

**Which?**

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# **The new way we trade: empowering and protecting global consumers**

The success of the UK's evolving new trade policy will ultimately be judged on what it means for consumers in their everyday lives and the choices and rights available to them. Reflecting consumer priorities, as well as those of businesses and workers, is crucial for the success and public acceptance of trade deals.

The UK now has a unique opportunity to empower its consumers as part of new trade deals – while at the same time boosting domestic economic activity and distinguishing itself as a world leader in trade policy.

As consumer confidence and spending become ever more central to UK economic growth, we are also seeing an increase in consumers purchasing goods and services directly from international vendors.

This cross border consumer-to-business e-commerce is estimated to be worth \$1 trillion a year, and growing;<sup>1</sup> and the World Trade Organisation is leading talks aiming to agree new rules for it.

With this increase in global trading activity, consumers need appropriate protections (whether trading directly or indirectly with international businesses). However, existing global trade agreements lack the necessary safeguards. They are out of date when it comes to recognising, encouraging and regulating new cross-border, consumer-business trade.

In no trade agreement to date are consumers treated as key players in the same way as businesses. And that is bad for consumer confidence.

However, in establishing its trade policy from scratch and being in the midst of multiple trade negotiations at once, the UK is in a unique position to pioneer a new way of negotiating and drafting deals. This is a huge opportunity.

Our trade negotiators should take a bold new approach, identifying dedicated leads within their trade teams on consumer issues – and pushing for consumer interests to be written into trade deals more explicitly.

This fresh approach would see governments treating consumers as key stakeholders in Free Trade Agreements (FTAs): engaging them more directly in agreeing their objectives for the negotiation process and formalising their interests into a consumer chapter, which builds on existing provisions and practices. This chapter would support the provisions that are relevant for consumers within individual chapters covering areas such as health protection, technical regulation, competition and digital trade.

## **The rewards are substantial**

The rewards of empowering and delivering the right protections for consumers through trade deals should not be underestimated.

Consumer confidence is boosted, as the purchasing of goods and services from abroad is made easier and safer; and the negotiation of trade agreements is made simpler, as the public feel their interests are better represented.

Countries want to encourage consumers to buy with confidence – and small businesses to sell with confidence – internationally. This requires the policy space for domestic regulation to be maintained, but also international cooperation on consumer rights and protections such as faulty foods and fraudulent sellers.

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<sup>1</sup> 'The McKinsey Global Institute projects that the global market for cross-border, business-to-consumer e-commerce will top \$1 trillion by next year', The McKinsey Institute [\[link\]](#)

Building consumers' interests into trade agreements will also help build public support for the agreements – a major sticking point for negotiations such as the Comprehensive and Progressive Trans Pacific Partnership (CPTPP) and the Transatlantic Trade and Investment Partnerships (TTIP) in the recent past.

Treating consumers as more significant stakeholders in trade agreements and formalising their interests in the deals would go a long way to achieving these aims. This needs to be done through a range of mechanisms:

- Ensuring meaningful consumer benefits, including greater choice, availability and affordability;
- Maintaining consumer protections and ensuring that trade negotiations build on UK values, standards and protections – for example through the Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT) Chapters, as well as a proposed chapters on ecommerce and digital trade
- Exploring options to enhance reciprocal consumer rights and enforcement with trading partners – whether in terms of competition policy or more specific cooperation on issues such as product safety alerts and policing of the content of online platforms;
- Developing trade deals openly and transparently and involving the public in setting the objectives for the negotiations; and finally, but crucially
- Embedding consumer interests in the objectives of any future trade deals and through the inclusion of a specific, cross-cutting consumer chapter.

### A consumer chapter in trade deals

There is limited precedent for the inclusion of consumer interests within trade deals, but there are signs of progress.<sup>2</sup>

The first trade agreement to feature a specific chapter focusing on cross-border consumer-business trade was the 2020 Digital Economy Partnership Agreement (DEPA) between New Zealand, Chile, and Singapore. This is limited in scope, being focused on easing restrictions on e-commerce, but shows that it is feasible and beneficial to include such a chapter in modern trade deals.

