



AGRICULTURE STRATÉGIES

Mirror clauses facing the realities of international trade

On October 20, French Chambers of Agriculture organized a conference entitled “European trade policy: between environmental challenges and preservation of agriculture competitiveness”. The conference focused on the issues related to the implementation of mirror clauses, which France intends to make a priority during its presidency of the European Union next year¹. The debates highlighted various obstacles that this idea will have to face.

Before mirror clauses with third countries, there is a need to harmonize production conditions between Member States

The Minister of Agriculture recalled the key issue of the debates during his opening speech: the creation of environmental value must go hand in hand with the creation of economic value. It is about valuing our model, built on non-price competitiveness, which is based on the quality of our products. This implies higher production costs, which make our products non-competitive when they are put in competition with products that are not subject to the same requirements.

He then recalled one imperative: first of all to harmonize the conditions of production within the common market. **But while the minister seems to be pleased with the obligation of eco-schemes and social conditionality within each Member State, he seems to forget that, beyond general rules, the choices of implementation remain specific to each country.** Requirements relating to eco-schemes will be defined within NSPs, and social conditionality falls under national legislation. As well as the environmental cross-compliance which is actually based on decisions arbitrated by national directives, [as we detailed in a previous article](#). Thus, it is these conditions which will actually define the level of requirement, and remaining governed by national rules, they will continue to generate distortions of competition between European countries.

This liability should therefore be considered as a priority, but the partial re-nationalization of the CAP with disparate NSPs will create an additional level of divergence, or even a bursting of the will to have a common policy.

¹ <https://www.politico.eu/article/emmanuel-macron-fair-trade-food-gastronomy-france-election-2022/>

MRLs (maximum residue limits), non-tariff barriers adaptable according to the interests at stake: a fragile basis for mirror clauses

But aren't not non-tariff barriers already a form of mirror clauses? These barriers, governed by the WTO through the SPS (Sanitary and Phytosanitary) Agreement, enable to refuse the entry of food which contains product residues in greater quantities than the standard accepted in the importing country.

The study² presented by Thierry Pouch having recalled that in the absence of developments on the side of the WTO, blocked since the Marrakech cycle, bilateral treaties have multiplied, the stakes during the negotiations now focus on non-tariff barriers. In other words, the standards imposed on products entering the EU are now more restrictive than quotas and customs duties. Stakes are therefore high.

The first-round table was then the occasion to recall the principles which currently guide the health standards in terms of acceptable pesticide residues in food. To be imposed, the residue limit must be the subject of an internationally validated scientific consensus, listed in the Codex Alimentarius for plant products. In practice, there are maximum residue limits (MRLs), which allow the importation of products whose production has used pesticides not authorized in the EU, as long as the residues that can be found in these products do not exceed this MRL, which must, in theory, be in conformity with the Codex Alimentarius... In theory.

As Sophie Devienne, Professor of Comparative Agriculture and Agricultural Development at AgroParis Tech, explained during a lively exchange with Nathalie Chaze, Director of Sustainable Food and International Relations at DG Health at the European Commission, lobbies sometimes succeed to negotiate limits that go beyond Codex standards, as in the case of lentils. For this production, glyphosate is used as a desiccator up to 4 days before harvest in Canada (practice not authorized in the EU), and the MRL accepted for lentils imported into the EU has been multiplied by 100 between 2008 and 2012 to reach 10 mg / kg, while the MRL proposed by Codex is 5 mg / kg³ ... and the MRL accepted in Canada is 4 mg / kg⁴.

On this subject, the explanation of the French government is edifying: "**import tolerances can be established on a case-by-case basis in order to meet the needs of international trade** . This involves setting the MRL at a level higher than that corresponding to the authorization or use of the substance in the EU, after a risk assessment concluding that there is no unacceptable effect on dietary exposure. When a plant protection substance is no longer approved at European level, the MRL is lowered to the limit of quantification, which generally corresponds to the absence of a residue detectable by current analytical methods (default value of 0.01 mg / kg). However, the European Commission can then raise this MRL in respect of an import tolerance. "⁵ **But if the risk assessment concludes that" there is no unacceptable effect on dietary exposure "**, why then impose stricter rules to our

² Study carried out by Clémence Dehut available on <https://chambres-agriculture.fr/publications/toutes-les-publications/la-publication-en-detail/actualites/accords-de-libre-echange-politique-commerciale-agricole-et-strategie-environnementale-de-lue-enj/>

³ https://www.fao.org/fao-who-codexalimentarius/codex-texts/dbs/pestres/commodities-detail/fr/?lang=fr&c_id=290

⁴ <https://pr-rp.hc-sc.gc.ca/mrl-lrm/results-fra.php>

⁵ <https://www.senat.fr/questions/base/2019/qSEQ190510323.html>

producers? Ultimately, glyphosate, which risks being phased out in France and Europe in the foreseeable future, could still benefit from wide tolerances if international trade so requires.

