What's in the Package? Transparency, Trade and the Politics of Food Labeling

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Introduction

A recent set of food scares in Canada, the most notable dealing with listeriosis in packaged meat products appears to be one of a number of events that have undermined public confidence in the food industry to ensure food safety. Food regulation is an especially sensitive area of public policy where citizens want government to play a major role in ensuring food

quality and safety for a number of reasons. First the act of eating, as Buckingham (2005) points out, is an inherently physically intimate and invasive one, necessary for health and survival, but also deeply imbedded in local cultures and norms. Second increasingly globalized systems of food production, processing and distribution, much of it controlled by large corporate actors, means that consumers, more properly food eaters, are increasingly distant and detached from, the sites of food production. They are reliant on others including regulators to assure the quality and safety of what they eat and to provide the information they need to assess and understand what is in the package when they make their food choices.

On December 1, 2008 Canada filed a complaint at the World Trade Organization (WTO) over a U.S. law implemented on September 30 which required retailers to provide country-of-origin (COOL) labeling for meat. International Trade Minister Stockwell Day announced that Canada (later joined by Mexico) requested consultations on the regulations on the grounds that they violated several articles of agreements on Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS) and other articles of the WTO. The Canadian government, Canadian meat producers and the media treated the issue of labeling as a conspiracy of US meat, especially beef and pork producers, to keep our products out of their markets.

Yet there is evidence that both American and Canadian consumers want to know more about where their food comes from and how it was produced. But distance from sites of food production, intellectual property rules, the emergence of global agri-business and the biotechnology industry's development of food using genetically modified or engineered organisms (GMOs) have further limited the capacity of consumers to directly assess what they are eating. Yet the demand to know what we are eating is rising.

> Concern has been rising among some consumers in a number countries regarding what can generally be classed as credence attributes of goods. These concerns include chemical residues on fruits and vegetables, drug residues in meat, growth enhancing hormones used in animal production, the animal welfare standards applied, the environmental cost of production, the use of child labour, etc. Probably the issue that has gained the highest profile is the advent of genetically modified (GM) crops in commercial agricultural production . In each of these cases, consumers cannot tell whether the attributes are contained in the goods they purchase either by inspection or after the experience of consumption. (Hobbs and Kerr, 2005, 81)

Consumers must rely in these cases for their food choices on information conveyed to them, most commonly in the form of labels.

The subject of labeling is a complex one that has been studied most commonly in the case of food by economists and business marketing experts who concentrate on the impact of labels on consumer behavior. Corporations view labels in terms of their contribution to the marketing of their product and whether attributes described in labels might enhance or limit demand for their product, permit a price premium on the product or somehow differentiate it in the marketplace. Public policy, in contrast, traditionally has tended to focus on the need to protect food eaters from health risks and misleading or fraudulent claims. This paper focuses instead on the struggle over the eaters' right to know what they are eating viewing the issue through the lens of growing demands of eaters for more transparency about what is in their food and how it is produced and the development of movements challenging the global food system. Better

information about their food allows eaters to make choices in favour of food attributes that accord with their values and include, but go well beyond safe, nutritious or tasty food. Using that capacity to choose may be one way concerned citizens can redress the increasing shift of power and influence to large corporate agribusiness, but only if trade rules and agreements do not limit or circumscribe food consumers' ability to choose. Food scares, concerns about climate change and a desire to support sustainable and local food production have increased media attention and public concern about food and increased the demand for information. As food production has become globalized national food regulations have the potential to interfere with trade and thus international institutions, such as the Codex Alimentarius and the World Trade Organization(WTO) have played an increasing role in food labeling standards. Rules governing food labeling are crucial to the consumers' access to information and are the subject of political struggle at the national and the global level. Canadian consumers' labeling preferences have not been fully reflected in Canadian policy on food labeling or in the positions the Canadian government adopts at organizations like the Codex and the WTO.

This paper will examine case studies of two very sensitive issues in international trade and food labeling, mandatory labeling of foods produced from genetically modified organisms (GMOs) and country of origin labeling. In both cases Canada's domestic regulations have not required such labeling and Canada has strongly opposed any international standards that support mandatory labeling for any reasons beyond the need to protect public health or stop misleading or fraudulent claims. Canada's international trade policies on food labeling have been subject to very little public debate. Until very recently the United States shared Canada's hostility to international standards of mandatory labeling and saw other national mandatory labeling regulations as trade barriers. However, with passage of the US Farm Bill in 2002 and the 2008 US Food Security and Energy Act the United States has moved toward expanding the number of food products, including meat, that require country of origin labeling. Canadian and American policies on food labeling at the Codex Alimentarius and the WTO will be examined to address questions about who influences policy on food labels and international negotiations on labeling standards and why there have been growing challenges to their efforts to limit consumers' rights to know more about their food.

The paper examines the justifications for mandatory food labeling and asks why some, such as public health and safety, are acceptable and legitimate under international trade rules and other based on concerns about processes of production and the rights of consumers to be informed about various aspects of the quality and nature of the food they are consuming are not. It argues that this question of legitimacy is really a political one the result of struggles engaging various actors, including states, corporations, social movements and non-governmental organizations.

The paper begins with a discussion of the World Trade Organization and the Codex Alimentarius, particularly its Committee on Food Labeling (CCFL) the key international institutions in the development of trade rules on food labeling. It then examines the case of mandatory labeling of GM foods and the US and Canadian efforts to stop the development of a standard at the Codex which would permit mandatory labeling. It also examines the role of other actors in the struggle over GM food labeling and links it to the various trade disputes involving food. The third part of the paper examines the case of Country of Origin Labeling, where once again the United States and Canada played a role in helping to limit work at the Codex on COOL. It goes on however, to address the reasons why the United States has most recently

begun to require such labeling and argues that the issue of COOL needs to be seen in a broader context than one which dismisses mandatory labeling advocates as a narrow cabal of protectionist producers in the United States. Rather the paper's conclusion argues that food labeling is part of a broader struggle over the globalized food system where the right of eaters to know more about where there food comes from, and how it was produced, so that they may make better choices is gaining ground, despite the efforts of powerful actors to stop or deny its legitimacy.

