

EU TRADE POLICY REVIEW – A CONSUMER PERSPECTIVE

Responses to the Consultation of the EU Commission from
the Federation of German Consumer Organisations – Ver-
braucherzentrale Bundesverband (vzbv)

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I. INTRODUCTION

The Federation of German Consumer Organisations – Verbraucherzentrale Bundesverband (vzbv) welcomes the fact that the European Commission is undertaking a review of its trade policy. The EU's trade policy review should tackle both the challenges arising from the COVID-19 pandemic and its repercussions for global trade and also acknowledge that the European Union's (EU) trade policy still requires reforming in order to properly reflect consumer interests and a value-driven EU trade policy.

The „Trade for All“-strategy, adopted in 2016, has been an important landmark strategy to acknowledge the interests of civil society, such as consumer interests, in EU trade policy. Nevertheless, after five years, global markets have undergone a number of changes: not only did digitalisation and global e-commerce further gain traction, the EU's responses to climate change and the quest for responsible global supply chains are also being reflected. European consumers increasingly shop online globally, they do want to shop more sustainably and want to know that EU standards are being upheld whilst receiving good value for money. These are the main driving forces from the German consumer perspective that should be reflected in the EU's trade policy which we already raised in our initial position paper on the EU's Trade Policy Review.¹

vzbv (www.vzbv.de) is the umbrella organisation for more than 40 consumer organisations throughout Germany and represents the interests of German consumers vis-à-vis policymakers, the private sector and in public. vzbv is also a founding member of BEUC, the European Consumer Organisation.

II. RESPONSE TO QUESTIONS

In the following, the questions posed by the European Commission in its Consultation Note² shall be answered. Not all questions will be referred to, since not all are directly relevant to a consumer perspective.

QUESTION 1

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

vzbv supports the European Commission's model of **open strategic autonomy** as an overall concept for its future trade policy. From the German consumer perspective it is important to be open to the world in order to supply consumers with a wide variety of products, support competitive markets and achieve affordable prices. Nevertheless, the European Union should not be open to global markets at all cost. Openness is not an end to itself but should contribute to the overall values of the European Union and the wellbeing of its citizens. Therefore, the EU's open strategic autonomy should also aim at concluding high-standard agreements and policies that underscore the EU's position as a frontrunner of a value-based trade policy and champion of multilateral institutions.

¹ vzbv: Neue Strategie für EU-Handelspolitik, 2020, <https://www.vzbv.de/dokument/neue-strategie-fuer-eu-handelspolitik>

² EU Commission: A renewed trade policy for a stronger Europe, 2020, <https://trade.ec.europa.eu/doclib/html/158779.htm>

The EU's trade strategy should contribute to a sustainable recovery after the COVID-19 pandemic and diversify supply chains based on high-standards.

The **EU should use its leverage as being a big and attractive market** to build incentives through its trade policy for other countries to introduce high standards for consumers, workers and the environment. Such credible high-standards agreements (preferably multilateral rather than bilateral) would put an end to the race to bottom which until today is most often the case in international value chains. The current structures in the global economy create problematic incentives, as they are often based on a competition for the lowest labour and environmental protection standards, or on creating competitive advantages for certain production locations by producing goods that deliberately do not meet EU rules. If international standards were to be applied consistently, fairer competitive conditions would be created, which would also favour more diverse supply chains since producers would not have to compete on the basis of the lowest standards. Such a consistent approach to high-standards in international value chains would therefore strengthen the "open strategic autonomy" of the EU. A unilateral dependence on certain production countries would also be reduced as more countries could join the market, which would facilitate the availability of products in the event of a crisis.

One sector where the EU was able to set the bar high for standards through its trade policy is **data protection and privacy**. In this field, it is clear that when a company wants to make business in the EU or with data from EU citizens, they have to respect the rules of the EU's General Data Protection Regulation. From a consumer perspective this approach should be withheld for the field of data protection and furthered to other sectors within the new EU trade strategy in order to create a fairer global competitive framework ("level playing field") that not only anchors high consumer standards but also supports EU businesses and creates more resilient supply chains.

