

23 Oct 2020

---

**European Commission Trade Policy Review**

---

**Transatlantic Consumer Dialogue response to the public consultation**

The Transatlantic Consumer Dialogue (TACD), a forum of EU and US consumer-centred organisations, welcomes the opportunity to provide answers to this consultation. Trade, with a focus on EU-US economic relationship, has been at the heart of the Dialogue's priorities since its creation over 20 years ago; below we address the questions which are concerned with the consumer and citizen interest. Our answers reflect the recommendations made in the Positive Consumer Agenda: New Rules for the Global Economy<sup>1</sup> and resolution on Digital Trade<sup>2</sup>, as well as other consensus sectorial policies which are published on [www.tacd.org](http://www.tacd.org).

**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?**

TACD's recent focus has been on the ongoing e-commerce negotiations at the WTO and we base our comments on this experience. We hold that to have trust and engage in online trade, consumers need to know that foreign traders will comply with the domestic rules that protect their health, safety, privacy, and financial well-being. The COVID-19 crisis has made people more dependent than ever on online shopping. But the rise of online sales has also generated 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 demonstrating repeatedly in the past, and particularly when the WTO e-commerce initiative started.

We therefore need clear rules to enable consumers to fully trust online shopping. On top of rules such as those that require clear information for consumers and easy access to redress, we need a better cooperation between consumer protection authorities. We need authorities to investigate cases of unsafe products such as toys or face masks sold around the globe.

The WTO should increase its cooperation with other international organisations to better understand what is making the global market unpredictable and unsafe for consumers. A

---

<sup>1</sup> "Positive Consumer Agenda: New Rules for the Global Economy" <http://tacd.org/wp-content/uploads/2017/03/TACD-Vision-Paper-Pro-consumer-agenda-Final.pdf>

<sup>2</sup> Resolution on Digital Trade: <http://tacd.org/wp-content/uploads/2020/05/TACD-Resolution-digitaltrade-Jan2019-final.pdf>

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) GlobalRecalls portal, the United Nations Conference for Trade and Development (UNCTAD) and with the World Customs Organization (WCO). All these organisations are working on similar issues, but they do not always talk to each other. In the WTO for example, there is a very low awareness about the existence of ICPEN.

WTO members should also look at the space they provide to stakeholders. A good example is the statement of the Ottawa group in June 2020<sup>3</sup>, 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?**

In the past, trade policy (such as the one linked to the defunct TTIP) has looked at limiting regulatory divergences between negotiating partners to facilitate trade instead of promoting a more positive and strategic cooperation.

TACD has proposed a different and new trade policy approach to ensure that while negotiators work to eliminate tariffs and other actual trade barriers, the role of regulators to implement robust consumer, labour and environmental protections is not undermined. Trade should be conducted on the basis of an agreed floor of protections, giving governments the freedom to set higher levels of protection as needed by their circumstances and populations.

TACD, during ongoing TTIP negotiations, called for EU and US regulators to work together outside the context of trade negotiations to enhance transatlantic coordination on consumer and other protections. Regulatory dialogues in areas such as e-commerce, telecommunications, product safety, food safety, the approval of medical devices and pharmaceuticals, financial services, chemicals, car safety, and enforcement of consumer law

could all be useful. These dialogues could focus on best practices, exchanges of information and coordination, for e.g. on antimicrobial resistance.

Such voluntary cooperation should work towards positive actionable outcomes, for example, establishment of rapid alert systems for unsafe consumer products, or cooperation on antibiotic resistance and related protections. The current COVID-19 pandemic has shed light on the problem of drug shortages and lack of compliance of products sold online such as masks. Any multilateral health initiative should include a cooperation dimension to ensure that medicines are available and affordable; for example, by sharing best practices on, and encouraging the use of, available intellectual property flexibilities that facilitate generic medicines competition.

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 encourages cooperation between market surveillance authorities to enhance consumer protection. As a result, the market surveillance authorities in the EU and Canada have signed a memorandum of understanding<sup>4</sup> 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. It should become a precedent for future agreements and be applied to the existing EU FTAs.

The EU should also help pave the way towards enhanced multilateral regulatory dialogues; global regulatory dialogues could be even more effective and should be preferred. Several international cooperation fora already exist. For example, in digital trade areas, the Council of Europe's Convention 108+ is a binding international agreement on data protection and data transfers, and the OECD has issued consensus principles concerning artificial intelligence. There are also various standardisation bodies (ISO, ITU), which are well-placed to discuss and agree on sound technical cybersecurity standards.

The EU's efforts and resources should be focused on such regulatory dialogues; trade agreements are not the appropriate tools to cooperate on issues involving essential public protections, human rights, or fast-evolving and sensitive digital issues.

