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Implications of the European Green Deal for agri-food trade with developing countries¹

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Abstract

The European Green Deal has the ambition to bring about a more sustainable food system. Trade policy is required to be coherent with and supportive of the objectives of the Green Deal. Various legislative and other initiatives have been introduced or proposed to use trade policy measures to support the move to higher sustainability standards in the food system both in the EU and globally. Mandatory due diligence requirements for companies are proposed to ensure they have ‘clean’ supply chains. Mirror clauses have been proposed in agri-food trade to require that imported products meet similar regulatory standards as EU producers. Promoting this agenda is a priority of the French EU Presidency in the first half of 2022. Higher sustainability standards and accompanying trade measures will have a significant impact on the competitiveness of EU producers as well as international trade in food. This paper provides a preliminary assessment of this debate, with a particular focus on vulnerable developing countries for which the EU is an important market.

Keywords: Reciprocity, mirror clauses, non-tariff barriers, agri-food trade, sustainability, developing countries

JEL Codes: F18, Q17, Q37

I. Introduction

Moving towards a more sustainable system of food production and consumption in the EU will be essential to achieve the objectives of the European Green Deal for a climate-neutral Europe by 2050, zero pollution, the decoupling of economic growth from resource use, the conservation of natural capital, and the protection of the health and well-being of citizens from environment-related risks and impacts. The evidence that food production results in air, water and soil pollution, contributes to the loss of biodiversity and climate change, and consumes excessive amounts of natural resources, is increasingly compelling. At the same time, unhealthy diets contribute to obesity and non-communicable diseases.

The agri-food elements of the Green Deal are set out in the Farm to Fork and Biodiversity Strategies which are built around three central planks: ensuring the food chain has a neutral or positive environmental impact; ensuring food security, nutrition and public health; and

¹ This paper draws on a longer report commissioned and published by the European Landowners’ Organisation.

preserving the affordability of food while generating fair returns for the supply chain (European Commission, 2020a, 2020b). They include a range of ambitious targets intended to put the EU food system on a transformative path to greater sustainability. Agriculture is expected to contribute to the reduction of at least 55% in net GHG emissions by 2030 under the ‘Fit for 55’ roadmap. The use and risk of chemical pesticides should be reduced by 50% by 2030. Nutrient losses should be reduced by at least 50% and the use of fertilisers by at least 20% by 2030. Sales of antimicrobials for farmed animals and in aquaculture should also be reduced by 50% by 2030. The area of agricultural land under organic farming should increase from a level of 8% in 2018 to 25% by 2030, while a minimum 10% of the agricultural area should be under high diversity landscape features by 2030.

The F2F strategy also underlines the importance of consumer behaviour change in food system transformation and climate change mitigation. Among the measures advocated are empowerment of consumers by better front-of-pack nutrition labelling; strengthening of educational messages in schools around sustainable eating; promotion of food-based dietary guidelines that incorporate sustainability aspects and encouragement to use fiscal policy tools to promote healthy and sustainable diets; an active change in food environments in institutions, including minimum mandatory criteria for sustainable food procurement by schools, hospitals and other public institutions; and setting a legally binding target to reduce food waste.

The Commission’s European Green Deal Communication (European Commission, 2019) included a section on the ‘EU as a global leader’ which recognised that “*The global challenges of climate change and environmental degradation require a global response*”. It included an agenda of actions, covering diplomacy, trade policy, development support and other external policies, to make the EU an effective advocate focused on convincing and supporting others to take on their share of promoting more sustainable development. It proposed to use its economic weight to shape international standards that are in line with EU environmental and climate ambitions.

The F2F strategy also stressed the importance of the external dimension. It proposed to pursue the development of Green Alliances on sustainable food systems with all its partners in bilateral, regional and multilateral fora. It particularly highlighted the importance of using trade policy to support and be part of the EU’s ecological transition. Various initiatives under this heading were proposed:

