

# Mirror Clauses – A Forgotten Concept or Implementation under different names

2023 MRL Harmonization Workshop  
San Diego, CA – 25.05.23

Volker Koch-Achelpöhler  
Agricultural Relations Director, Europe  
Gowan Crop Protection, Ltd.





# Overview

1. The Green Deal Policy Dilemma
2. The Concept of Mirror Clauses
3. Mirror Clauses in Action
  - a. Environmental Factors in MRL Setting
  - b. Green Diplomacy
  - c. Export Ban



# 1. The Green Deal Policy Dilemma





# The Green Deal Policy Dilemma – Objectives & Instruments

- A **central Green Deal Objective**: Reduce the environmental and climate impact of food production and consumption
- The **Core Policy Instruments** addressing agricultural production aim at **reducing, restricting, banning, prescribing** (e.g. fertilizers, crop protection products, crop rotation, organic production)
- An **enabling regulatory environment** for the introduction of chemical, biological and digital **innovations** into agriculture is **missing or not consistently implemented**
- **Intensity of political intervention** in EU agricultural production **higher** than in the rest of the world





# The Green Deal Policy Dilemma – Impact on EU Agriculture & Trade

- **Impact** on EU farmers and growers:
  - policy driven **cost increases**,
  - Policy driven **productivity losses**,
  - **Decreasing competitiveness** compared to farmers & growers from third countries.
- Without political intervention in trade, **increased** substitution of domestic agricultural products by **imports**.
- Trade policy options:
  - **Restriction of market access** for agricultural products not produced according to EU standards
  - **Export of European standards**

## 2. The Concept of Mirror Clauses







# The Concept of Mirror Clauses

- Mirror clauses aim to guarantee that imported products are produced under the same or similar sanitary, phytosanitary, welfare and environmental standards as products produced domestically within the EU .
- They are intended to address concerns about competition, consumer protection and sustainability.
- The term Mirror Clauses has largely disappeared from the political discussions, but the concept is still present and implemented





# Mirror Clauses – A Controversial Instrument

- Mirror clauses may pose legal challenges under the World Trade Organization (WTO) rules, especially if they are imposed unilaterally and not negotiated bilaterally.
- Mirror Clauses may create trade barriers and distortions for third countries, especially developing countries, that do not have access to the same resources, technologies and subsidies as the EU .
- Mirror clauses may interfere with the regulatory sovereignty and policy choices of other countries.



[illegible]





# How to get EU Standards applied globally - Convincing, Imposing, Preventing

- ***Imposing*** – Attempt to force farmers and growers in third countries to apply EU standards if they want to export to EU (e.g. new MRL policies)
- ***Convincing*** – Attempt to implement EU standards within the framework of trade agreements and partnerships (Green Diplomacy)
- ***Preventing*** – Attempt to prevent that farmers and growers use means in agricultural production that are banned in Europe (Manufacturing ban for export of crop protection active substance banned in the EU)





## Environmental Factors in MRL Setting – What happened so far (I)

- **Farm to Fork Strategy 2020:** *“The EU 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”*
- **EU Commission Regulation (EU) 2023/334 of 2 February 2023** provided for lowering all current MRLs for clothianidin and thiamethoxam to the Limit of Determination (LODs). Justification: Addressing an environmental concern of global nature, that is the global decline of pollinators





## Environmental Factors in MRL Setting – What happened so far (II)

- EU Commission argues that new approach is limited in scope. However, at the February SCoPAFF **four EU Member States flagged** more generally that, as a matter of principle, **they would no longer support import tolerances for substances not approved in the EU.**
- It appears that the EU Commission is using the case of the two neonicotinoides as a **test case** to see how much resistance they will get



# Environmental Factors in MRL Setting – Legal Aspects

- Extra-territorial application of EU law
- Non-compliance with WTO and EU law
- Non-reliance on international standards and principles
- Not proportionate to the objective
- Discriminates against imports from non-EU countries





## Environmental Factors in MRL Setting – Regulatory Aspects

- Different regions have different needs: different production systems
- Different regulatory frameworks including different assessments for environmental risks
- Different mitigation measures to manage risks
- MRLs not appropriate to tackle environmental challenges



## Environmental Factors in MRL Setting – Scientific Aspects

- In geographies where there are apparent pollinator declines, this is due to a range of factors, such as habitat loss and land use change, for honeybees also parasites such as the Varroa mite.
- One single factor alone cannot explain the pattern of bee colony decline observed in some countries, while bee colonies increase in others
- No global environmental risk arising from the two substances that remain unmanaged.
- There might be use patterns that can essentially eliminate the environmental risk of concern.





## The EU's Green Diplomacy

- **Objective:** EU to support the global transition to sustainable agri-food systems
- **Tools:**
  - EU will pursue the development of **Green Alliances** on sustainable food systems
  - EU trade policy will introduce **sustainability chapters** in all EU **bilateral trade agreements**.
  - EU will promote **international standards** in the relevant international bodies



# Export Ban – Concept, Timeline, Scope

- Legislative initiative that aims at prohibiting production and/or export of certain hazardous chemicals that are banned in the EU – to protect non-EU countries from their negative effects on human health and the environment
- Timeline:
  - Public consultation ongoing until July 31<sup>st</sup>
  - Adoption of a legislative proposal probably in January 2024
- Exact scope still unclear (may include all active substances not explicitly authorized in the EU)





# Export Ban – Counterproductive Impact

- **Two supply scenarios**

- Active substance/product not further manufactured => If no alternative available farmers and growers in third countries potentially will see serious crop protection challenges
- Active substance/product will be supplied from other region

- **Impact:**

- Initiative will fail to achieve its objectives of protecting human health and the environment in third countries
  - **Best case:** No positive impact for human health and the environment,
  - **Worst Case:** Negative impact for human health and the environment (product quality, missing stewardship activities, etc.)
- May have a detrimental impact of food security in lower income countries



## Conclusions & Outlook

- **Mirror clauses as economic necessity:** If the current ideas for pesticides reduction (use and toolbox) are implemented, EU agriculture would need protectionist measures to stay competitive. From this perspective mirror clauses seem to be necessary.
- **Mirror clauses as moral imperative:** Important parts of the European political establishment are convinced that there is no alternative to the Green Deal approach and that it needs to be implemented globally. Mirror clauses are then a moral imperative
- **EU is testing the waters:** Europe is currently testing how far it can go with the introduction of Mirror Clauses without risking legal challenges and retaliation.





# Thank you for your attention!

Volker Koch-Achelpöhler

phone: +32 470 82 34 62

e-mail: [Vachelpohler@gowanco.com](mailto:Vachelpohler@gowanco.com)