The European Commission should consistently enshrine **consumer rights in global e-commerce** in bilateral and plurilateral trade agreements. As more and more consumers shop outside the EU, their trust in global markets is at stake due to lacking consumer rights and the increasing amounts of non-conforming goods (see also response to questions 10 and 11) imported. As to the social dimension, legislation on **due diligence** is overdue in order to give consumers the means to make a tangible sustainable choice. Consumption decisions alone, however, cannot correct the problems created at the stage of production (for more detail see response to question 8). Finally, regarding environmental protection and the fight against climate change, the introduction of a **carbon border adjustment mechanism** can be an important step to create more transparent and resilient supply chains from an environmental perspective (see also response to question 8).

The EU's open strategic autonomy also requires more **international cooperation and strategic coordination** between countries but also with and between international organisations such as the World Health Organisation, the World Trade Organisation, other UN bodies and regional organisations.

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?

Although the European Union is a net exporter of medical devices and high-quality medicinal products, it does not manufacture a number of basic substances, medicines, generics and protective equipment. The EU is therefore dependent on the import of these products. The worldwide export restrictions as well as the partly insufficient availability of basic substances for drugs in the European Union have led to a debate about a possible “reshoring”, i.e. the shortening or renationalisation of supply chains for “essential products”. However, from a consumer perspective, a **diversification and fair competition** instead of national or European production should be the answer to the challenges that became apparent during the COVID-19 pandemic.

A renationalisation (or Europeanisation) of supply chains for the production of Personal Protective Equipment (PPE) goods or other essential goods (such as agricultural goods) would probably harm consumer welfare in the form of rising prices, as production costs are many times higher in the EU. Nevertheless, the EU would still remain dependent on the necessary raw materials, which are in fact not available in the EU (such as rubber or crude oil). Transnational supply chains are not generally the cause of the problem of an inadequate provision of scarce goods. Rather, the lack of diversification of supply chains, the insufficient enforcement of existing import rules, and inadequate stockpiling for crisis situations are to be considered contributing factors.

❖ **Supply chain diversification:** With regard to essential goods, there should be no unilateral dependency on a single country of production, as it is often the case with medical devices and pharmaceuticals today.³ Even if these decisions are in the responsibility of businesses, this should also be encouraged by the political framework with regard to essential goods, for example by setting appropriate public procurement guidelines.

❖ **Negotiation of a multilateral trade agreement on medical goods:** The aim of such an agreement must be to facilitate trade in affordable pharmaceuticals. In particular, the European Commission should include questions of patent protection in international trade through the WTO TRIPS Agreement.

❖ **Strategic stockpiling and greater coordination between Member States with a view to maintaining reserves of essential products:** Consideration could also be given to requirements for public procurement, for example through dual suppliers. The COVID-19 pandemic clearly shows that a “just-in-time” mantra is reaching its limits, especially for essential goods.

³ As is currently the case, for example, for protective equipment, which is only produced in China, or for the production of generic drugs and antibiotics, which are largely manufactured in India.

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?

The COVID-19 pandemic demonstrates the value of functioning multilateral institutions to address global challenges. The EU must continue to be a driving force of multilateralism in the wake of the pandemic, for example regarding a multilateral agreement on medical goods and a broader reform of the WTO governance. In order to enable functioning markets, clear rules on export restrictions at the level of the WTO are needed.