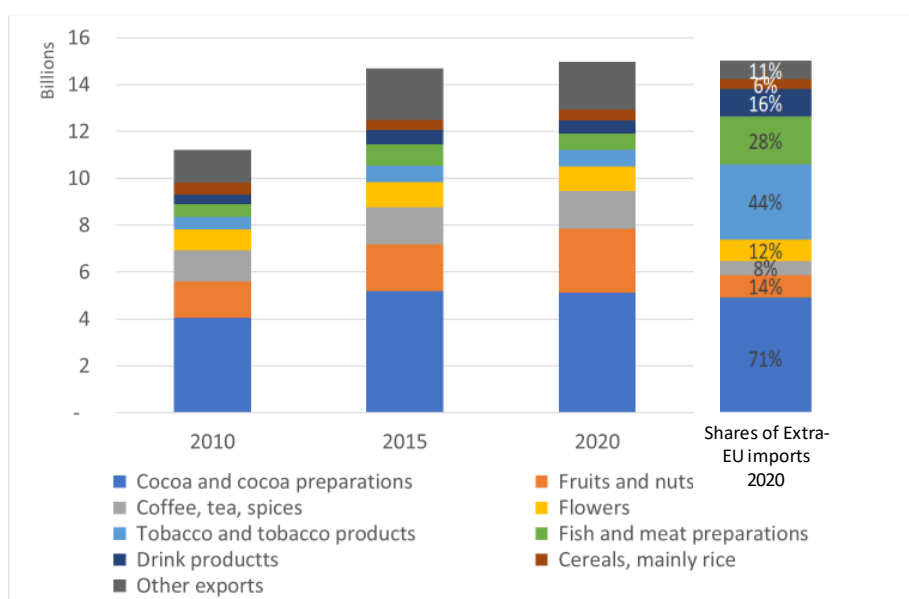
- “The EU will seek to ensure that there is an ambitious sustainability chapter in all EU bilateral trade agreements.
- It will ensure full implementation and enforcement of the trade and sustainable development provisions in all trade agreements, including through the EU Chief Trade Enforcement Officer.
- It will obtain ambitious commitments from third countries in key areas such as animal welfare, the use of pesticides and the fight against antimicrobial resistance.
- It will strive to promote international standards in the relevant international bodies and encourage the production of agri-food products complying with high safety and sustainability standards, and will support small-scale farmers in meeting these standards and in accessing markets.
- To reduce the EU’s contribution to global deforestation and forest degradation, the Commission will present in 2021 a legislative proposal and other measures to avoid or minimise the placing of products associated with deforestation or forest degradation on the EU market.

- Imported food must continue to comply with relevant EU regulations and standards. The Commission will take into account environmental aspects when assessing requests for import tolerances for pesticide substances no longer approved in the EU while respecting WTO standards and obligations.
- To address the global threat of antimicrobial resistance, products of animal origin imported into the EU will have to comply with strict requirements on the use of antibiotics in line with the recently agreed veterinary medicinal products Regulation.
- A more sustainable EU food system also requires increasingly sustainable practices by our trading partners. In order to promote a gradual move towards the use of safer plant protection products (PPPs), the EU will consider, in compliance with WTO rules and following a risk assessment, to review import tolerances for substances meeting the "cut-off criteria" and presenting a high level of risk for human health.
- The EU will engage actively with trading partners, especially with developing countries, to accompany the transition towards the more sustainable use of pesticides to avoid disruptions in trade and promote alternative PPPs and methods.
- As part of its approach to food information to consumers it will lead the work on international sustainability standards and environmental footprint calculation methods in multilateral fora to promote a higher uptake of sustainability standards.”

The relevant sustainability standards for food cover climate, environment, social, and animal welfare impacts. They relate to production practices – the way a product is produced - rather than product characteristics. Implementing these requirements and changes will have a significant impact on the competitiveness of EU producers as well as international trade in food. These changes will have implications not least for developing countries which is recognised in the F2F strategy. The EU has committed to helping these countries reach the UN Sustainable Development Goals, particularly through its commitment to Policy Coherence for Development included in the Treaty of Maastricht (1992) and strengthened in the Treaty of Lisbon (2009). This requires that it considers the impacts of its domestic policy changes on the interests and needs of these countries. I focus particularly on what I call vulnerable developing countries by which I mean both least developed countries as well as the African, Caribbean and Pacific countries that have a special relationship with the EU – around 87 countries in all, though similar issues will also apply to other low income developing countries. Around 70% of their commodity exports consist of four product categories, cocoa, fruits, fish preparations and coffee (Figure 1).

