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Mirror, Mirror on the Wall, Who Has the Fairest Clauses of Us All? Stress-testing the Application of Mirror Clauses to Pesticides

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Brussels, Belgium, 14th March 2022 - In less than six months, ‘mirror clauses’ have taken EU trade policy by storm. To inject ‘reciprocity’ in trading terms, the French Presidency of the Council is proposing that imported food and feed be produced under the exact same sanitary, phytosanitary, welfare and environmental standards as those imposed on domestic products within the European Union.

The international trade rulebook is both complex and yet relatively straightforward in ensuring that process and production methods applied to imports respond to legitimate justifications and do not result in a disguised barrier to trade. The European Union may learn from the United States’ playbook to ensure that mirror clauses are negotiated with trading partners bilaterally, rather than imposed on them unilaterally.

As part of its Farm to Fork strategy, the European Commission has announced two pesticides reduction targets to be attained by 2030, and it is in this framework that questions relating to plant health and international trade have been gaining traction. With pesticides targets set to raise costs for European farmers and productivity levels likely compromised, there are genuine concerns that domestic products will be competitively undercut by imports produced ‘less sustainably’.

To grasp the complexity of mirror clauses applied to the phytosanitary sphere, understanding how the European Food Safety Agency authorises and bans active molecules and bio solutions is vital. Appreciating the daily efforts of national customs agents in checking imports for pesticides residues, and coordinating efforts of Member States on rejected food and feed imports that do not meet EU requirements, is also paramount.

"There are warranted societal justifications to impose measures to protect humans, animals, plants and ecosystems. To remain legitimate under international law however, mirror clauses should be 'stress-tested' to avoid being applied as a means to gain competitiveness," stressed Emily Rees, the author of the study.

Countries are unequal when it comes to the risk of pests and climate change is already intensifying their distribution with potentially dramatic impact for global food security. When it comes to protecting plant health, regional conditions must be considered to not only avoid inconsistency with WTO rules but also to ensure that mirror clauses do not result in a practical ban on imports from developing countries impacting livelihoods worldwide.

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