From a consumer perspective, the question of **fair and competitive markets** is important to be tackled in the context of a WTO reform process. More transparency on subsidies should be achieved among WTO members especially in the aftermath of the COVID-19 pandemic, which was accompanied by massive financial support programmes from governments around the world. Governmental subsidies distort markets, often to the disadvantage of consumers. Therefore, it is important that EU trade agreements contain clear obligations regarding transparency on subsidies and limits to state aid disrupting competition in the markets of the concerned countries.⁴

With regard to **online consumer trust**, the WTO should also be more ambitious. The global e-commerce regime is currently characterized by multiple problems, ranging from fake goods, online scams, unsafe products and the noncompliance with basic EU consumer rights such as the right to withdrawal, or information on the provider of goods and services.⁵ Given the magnitude of these problems and the steady rise of global Business-2-Consumer (B2C) e-commerce from the part of EU consumers, especially during the COVID-19 pandemic⁶, this problem should also be reflected more strongly in the WTO reform process. In that respect, the Joint Statement Initiative on e-commerce should reflect respective international agreements from the Organization for Economic and Development Cooperation OECD⁷ or the United Nations⁸ on these issues. Such a work stream should also reflect the underlying problem of unsafe products being imported into the EU.

Furthermore, the WTO needs to better reflect the overarching **global challenge of climate change and social development**. In that respect, the Paris Agreement and the Sustainable Development Goals, being internationally agreed frameworks, should be introduced into the WTO's overall work plan and potential future agreements. Both meeting the Sustainable Development Goals (SDGs) and the transition to climate neutrality within the framework of the Paris Agreement will have major implications on the global trading regime. It is crucial that the WTO opens up to those already globally agreed frameworks, also to cushion the effects of these transitions on global trade. It is

⁴ A matter that has also been recently raised by the German Monopolkommission: Competition Report 2020, <https://monopolkommission.de/en/reports/biennial-reports/342-biennial-report-xxiii-competition-2020.html>.

⁵ vzbv / BEUC: The challenge of protecting EU consumers online, report commissioned by vzbv/BEUC, 2017.

⁶ This has also been underlined in the WTO Secretariat's Report on E-Commerce during the pandemic: https://www.wto.org/english/tratop_e/covid19_e/ecommerce_report_e.pdf

⁷ OECD: Recommendation, Consumer Protection in e-Commerce, 2016, <https://www.oecd.org/sti/consumer/ECommerce-Recommendation-2016.pdf>

⁸ United Nations: Guidelines on Consumer Protection, 2015, <https://unctad.org/en/Pages/DITC/CompetitionLaw/UN-Guidelines-on-Consumer-Protection.aspx>

high time that the WTO Agreements on Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS) are made fit for a sustainable future. Furthermore, carbon border measures that are currently debated inside the EU should be openly discussed within the WTO with the aim of finding a constructive joint approach instead of risking that policies to implement the Paris Agreement will be subject to trade disputes.

With respect to the **involvement of civil society**, the European Union should play a more active role in opening the WTO to non-business stakeholders. It has to be welcomed that the Ottawa Group demanded a deepened engagement with stakeholders in June 2020, although this was – unfortunately – only directed to the business community.⁹ Whilst the WTO Public Forum represents an important annual gathering of a broad group of stakeholders, a more permanent inclusion of civil society and consumer interests should be sought. Recently, the WTO Secretariat and outgoing DG Roberto Azêvedo was interested in consumer perspectives, i.a. in the context of a Consumer Dialogue in 2018.¹⁰ Such a broader engagement with civil society and consumer representatives would also broaden the overall legitimacy of the WTO.

The **WTO should also cooperate more intensively with other international organisations** to better understand what the challenges of the global market are for consumers. A formal cooperation should be established between the International Consumer Protection and Enforcement Network (ICPEN), the WTO, the OECD, the United Nations Conference for Trade and Development (UNCTAD) and the World Customs Organization (WCO). All of these organisations are working on similar issues but do not always talk to each other. In the WTO for example, there is very low awareness about the mere existence of ICPEN.

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?

From the consumer perspective, **regulatory cooperation can be beneficial if a number of conditions are respected:**

- ❖ Any cooperation between regulatory authorities should be voluntary in nature and should include the relevant technical bodies – also at member state level.
- ❖ The cooperation itself should be more transparent than it is today, next to the publication of overall reports of regulatory cooperation meetings, also its minutes and participants should be published.
- ❖ The participation of external “interested persons”¹¹ in meetings of regulatory cooperation bodies should be handled in a balanced manner, also including civil society and consumer representatives.