In the context of these commitments, this paper has several objectives. First, it reviews the proposals that the Commission has made to follow up on these commitments in the F2F strategy (Section II). It identifies the direct and indirect ways in which Green Deal sustainability standards can impact on international trade (Section III). The literature on mirror clauses in particular is very underdeveloped with only a few contributions in the literature to date (Baldon *et al.*, 2021; Spiller, Busch and Tangermann, 2021; Rees, 2022). The following section reviews some arguments for and against the use of unilateral measures such as mirror clauses (Section IV). The next section presents a case study of pesticide mirror clauses to see what lessons might be learned (Section V). In the final section, ways to avoid unwanted adverse effects on vulnerable developing countries are discussed (Section VI).

Figure 1. Composition of EU agri-food imports from vulnerable developing countries



Source: Own tabulation based on Eurostat COMEXT trade statistics for HS chapters 1-24. Vulnerable developing countries defined as either/both least developed countries and the African, Caribbean and Pacific countries with which the EU has a special relationship.

II. Green Deal trade initiatives

The Green Deal trade strategy was first set out in the EU Trade Policy Review of February 2021 which included as one of its pillars the need to promote responsible and sustainable value chains. It underlined the role of import standards and asserted the legitimacy of applying production requirements to imports based on the need to protect the global environment or to respond to ethical concerns (European Commission, 2021b). This undertaking was pursued in the CAP political agreement in July 2021 which included a statement by the Council and Parliament calling on the Commission to produce a report assessing the rationale and legal feasibility of applying EU health and environmental standards to imported agricultural and agri-food products by June 2022 (Official Journal 2021/C 488/01). A public call for evidence to feed into this report was launched in February 2022.²

The Commission has embarked on a review of the trade and sustainable development (TSD) chapters in its free trade agreements. It has proposed a regulation on deforestation-free supply chains, directives on corporate sustainable reporting and corporate sustainable due diligence, and announced that it will propose a ban on the import of products made with forced labour. These due diligence initiatives build on the EU Voluntary Code of Conduct on responsible food business and marketing practices launched in June 2020 as one of the first deliverables of the F2F strategy and which included aspirational targets on sustainable sourcing in food supply chains.

The French EU Presidency in the first semester of 2022 has made one of its priorities the reciprocity of trading standards - in other words, ensuring (chiefly by means of ‘mirror clauses’) that agri-food products imported into Europe abide by the EU’s environmental and health standards. A mirror clause related to use of antibiotics in animal production was included

² https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13371-Imports-of-agricultural-and-food-products-applying-EU-health-and-environmental-standards-report-_en.

in the Veterinary Medical Products Regulation (EU) 2019/6. The Regulation entered into force in January 2022 but the mirror clause has yet to be implemented. The Commission has stated in a declaration attached to the CAP political agreement that it will review the way it sets Maximum Residue Limits and import tolerances for pesticide residues for active substances no longer approved in the EU to take global environmental impacts of pesticide use into account (Official Journal 2021/C 488/03). It is undertaking a review of animal welfare legislation which will consider a requirement that similar animal welfare requirements should be applied at import, and in particular as regards the use of cages, as in the EU. The Commission will propose a Regulation for a Sustainable Food System Framework by end 2023 that, among other things, will seek to avoid the externalisation of unsustainable practices and to raise global standards, while remaining within planetary boundaries. Another type of mirror clause is where a border levy is imposed to equalise the burden of environmental taxes. The Commission has proposed a Carbon Border Adjustment Mechanism for five commodities (including fertiliser), though there is no proposal at the present time to extend this to food.

There can also be lessons learned from legislation in place that addressed sustainability standards prior to the Green Deal announcement. Relevant legislation includes the Renewable Energy Directive (EU) 2018/2001 (RED II) that spells out sustainability criteria for biofuels to qualify towards the biofuels target share in transport energy set out in that Directive; Regulation (EC) No 2368/2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds; Regulation (EU) No 995/2010 which prohibits the placing of illegally harvested timber and timber products on the EU market; and Regulation (EC) No 1005/2008 on illegal, unreported and unregulated fishing under which fisheries products from non-cooperating nations are banned from the EU market.

