_e.htm

¹⁹ https://www.beuc.eu/publications/beuc-x-2019-033_front-of-pack_nutritional_labelling.pdf

²⁰ https://ec.europa.eu/info/sites/info/files/ec_circular_economy_final_report_annex.pdf

- Incorporate a suspension clause. Any serious injury to the environment and labour rights from trading partners should trigger a suspension of the whole agreement. The Chief Trade Enforcement Officer should make sure that the removal of trade preferences and, if necessary, a full suspension, will happen in a timely manner.
- The **general exceptions** of EU trade agreements should refer to measures contributing to achieve the SDGs and comply with the Paris Agreement

The reform of the WTO will be a central piece of the trade policy review. Consumer organisations strongly support a strong rules-based multilateral order and the EU's effort to save the WTO. As we explained in our reply to question 3, **the reform the WTO must include a sustainability angle**. 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 reviewing the TBT and SPS agreements. 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. Moreover, the EU should call for a more efficient dialogue between the WTO, the UN and other international organisations to **make the SPS and TBT agreements fit for the sustainability challenge**.

Question 10: How can digital trade rules benefit EU businesses, including SMEs? How could the digital transition, within the EU but also in developing country trade partners, be supported by trade policy, in particular when it comes to key digital technologies and major developments (e.g. block chain, artificial intelligence, big data flows)?

Trade policy could support a people-centric digital transition by enhancing consumer trust online, while preserving the EU's policy space with regards to key digital areas:

- **Online consumer trust:** The share of EU consumers buying online has doubled in a decade²¹. The COVID-19 crisis increased this tendency for consumers, especially for purchases originating from third countries. Trade policy can help consumers to trust that what they will buy online from foreign traders will be safe and comply with EU law. For instance, each trade agreement concluded by the EU should include an online consumer trust article. It should make sure that consumers will know where the product and trader come from and what the applicable consumer rights are. The article should also guarantee that consumers will have easy access to redress if something goes wrong. On top of that, all trade agreements of the EU should promote an improved cooperation on food and product safety, health, enforcement of domestic laws, competition, redress and dispute resolution.
- **Telecommunications:** Digital trade is enabled by critical infrastructure and services such as telecommunications. Trade policy should be much more ambitious on the demand side. We already witnessed an improvement in transparency for telecom prices in recent trade agreements such as the EU-Japan economic partnership²². We call on negotiators to go a step further by promoting strong competition rules that aim to bring down prices for consumers when it comes to text messages, calls,²³ data downloads and roaming. Roaming costs matter to

²¹ According to [Eurostat](#) figures published in June 2020

²² [Article 8.57 on international mobile roaming](#) of the title on services of the Economic Partnership Agreement between the EU and Japan.

²³ BEUC [Factsheet](#) "International Calls".

consumers because mobile phones and frequent cross-border travel have become almost commonplace for consumers. Unfortunately, prices for calling, texting or downloading data by phone when abroad are so high as to be prohibitive. The EU has experienced the success of roaming rules both at retail and wholesale level. Trade discussions can take 'roam like at home' to another level. This is something that is envisaged in other trade negotiations. For example, the UK and Australia are exploring the possibility of a roaming arrangement in the context of their trade negotiation²⁴. EU consumers should not fall behind. After all, it is a major EU success story.

- **Data protection & privacy:** The European Union has clearly stated that the fundamental rights to privacy and personal data protection are not up for negotiation. The Commission has repeated this in several occasions. After years of multi-stakeholder engagement, inter-service and inter-institutional consultations, the EU agreed on a **horizontal position**²⁵. It is a compromise that allows the EU to negotiate rules on cross border data flows in trade agreements while fully safeguarding EU citizens fundamental rights. Consumer and digital rights groups in Europe and abroad warmly welcomed the adoption of this EU position on cross border data flows, data protection and privacy in trade agreements²⁶. The EU must now stick to its position. This should be treated as a red line for the EU. If the outcome of trade negotiations on this topic does not mirror the EU text, BEUC strongly urges the EU not to commit to it. The EU must build on the international success of the GDPR. The risks for consumer rights would be greater than the benefits that can be achieved.
- **Net neutrality:** Net neutrality is a cornerstone principle of the internet. Having full access to the internet by everyone without discrimination at any time enables e-commerce. It allows users to have and enjoy the right to access content, services, applications and devices of their choice without discrimination. However, trade rules on net neutrality so far have not fully succeeded in making sure countries adhere to this principle. Some of our trading partners have very different views on the matter so if the EU Regulation on the Open Internet cannot be mirrored, the EU should not agree to lower standards.
- **Cybersecurity:** The EU should not take commitments in its trade agreements which could limit its ability to regulate on cybersecurity. Indeed, some of our trading partners have committed to favour self-regulation instead of 'prescriptive regulations' regarding cybersecurity. This is the case for the US, Canada and Mexico in their recent trade deal called USMCA²⁷. These partners are likely to ask the EU not to regulate connected products, notably in the negotiations on e-commerce happening at the WTO²⁸. This is very problematic as self-regulation has proven to fail consumers²⁹. Product tests by our member organisations, national consumer groups, proved that connected toys or smartwatches for kids are manufactured today without basic security features³⁰.