Food and Trade Regulation: The WTO, the Codex Alimentarius and food labeling.

Globalized food production, much of it dominated by large corporate conglomerates, the rapidly increasing level of food imports, and the existence of differing national food standards and regulations and their impact on trade has made harmonizing standards much more important. This was reflected in the conclusion of the Uruguay Round of the General Agreement on Tariffs and Trade which created the WTO and its agreements on Sanitary and Phytosanitary (SPS) measures and Technical Barriers to Trade (TBT). SPS measures deal with food safety while Technical Barriers to Trade include regulatory measures adopted to deal with consumer safety, health or environmental protection and include labeling. In using such measures WTO members are obligated to employ national regulations that are the least trade restrictive and, in the case of food safety, based on scientific grounds and, where available, international standards. The standards of an existing body, the Codex Alimentarius, are directly referenced in the SPS agreement and thus could serve as a benchmark and justification to the WTO for national measures to protect food safety. It has, as a result, turned the Codex Commission, along with the WTO, into a site of struggle around states' right to regulate food and the extent to which such regulations constitute unjustifiable barriers to trade. National rules which deviate (i.e. exceed) Codex standards could become the subject of trade disputes and targets for WTO-authorized, and potentially costly, trade retaliation. On the other hand, as Buckingham (2000) points out:

> Once international standards emerge, their employ is very difficult to challenge under the WTO dispute resolution mechanism. With a Codex standard on labeling, clearly WTO panels would be obliged to accept the standard once enacted into any national legislation. Such legislation would be a legitimate exception to WTO rules set up to facilitate international trade (210).

The role of the Codex

Standards developed in the Codex can in essence reduce or expand the policy space for national food regulation. As a result of its changing role, Codex rule-making processes have become more politicized, reflected in its growing membership of state actors (181), the increased involvement of national trade officials and other organizations such as the WTO. In addition, non-state actors, both corporations and non-governmental organizations (NGOs) (Veggeland and Borgen 2005) have sought to play a greater role in the standard setting process both through the direct involvement in the work of the Codex Commission and its committees and through efforts to influence the negotiating positions of state actors.

A joint body of the Food and Agriculture Organization (FAO) and the World Health Organization (WHO) the Codex was founded in 1962 with a mandate to develop and harmonize food standards both "protecting the health of consumers and ensuring fair practices in the food trade" (WHO 2005, 14). The Codex Commission is in session for two years culminating in a bi-annual meeting held in Rome (FAO) or Geneva (WHO). Much of the work

is carried out in various committees dealing with functional issues (such as general principles, labeling, limits on pesticide residues) and commodity areas (such as milk and milk products or meat) as well as a number based on geographic regions. Each member state has a national Codex contact point (often in the national food safety regulating agency) and the national chairs of various Codex committees host the work of the committee, that is, fund the secretariat and undertake the costs of the annual meeting of that committee. In the case of food labeling, Canada has chaired and hosted the committee's work for many years.

Decisions of the Codex committees and of the full Commission are normally made by consensus. The development of new food standards follows an 8 step set of procedures which involve the submission of a proposal to develop a standard, a discussion paper and a decision by the relevant committee that a standard should be developed. Once developed the draft standard is circulated to all member governments for comment. The draft may then be revised and ultimately adopted. Given the increasing demand for, and complexity of, food production and standards and the small size of the Codex secretariat the process can take years.

Policies on the representation of various interests in food production at the Codex have traditionally allowed for more input from non-states actors, especially food producers and processors, and more transparency than is the case for the WTO. This relative openness has, given the changing trade significance of Codex standards in recent years, provided a potential direct channel for corporate influence over the development of international standards. The meetings of the Commission in 2000 and 2002, for example, included about 150 of these INGOs (Codex term). Of these about 70 per cent represented industry in some form (WHO and FAO 2002 *Report of the Evaluation*, and Sklair 2002). By 2005, the number of INGOs had reached 156 and for the meeting of June 2007, 157 are listed. The number of observers has, in fact, increased more rapidly than state membership (Huller and Maier 2006). The Codex Committee on Food Labeling has followed a similar pattern. In the 2006 Ottawa meeting 20 of the 25 observers appeared to represent industry while in May of 2007 of the 27 present 21 appeared to represent producer or corporate organizations. Moreover, the composition of national delegations often includes industry representatives and a few other organizations. Of the 200 official national delegates in 2000, 48 came from industry (Sklair 2002, 164) while only 4 represented consumer organizations. (Consumers International, 2006). In the 2008 committee meetings on labeling, for example, Canada's delegation included the umbrella organization BIOTECanada "Canada's voice for biotechnology" represented by a Monsanto executive, along with representatives of corporations such as, Kraft, Nestle and Mead Johnson.

Consumer and environmental NGOs, even with their more limited resources, have also used the capacity to access committee and commission meetings to report on, and influence, the proceedings, either in themselves, or as part of national delegations. In addition through the extensive use of the Internet they have shared their reports and intelligence on Codex activities widely with other trans-national coalitions. Thus the work of the Codex has become more known, along with the efforts of biotechnology companies, such as Monsanto, to shape the standards. In addition to the imbalance of private interests represented at Codex meetings there is also one involving developing countries, especially the least developed countries, which often do not participate in meetings or send small delegations of a single individual (compared to the US which often has 20 or more at the CCFL meetings) despite some modest funding from the Commission to facilitate their participation.

