Use of mirror clauses by the EU

The policy reach of the EU Green Deal and Farm-2-Fork strategy extends right into a Southern African citrus orchard, through the so-called "mirror clauses". By Paul Hardman

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Sustainability in global trade

The most recent United Nations Climate Change Conference, or Conference of the Parties (COP27) was held from 6 - 20 November last year. Perhaps, it did more to remind us of the complexity of global environmental problems, rather than making strides towards concrete solutions that address the underlying causes. It is difficult to see real progress coming from there.

So while the COP discussions plod along, some countries are becoming proactive about seeing sustainability issues being tackled and making this an important component in bilateral trade agreements. The European Union (EU) is so with the Green Deal and Farm-2-Fork strategy, which expressly include specific clauses aimed at trading partners.

These policy instruments (mandates) are now in the hands of the EU Commission officials to influence third countries to adopt more sustainable practices. Therefore, it is of great interest to see how these "mirror clauses" will likely impact the South African citrus industry.

What are mirror clauses?

The EU is seeking reciprocity, i.e. for trading partners to set ambitious environmentally-friendly targets equal to those made by the EU. A reflection of the Farm-2-Fork strategy alone would suggest the EU expects trading partners to at least confront issues such as:

- Increasing organic production
- Reduction in the use of synthetic inputs (i.e. fertilisers)
- Reduction in the use of pesticides
- Embracing a circular economy (i.e. reducing or managing the use of plastics)
- Demonstrating lower carbon emissions
- Redressing biodiversity losses.

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These goals are ultimately expected to be pursued using formal trade agreements, whereby positively reciprocating countries are more likely to gain preference to markets. However, significant pressure to move in tandem with the EU is expected from political and commercial quarters too.

Concerns about the EU mirror clauses

In practice any attempts at simply reciprocating on these issues will need to be carefully considered to avoid counterproductive outcomes. The CGA has already expressed concerns about the paradoxes within the Farm-2-Fork strategy that may actually lead to true environmental stewardship being set aside for economic or political reasons.

Therefore, a cautious view of the "mirror clauses" is necessary for the following reasons:

- **Sustainability priorities:** A key finding from the SHAFFE Sustainability Task is that different sustainability components may have a different value (priority) in one context versus another, and imposing a specific preference from another part of the globe is problematic. To illustrate, the issues being dealt with in Argentina are different to those in Brazil or New Zealand. More importantly, the solutions to solve these issues are often tied to rural communities and cultures. The point is that what may work well in Europe might be inappropriate in SA. When it comes to environmental sustainability, local conditions certainly matter. Direct reciprocation cannot always apply.
- **Science and evidence:** It is hoped that decisions on sustainability commitments are based on sound science and evidence. For example, the Confronting Climate Change project has over a decade's worth of data, tracking carbon emissions on citrus farms. Will this robust data be used in carbon emission discussions? At this stage there seems no obvious mechanism to take account of the good work being done by Southern African fruit and wine industries to reduce their emissions.
- **Environmental standards:** The EU states in the Farm-2-Fork strategy that they are looking to improve global environmental standards. Are the EU standards better than those developed elsewhere? From our own experience, the standards emanating from Europe do not always work well in SA. This is not a criticism of the intent, but simply a fact that standard developers may not have envisaged the requirements being applied in this context. Consider the fynbos biome as a unique feature of the Cape. To what extent would that be considered when setting standards? Again, the issue is not the principle or intent around standards, but rather how it is framed and implemented. Does it make sense?
- **Uncertainty within Europe:** It has already been observed that different member states can and should adopt different approaches to implement the Farm-2-Fork strategy. One area of concern is packaging and labelling requirements, which are regulated at the member state level. Another is the regulations dealing with pesticide substitution, also managed at the member state level. The disintegration of a common market is a problem for third countries, because it implied the adoption of one option at the expense of another (lost marketing opportunities). This is further complicated when you consider that Great Britain is now free to choose policy approaches that are entirely different to those in the EU. So who do you follow?
- **Targets or actual progress:** There are questions and uncertainty about whether the member states will actually achieve their own targets. The ambitious target of 25% of production being done using organic methods is a good one, but will it be achieved? It has been set back due to the Russian-Ukraine conflict. Food security has become a priority and could overshadow organic targets. Another example is the slow progress made by member states on the pesticide substitution process. The Commission has expressed concern that this is simply not happening fast enough. How are third countries expected to interpret this and be expected to carry a burden that not even the EU member states can manage?
- **Technical barriers to trade:** Some may ask if the Farm-2-Fork strategy may have simply been constructed to protect EU producers. This is a rather cynical outlook, but does tie in with why the COP process is taking so long – there are simply too many other agendas that cloud the sustainability space. Some countries have already raised concerns that the "mirror clauses" are in conflict with the principles established for international trade – the World Trade Organization (WTO) Phytosanitary and Sanitary (SPS) agreement. Will there be any countries willing to contest this through a WTO dispute?

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The current reality is that we anticipate that the "mirror clauses" are indeed likely to influence the terms of trade to the EU. But right now, there are more questions on "what", "when" and "how", as this plays out. In particular, it's unclear how the details of the reciprocation will be thrashed out and what opportunities there will be for third countries to make inputs. What evidence will be used to justify positions taken? After all, there was very little opportunity for third countries to influence the design of the EU Green Deal and Farm-2-Fork Strategy.

Perhaps the most important consideration is how do we prepare for the future and how do we become aware of on-going developments? For this, citrus growers are encouraged to participate in the Citrus Sustainability Forum – a platform designed to anticipate future challenges. By having a range of stakeholders involved, solutions can also be considered and plans made to work towards these. Please contact the CGA to join this grouping.