²⁴ <https://www.telegraph.co.uk/business/2020/06/20/mobile-roaming-abroad-could-free-post-brex-it-deals-uks-trade/>

²⁵ EU horizontal [position](#) on cross-border data flows and protection of personal data and privacy in trade agreements

²⁶ Civil society groups [respond](#) to EU position on data privacy in trade negotiations

²⁷ https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/19_Digital_Trade.pdf

²⁸ https://www.beuc.eu/publications/beuc-x-2019-014_wto_e-commerce_negotiations_-_beuc_recommendations.pdf

²⁹ See the tests results of our Dutch member, Consumentenbond, on easily hackable home security camera <https://www.consumentenbond.nl/beveiligingscamera/onveilige-chinese-beveiligingscameras-net-onkruid> and also the results of tests conducted by our UK member, Which? <https://press.which.co.uk/whichpressreleases/more-than-100000-hackable-cameras-in-uk-homes-warns-which/>

³⁰ See the [#Toyfail](#) analysis of consumer and privacy issues in three internet-connected toys, by Forbrukerrådet

- **Artificial intelligence (AI):** Canada, like the US, proposes to protect algorithms as trade secrets and limit transparency requirements within the context of the WTO negotiations³¹. If agreed, this would limit the level of transparency and accountability the EU or its member states could require from companies with regard to software source code and automated decision processes. This is problematic because as a principle, authorities should be able to check if AI processes comply with EU law and treat consumers fairly³². The EU should keep its margin of manoeuvre to regulate AI.

Overall, the **EU trade policy review needs to ensure that trade will not be an obstacle to consumer protection.**

Question 11: What are the biggest barriers and opportunities for European businesses engaging in digital trade in third countries or for consumers when engaging in e-commerce? How important are the international transfers of data for EU business activity?

Our research³³ shows that trust is lacking and that EU consumers buying online from foreign sellers face many hurdles. The four main barriers they face are:

- **Entering the online global marketplace by accident:** A consumer thinks he/she is buying a product from a seller located in the EU while the seller is in reality in, for instance, the United States.
- **Poor quality of goods:** The online picture looked appealing, but the product delivered is not in conformity and/or does not function properly.
- **Delivery time and costs:** Consumers are not always aware it can take up to 2 months for products to be delivered. Sometimes consumers face unexpected custom duties for imported products, as these are almost never announced during the purchase process.
- **Difficulty in resolving disputes:** Trying to return a product to a Chinese seller and ask for reimbursement can be very complicated.

In 2020, our members and colleagues in third countries have unveiled a major digital trade barrier for consumers. Following serious concerns already raised about unsafe jewellery, cars seats, chargers, travel adaptors and power banks that were available online, they uncovered the presence of many other **non-compliant and dangerous products** on popular marketplaces³⁴. 66% of 250 consumer products that were purchased on online marketplaces such as Amazon, AliExpress, eBay and Wish have been found not compliant with EU laws and technical standards which are in place to protect consumers' rights, health and the environment. These are the results of a mystery shopping conducted by 6 consumer groups of the BEUC and International Consumer Research and Testing (ICRT) networks. The products included smoke and carbon monoxide alarms that do not work, children's clothing with a lengthy cord, toys that contain chemical levels 200 times over the limit and a power bank that melts during testing.

³¹ https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDDocuments/254874/q/INF/ECOM/34.pdf

³² https://www.beuc.eu/publications/beuc-x-2019-063_ai_rights_for_consumers.pdf

³³ BEUC and vzbv study 'The Challenges to protect EU consumers in online global markets', 2017.

³⁴ See BEUC press release at <https://www.beuc.eu/publications/two-thirds-250-products-bought-online-marketplaces-fail-safety-tests-consumer-groups/html>.