In terms of how food safety and other standards are developed the scope of risk assessment within the Codex has been restricted to human health risks in various foods. Given its small secretariat and limited resources, the Codex must rely heavily on various "independent experts" for its scientific advice on the question of health risks. Procedures of risk assessment have typically relied on the WHO/FAO Joint Expert Committee on Food Additives, the Joint Meetings on Pesticide Residues and the Joint Expert Meetings on Microbiological Risks which involve experts reviewing the evidence contained in existing studies, most of which are furnished by the "food manufacturer's scientists rather than conducting first-hand empirical studies of their own." (Huller and Maier 2006, 284)

Determining what is independent disinterested scientific knowledge is not always easy. One means by which corporate actors have sought to enhance their authority and legitimacy on controversial issues around food or other product safety has been the creation of what Buse and Lee have called "institutionalized non-profit industry established and funded scientific networks" (Buse and Lee 2005, 13) such as the International Life Sciences Institute which claims to be "a global network of scientists devoted to enhancing public health decision-making". (see www.ilsi.org) The organization, however, was founded in 1978 by various food and beverage firms including Coca-Cola and had links to the tobacco industry (Sell 2007). It also has extensive links to the FAO and is active in the work of the Codex, including the Committee on labeling. The ILSI Food Biotechnology Committee works to "support the development and harmonization of science-based regulations in the world for biotechnology-derived food products and disseminate scientific information regarding the safety assessments of these products to governments, industry, and other interested groups." (http://www.ilsi.org/AboutILSI/IFBIC/ accessed June 21, 2007). ILSI has strongly opposed the mandatory labeling of GM foods.

The fact that certain knowledge and rationales for setting and regulating food standards are acceptable within the Codex, while others are not, is a reflection of power. Although the Codex does allow for "other legitimate factors" to enter the process at the risk management stage, these have been the subject of great dispute especially within the Codex committee on General Principles. Where scientific uncertainty exists or important social factors intervene, such as consumer or environmental concerns, the resulting differing national regulations can form the basis of trade disputes, as in the case of GM foods or beef hormones. While this difference is often summarized in terms of European precautionary based regulation and US science, or risk-based regulation, it also has imbedded within it various material interest of actors. Thus privileging independent scientific assessments of safety has implications in terms of the discursive and structural power of various actors. The globalized nature and increasing scale of food production along with the rapid development and changes in the technology of food production, especially biotechnology, means that those with the scientific resources and knowledge have advantages within this discourse over those who lack such resources.

The Battle over GM Food Labeling

The negotiating positions of the various state actors are themselves, in the case of GM food products, a reflection of their interests in GM commodities. GM crop production is concentrated in soybeans, maize, canola and cotton. Most crops were developed to be either herbicide tolerant (with the same company controlling seeds and herbicide) or insect or pest resistant. The major producers are the United States, Canada, Argentina, Brazil and China. As early adopters of biotechnology in agriculture the US and Canada have become heavily invested in GM crops and thus GM food. The US Grocery Manufacturers of America estimates that

over 70% of food on the shelves of US super markets contain GMOs. In contrast Europe has been slower to adopt these crops and much more hesitant to approve them.

In both Canada and the United States, the embracing of the biotechnology sector came early with close links between the biotechnology industry, government departments and regulatory agencies (Smythe, 2009). With this clear support for a "leading edge industry" and its growing influence came limited regulation. The existing regulatory regime in each country is based on the concept of "substantial equivalence" which assumed that the if the GM product, in its components, were the same as those already deemed safe, the product would, in its entirety, also be considered safe. Despite limited regulation and the pervasive presence of GM crops and food concerns have persisted about safety of GM crops in, their environmental and other impacts in terms of crop contamination and accidental release in both countries. (Kollman and Prakash, Smythe) Other concerns include the extent of power that strong intellectual property rules and market concentration have afforded biotechnology corporations . Consumers, as reflected in numerous surveys, want to know which foods contain GMOs and prefer mandatory labeling. In both cases however, largely because of the influence of the biotechnology and food industries regulations have only called for voluntary labeling, which in practice has meant no labeling at all of GM food products leaving those who seek to avoid GM food with limited options, one being organic. In contrast the European Union, since 1998, as a result of food scares and strong consumer and food retailer opposition, had not approved any new GM products, but indicated it would do so once mandatory labeling and traceability rules were put in place. On July 2, 2003 the European Parliament approved two laws that required the labeling of GM products. The result again was that food producers and retailers avoided GM crop and food to avoid the need to label them, anticipating strong consumer resistance. Given the negative impact of the EU's GM moratorium on food exports the US (June 2003) and then Canada (August 2003) launched a trade dispute at the WTO. Differing regulatory regimes, the potential for limited market access for GM products and existing and potential trade disputes meant that these actors all had strong incentives to advance their interests through the Codex Commission. In the case of the US:

> Prior to 1995 the United States did little to block these proposals since it could not be compelled to adopt them as national policy. With the establishment of the WTO and its system of binding dispute settlement, the United States began using various food diplomacy tactics to block the adoption of more rigorous food safety standards, especially those that are the subject of either political or scientific dispute. (Thomas 2006)

Similarly the European Union has sought to use food diplomacy to advance its interests and to also block Codex standards, for example, in the case of bovine growth hormones when the emerging standard did not support EU regulatory practice. When that effort failed, the EU became the subject of a WTO challenge over its ban on US and Canadian beef. On the other hand, when US attempts to gain acceptance of the use of synthetic hormones to increase milk production via a Codex standard also failed, the basis of another trade challenge against the EU disappeared. In each of these cases a central issue has been that of the scientific justification, in terms of food safety, and the role of risk assessment and risk management. The role of scientific knowledge and uncertainty is relevant to understanding the discourses around labeling of GM foods and their link to forms of discursive and structural power.[i]

In 1991 the Codex Commission recognized a need to address biotechnology and GM foods and the CCFL agreed that work on labeling aspects of biotechnology should begin. In April 1993 the United States was asked to prepare a paper that was discussed in the October1994 session. Debate centered around whether labeling should be required only when there were health and safety concerns and whether it should be required if the foods in question did not differ substantively from traditional equivalents.