DEPA is not formally a trade agreement under WTO definition (parties do not receive preferential treatment with regard to WTO schedules), but it sets a clear precedent for the UK to build on.

There is also precedent in recent trade deals for increasing the number of specific chapters for specific interests. A small and medium-sized enterprise (SME) chapter was included in the US Mexico Canada Agreement (USMCA), for example. This is a relatively recent addition first included in CPTPP.<sup>3</sup> Governments had previously argued that SME interests were served by all of the general provisions – presenting a parallel for the current way consumer interests are dealt with.

The USMCA small and medium-sized enterprise chapter contains provisions in common with the labour and environment chapters that have more commonly been included. It promotes cooperation, information sharing, a committee of government representatives on SME issues, and a dialogue. But the SME chapter also makes specific reference to SME provisions elsewhere in the agreement, which would be necessary for a consumer chapter.

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<sup>2</sup> See Appendix 1: Precedent for including consumer interests

<sup>3</sup> New Zealand Ministry of Foreign Affairs and Trade: Supporting small and medium-sized enterprises onto the world stage [link](#)

The first indications of the UK's approach to future trade deals comes from the Agreement between the UK and Japan for a Comprehensive Economic Partnership.<sup>4</sup> This was a continuity agreement to a large extent, but does include stronger provisions on consumer protection within the Agreement's Competition Chapter (Chapter 11) than had been included in the EU-Japan agreement that the UK was previously party to.

The UK now needs to build on this in the new trade deals that it is negotiating, showing itself to be a global leader in consumer protection and making the case for a more detailed consumer chapter.

### Our recommendations

Global trade is changing. The existing model of business-to-business international trade facilitated by trade agreements (and business-to-consumer domestic markets enforced by national laws subject to international non-discrimination), is evolving.

Increasing numbers of consumers are importing goods and services directly, most visibly using online platforms, but also in purchases from small businesses in other countries.

They want appropriate protections for all of their trading activities, whether domestic or international – and whether buying goods, services or a combination of both.

Governments have been slow to respond to these new ways of trading. More generally, they have failed to acknowledge how consumer trust and confidence will increasingly depend on consumer interests being made explicit within trade deals.

Consumer interests need to be recognised as a key part of the international trade landscape, and therefore an integral part of the UK's new trade deals.

This will be achieved when governments name a dedicated consumer lead within a trade team, and commit to include provisions directly related to consumers in their agreements.

Building on its reputation as a global leader in consumer rights, **the UK should negotiate for the inclusion of a specific consumer chapter within its trade deals.**

This chapter should include and integrate:

- The overarching aims of ensuring a high level of consumer protection.
- The importance of delivering tangible benefits to consumers
- The value of fostering consumer trust, including online;
- The need to integrate the consumer interests in the implementation of the whole agreement.
- The ambition and practical mechanisms needed to contribute to the effective enforcement of consumer law, also in cross border situations.
- Maintenance of the ability of each country to set and regulate its levels of domestic consumer protection, and to adopt or modify relevant policies and laws accordingly.
- Commitments to ensure a high level of protection for personal data and privacy of consumers by means of strong safeguards.
- The importance of ensuring the protection of public health and consumer interests and for them to be considered as legitimate reasons to regulate, including the application of the precautionary principle.
- Clarity that in the eventuality of a dispute, consumer protection measures can only be examined in a State to State dispute context.

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<sup>4</sup> Agreement between the United Kingdom of Great Britain and Northern Ireland and Japan for a Comprehensive Economic Partnership, 23 October 2020

- Modalities for dialogue and cooperation on consumer protection, redress and market surveillance for goods, and, as appropriate, for services.
- The establishment of a consumer committee to monitor the implementation of trade deals from a consumer perspective.
- The importance of ensuring transparency as a necessary element to promote public participation and trust.
- The need to consider the impacts on consumers in the framework of impact assessments.
- The need to support consumers in making more sustainable choices and the consumer interest within sustainable development.