With regards to **international transfers of data**, it is important to understand why this matters for consumer trust in digital trade. The Commission cannot only look at the importance of data for businesses. Data is not a tradable asset. Consumers cannot sell or renounce to their right to data protection or their right to privacy. These are fundamental rights. The right to privacy is also a human right. Consumers in the EU trust that their data and privacy will be protected by the General Data Protection Regulation (GDPR). The GDPR is a trade and trust enabler. Without strong privacy and data protection rules, we would have a serious barrier to digital trade for consumers. This should not be put in question by trade negotiations.

Some stakeholders argue for 'interoperability' or 'compatibility' of rules, but this is not compatible with EU law. The EU standard is higher. The GDPR allows for free, safeguarded international data transfers if the country where the data is transferred and/or processed provides an essentially equivalent protection than that offered in the EU. This is facilitated by the so-called 'adequacy decisions'. This high standard of protection has been made crystal clear with the Court of Justice of the EU's judgment Shrems II (case C-311/18)³⁵. In any case, the GDPR also offers other mechanisms to transfer personal data abroad. BEUC agrees with data flows provided personal data protection, data security and privacy are strongly secured.

To constructively engage in cross-border data flow discussions, the EU adopted a **horizontal position** on data flows, data localisation and the protection of privacy and personal data. As explained in our answer to the previous question, BEUC strongly welcomes this EU horizontal position. It is the only acceptable compromise to preserve consumer trust and fundamental rights in trade policy. It would be highly inadvisable to reopen this debate. **Fundamental rights are not up for negotiation.**

Question 12: In addition to existing instruments, such as trade defence, how should the EU address coercive, distortive and unfair trading practices by third countries? Should existing instruments be further improved or additional instruments be considered?

There is an ongoing debate about adapting EU competition rules to facilitate mergers between European firms to compete with heavily subsidised foreign companies. From BEUC's viewpoint, this is not the right approach. One should start by increasing the transparency of the subsidies that foreign companies seeking to enter the European market receive. Further to this, international procurement rules are more suitable to address these issues than competition laws. This is because from a consumer perspective, competition seeks to enhance consumer welfare by ensuring that consumers benefit from choice, better prices and high-quality products while this objective might be at odds with the political push to allow anti-competitive mergers to go through under the excuse to be able to compete in global markets. This is why it is important that the trade agreements concluded by the EU contain clear obligations regarding **subsidies transparency and limits to state aid disrupting competition** in the markets of the concerned countries.

³⁵ <https://www.beuc.eu/publications/eu-top-court-sides-consumer-privacy-eu-us-data-shambles/html>

Question 13: What other important topics not covered by the questions above should the Trade Policy Review address?

1. Give consumers the prominence they deserve in trade policy

A study³⁶ commissioned by our German member, Verbraucherzentrale Bundesverband (vzbv), showed that consumer protection does not figure prominently in the trade agreements concluded by the EU. One conclusion of the study was that because consumer protection is not listed among the explicit objectives of the latest generation of trade agreements, it does not benefit from special attention. Therefore, **consumer protection should be defined as an overarching objective of trade agreements**. This should be reflected at different stages, including in negotiating mandates, as is the case the ongoing talks with Australia³⁷ and New Zealand³⁸. It should further be mentioned 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 protection. 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 agreement.

Chapters that are traditionally negotiated as part of trade agreements, 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 and describe how consumer organisations will be involved in the implementation of an agreement. Such chapter would be the naturally continuity of the EU 'Trade for all strategy' towards a more people-centric trade policy. To illustrate what a **consumer chapter** could look like, we developed a model chapter in a separate position paper³⁹.

2. Break the silos between trade policy and other policy areas

Trade is a cross-cutting public policy area. Many people do not realise to what extent their daily life is related to trade. It matters to consumers because it impacts their consumption basket but also how their governments decide to regulate and more importantly it is a key driver in geopolitics. **We need the trade policy review to contribute to breaking the silos between policy areas.**

³⁶ 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

³⁷ <https://www.consilium.europa.eu/media/35794/st07663-ad01dc01-en18.pdf>

³⁸ <https://www.consilium.europa.eu/media/35796/st07661-ad01dc01-en18.pdf>

³⁹ https://www.beuc.eu/publications/beuc-x-2017-096_lau_model_consumer_chapter_in_trade_agreements.pdf

The new EU Trade strategy should encourage **out of silos policy making**. We need the responsible directorate generals (DG) of the European Commission to team up and share information. On a more operational basis, more regular cross-cutting meetings should be organised. There should also be more task forces at Commissioner, cabinet and desk officer level. It is also important to organise wider consultation of Commission services when trade proposals are made to trading partners. There is a tendency to think that some trade provisions are just a 'usual wording' in the trade world and there is no need for other Commission services to provide input. But this usual language needs to be updated when our markets change. Likewise, DG Trade, Justice and Grow should be actively involved if the EU customs policy is reformed so that there is consistency between EU policies and to show the EU has a coordinated response to emerging issues.