Consumer groups—in this case, Consumers International (CI)—favoured a system of comprehensive labeling based on the consumers' "right to know." Others also argued in favour of labeling that indicated how food was produced in order to permit consumers to make choices based on values other than just those of health and safety. In the absence of a clear consensus the issue was ultimately referred back to the commission's executive committee. By April 1997 the secretariat had produced a set of Draft Guidelines based on previous work, but after delegate complaints about the short time frame in which to consider the guidelines, the committee decided to take more time to solicit member comments. The guidelines would have limited labeling for those GM foods that were not considered equivalent to traditional foods. There were also specific proposals on labeling in relation to allergens. This more restricted approach to labeling was supported by the country delegates of the major producers of GM foods, which included the United States, Brazil, and Mexico, along with the major corporate players in the biotechnology industries. Norway advocated a broader approach that reflected the right of consumers to know and choose, supported by consumer organizations. These divisions would be replicated in subsequent meetings of the CCFL as efforts to find a consensus became ever more elusive.

In 1999, an alternative to the first set of draft guidelines had emerged that would allow for all foods containing GMOs to be labeled. Consumers International supported this more inclusive approach. In opposition, the United States and Argentina made the argument that labeling was unnecessary, given the equivalence of GM foods to conventional foods. It should only be required when there were health and safety concerns (eg allergens) and if the foods in question differed substantively from traditional equivalents. The United States raised the concern that labeling based on the method of production would imply that GM foods were unsafe and would deter consumers. The United States was supported by a number of industry associations. In the absence of consensus, again the committee opted to create a working group, coordinated by Canada, to rewrite the draft and develop the two options. By 2001, the working group's revised draft now included three labeling options. Despite the optimism of the Canadian chair (MacKenzie 2001) the slow progress did not lead to a consensus. By 2003, the committee acknowledged little progress and another working group was established whose report was reviewed in the 2004 meeting.

The US opposition to labeling based on the "method of production" was shared by Canada and rested on the argument that such a policy would constitute an unfair trade practice and a barrier since consumers would perceive the label as a safety warning. The United States argued that only cases where significant changes in the product composition had occurred were legitimate candidates for mandatory labeling. Canada concurred and also reiterated the US claim that developing countries would be unduly burdened by broader labeling guidelines. Not surprisingly the European Union, which had just developed its own labeling and traceability regulations in 2003, and had been subjected to a US and Canada trade challenge on its earlier moratorium on GM approvals, opposed the US position.

Since the inception of this work at the Codex, the US position has, in fact, lost ground as more countries have opted to develop some system of labeling that goes beyond the US position. By 2005, countries supporting a more comprehensive labeling of GM food included the EU countries, China, Japan, Korea, Thailand, India, Nigeria, Kenya, Cameroon, Malaysia, Australia, and New Zealand. Those nonstate actors on the comprehensive labeling side included Consumers International,the International Federation of Organic Agriculture, Greenpeace, and the Erosion, Technology and Concentration (ETC) Group. Those favoring very limited labeling included the major biotechnology organizations such as CropLife, the Biotechnology Industry Organization (a US industry advocacy group), BIOTECanada, the International Association of Plant Breeders for the Protection of Plant Varieties, and the International Council of Grocery Manufacturers (US PIRG 2005).
By the time of the May 2006 meeting the more restrictive view of labeling, supported by the Canada, the US and a few GM food-exporting countries along with the biotechnology industry, was losing ground and their preferred position was for the Codex to abandon the search for guidelines on labeling altogether since any development of mandatory labels at the Codex would limit their ability to push for more export market access via the WTO.

In contrast some smaller countries had lined up behind the EU and Japan largely because they feared the trade implications for their own exports in these markets if they accepted GM products without labeling or traceability. At meetings of the CCFL in 2006, 2007, 2008 and 2009 a major issue, once again, was GM food labeling. The United States and its biotechnology allies lobbied vigorously to suspend CCFL work on GM labeling in 2006, at one point characterizing it as a waste of time, given that there was no consensus.

In the case of labeling the debate centered around whether it Consumers groups, in this case Consumers International (C.I), favoured a system of comprehensive labeling based on the consumers "right to know". Others also argued in favour of labeling that indicated how food was produced in order to permit consumers to make choices based on values other than just those of health and safety. Both Canada and the United States explicitly rejected the idea that labeling might be based on a consumers' right to know or on the process or production methods used to produce the food, even though Codex was developing standards on organic labeling. The stalemate at the Codex committee however, has not meant that conflict over labeling GM food has ceased, rather it continues on a number of fronts including through the trade dispute system of the WTO and the SPS and TBT committees. Here again the key question is on what legitimate basis can states undertake regulation of food labeling which may have a trade impact?

The SPS and TBT committees

What is a legitimate basis for a regulation that may impact trade? In the WTO dispute about the EU moratorium of Oct 1998 on approvals of GM products the US and Canada, both major GM food exporters, claimed that the moratorium had restricted imports of their agricultural and food products and violated various WTO obligations including several sections of the SPS agreement and two articles of the TBT agreement. The final Report of the Dispute Panel released in September 2006 did find that the EC:

> acted inconsistently with its obligations under Articles 5.1 and 2.2 of the SPS Agreement with regard to all of the safeguard measures at issue, because these measures were not based on risk assessments satisfying the definition of the SPS Agreement and hence

> could be presumed to be maintained without sufficient scientific evidence. (WTO Panel Report, Sept.23, 2006)

The definition of what can be considered a legitimate exception to trade obligations is clearly a notion of public health or safety, based on risk assessments with "sufficient scientific evidence" as the justification.

In fact the agreement on Sanitary and Phytosanitary measures does, along with Article 20 of the GATT, allow for a state's right to regulate that goes beyond human health:

> *Reaffirming* that no Member should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health, subject to the requirement that these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Members where the same conditions prevail or a disguised restriction on international trade;
>
> Article 2 Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence, except as provided for in paragraph 7 of Article 5.