III. The trade impacts of higher sustainability standards

Assessing the trade impacts begins by looking at the potential direct consequences of Green Deal standards for agricultural production and trade in the EU. Several studies have attempted to quantify the impacts on production and farm income of implementing several of the quantitative targets included in the F2F strategy (Barreiro-Hurle *et al.*, 2021; Beckman *et al.*, 2020; Bremmer *et al.*, 2021; Henning *et al.*, 2021). All predict a significant reduction in production although some project that the offsetting price increases may be sufficiently strong to lead to an overall increase in farm income (though not necessarily for all commodities). As a consequence of reduced production, these studies also project that imports from third countries will increase.

The studies have been criticised on several grounds, including that they ignore potential adjustments in demand arising from the food policy measures included in the F2F strategy (shift to more plant-based diets particularly through the greater availability of alternative proteins, introduction of sustainability labelling, reduction in food waste) (European Commission, 2021a). Some dietary changes have the potential to reduce EU consumption and would thus mitigate the increase in imports foreseen in the modelling studies. However, there is scepticism about the effectiveness of the measures proposed to bring about significant dietary changes in a relatively short period. Also, some of the desired dietary changes, e.g. increased consumption of fruits, vegetables and nuts, would likely lead to increased import demand even in the absence of any reduction in EU production due to higher sustainability standards.

These first-round impacts of the Green Deal have the potential to increase the demand for exports from developing countries, particularly for fruits, vegetables and nuts. The potentially

positive impacts arising from increased access for third country exports to the EU market include impacts on employment, incomes, food security and poverty. However, all else equal, lower production in the EU and stronger demand for imports would also push up world market prices and could further intensify problems of undernutrition for low-income households in both food-importing and exporting countries (Beckman *et al.*, 2020). EU imports can also result in environmental degradation or pollution (deforestation, biodiversity loss, competition for water in water-scarce countries, fisheries collapse) or may exacerbate social concerns (animal welfare, working conditions, land expropriation) where poor production conditions are associated with those imports.

Thus, this potential increase in imports gives rise to the demand for accompanying trade policy measures such as mirror clauses. While the principal issue of concern is that higher standards associated with the transition to a more sustainable food system will lead to a loss of competitiveness of EU producers, trade measures also have other aims. Thus, they are intended to address one or more of the following objectives:

- To safeguard EU production capacity by ensuring that EU producers compete with imports on a level playing field, by requiring that imports should meet the same production and process standards as demanded of EU producers. A closely related political argument is to avoid that the potential negative impacts of higher production costs on domestic producers might lead to a watering down or slower implementation of higher sustainability standards within the EU.
- To avoid that EU consumers off-shore the negative environmental consequences of their consumption through existing or increased imports. This argument is especially relevant if higher production standards in the EU intended, for example, to reduce GHG emissions, to improve animal welfare, or to safeguard biodiversity, result in greater production in third countries with lower standards. There is then a risk that, globally, GHG emissions could increase, more animals could experience suffering, and biodiversity loss might accelerate despite improvements within the EU.
- To raise global sustainability standards by leveraging access to the EU market to give a stimulus to exporting countries to raise their standards. As exporting countries will often design their production standards to meet the demands of the most stringent export market, in this way EU standards can also become *de facto* standards for exports to other markets as well.

In summary, higher EU sustainability standards can have both direct and indirect impacts on international trade and therefore third countries. The direct effects refer to the changes in import and export positions for individual commodities arising from the impacts on the competitiveness of EU producers. These can create opportunities as well as threats for third countries depending on their food and nutrition status and net food trade position. The indirect effects arise where these higher standards are also applied to imported products and where exporting countries have different capacities to meet these standards. The application of these standards to imports will act as a non-tariff barrier that reduces their competitiveness. Both of these effects need to be evaluated when assessing the external dimension of the Green Deal.

IV. The range of trade policy instruments

The trade policy measures available to ensure greater coherence between trade policy and Green Deal objectives can be classified into multilateral, bilateral and unilateral measures.³

Multilateral measures refer to raising international standards in bodies such as the Codex Alimentarius Commission or the World Organisation for Animal Health, or negotiating multilateral environmental agreements such as the Paris Agreement or the Stockholm Convention on Persistent Organic Pollutants.

Bilateral measures refer to introducing sustainability clauses in free trade agreements or supporting the transition to more sustainable practices in third countries through financial and technical assistance.