These regulatory cooperation efforts should be conducted on a fully transparent and balanced multi-stakeholder basis, with adequate resourcing from governments to facilitate the participation of under-resourced stakeholders.

---

<sup>4</sup> [https://ec.europa.eu/info/sites/info/files/sqned\\_agreement\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/sqned_agreement_en_0.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 to promote the principles of sustainability. TACD encourages the EU to condition increased market access in its trade agreement on satisfying a floor of improved environmental and human rights protections, as well as consumer and labour protection.

There is a need for enforceable and substantive labour and environmental rights and standards; without such standards global trade can produce a race to the bottom between nations in wages, working conditions and environmental and health safeguards. Labour and environmental standards do exist globally, but there is no effective enforcement. An efficient way to address this problem is to ensure that any benefits to partner countries in terms of market access are conditioned on a confirmation that labour and environment rights, not only provided on paper but through changes to those countries' laws, and that they are being enforced with concrete results, with trade benefits being halted if conditions deteriorate.

**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)?**

In relation to digital trade, TACD has three key recommendations for the EU:

#### **1. Put consumers first**

- **Electronic commerce:** The development of international cross-border online commerce has the potential to boost the competitiveness of the economy and improve consumer choice and welfare. The current COVID 19 pandemic has increased exponentially online commerce, including cross-border purchases. Therefore, it is essential to prioritize improvement of consumer trust online. It is not always easy for consumers to shop online and get all the information they need to make informed choices, such as details about the product, or the seller's location and how to contact him/her, or what to do if things go wrong. Provisions on online consumer trust proposed by the EU in talks with Australia and New Zealand<sup>5</sup> are good starting points. As stated also under the regulatory cooperation question

---

<sup>5</sup> [https://trade.ec.europa.eu/doclib/docs/2018/december/tradoc\\_157570.pdf](https://trade.ec.europa.eu/doclib/docs/2018/december/tradoc_157570.pdf)

above, if international cross-border e-commerce rules are to be negotiated in any forum they should focus on guaranteeing consumers a floor of basic protections, such as information needed to make an informed choice, and easy access to dispute resolution and redress.

- **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 partnership (Article 8.57 on international mobile roaming<sup>6</sup>). 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, data downloads and roaming. Roaming costs matter to consumers, whose use of mobile phones and frequent cross-border travel have become almost commonplace. Unfortunately, prices for calling, texting, or downloading data by phone when travelling from the EU to the US are prohibitively high. 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.
  - **Data protection & privacy:** Nothing in a trade deal should compromise the protection of personal data and privacy afforded by countries’ related laws. US TACD members are currently advocating for a strong and comprehensive federal privacy law. 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 on several occasions. TACD, together with its members BEUC and EDRi, have welcomed the EU’s proposals for provisions on cross-border data flows<sup>7</sup> and protection of personal data and privacy in trade agreements. These provisions are balanced and are the result of hard work and extensive consultation with stakeholders and other trade partners. This is not about imposing the EU General Data Protection Regulation (GDPR) on other countries, but about ensuring that all countries can regulate in the public interest to provide consumers with privacy and data protection. That protection can help to foster more trust in the digital economy and trade in general.
2. **Leave the following issues out of trade agreements:**
- **Net neutrality:** Net neutrality is a cornerstone principle of the internet. Ensuring that everyone has full access to the internet, without discrimination, enables e-commerce. It allows individuals to choose the content, services, applications, and

<sup>6</sup> [http://trade.ec.europa.eu/doclib/docs/2018/august/tradoc\\_157228.pdf#page=185](http://trade.ec.europa.eu/doclib/docs/2018/august/tradoc_157228.pdf#page=185)

<sup>7</sup> [https://trade.ec.europa.eu/doclib/docs/2018/may/tradoc\\_156884.pdf](https://trade.ec.europa.eu/doclib/docs/2018/may/tradoc_156884.pdf)

devices they desire. However, trade rules on net neutrality have not fully succeeded in making this principle a reality. If the EU Regulation on the Open Internet is not mirrored in other countries, the EU should not agree to lower standards via trade agreements. Net neutrality and internet governance-related matters should be addressed via open, multi-stakeholder processes.