States employing such measures, as article 3 on harmonization makes clear, where possible "shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist" and then later references bodies such as the Codex. It does allow, however, that in some instances states may go beyond those minimal international standards, but again only if there is a "scientific justification, or as a consequence of the level of sanitary or phytosanitary protection a Member determines to be appropriate in accordance with the relevant provisions of paragraphs 1 through 8 of Article 5.2" Article 5 discusses the nature of the risk assessment the regulating state should undertake. "In the assessment of risks, Members shall take into account available scientific evidence; relevant processes and production methods; relevant inspection, sampling and testing methods." All such regulations should be, the agreement indicates, transparent, notified to the WTO, and use methods that are the least restrictive of trade. Clearly then the SPS agreement does allow for a state's right to regulate on the basis of animal and **plant life and health**, and go beyond existing standards, but it does not reference any broader societal or environmental concerns, nor does it recognize any basis that is not rooted in scientifically-based risk assessment.

The other committee which comes into play in the case of labeling is the Technical Barriers to Trade. The TBT agreement does cover labeling as well.

> *Desiring* however to ensure that technical regulations and standards, including packaging, marking and labeling requirements, and procedures for assessment of conformity with technical regulations and standards do not create unnecessary obstacles to international trade;
> *Recognizing* that no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices,

The TBT has become quite preoccupied with labeling issues. In contrast to the SPS however, the protection of the environment is clearly referenced. Measures undertaken, however, "shall not

be more trade-restrictive than necessary to fulfill a legitimate objective." What constitutes a legitimate objective is laid out once again in Article 2:

> Such legitimate objectives are, *inter alia:* national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment.

Similar to the SPS agreement the TBT also calls for regulations to be based, where they exist, on international standards, be the least trade restrictive alternative, be notified to states that might be affected in a timely and transparent way, and follow MFN and non-discrimination provisions of the WTO. For those measures where there are no existing international standards there are obligations to notify members and allow sufficient time for comment before enacting measures.

Neither agreement however, provides much guidance on how labeling measures that are enacted to achieve other social objectives might be viewed. There is no provision for a consumer's right to know, especially as it relates to the process of production. Given the level of concern about food and the desire of consumers to know more about what they are eating it is not surprising that there has been pressure on states to label for reasons that go beyond those identified in either the SPS or the TBT. The EU's labeling regulations of 2003 are a case in point. Regulations 1829 and 1830 set out the requirement for labeling and tracing GM products including food and animal feed. They have remained a major trade irritant with the United States and Canada. The preamble to these regulation 1830 describes labeling and traceability as necessary:

> so as to ensure that accurate information is available to operators and consumers to enable them to exercise their freedom of choice in an effective manner" and later
> "It is necessary to ensure that consumers are fully and reliably informed about GMOs and the product, food and feed produced therefrom so as to allow them to make an informed choice of product.

Moreover, as Article 1 of the regulation makes clear, tracing products is seen to be integral to effective monitoring of the impacts of such products on both human health and the environment.

> Article 1. Objectives
>
> The Regulation provides a framework for the traceability of products consisting of or containing genetically modified organism (GMOs), and food and feed produced from GMOs, with the objectives of facilitating accurate labeling, monitoring the effects on the environment and, where appropriate, on health, and the implementation of the appropriate risk management measures including, if necessary, withdrawal of products.

While the dispute with the United States and Canada over GM approvals pre-dates these regulations on labeling the regulations have continued to create problems for US exporters, as the case of Liberty Link indicates. As reported in the *New York Times* August 26, 2006 US agriculture officials found the unapproved GM rice in shipments of long grain rice from Arkansas and Missouri. This led to tighter rules for GM free certification for US rice going into Europe, the closure of the Japanese market to US rice, and ultimately shiploads of US rice being turned back from a Dutch port. For Bayer CropScience it also meant facing a lawsuit from angry

farmers in Missouri whose non GM crops had been contaminated. (Schramm, 95). Pressure from the biotechnology and agricultural sectors also resulted in members of Congress demanding that the USTR launch another complaint, this time, against the EU regulations on labeling and tracing. Uncertainty about the likely success of a case based on the TBT obligations and the desire for European cooperation to rescue the sinking Doha negotiations, according to Schramm (96), accounted for US restraint. But concerns remain that other countries may follow suit in tightening up and strictly enforcing labeling requirements

Country of Origin Labeling

Country of origin labeling is a broad and complex issue in international trade for all kinds of products, not just food. Food labeling in terms of its origins has a long history and many foods are intimately connected and identified by place. However, a system of globalized and integrated food production makes it difficult for consumers to identify or determine a place of production. Place is often identified with particular and distinctive products and labeling the origin may be seen by food retailers, or even governments, as a marketing or promotional tool.

Both the World Trade Organization and the Codex Alimentarius have guidelines or rules that impact COOL labeling. The WTO does permit the labeling of a product's origin under Article 9 referring to marks of origin. But labeling requirements are subject to all of the principles of the WTO including non-discrimination which requires that like products, be they domestic or foreign, be treated equally in terms of regulations, in this case labeling. As outlined above however, the SPS and TBT agreements cover matters of labeling and accept certain justifications for such labeling.

In the case of the Codex questions of origin and the requirement to label are covered in the General Guidelines on Labeling of Prepackaged Foods, section 4.5 Country of Origin which states:

> 4.5.1. The country of origin shall be declared if its omission would mislead or deceive the consumer
>
> 4.5.2 When food undergoes processing in a second country which changes its nature, the country in which the processing is performed shall be considered to be the country of origin for its purposes of labeling.
>
> (Codex 2008)

Above and beyond the need to ensure that consumers are not mislead the Codex has little else to say. That might have changed had an attempt by the United Kingdom to have the CCFL engage in new work on COOL labeling been successful.