The EU also has a wide range of unilateral measures at its disposal, of which mandatory due diligence and mirror clauses are seen as the most effective, and as we have seen figure prominently in recent Commission initiatives as well as the French Presidency priorities. Labelling is another example of a unilateral measure, as is financial compensation to affected producers.

The gold standard in terms of providing a level playing field is to reach an international agreement that sets high minimum standards and has a credible enforcement mechanism. This both raises global standards, avoids the risk that EU consumption leads to unwanted environmental pressures in exporting countries, and ensures a level playing field. The EU is a party to many multilateral environmental agreements.⁴ The problem with international agreements is that they tend to the lowest common denominator. Few have a credible enforcement mechanism and many rely principally on peer pressure. Very often, EU domestic standards go beyond those agreed at the international level. Other measures will then be necessary to achieve the desired objectives.

Bilateral measures rely on voluntary agreements between two parties. Exporting countries might accept to enforce higher standards on exports to the EU in return for greater preferential access to the EU market (the special tariff rate quota for hormone-free beef, or the so-called ‘Hilton’ quota for beef imports reserved for animals exclusively raised on pasture since weaning, are examples). The debate around EU bilateral measures is that, in previous free trade agreements, the EU has offered preferential access without securing sufficiently robust sustainability commitments in return. The criticism is made, in particular, that the sustainability commitments offered by the EU’s trading partners have been of a best endeavours nature and are not really enforceable because of the absence of sanctions (Bronckers and Gruni, 2021). Based on bargaining theory, one would expect trading partners to accept a stronger sustainability commitment only if the EU is prepared to pay for this in terms of giving greater market access in return. There is thus an inherent conflict when using bilateral measures between two of the objectives for Green Deal trade measures of protecting EU producers from greater competition and raising sustainability standards in exporting countries.⁵

³ Wojciechowski, J., 2022, “Improving coherence between the Green Deal, the CAP and EU Trade Policy”, presentation to Agriculture and Fisheries Council meeting, Brussels, 21 February 2022.

⁴ See the list on this Commission web page ‘Multilateral environmental agreements’, available at https://ec.europa.eu/environment/international_issues/agreements_en.htm.

⁵ This tension may be one of the reasons for the slow progress being made to conclude free trade agreements between the EU and Australia and New Zealand.

Unilateral measures take two main forms: (mandatory) due diligence and mirror clauses (also referred to as reciprocity requirements). Both have the objective of preventing imports that do not meet production standards decided unilaterally by the EU but differ in the way of achieving this. Due diligence rules put the onus on business and national corporate regulators to ensure compliance, while mirror clauses require enforcement at the EU border through customs and other controls, e.g., under the Official Controls Regulation. The pros and cons of which approach to use have been debated when it comes to the human rights issue of preventing imports produced using forced labour, where campaigners want to use trade legislation (with the potential this has to induce retaliatory actions) as opposed to due diligence (where compliance is left to company sourcing policies which are less transparent and also harder to enforce).⁶ For the remainder of this paper, we focus on mirror clauses as an example of unilateral trade measures.

Unilateral actions have advantages and disadvantages relative to multilateral action with respect to the three objectives set out earlier for trade policy instruments. Their main advantage is precisely that they are unilateral. There is no need to engage in painstaking and complex multilateral or bilateral negotiations with reluctant countries that may not share the EU vision of sustainability. But this is also their downside. Because the EU acts alone, it is open to potential retaliation if other countries feel the market access for which they bargained has been diminished without their consent.

This paper does not speculate on the likely outcome of a WTO case brought against mirror clauses based on production practices in exporting countries. The legal jurisprudence is contested, and much will depend on the precise wording and enforcement of the mirror clause (Rees, 2022). The Commission paper foreseen by June 2022 is expected to address these issues in detail. There is nonetheless a risk that a WTO dispute panel could find against the EU, which could lead to retaliatory tariffs being imposed on EU agri-food exports. In this situation, the objective of unilateral trade measures designed to maintain production capacity in the EU could well backfire, depending on the products targeted for retaliation. Agricultural producer organisations are aware of this risk and somewhat hesitant in their support for mirror clauses as a result.⁷

A number of factors would seem to be important in weighing up the benefits and risks. Mirror clauses are justified first as a way of establishing a level playing field with imported products. They are advocated in part on the basis that they are intended to protect production capacity in the EU. This argument can be broken down into a number of elements. Are EU standards indeed higher than those in other countries? Do differences in standards actually lead to a significant competitive disadvantage? And are not EU producers already subsidised and compensated through the CAP to adopt such standards while producers in third countries are not?