⁹ Ottawa Group: June 2020 Statement of the Ottawa Group: Focusing Action on Covid-19, 2020, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/wto-omc/2019-06-covid-19.aspx?lang=eng

¹⁰ WTO: Consumer groups express support for multilateral trade, stress priorities for e-commerce, 2019, https://www.wto.org/english/news_e/news19_e/trdia_06may19_e.htm

¹¹ See i.a. Art. 18.14 (3) b) 2. Of the EU-Japan FTA, or Art. GRP 13.2 of the draft Treaty on the future EU-UK relations.

If those conditions are met, there are a number of areas where a closer cooperation between regulatory authorities is of importance from a consumer perspective. When it comes to the stark rise of global e-Commerce, a **better cooperation between market surveillance, customs and consumer protection authorities** from the different parties to the FTA is of crucial importance in order to keep European consumers safe in international markets. This is also a trade issue, as the Administrative Arrangement between the European Commission and Canada on the mutual information on the safety of non-food products showed.¹² This cooperation has been triggered by the EU Canada trade agreement CETA. Similarly, cooperation in the fields of food safety, antimicrobial resistance, and competition policy are of importance. With respect to **digital trade**, a cooperation between authorities already exists in other multilateral or global fora. As trade agreements are not the appropriate tools to cooperate on sensitive digital matters, a cooperation in those existing international fora should be strengthened.¹³

The European Commission should also be more transparent in its **process of designing new areas of regulatory cooperation** with trading partners. Again, the process set-up in the implementation phase of the CETA agreement where civil society could suggest areas of potential cooperation has to be welcomed. This should be done by default.

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?

The **EU trade policy must serve the implementation of the Paris Agreement on climate change and the SDGs** more directly than it is the case today. Accordingly, the future EU trade policy must ensure that trade partners cannot qualify European rules such as a general price on CO₂ or voluntary product standards such as the EU Ecolabel as “unnecessary barriers to trade”. The new paradigm should be to make trade compliant with the SDGs, not the other way around. This should be an important goal of the Chief Trade Enforcement Officer. Next to the SDGs and the Paris Agreement, the UN Guidelines on Business and Human Rights¹⁴, the OECD Guidelines on Multinational Enterprises as well as international environmental agreements¹⁵ constitute important building blocks for a sustainable trade policy. They should form essential elements and building blocks of any future agreement.

In order to facilitate the transition to a greener economy, the introduction of a **carbon border adjustment mechanism** (in the absence of a binding international agreement on CO₂ pricing) is to be welcomed from the consumer perspective. If properly designed, a carbon border adjustment mechanism can be an effective trade instrument to achieve the climate objectives of the European Union. It can enable consumers to consume

¹² Administrative Arrangement between the European Commission's Directorate-General for Justice and Consumer Protection and the Department of Health Canada on the mutual information on the safety of non-food products, 2018, https://ec.europa.eu/info/sites/info/files/sgned_agreement_en_0.pdf

¹³ For more details see BEUC's response to the European Commission's consultation on the EU Trade Review.

¹⁴ UNHR: Guiding Principles on Business and Human Rights, 2011, www.ohchr.org/Documents/Publications/Guiding-PrinciplesBusinessHR_EN.pdf

¹⁵ Such as i.a. the Convention on Biodiversity, the Vienna Convention on the Protection of the Ozone Layer, or the Protocol on Sustainable Forestry Management.

more sustainably and would create a “level-playing field” between EU and non-EU producers. Such a mechanism must have a clear steering effect towards sustainable, consumer-friendly production methods.

In May 2020, the European Commission published its **‘Farm to Fork’ Strategy** 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’). 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.