In 2000 the UK had proposed that given the importance for consumers of knowing the origins of food and that several countries were initiating work in this area the Committee should consider new work to revise the Guidelines. The CCFL decided to ask the UK, along with Malaysia and Switzerland to prepare a paper which was discussed the following year. The paper set out some issues around COOL labeling and identified areas where existing provisions were lacking, for example, in dealing with the sources of ingredients in processed food. After some discussion it was agreed to seek the approval of the Codex Commission to begin such work. Approval, however, was not forthcoming, rather the Commission encouraged the Committee to engage in further discussions based on a summary of the issues provided by the Codex Secretariat. In 2002 the paper was discussed at the meeting in Halifax. There the extent of disagreement on further work in this area became clear. The United States argued (despite the looming passage of the Farm Bill which had mandatory COOL requirements) the current

provisions of the Guidelines were sufficient. According to the Report of the 2002 CCFL the US further:

> expressed it concerns that modifications to the Codex *General Standard* would not provide additional benefits to consumers, and that there was no evidence that the revised text was required based on food safety. It also noted that work in the Committee may duplicate the work underway in WTO and WCO, and the industry would face difficulties due to the diversified and varying origins from which they purchase ingredients. The Delegation further pointed out that country origin labeling might infringe on the provisions of the TBT Agreement due to its implications on trade. (Codex 2002, 13)

In contrast the UK delegation argued that many countries had already begun introducing either voluntary or mandatory labeling and that "consumers' demands for more information on country of origin had been increasing, especially for meat and meat products" (Codex, 2002, 13). The basis of labeling was not to address food safety, but rather a need to "provide consumers with the information needed to make a choice of products". The UK position that work should continue was supported by Malaysia, Korea, Switzerland, India and Japan. Consumers International also supported further work claiming many consumers were confused about the origin of their food. Given a lack of consensus the committee to decided to circulate the paper again for further comment. The 2003 meeting saw a similar divergence of views. Most large food exporting countries, especially in Latin America, along with New Zealand concurred with the view to stop work. The United States argued:

> The existing Codex General Standard for the Labeling of Prepackaged Foods[1] (General Standard) already requires country of origin labeling in cases where its omission would mislead or deceive the consumer. This requirement is appropriately focused on the objective of preventing consumer deception. Furthermore, we are not aware of a deficiency in the existing Codex general standard. .. Expanded mandatory country of labeling requirements could create an unnecessary obstacle to trade with no legitimate or internationally recognized justification. (Codex, 2003, 6)

A position supported by International Council of Grocery Manufacturers Associations (ICGMA) and International Frozen Food Association (IFFA) and the European association representing the food and drink industry. On the side favouring continuing work on the issue were a number of European country members, the European Commission, Norway and Switzerland and the main consumer and public health NGOs (CI, IACFO and Intrernational Baby Food Action Network (IBFAN). Canada's position was one of general satisfaction with the existing guidelines but some willingness to modify wording so as to address concerns about misleading consumers. However, Canada rejected a proposed amendment which would have identified the country of origin for meat as the place of birth, rearing and slaughter arguing to maintain the existing definition based on the location where the last significant production operation occurred, thus permitting meat from Canadian animals shipped to the US for slaughter to be labelled as US meat. The CCFL reported their division to the Codex Commission which encouraged a further attempt in 2004 to find a consensus. The CCFL discussions were no more fruitful than they had been the previous year. This time the Commission agreed to the CCFL decision to cease work on the issue. As a result the existing Codex standard remains a very

limited one where country of origin labeling requirements are based only on the notion that omitting country of origin would somehow mislead the consumer.

The battle in the US over COOL

Regulations on the origin of goods in the United States goes back to the Tariff Act of 1930, but the current legislation had its roots in the introduction of the Consumer Right to Know Act of 2001 by Senator Tim Johnson, a South Dakota Democrat- one of many similar bills he has introduced since being elected in 1986. The bill required that beef, lamb, pork and fresh fruit and vegetables be labelled at final point of sale according to their country of origin. Similar bills affecting meat and other commodities were introduced by Democrats from North Dakota and California in the House of Representatives. The resulting bills which passed the House and Senate as part of the farm bill had differing provisions on what commodities would be covered and the final compromise between the House and Senate versions of the bill contained a broader list including meat.

Opposed by food processors, retailers, meat packers and large agri-business the labeling provisions of the Farm Bill were not supported by either the Bush Administration or the US Department of Agriculture (USDA). The two year phase in from voluntary to mandatory labeling in the bill allowed powerful forces of opposition to mobilize. In many ways the struggle in the United States over COOL labeling has many parallels to that involving GM food. In both cases the opponents of mandatory labeling had the advantage of close links to the US Administration through the revolving doors of the offices of corporations and senior administrators and deep pockets for lobbying and campaign contributions. Corporate agri-business opponents, as a Public Citizen report noted in 2005, were also able to spend massive amounts of money on lobbying and campaign contributions. Twenty-one corporations and trade associations, such as the Grocery Manufacturers of America, spent over 29 million$ from 2000-2004 on lobbying Congress on a range of issues and 160 lobbyists worked to oppose COOL (Public Citizen, 2005, 2). In the same time period these organizations also donated 12.6 million $ to Congressional campaigns. In addition the costs of implementing COOL, according to the USDA and food industry (similarly to the case of GM labeling) were estimated to be very high and likely to be passed on to consumers with little benefit, a fact challenged by the General Accounting Office (GAO) in a 2003 study. On the other side in favour of COOL were groups of smaller-scale livestock producers, small farmers, environmental and consumer organizations. The latter pointed to several public opinion surveys which showed a desire on the part of the public for mandatory country of origin labels.

The opponents were effective in using the delay in mandatory labeling until 2004 to organize sympathetic members of Congress to support the passage of an appropriations bill for the USDA which delayed implementation of mandatory labeling a further two years and then a further year, until 2007. The delay also allowed opponents from outside the US to provide comment in opposition to the provisions as well. The Canadian government, Canadian meat producers and the food industry also made their voices heard working in close cooperation with opponents in the US.