⁶ Aarup, S., [Ban on Uyghur imports becomes EU's hot potato](#), Politico.eu October 15, 2021.

⁷ COPA-COGECA in its feedback on amending the Official Controls Regulation to allow checks for antibiotic compliance noted that: *“It is unacceptable for the EU to impose unduly restrictive demands on our trading partners, especially if they may be considered technical barriers to trade. We believe in market-oriented animal health rules and conditions, as well as in the reciprocity of standards. Nonetheless, to achieve these we believe that we should focus more on the possibilities to communicate with our trading partners and share the best practices that are already in place in the EU. Acting any differently could undermine third countries’ confidence in EU food production and have a negative impact on EU exports of both food and other agricultural products.”*

- blob:<https://ec.europa.eu/d86bfed2-dd03-49ad-af8a-9012afa7de50>

Another issue is which sustainability standards might be addressed through mirror clauses? Based on the level playing field criterion, one might select those standards that have the highest compliance costs for EU producers and thus are likely to have the greatest adverse competitive impact. But as Commissioner Wojciechowski has warned, the objective of mirror clauses cannot be based on economic considerations but must be in full compliance with WTO rules.⁸ An alternative criterion would focus on standards that protect global environmental goods. When discussing the use of unilateral measures to pursue sustainability standards, the Commission is careful to qualify that these are intended to be environmental concerns of a global nature. The presumption is that it will be easier to defend import restrictions based on production practices in the WTO if they are linked to safeguarding global environmental goods rather than either local environmental goods or purely protectionist motives.

Another relevant consideration is how effective a particular mirror clause might be in raising global standards. Their effectiveness will depend on the reaction of the exporting country. Countries may raise their domestic standards to comply with the EU requirements and to maintain access to the EU market. Or they may decide to forego supplying the EU market on the grounds that it is not feasible or too costly to meet the EU standards and instead divert supplies to less demanding markets. It is also important to take account of the existence of relevant private standards. These are often more demanding than public standards so some of the trade impacts of higher public standards may already be factored into existing trade flows.

Mirror clauses are politically popular because it appears as if their costs are borne by foreign producers. Foreign producers indeed lose out (hence their incentive for retaliation). However, given that for most products EU self-sufficiency rates are high and imports make up only a small share of domestic consumption, the main costs will be borne by EU consumers. The principal impact of mirror clauses will be to increase the transfer from EU consumers to EU producers because of higher prices. Mirror clauses work because they restrict imports in a situation where EU production is falling and thus permit EU producer prices to increase by more than would occur without these clauses (the F2F impact studies cited earlier predict substantial price increases would follow achieving the supply-side F2F targets). This in itself is not an argument against mirror clauses. EU consumers in their role as citizens may be willing to pay this higher price because of the global environmental benefits. Higher prices for certain food products (e.g. animal source foods) may also be consistent with the Green Deal ambitions for dietary change. However, for other food products where the Green Deal ambition is to increase consumption (e.g. fruits, vegetables, pulses and nuts), mirror clauses could make the achievement of this ambition more difficult.

Food safety and environmental standards evolve differently around the world as countries respond to different specific risks and prepare for emerging challenges. Standards may differ because countries may interpret the science differently (which in turn may be a function of the strength of vested interests affected by these standards in each country), because of their different exposure to specific risks (pests and diseases in tropical countries are different to those in Europe), or because of differences in the willingness or ability to shoulder risks (risk preferences). The subjectivity of risk management with respect to food safety is evident in the EU which, since the General Food Law in 2002, has separated the function of risk assessment (a procedure based on science undertaken by EFSA) from that of risk manager (in the form of the Commission assisted by the Member States that undertakes a more political appraisal in deciding on the steps to take to manage the risk). The General Food Law recognised that

⁸ Wojciechowski, *ibid.*

scientific risk assessment alone cannot always provide all the information on which a risk management decision should be based, and that other factors relevant to the matter under consideration should legitimately be taken into account including societal, economic, traditional, ethical and environmental factors and the feasibility of controls. While the universal application of a particular sustainability standard may seem obvious to us in Europe, we should be open to the possibility that other countries will not always see the issue in the same way for these reasons.

