

The Consumer Voice in Europe

THE CONSUMER CHECKLIST FOR A POSITIVE EU- AUSTRALIA 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 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

- One root cause of public discontent with recent trade deals like 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 to 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 Australia are about to start negotiating a free trade investment this summer. As progressive trading partners, they have an opportunity to design a trade agreement that would protect consumers while bringing them benefits. This could for instance be materialised in a chapter dedicated to consumers in the trade 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).

Our recommendations for a positive trade agreement for consumers

1 Consumers at the heart of the agreement

The EU-Australia 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 The vision of trade agreements tailor made for companies and investors to boost growth and jobs is outdated.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 citizens 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 - Australia agreement:

- **Define consumer protection as a key objective of the agreement:** A study² 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 the EU - Australia 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 will be able to maintain their right to regulate in the public interest including on consumer protection³. 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 agreement⁴.
- **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 and Australia 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 like ours will be involved in the implementation of an agreement. To illustrate what such a chapter could look like, we developed a [model consumer chapter](#) in a separate position paper⁵.

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

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. That is the theory, but in practice trade benefits are not automatically passed on to consumers, contrary to the general belief. It depends on a lot of factors such as the competitive pressure of the market.

As a matter of fact, economists have recently realised how unclear the link between the reduction of tariffs and the reduction of consumer prices and the enhancement of choice is. Some economists are now trying to assess it more concretely in recent studies. Note, for example, the recent paper from the Chief economist of the directorate general for Trade of the European Commission on consumer benefits from trade⁶. These studies show that there is not necessarily a direct link between the reduction of import duties and a reduction of consumer prices and increased choices.

Therefore, we recommend the EU to approach the issue of reduced prices and increased choice in a constructive way. For instance, both sides should commit that their relevant authorities will supervise the competitiveness of markets affected by the trade agreement. This could ensure that the 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 rather easy for the EU-Australia FTA 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 (e.g. roaming fees). A reference in the text to the political will to **reduce international telecom retail prices and roaming fees** would be a positive step to show consumers the concrete benefits of the FTA while they travel.
- **Eliminate unjustified geo-blocking**. 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.

4. High levels of consumer protection

Trade must benefit and protect all. The EU - Australia trade agreement must uphold consumer protection levels on both side. There should be **no trade-offs in the margins of the talks** on food, product, health safety standards, cosmetics, financial services or access to medicines. The EU and Australia have an opportunity to demonstrate that their FTA will not result in lower consumer protection standards.

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

From a European perspective, one way of ensuring this would be to state clearly in the text of the agreement that the EU can maintain the use of the **precautionary principle**. There should also be a 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)⁷. The EU-Australia 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 to give up core principles of democratically agreed legislation in the EU. It would also undermine safety of consumers and the environment in Europe.

5. Secured data protection and privacy rights

The EU and Australia should **explore the possibility of an adequacy agreement on data protection first**, rather than introducing rules on data flows in their trade deal. If the EU and Australia would decide otherwise despite our recommendation, then they should only use the recent **EU horizontal approach on data protection and trade**⁸ in their agreement, not the CPTPP text (Comprehensive and Progressive Agreement for Trans-Pacific Partnership). The European Commission recently endorsed this approach for cross border data flows data and for personal data protection in trade agreements. It provides a necessary safeguard to ensure that the privacy rights of EU citizens will be fully protected in the FTA. The CPTPP model on the other hand, is too weak to fully preserve EU citizens' fundamental right to data protection and privacy.

6. Consumer protection preserved from foreign investors attacks

Investor-protection mechanisms like ISDS (investor to state dispute settlement) and ICS (Investment Court System) risk deterring the EU 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 flows⁹ nor evidence that they are needed. Most importantly, high doubts remain unanswered regarding the compatibility of these regimes with EU law¹⁰. Despite the fact that 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 Australia, negotiated in parallel of the trade deal.

7. Positive and voluntary regulatory dialogues to protect consumers

Cooperation between regulators of the EU and Australia could be beneficial for consumers if it is designed and implemented in a careful way. Such cooperation should focus on a dialogue and exchange of information between regulators but should not be a cooperation

⁷ Examples might include the ethics of something like cloning or the desire to make decisions based on the origin of a product.

⁸ http://trade.ec.europa.eu/doclib/docs/2018/may/tradoc_156884.pdf

⁹ 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.

¹⁰ 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.

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 of the EU and Australia 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:

- **Create or pursue dialogues between EU & Australian regulators primarily aiming to protect and benefit consumers:** These kind of dialogues between regulatory authorities 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 Australia 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 Australia government.
- Issues related to **good regulatory practices and impact assessment** of regulations should not be tackled in such cooperation as it requires to be dealt with in a more appropriate context.

8. Transparent negotiations

We see a lot of potential for transparency for this upcoming negotiation between the EU and Australia, especially as both sides are in the process of increasing transparency in their trade policies. The EU and Australia should be transparency leaders in global trade and go to the next level:

- **Publish negotiating proposals** during the rounds.
- **Debrief stakeholders** after each round.
- Set up or use existing advisory groups to **allow input from stakeholders**, for instance the EU expert group on free trade agreements.
- **Publish consolidated texts.** This would be a first in EU and Australia FTAs 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 EU and Australia to pursue their excellent transparency efforts.

END



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