The United States made its formal notification of the measures to the TBT on June 26, 2007 as the clock on delaying COOL was running out. It justified the measures in terms of their objective and rationale as “Protection of consumers and human health” (WTO, 2007) and called for comment on the measures to be sent to the USDA’s Agricultural Marketing Services before the final rule. When the Federal Register notification of the final rule on COOL was issued in

2007 the Canadian government's commented. Its views closely matched those of the US opponents of COOL and Canadian producers. The government argued that the regulations would cost at least 3.9$ billion US (using the USDA figure) and provided no benefit to consumers. It also claimed that the US and Canadian governments had been working hard for the past 18 years toward trade integration to "make national origin irrelevant in business and consumer decisions" a statement some American and Canadian food eaters might find disturbing. They went on to point out that the definition of processing in the Act did not conform with the Codex standard cited above. The problem from a meat industry perspective lay in the high level of integration of the industry and the extent of movement of live animals, carcasses and meat products across the border. The fear for Canadian producers was of course that meat which would now need to be labelled as product of Canada or Canada and the United States would suffer at the hands of consumers in comparison to product labelled as that of only the United States. In contrast consumer groups and smaller livestock producers in the US argued that the current voluntary system of labeling was actually misleading consumers who did not know that the USDA inspected meat might have originated in Canada or Mexico and only been slaughtered in the US.

In June 2008 the Food Conservation and Energy Act was finally passed by Congress replacing the expired 2002 farm bill, after a long drawn out battle that included a presidential veto and override. The new farm bill at 673 pages contains much political pork and many tradeoffs among a number of interests, including those of agri-business, those benefitting from massive subsidies and, most interestingly, local and organic farming. What it also included in Title XI were measures to implement COOL which were to go into effect on September 30, 2008. Once again similar forces opposed the COOL provisions. Canada again raised concerns in a submission to the USDA in Sept 2008 and indicated it would launch formal consultations with the US under the provisions of the WTO. Canada raised concerns about the three labeling options, issues of national treatment under the WTO and the definition of processing and Canada argued that COOL represented a reversal of economic integration, would be costly and confuse consumers. Opponents in the fall 0f 2008 mounted a concerted lobbying effort to have the Act implemented in a way by the USDA that would allow for labeling that vaguely indicated meat products were derived from a number of national sources. While this raised concerns among consumer activists it re-assured the Canadian government and producers that their concerns had been heard and Canada suspended its WTO challenge in January 2009. In the interim a President supportive of COOL[ii] and a new Secretary of Agriculture took over the administration in January 2009. The USDA final rule on COOL was preceded by a letter on February 20, 2009 from the new US Secretary of Agriculture Vilsack who "suggested" in a letter to the industry that they voluntarily go beyond the rules on labels and indicate very specifically to consumers what production steps occurred in which country, signalling a move away from more watered down rules. Thus a label might note that the animal was born in Canada, raised and slaughtered in the US (Vilsack, 2009). Canadian producers feared that if costs to comply increased and led to a need to segregate Canadian cattle and meat there would be a reluctance on the part of US processors to purchase Canadian livestock altogether, or lead to severely discounted prices for Canadian producers in the US market. At that point Canada re-initiated the WTO process.

The persistence of this issue from 2002 and the extent to which pro-COOL forces have been able to have their voices heard despite the well-resourced opposition suggests that this is

more than just a knee-jerk Congressional reaction to a few US livestock producers who seek to protect their market and increase the slumping prices for their product. Even some Canadians have had the temerity to suggest, as have many US critics of agribusiness, that the plight of some Canadian and American livestock producers has much more to do with the very high levels of concentration in the processing industry, where "four companies slaughtered about 88 percent of all U.S. beef in 2007." (IATP, 2009) A similar situation exists in Canada where, as the National Farmers Union notes " two or three major packers—Cargill, Tyson, and XL (Nilsson Brothers Inc), along with a small contribution from a Quebec packer, slaughter and process 89% of Canada's cattle." (National Farmers Union, 8) This is coupled with a high level of dependence on access to the US market which has proven to be precarious (as the BSE experience suggests) and "captive supply whereby beef packing corporations also own or control cattle on feed and finished cattle" (14) weakening the market power of smaller sellers of cattle.

As indicated above US producers were joined in the battle for COOL by a number (over 100) other local food, environmental and consumer activist organizations . In fact it could be argued that rather than some temporary protectionist aberration what the COOL case reflects is part of a broader set of trends around food that pose challenges for the globalized corporate food system, the international trading system, and Canada. These trends include the development of local and transnational movements challenging global agribusiness discussed below.

Movements and food issues: Challenging Global Agri-business.

The past decade has seen the development of broad transnational coalitions that have challenged the WTO and the development of trade rules, especially as they relate to food and agriculture. They have challenged the definition of what is a legitimate basis for state regulation of food and more specifically GM and country of origin food labeling and linked it to broader questions about food trade and agriculture. Most notable have been campaigns around trade rules and GM food.

The Friends of the Earth initiated a specific campaign targeted at the WTO and the questions raised by the dispute over the regulation of GM products. The "Bite Back: WTO Hands Off Our Food!" campaign was designed to put pressure on the WTO and its members. It took the form of campaigns in a number of countries, direct action and demonstrations at the WTO headquarters in Geneva and a petition signed by more than 100,000 citizens from 90 countries, involving 544 organizations which was ultimately presented to officials at the WTO Hong Kong ministerial. The signatories called on the WTO not to undermine the sovereign right of any country to regulate GM food :

> We, wishing to protect our right to decide what we eat and grow have serious and legitimate concerns about the risks of genetically modified foods and crops (GMOs) for consumers, farmers, wildlife and environments around the world.
>
> By mounting this World Trade Organisation (WTO) dispute the US and others are trying to force genetically modified food into the European Union and other parts of the world. They seek to prevent countries from choosing for themselves whether to permit genetically modified food and farming. They also seek to undermine our right to know and choose what we eat and farm. (FOEI, 2005)

Specific campaigns in a number of countries (including one led by Greenpeace in Canada) under the FOE umbrella included demanding mandatory labeling of GM food. FOEI was joined in the

campaign by many of the key members of the global coalition which has articulated clear critiques of the WTO, Our World is Not for Sale (OWINFS), including ActionAid Alliance, Public Services International, Public Citizen, the International Gender and Trade Network, the French Confédération Paysanne, the Indian Research Foundation for Science, Technology and Ecology and Greenpeace International. The campaign, while it clearly did not determine the outcome of the 2003 trade dispute over the EC regulations, undoubtedly raised greater awareness of the issues by working with a broad coalition of development, aid and union organizations. In fact the major transnational coalition which has, the Our World network has increasingly addressed food issues from the perspective of food sovereignty an idea developed and articulated by one of its key members Vía Campesina.