Mirror clauses, legally possible but which involve many risks

In these conditions of divergence between European states and opportunistic flexibility for MRLs, how will mirror clauses act?

The legal study carried out by the French National Beef Cattle Federation and the Nicolas Hulot Institute has already highlighted the compatibility of mirror clauses with WTO rules⁶, and the Commission must produce an institutional study on the subject in 2022. But, if the mirror clauses have already been successfully implemented for areas relating to the protection of human health (eg antibiotics or growth hormones), with regard to practices relating to production conditions which do not involve identifiable residues in the finished product, their application to agricultural products will pose several major problems.

1) Interference in food sovereignty

The implementation of mirror clauses relating to production standards implies a form of interference from the EU in the regulations of other countries, since it implies imposing standards that correspond to societal choices. In the absence of residues, it is indeed not possible to argue about the health risks. This interference in matters of food sovereignty (each country being free to decide its way of producing) would then risk creating significant geopolitical tensions. Thus, even if the will to apply mirror clauses is shared by the European Parliament, it will not necessarily have concrete or immediate application; the battle will be long and **will not be able to succeed under the French presidency.**

2) An impossible control

These production standards will not necessarily result in residues in the finished products: pesticide residues depend on the moment they were used in the cycle of the crop, and the production conditions linked to animal welfare (use of cages, stocking density for example) do not lead to different properties in animal products. **Checking the application of these standards would involve checks within farms or slaughterhouses in other countries, which do not have the same traceability tools. A titanic job, when the EU is already not even able to control all the MRLs in force, nor to properly enforce the MRLs that are subject to controls,** as demonstrated by the recent report by Senator Laurent Duplomb in the case of ethylene oxide residues⁷ : “regarding the 1 498 substances to check, about 900 of them are almost never checked by health authorities today”.

3) The risk of loss of confidence of business partners

And if new clauses were to apply, how to define the scope of the products concerned? Would the renegotiation of treaties already recorded then be considered, or even completely unilaterally called into question by the EU? Such an option would imply a loss of confidence on the part of our partners in the ability of the EU to meet its commitments. However, we can remain sceptical about this possibility, since even the exit of the United Kingdom did not lead to a renegotiation of the quotas

⁶ <https://www.fondation-nicolas-hulot.org/mondialisation-comment-protoger-lenvironnement-et-les-agriculteurs/>

⁷ <https://www.senat.fr/rap/r20-368/r20-368-syn.pdf>

already acquired, while the beneficiary countries of these quotas have since been able to negotiate additional outlets with the United Kingdom.

4) Risk of retaliatory measures

If in terms of free trade the EU wants to set an example, considering itself capable of imposing new standards because of its ability to influence, in fact it is encountering fierce resistance from competing producer countries. Indeed, the EU already applies production methods which would entail an additional cost for its trading partners if they were to be forced to comply with these requirements. Since third countries are well aware of these issues, [the EU strategy is regularly qualified as disguised protectionism](#) and is already the subject of regular complaints within the WTO TBT (Technical Barriers to Trade) Committee. **If the mirror clauses were to be applied widely, the EU would then be exposed to retaliatory measures which can apply both to the agricultural sector, and thus limit our ability to export to markets that are favourable to us, but also in other sectors,** such as the Airbus / Boeing conflict which resulted in the application of additional taxes on agricultural products. What solution to avoid these retaliatory measures? The conference did not provide an answer. Since these are measures linked to societal choices, different from the case of environmental or consumer protection which can be argued on solid scientific bases, it is the ability of the EU to convince that will make the difference.

The mirror clauses, which nevertheless seem to represent an essential solution to the reconquest of food sovereignty, therefore seem difficult to access. Should we despair?

The EU and France consider themselves able to successfully impose their views on environmental protection, but will they? We can already see that the success of the Paris Agreement was much less decisive than some believed. Third countries have in fact accepted enhanced cooperation involving membership in efforts to combat global warming, but it remains much less satisfactory than the objectives set were intended to be. If some glimmers of hope persist, such as the fight against imported deforestation which refers to practices that are not detectable in the properties of food, or [again the adoption of an environmental plan by New Zealand to adapt to the rise in international standards](#), the road will be long towards an effective implementation of the mirror clauses. The obstacles to be overcome remain numerous, and show that European legislation still needs to evolve, in particular on a last point, which was hardly mentioned at this conference: labelling. As long as a product takes as its origin the country of its last substantial transformation, as long as the country of origin of the ingredients of processed food is not clearly announced, the loopholes will remain gaping and imports increasing. Let us hope that the revision of the INCO regulation, announced by the Minister of Agriculture, will also be one of the priorities of the French presidency.

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