V. Case study: Linking MRLs to sustainability criteria

Changes in the way the EU sets Maximum Residue Limits (MRLs) for pesticides have been flagged by the Commission and identified as a priority of the French EU Presidency in the first semester of 2022. Considering the commodity composition of imports from vulnerable developing countries shown in Figure 1, it is also the trade policy instrument likely to have the most immediate impact on vulnerable developing countries. This section takes the proposed changes in MRLs as a case study of a Green Deal trade policy instrument.

Several possible steps to further tighten Maximum Residue Levels (MRLs) for imports have been suggested. The Commission has stated that it will review import tolerances for substances banned based on the hazard-based criteria and presenting a high level of risk for human health. Substances identified under the hazard criteria include those that are mutagenic, carcinogenic or toxic to reproduction, or, since October 2018, if they are deemed endocrine (hormone) disrupting substances according to the scientific criteria laid down in Commission Regulation (EU) 2018/605, or are substances considered to be persistent organic pollutants (POPs) or have properties that trigger related EU criteria (persistent, bioaccumulative, toxic; or very persistent, very bioaccumulative). Once a substance falls into this category, it is automatically banned for use as a pesticide in the EU and no further risk assessment is required (to better understand the implications of this, note that a hazard is something that could potentially cause harm, whereas risk is the probability that a person will be harmed or experience an adverse health effect if exposed to a hazard). However, the Commission continues to assure the EU's trading partners that, in line with its obligations under the SPS Agreement, requests for import tolerances will be handled through a process that includes a full risk assessment.

A second step would require global environmental impacts in third countries to be evaluated when setting import tolerances for substances that are banned in the EU. The Commission has already committed to take this step.

A third step would introduce a mirror clause requiring imported products to meet the same environmental standards as set for EU producers. This would be particularly relevant where the use of the active substance is banned in the EU and the associated MRL is automatically set to the lowest default level. Under current EU legislation, requests for import tolerances can be considered (meaning a request to set a higher MRL), but only where the reason for banning a pesticide active substance in the EU is not based on public health grounds, for example, where other concerns are identified such as environmental risks or insufficient efficacy, or where there has been insufficient data for EFSA to make an assessment. Provided a risk assessment confirms there are no expected risks to human health, import tolerances can be set based on residue levels consistent with good agricultural practice in the exporting country. A mirror clause would imply a more far-reaching change in current legislation than what the Commission has currently committed to, which is to take global environmental impacts into account when assessing requests for import tolerances. A mirror clause would eliminate any

role for import tolerances at least for products whose use is banned in the EU. If EU producers cannot use a particular substance, it would also be effectively banned for use by producers in third countries, at least for their exports to the EU.⁹

As noted previously, effective multilateral agreements are the best way of achieving the multiple goals of avoiding adverse competitive effects on EU producers, avoiding the displacement of environmental and health problem abroad if imports increase, and leveraging an increase in sustainability standards globally. For pesticide residues, the FAO/WHO Codex Alimentarius is the relevant international body that sets international standards. However, Codex risk assessments currently only look at the impact on human, plant and animal health. The EU has proposed to extend the Codex terms of reference to also address the challenges posed by climate change, biodiversity loss, the spread of antimicrobial resistance and the increase in non-communicable diseases.¹⁰ It points out that this approach would be fully consistent with the sustainability commitments taken by Codex Alimentarius members in other international fora or multilateral processes. However, persuading other members to agree to this change looks like an uphill struggle at this time.

Regardless whether the link between MRLs and production practices in exporting countries remains limited to a consideration of impacts of global environmental concern, or whether a fully-fledged mirror clause is introduced that would ban the use of pesticides banned in the EU, there remains the question of enforcement. Official Controls test products at the border, for example, for residues of pesticides or antibiotics. But sustainability standards refer to how products were produced, and this is not always evident in the product itself, and particularly in the case of processed products. What might be solutions? Will imports have to be accompanied by an official certificate declaring compliance with EU standards, thus requiring separate supply chains in exporting countries as for hormone-treated beef? Will enforcement be left to private actors to exercise mandatory due diligence? Will the EU only import from countries that have brought their legislation into line with EU standards? The failure so far to explain how the antibiotics mirror clause will be enforced despite the legislation being in place for three years suggests these enforcement issues are not simple.