Concretely, the following elements should be reflected in order **to streamline the SDGs and the Paris Agreement with the EU’s trade policy**:

- ❖ The EU Commission’s Green Deal team should provide guidance to the Trade Commissioner, the Chief Trade Enforcement Officer and DG Trade. DG Trade in its entirety should ensure that the promotion of SDGs is properly reflected in the EU’s trade policy, while the Chief Enforcement Officer should be responsible for its implementation.
- ❖ Trade impact assessments should evaluate the effects on the ability of the EU to achieve the SDGs in addition to the environmental impacts.
- ❖ Negotiating mandates and the general objective of EU trade agreements should indicate that trade commitments must be compliant with the Paris Agreement and the SDGs.
- ❖ Chapters related to sanitary and phytosanitary measures (SPS), technical barriers to trade (TBT) and trade and sustainable development (TSD) in EU trade deals should contribute to achieving the SDGs.
- ❖ TSD chapters of EU trade agreements should:
 - Include the word ‘sustainability’ in the right to regulate article, next to labour and environment.
 - Be subject to the overarching dispute settlement mechanism of the trade agreement.
 - Make trade preferences (e.g. quotas) towards our trading partners’ conditional on respecting their environmental, sustainable development goals and labour rights commitments. Preferences would be removed if no amicable solution has been found during the mediation process.
 - Incorporate a suspension clause. Any serious injury to the environment and labour rights from trading partners should trigger a suspension of the whole agreement in a timely manner.

- ❖ The general exceptions of EU trade agreements should refer to measures contributing to achieving the SDGs and comply with the Paris Agreement.
- ❖ Establish a complaint mechanism linked to the office of the Chief Enforcement Officer where businesses and civil society actors can complain about breaches against of commitments from the Paris Agreement or the SDGs.

QUESTION 9

How can trade policy help to foster more responsible business conduct? What role should trade policy play in promoting transparent, responsible and sustainable supply chains?

Enforcing high national and international **sustainability standards** in transnational supply chains (with regard to social and environmental protection) is of key importance. DG TRADE already has ample experiences on this matter, for example regarding the introduction of the Conflict Minerals Regulation.

The announcement by Commissioner for Justice and Consumer Protection, Didier Reynders, that **EU legislation on due diligence** in supply chains should be proposed in 2021 is an important step. Consumers alone are not able to change international supply chains simply through their consumption habits, therefore binding rules are needed. This will benefit not only companies and will level the playing field but it will also benefit consumers since sustainable consumption begins with sustainable production. The COVID-19 crisis is forcing companies worldwide to establish better risk management systems that would prevent supply bottlenecks in times of crisis. A legal act on due diligence should further oblige companies to respect human rights and environmental standards in their value chains and provide for sanctions as well as legal remedies for those affected.

Although the introduction of EU legislation on due diligence is not lead by DG TRADE, the trade-related aspects of the forthcoming legislation and cooperation between the Commission services are of crucial importance. Until now, trade agreements' sustainability chapters – although legally binding for the trading partners – cannot be properly enforced, which is why a legislative approach on the EU side regarding businesses responsibilities is to be welcomed from the consumer perspective. In order to contribute to a coherent policy sphere, **DG TRADE should also use its genuine instruments** in order to contribute to a strengthened responsible business conduct:

- ❖ International standards on human rights and environmental protection should be increasingly included in foreign trade promotion activities of the European Commission.
- ❖ In public procurement, socially- and environmentally-friendly standards should be enabled. Social and environmental criteria should be equally relevant as the costs of products. Authorised sustainability certifications such as the EU Ecolabel, national environmental labels, the EU Organic Label and EU energy efficiency labelling should be admissible as criteria. Furthermore, Corporate Social Responsibility (CSR) criteria should be duly reflected. EU rules on public procurement have to enable more responsible business practices in EU and non-EU procurement choices. At the moment, EU procurement law limits the ability of Member States to use CSR

criteria in their procurement that could also go beyond mere legal requirements for CSR.¹⁶

- ❖ In light of specifically enable Small and Medium-sized Enterprises (SMEs) in global trade, the European Commission should support those actors specifically in adapting to the future legislation.
- ❖ The current work strands in the EU institutions on the potential use of digital technologies, especially blockchain, should be considered in light of potential new rules on due diligence in order to enable secure and forgery-proof supply chains.¹⁷
- ❖ As deliberated in question 8, DG TRADE should aim for consistent policy tools and properly reflect human rights and workers' rights in their trade agreements.