- **Cybersecurity and internet of things:** Robust international standards for cybersecurity are needed. Effective cybersecurity measures must protect consumers, devices, and networks. Product tests by TACD member organisations, national consumer groups, proved that connected toys or smartwatches for kids are manufactured today without basic security features<sup>8</sup>. Including such measures in the context of trade discussions, however, is likely to interfere with ongoing efforts to achieve those goals. It could lock countries into deficient technical standards. 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). Therefore, TACD believes that the EU should not take commitments in its trade agreements which could limit its ability to regulate on cybersecurity.
- **Artificial intelligence (AI):** Regulators have not kept pace with the immense technological advances made during the past decade. They are only starting to explore the possibilities of how to regulate artificial intelligence (AI) and ensure that algorithmic decision-making is transparent, accountable, and non-biased. However, some countries, like the US, propose to protect algorithms as trade secrets and limit transparency requirements in the context of the ongoing WTO e-commerce negotiations<sup>9</sup>. This would restrict or make difficult the introduction of public supervision of AI and algorithmic decision-making. Consequently, inclusion of provisions related to AI governance are not appropriate in any trade agreement

**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?**

---

<sup>8</sup> <https://fil.forbrukerradet.no/wp-content/uploads/2016/12/toyfail-report-desember2016.pdf>

<sup>9</sup> [https://docs.wto.org/dol2fe/Pages/FE\\_Search/DDFDocuments/254874/q/INF/ECOM/34.pdf](https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/254874/q/INF/ECOM/34.pdf)

Regarding the importance of international data transfers, this is currently fully possible within the provisions of the GDPR. Adequacy decisions are a good instrument to enable data flows, providing they are properly negotiated and designed (the US-EU Privacy Shield was not, as the recent Schrems II judgement has revealed). There are other provisions in the legislation to enable data transfers outside the EU, while securing personal data.

Importantly, people in the EU trust that their personal data will be protected by an effective law. The lack of strong privacy and data would be a serious barrier to digital trade for consumers. The GDPR is a trade and trust enabler. This should not be put in jeopardy by international trade negotiations. Personal data is not a tradable good, and the right to privacy is a human right.

As stated in the question above, TACD supports<sup>10</sup> the EU horizontal position on data flows, data localisation and the protection of privacy and personal data. TACD does not recommend for this debate to be re-opened during this trade policy review.

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

- **Future trade policy must ensure transparency and inclusiveness:** Decision-making and negotiating processes must be made open to all those who will be affected. EU's significant improvements in transparency and public interest involvement must be both maintained and improved under the new trade Commissioner. EU likewise should insist on equal transparency both multilaterally and from its negotiating partners, which currently is not the case.
- **Negotiating mandates should explicitly state that the goal of the agreement is to enhance consumer well-being and secure current and future levels of consumer protection:** Trade agreements must be designed for all. The vision of trade agreements tailor-made for companies and investors to boost their own profitability by eliminating consumer and environmental safeguards, and imposing new protections and privileges for themselves, is outdated. This old model of trade deals is no longer politically viable for the simple reason that citizens rightly feel that they are not being taken care of in these agreements. For instance, we must assure that health, safety, and environmental effects of products are disclosed to consumers. That trade agreements' primary goal is to promote consumer well-being and protect current and future levels of protection should be set in stone in negotiating mandates.

---

<sup>10</sup> [http://tacd.org/wp-content/uploads/2018/02/EDRi\\_BEUC\\_TACD\\_statement\\_trade\\_dataflows.pdf](http://tacd.org/wp-content/uploads/2018/02/EDRi_BEUC_TACD_statement_trade_dataflows.pdf)

- **The impacts on consumers must be better assessed as part of the trade negotiation process:** Impact assessments generally disregard impacts on consumers, apart from the hypothetical impact on prices. Worse, econometric models, such as those employed to project economic gains from TTIP, presume consumer protections are non-tariff trade barriers the elimination of which are calculated as economic gains. The costs that would result from elimination of such safeguards are never considered (e.g. health, labour, financial stability, environment etc.). Impact assessments should also present data on consumer choice and benefits in consumers' everyday life and identify more clearly the impact on right to regulate. Furthermore, the ex-post evaluations of trade agreements should be strengthened to give a better overview of the factual effects trade agreements have had, e.g. on consumer prices, product choice and health and safety.
- **The EU should rethink how its trade mandates are drafted:** A trade mandate is currently a joint discussion between the Commission and the Council. But it should also involve the European Parliament as well as stakeholders and citizens. A public consultation could help in paving the way to a successful trade agreement. A mandate supported by the entire society will lead to a more consensual ratification process.

The Transatlantic Consumer Dialogue (TACD) is a forum of 77 US and EU consumer and citizen rights organisations, <http://tacd.org/about-tacd/member-list/>. The TACD Secretariat is hosted by BEUC, Rue d'Arlon 80, B-1040 Brussels, tel +32 (0)2 743 1590 | Secretariat: [oriana.henry@tacd.org](mailto:oriana.henry@tacd.org) | @tacd\_consumers

**Organisations on the TACD Steering Committee:** Consumer Federation of America (CFA), Consumer Reports U.S., Danish Consumer Council, European Consumer Organisation BEUC, German Consumer Federation VZBV, Public Citizen U.S., Test Achats Belgium, U.S. PIRG