VI. Policy recommendations

Eliminating the use of pesticides that are deemed to be dangerous to health or to have adverse consequences for the environment also in countries that export to the EU is a desirable objective. However, the use of these pesticides contributes to economic production and viable livelihoods on many different types of farms in developing countries. They are often reasonably cheap and effective at controlling pests and thus maintaining yields. The farms that benefit include the large-scale banana plantations of Central America, the well-resourced vineyards of South Africa, but as well smallholder producers of cocoa, coffee and other commodities across Africa and Asia.

⁹ Note that an active substance may not be approved in the EU either because it has been prohibited on either health or environmental grounds, or because there has been no request from a manufacturer to seek approval or renewal. In some cases, a manufacturer may not seek renewal because it recognises that it is not likely to pass the risk assessment, but in other cases there may simply not be an economic incentive to seek approval in the EU. Non-authorisation as opposed to prohibition therefore does not necessarily imply that the active substance is unsafe (Rees, 2022).

¹⁰ Council of the European Union, [Conclusions on the EU's commitment to an ambitious Codex Alimentarius fit for the challenges of today and tomorrow](#), document 6298/22 21 February 2022.

Measures to limit the export of commodities from low-income developing countries to the EU that make use of active substances banned in the EU must therefore meet four criteria. They should be implemented:

- Providing a sufficient transition period to allow viable alternatives to the banned pesticides to be developed. Under current rules, exporting countries are given 6 months to adjust to changes in EU MRLs. This time period is grossly inadequate for the changes required in exporting countries. The Farm to Fork Strategy envisages that EU farmers will have a transition period of ten years in order to reduce pesticide use by 50%. It is unreasonable to ask low-income developing countries to completely eliminate use of certain pesticides within a six month period. The adjustment time required will depend on the structural characteristics of the industry, the nature of the pest, in some cases the time needed to breed and develop pest-resistant varieties, and so on. Obviously, milestones and targets would need to be set to ensure that progress was being made.
- Producers in low-income countries will also require technical and financial assistance to adapt their production practices to the elimination of certain pesticides. The development of non-toxic pesticide alternatives or pest-resistant varieties will also require the investment of significant resources. For some commodity supply chains, private sector actors will be in a position to shoulder some of this cost. However, the EU will be obliged to greatly increase its financial contribution to low-income developing countries if more stringent import standards are introduced.
- The third principle is the importance of direct consultation and partnership with the exporting countries. The principles of the just transition in Europe emphasise that those affected by change should be consulted and have a say in managing that change. This principle should also apply to the external dimension of the Green Deal. One could envisage building on the proposal for Green Alliances in which the EU and partners in the exporting countries would jointly agree on the appropriate transition periods, the level of financial and technical resources needed, and how these resources would be allocated to ensure a successful transition to more sustainable agricultural practices.
- A fourth requirement is that EU decision-making must have mechanisms where the interests and needs of these countries are explicitly considered. Good mechanisms are in place for legislative proposals, but the silo nature of decision-making in the Commission may inhibit a holistic view when more routine decisions with potentially significant effects for developing countries are taken. In setting MRLs for commodity/pesticide combinations, EFSA draws on scientific expertise to assess the health and environmental impacts within the EU. If it is also to assess the global environmental impacts on practices in exporting countries, significant additional expertise and resources will be required. Also the Commission, as risk manager, needs to ensure that the interests of vulnerable developing countries are fully considered in any decisions that it makes. Commission recommendations must be endorsed by the Standing Committee on Plants, Animals, Food and Feed (PAFF Committee) which plays a key role in ensuring that Union measures on food and feed safety, animal health and welfare as well as plant health are practical and effective. This Committee is made up of Member State experts in 14 different sections including one on phytopharmaceuticals that deals with pesticide residues. Although this Committee is required to consider comments received from WTO Members, it is not evident that it has particular expertise in assessing the impacts of its decisions on developing countries. There is an urgent need to put appropriate structures in place in parallel with decisions to proceed with the trade policy instruments of the Green Deal.

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