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)?

Digital trade rules can benefit consumers if they are designed in the right way. As explained above, the EU has the potential to use the attractiveness and power of its Internal Market to further its value-based trade policy whilst contributing to an increase of consumer trust in the digital world.

- ❖ **Online consumer trust:** With just a few clicks, consumers can shop globally today. In 2018, 15.6 percent of European consumers shopped outside the EU.¹⁸ A trend that has been rising for years. In this context, direct imports from China to Germany – China being the largest e-commerce market for German consumers – alone rose from 40 to 100 million parcels between 2016 and 2017.¹⁹ Online marketplaces that bring consumers together with retailers and producers around the world are important drivers of this phenomenon. Given the increasingly global nature of this market, it is important that EU trade policy reflects this in its bilateral and plurilateral trade agreements. Therefore every new agreement should include commitments on consumer rights in e-commerce, highlighting the need for transparency and consumer information, mandating the respective trade partner to introduce basic consumer rights such as the right against scams and deceptive practices, access to redress as well as commitments on regulatory cooperation in this field as mentioned in question 4. Furthermore, the cooperation between different Directorates-General of the European Commission and national authorities at EU level and between International Organisations (such as the WTO, UNCTAD, ICPEN and OECD) at

¹⁶ Laurens Ankersmit: The contribution of EU public procurement law to corporate social responsibility, 2020, <https://onlinelibrary.wiley.com/doi/full/10.1111/eulj.12353>

¹⁷ European Parliament Think Tank: study on blockchain for supply chains and international trade, 2020, <https://epthinktank.eu/2020/06/03/new-stoa-study-on-blockchain-for-supply-chains-and-international-trade/>

¹⁸ European Commission (2019): Consumer Scoreboard 2019.

¹⁹ Bundesrat (2019): Drucksache 345/19

global level needs to be reinforced in order to enable a joint approach to the problem of unsafe global e-Commerce which impedes on consumer trust in the digital world.

❖ **Data protection / Privacy:** After intense debates at EU level between the EU institutions, different Directorates-General and a multitude of stakeholders, the European Commission adopted a horizontal provision on data localisation, data protection and privacy in 2018.²⁰ vzbv supports the horizontal provision as it treats data protection and privacy as what they are: Fundamental rights that cannot be compromised in a trade agreement. Since the horizontal position safeguards EU citizen's rights, the European Commission should stick to this agreed position in future negotiations and agreements. The international success of the GDPR should support the Commission's position in that respect.

❖ **Algorithm-based Decision Making / Artificial Intelligence:** The shift towards algorithm-based decision making (ADM) and artificial intelligence (AI) is changing the way in which consumer markets and our societies function. AI will have a major impact on the welfare of individuals and society at large and it will play an increased role in the entire socio-economic sphere. Therefore, vzbv supports the European Commission's effort to introduce a risk-based European regulatory framework for AI in order to reap its benefits and minimise the risks associated with it.²¹ vzbv stresses that the European Union must take responsibility as a global actor and establish a regulatory framework on AI that ensures people can trust that the technology respects European values and European laws. Trust that is urgently needed – a recent survey shows that more than half of the German consumers (52 percent) fears that they are being manipulated in their purchasing decisions through AI.²²

From a consumer perspective, it is important that a potential EU legislative act that will follow the European Commission's Whitepaper is not limited in any way by obligations that might arise from trade agreements. Recent research commissioned by vzbv shows that more debate on the linkage between rules on trade in services and the emerging rules on AI are strongly needed.²³ An open and inclusive deliberation on the interactions between the EU's trade policy and EU governance of artificial intelligence has not yet taken place. Due to the early nature of AI regulation, a reservation in the EU's trade commitments in order to secure the EU's regulatory autonomy is deemed necessary. The cross-border supply of AI-enhanced services needs to abide to the local EU and member states rules and should not be limited by trade law obligations.