There are examples proving the efficiency of out of silos policy work in the EU:

- **Regulatory cooperation:** Dialogues between regulators became a cornerstone of EU trade agreements during the CETA and TTIP talks. One of our repeated pieces of advice to DG Trade was to leave regulators in the driving seat, not trade experts. We called to manage these dialogues independently, not through trade agreements. Authorities' priority should remain to keep markets competitive and safe for consumers, not to facilitate trade. DG Trade and DG competition worked together to make this happen with Mexico. A dialogue between competition authorities has been suggested in the trade agreement but it is created and managed in parallel by authorities⁴⁰. It is a positive example of out of silos approach. It should become the norm in the renewed EU trade policy.
- **Data flows, data protection and privacy:** one of the recent EU trade challenges has been about data flows VS data protection and privacy. How can you agree on trade rules with third countries to allow data to flow more freely without undermining people's fundamental rights? The reason why the EU managed to find an adequate answer in 2018⁴¹ is because DG trade, DG Justice, the European Data Protection Supervisor, experts in the European Parliament and Council and many others worked together.

To sum up, we expect the following from the trade policy review:

- More regular cross-cutting meetings and task forces at Commissioner, cabinet and desk officer level.
- Regular discussions with Member States on strengthening public enforcement of consumer and safety legislation vis-a-vis third country traders.
- Efficient tools to share information on emerging trends impacting trade.
- Systematic consultation of DGs whose portfolios might be affected before putting trade proposals on the negotiating table.

3. Be transparent and involve consumer organisations

Looking back 5 years ago, the EU's trade transparency progress is quite significant. This is very positive as it allows public interest groups like us to see what is being negotiated on behalf of citizens. The regular civil society dialogues⁴² and the creation of the free trade agreement expert group⁴³ are also good tools to allow stakeholders to raise their demands and concerns about trade.

⁴⁰ https://ec.europa.eu/competition/international/bilateral/mexico_mou_2018_en.pdf

⁴¹ https://trade.ec.europa.eu/doclib/docs/2018/may/tradoc_156884.pdf

⁴² https://trade.ec.europa.eu/civilsoc/csd_proc.cfm

⁴³ <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1776>

The challenge is now to take these efforts to the next level. First, a **new group of civil society trade experts should be established**, to replace the FTA expert group. BEUC and 20 other organisations, which were member of the FTA expert group, have made this explicit request to Commissioner Hogan in a letter, early June. We all stress the need for access to EU draft proposals and consolidated texts in order to provide meaningful input to the Commission. Also, once negotiations enter the end game, public interest groups can no longer exercise their watchdog role but end up screening a final text. In some cases, such as CETA (EU-Canada trade deal), we found ourselves in a position where we could not support the final agreement⁴⁴. If back then we would have had access to the draft text, we could have proposed solutions to improve it.

New trade agreements can be monitored by civil society groups through **domestic advisory groups** (DAGs). The problem is that for some agreements the DAGs only focus on the sustainable development part. All new agreements should expand the scope of the DAGs to all issues covered. The participation to these groups is open but if the EU wants them to be really balanced and efficient, more budget is needed. Most NGOs do not have the means to dedicate an officer to such task. This also applies to the FTA expert group.

Transparency and engagement are a shared responsibility with Member States.

It is quite shocking to see that despite the transparency wave, trade ministers still refrain from making trade mandates public. This decision is taken on a case by case basis. Rather, it should become systematic for all negotiations. All Member States should also have trade dialogues or expert groups in place where they could debrief national stakeholders and seek advice. Some Member States made this effort during the TTIP negotiations and national consumer organisations found it useful. Establishing regular national civil society dialogues could contribute to a better acceptability of trade agreements.

⁴⁴<http://ttip2016.eu/files/content/docs/Full%20documents/160512%20BEUC%20position%20paper%20on%20CETA.pdf>



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