Such provisions would help to bring FTAs up to date with modern trade. As well as benefiting consumers, these provisions should also help UK businesses to sell directly to consumers across the world. In both respects, the UK would be demonstrating leadership in global trade, as well as consumer rights – helping to ensure the future prosperity of UK consumers and business.

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## Appendix 1: Precedent for including consumer interests

Analysis for Which? carried out by trade expert David Henig found that although consumers are the ultimate object of international trade – trade deals are struck to open up markets, giving consumers lower prices and greater choice – in no trade agreement are their specific interests given anywhere near as much attention as business and labour.

There are rightly specific chapters for labour and the environment in recent agreements and the establishment of commitments and cooperation meant to ensure fair competition, but consumer interests have been given far less attention and no specific chapter.

In existing trade deals there are provisions that impact consumers in various ways and determine the choice and standards that apply to them – and in some specific cases references to certain consumer rights are made.

Recent e-commerce chapters have focused on consumer issues such as prohibition of unwanted electronic messages, and cooperation on consumer protection for online purchases. Also common are provisions in which consumer protection is allowed as a reason for regulation, as long as this is non-discriminatory against businesses from other countries. But these existing provisions are limited in scope.

The content of FTAs doesn't do enough to represent consumer interests, Henig concludes. Where they have been taken into account, consumer interests have been considered to be primarily served by encouraging trade flows and low tariffs. They have also often been treated with suspicion by negotiators ('consumer interests' can be seen as shorthand for protectionism).

Trade agreements currently fall short in representing consumers in two areas in particular: firstly in not providing adequate, non-discriminatory domestic measures for consumer protection, such as labelling and quality, and secondly in not recognising that consumers are increasingly direct players in international trade, buying goods and services directly from international sellers.

When the General Agreement on Tariffs and Trade (GATT), the forerunner of the World Trade Organisation (WTO), was adopted in 1947, there was an acceptance that fair international trade should not require countries to accept measures which damaged public morals or human life, as long as these were applied in an equal way between members.

But these principles have often been interpreted narrowly in trade deals since. The GATT and agreements reached since, have also been focused on a model where international trade is carried out between businesses, who sell to consumers in their domestic markets – which does not reflect the e-commerce of the modern global economy.

The founding of the WTO in 1995 was the starting point for a wave of bilateral trade deals that have also predominantly focused on businesses – largely leaving out consumer interests.

References to consumer interests can be found in some specific deals – but these are difficult to find and have been inconsistent. The EU–Chile Association Agreement of 2002, for example, includes a consumer protection reference, encouraging cooperation on legislation, sharing of information, early-warning systems and technical assistance.

By the introduction of the EU–South Korea Free Trade Agreement in 2011, references to consumers had become even more fragmented, although it included a reference to exchanging views on market surveillance and enforcement activities. This Agreement was, however, the first

to recognise the growing importance of international trade taking place between businesses and consumers, rather than merely business-to-business activity.

Since 2011, cross-border consumer-business trade has grown increasingly important to the global economy. The McKinsey Global Institute projected that the global market for cross-border business to consumer e-commerce will top US\$1 trillion by 2020. Going forward, cross-border consumer-business trade needs to be given much greater attention within trade deals – and that means formalising the interests of consumers into the deals.

As set out above, the first trade agreement to feature a specific chapter focusing on cross-border consumer-business trade was the 2020 Digital Economy Partnership Agreement (DEPA) between New Zealand, Chile, and Singapore. Module 6 of the agreement, entitled “Business and Consumer Trust” contains commitments from the three signatory nations to: *provide cross-border online consumer protection, tackle unsolicited commercial electronic messages and maintain consumer access to and use of the internet.*

One of those involved in the negotiations interviewed by Henig said that “Part of DEPA’s rationale is to recognise that the nature of trade is changing but the international rules have not kept pace with that change... consumers are becoming traders.”

“They [consumers] are operating cross-border and the proliferation of business-to-consumer transactions is huge. We wanted to make sure that this was acknowledged”

The UK is now uniquely placed to build on this precedent, as well as its established reputation as a global leader in consumer protection.

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