❖ **Telecommunication:** Trade policy should be much more ambitious on the demand side. An improvement in transparency for telecom prices in recent trade agreements has already been reached in the EU-Japan economic partnership.²⁴ Promoting strong competition rules that aim to bring down prices for consumers when it comes to text messages, calls, data downloads and roaming should be part of every future

²⁰ EU horizontal position on cross-border data flows and protection of personal data and privacy in trade agreements

²¹ European Commission: Whitepaper on Artificial Intelligence, 2020.

²² The survey has been conducted in seven EU countries, including Germany. The results for Germany can be found here: <https://www.vzbv.de/pressemitteilung/ki-jeder-zweite-befuerchtet-manipulation-bei-kaufentscheidungen>

²³ Kristina Irion, expert opinion commissioned by vzbv, forthcoming.

²⁴ Article 8.57 on international mobile roaming of the title on services of the Economic Partnership Agreement between the EU and Japan.

trade agreement. Roaming costs matter to 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 negotiation.

❖ **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 trade commitments that might lower the EU standards.

❖ **Cybersecurity:** The EU should not take commitments in its trade agreements which could limit its ability to regulate on cybersecurity. Indeed, some of the EU’s 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 USMCA²⁵. These partners are likely to ask the EU not to regulate connected products, notably in the negotiations on e-commerce happening at WTO level. This is very problematic as self-regulation has proven to fail consumers.²⁶ Product tests by European consumer organisations, proved that connected toys or smartwatches for kids are often manufactured without basic security features.²⁷

²⁵ USMCA: Digital Trade Chapter, 2019, <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/19-Digital-Trade.pdf>.

²⁶ Consumentenbond: Onveilige Chinese beveiligingscamera's: net onkruid, 2020, <https://www.consumentenbond.nl/beveiligingscamera/onveilige-chinese-beveiligingscameras-net-onkruid>; Which?, More than 10.000 hackable cameras in UK homes, 2020, <https://press.which.co.uk/whichpressreleases/more-than-100000-hackable-cameras-in-uk-homes-warns-which/>

²⁷ See the #Toyfail analysis of consumer and privacy issues in three internet-connected toys, by Forbrukerrådet, 2016, <https://fil.forbrukerradet.no/wp-content/uploads/2016/12/toyfail-report-desember2016.pdf>

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?

The “globalization” of B2C described above certainly has advantages for consumers: they can buy products that are not available in their country or they can purchase a particularly well-priced product. But on the other hand, this internationalisation is not only a success story, especially regarding consumer rights as our research showed.²⁸

- ❖ **Dangerous products, poor product quality:** The product looked promising online, but the quality delivered is inferior at best or dangerous at worst. European consumer organisations have tested more than 250 products bought via online marketplaces abroad – 66 percent of them did not meet EU standards.²⁹
- ❖ **Unclear information:** Consumers are often unaware that they are entering into a contract with a foreign trader when they make a purchase on an online platform. A survey by vzbv’s market monitoring department showed that half of the consumers surveyed who had bought clothes from Asia did not know that their contractual partner was located Far East.³⁰
- ❖ **Delivery time and costs:** Long delivery times are understandable when ordering in the US or China, but they are often not indicated. Often, consumers also have to pay additional import taxes and customs duties (depending on the goods’ value) without being informed beforehand.
- ❖ **Complications with cancellation and return:** Trying to claim the legal guarantee when a product is defective from a foreign retailer can be complicated and costly, as often no contact person is indicated and postal charges for a return are manifold the value of the item bought.

In short: **Consumer trust is at stake** when global B2C-commerce is concerned. These various problems and challenges cannot be solved easily and not only through trade policy either. They require answers at the level of legislation, international agreements, law enforcement and cooperation between authorities.

Regarding **the international transfer of data**, those do not only matter to businesses but also to consumers as it is their personal data that is being traded and that is at stake. Data protection and privacy is a fundamental right and should therefore be subject to specifically sensitive treatment, also in trade policy. 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 the EU standard is higher compared to our trade partners’ rules. The GDPR allows for free,

²⁸ BEUC and vzbv study: The Challenges to protect EU consumers in online global markets, 2017.

²⁹ BEUC: Two-thirds of 250 products bought from online marketplaces fail safety tests, consumer groups find, 2020, www.beuc.eu/publications/two-thirds-250-products-bought-online-marketplaces-fail-safety-tests-consumer-groups/html

³⁰ vzbv: Billigkleidung aus Asien: Marktwächter raten zur Vorsicht beim Onlineshopping, 2018, <https://www.vzbv.de/pressemitteilung/billig-kleidung-aus-asien-marktwaechter-raten-zur-vorsicht-beim-online-shopping>

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’. The GDPR offers other mechanisms to transfer personal data abroad. BEUC agrees with data flows provided personal data protection, data security and privacy are secured. Unfortunately, not all trading partners or industry players follow this logic.

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 question 10, vzbv 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.

QUESTION 13

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

Within the European Commission and in close cooperation with the Member States, embedding technical expertise and **cross-sectoral cooperation** must become standard practice in EU trade policy. This is particularly evident in areas such as cross-border e-commerce which affects a large number of different Directorates-General of the European Commission and where technical expertise from a range of actors is relevant.

The **Chief Enforcement Officer** should be a central contact point, also for complaints not only from businesses but also from civil society, including consumer organisations, regarding abuses in international markets.

The European Commission’s work on furthering the **transparency** of trade agreements has been evolving since the adoption of the “Trade for All”-strategy. But the transparency in ongoing negotiations and in the implementation of concluded agreements can still be improved. This concerns the publication of draft texts (including those from trading partners) and of further relevant documents, i.a. from regulatory cooperation meetings.

A **regular dialogue with representative stakeholders** at both the EU and the national level should be sought, following the experiences made with the Trade Expert Group under the last Commission’s term. From a national organisation’s point of view, the Corona-induced change of formats of stakeholder briefings from presence meetings to videoconference should be kept for general stakeholder briefings also after the COVID-19-induced restrictions have been lifted. Those formats enable a presence of national organisations which can otherwise not always be assured if meetings are held in Brussels only. Furthermore, transparency and engagement are a **shared responsibility with Member States**. It is disappointing to see that despite the transparency wave, trade ministers still refrain from making trade mandates public, as this decision is still taken on a case by case basis. Rather, it should become systematic for all negotiations.

In order to secure the benefits of trade for all parts of society, it is indispensable to enable a regular and institutionalised **participation of representative civil society** in the monitoring and implementation of trade agreements, including consumer organisations. In current EU trade agreements, two forms of institutions were developed in this respect: Domestic Advisory Groups (DAGs) relating to inner-EU coordination and Civil

Society Forums (CSFs) relating to the transnational representation of civil society. The European Commission should review the functioning of both sets of dialogues especially what regards the feasibility of participation from civil society. In that respect, it might be helpful to cluster the magnitude of already existing DAGs in order to enable civil society participation. Such a clustering could relate to either regional groupings, clusters relating to the specific sections to be monitored (such as social, environmental or consumer issues), or also a grouping of the meeting dates so that different DAGs meet in the same week. A further problem is that for some agreements the DAGs only focus on the sustainable development part. All new agreements should therefore expand the scope of the DAGs to all issues covered. Also, civil society dialogues with trade partners should be reviewed as to their effective functioning and choice of representatives in order to ensure a meaningful cooperation.