Since its beginning in 1993 Vía Campesina , the world-wide network of peasant and small farmer organizations (which includes the pro- COOL National Farmers Union in Canada and the National Coalition for Family Farming in the US) has played an increasingly important role in articulating an alternative vision of agricultural production that focuses on what foods is produced, how it is done and the scale of production. The ideas have been embodied in the concept of food sovereignty. The first key principle is one of:

> Placing priority on the production of healthy, good quality and culturally appropriate food primarily for the domestic market. It is fundamental to maintain a food production capacity based on a system of diversified farmer-based production –one that respects biodiversity, production capacity of the land, cultural values, the preservation of natural resources – to guarantee the independence and the food sovereignty of populations. (Desmarais, 34)

Not surprisingly one of its main issues is the question of patents and seeds and opposition to GMOs.

> Vía Campesina believes that in order to protect livelihoods, jobs, people's health and the environment, food has to remain in the hands of small scale sustainable farmers and cannot be left under the control of large agribusiness companies or supermarket chains. GMOs and industrial agriculture will not provide healthy food and will further deteriorate the environment. For example, the new "Green Revolution" pushed by AGRA in Africa (new seeds, fertilizers and irrigation at large scale) will not solve the food crisis. It will deepen it. (www.viacampesina.org)

The concept of food sovereignty has been integrated into this most recent version of the joint declaration of the OWINFS coalition:

> We believe that the development of food sovereignty, food security and peasant- and family farmer-based sustainable agriculture requires governments to acknowledge the flaws in the "free market" principles that underpin perceived comparative advantage, export-led agricultural development and "structural adjustment" policies; and replace those policies with ones that **prioritize and protect local, subsistence and sustainable production, including use of import controls and regulation that ensure more equitable sustainable production methods.**

The coalition statement goes on to suggest a convention on food sovereignty and sustainable agriculture, and challenges the WTO's focus on trade liberalization at all costs, arguing that governments have a right to define the food and agriculture policies of their countries. That includes a

right to adopt the precautionary principle to protect public health, the environment, and agriculture from unknown risks which "must take precedence over any trade agreements and provisions" This vision then is one that totally rejects a globalized, export intensive, corporate driven, technology-intensive food system and challenges the very notion that trade rules should be able to limit a state capacity to regulate in favour of domestic oriented smaller scale sustainable agriculture. While this might be seen as a utopian vision it is one some suggest that has become increasingly influential in global debates about food governance. Moreover, it appears to complement and resonate with a number of other food-related movements that have emerged in the past decade including those involving slow food, the re-localization of agriculture and the concern about the impact of the global food trade on food security and climate change. Most recently these concerns have been reflected once again in labeling. A report in the British press in February 2007 suggests that the British government, as a result of the moves of supermarket chains to create a green standard, would create a standardised eco-label showing the amount of greenhouse gases involved in growing and transporting food.(Clover, 2007). Such a move could quite clearly have trade impacts, if consumers begin to make their food choices in favour of local and sustainably produced food. More recently the Conservative Party in the UK with its eye on the upcoming election has launched the 'Honest Food' campaign which calls for clearer and mandatory country of origin food labeling on meat products. Nick Herbert, Conservative Shadow Food and Rural Affairs critic points out that consumers are being misled by meat products labeled British and 89 per cent would support labeling which only uses that term for meat from livestock born and bred in Britain.

Climate concerns, oil price spikes, global financial and food crises have all contributed to challenges facing the global food system. Confusing labels, food scares and a desire to make informed choices about what they are eating has led consumers to demand more information about where their food comes from and how it has been produced. Canada in particular at least in its policies on food labeling seems somewhat slow to embrace this reality. Even the GAO noted in 2003 that 57 countries trading with the United States already required COOL on one or more of the commodities listed in the US 2002 Farm Bill.

Canadian delegations at the Codex and the WTO continue to claim that consumers do not have a right to know how their food is produced and that they do not care about the origins of their food but shop based only on quality and price. Yet the CBC Marketplace expose of the misleading nature of "Product of Canada" labeling suggests otherwise and quickly led to a public outcry over Chinese apple juice, which was labelled as a product of Canada, because, as the CBC noted, it "doesn't actually mean the food is from around here. All it means, legally speaking, is that at least 51% percent of its production costs were spent in Canada. Sometimes "Product of Canada" has been to three continents before it lands here" (CBC, 2007) The Harper government shortly thereafter in April 2008 introduced new guidelines which will require both that the contents and processing be Canadian to qualify for the Product of Canada label. For foods that are processed in Canada, but contain imported ingredients, qualified Made in Canada labels will be available, such as "Made in Canada from imported ingredients." Few media noted, however, the fact that these are guidelines and COOL is not mandatory, only

companies choosing to use these label designations must comply. Perhaps it is time, as the National Farmers Union suggests, for Canada to embrace COOL

> Citizens have a right to know where their food comes from; to know if their dinner roast is from Canada or New Zealand or Uruguay. Most people would prefer to know even more: i.e., whether their Canadian roast is from Southern Alberta, Central Manitoba, or Eastern Ontario. Canada can use country-of origin labeling to meet the information needs of consumers, help build diversified local markets, reduce food miles, and move our meat system toward increased social, economic, and environmental sustainability. (NFU, 21)

If pressures continue to mount to re-think the globalized food system the international trading system and the Canadian government may find that labeling and allowing consumers to make informed choices may be the lesser of many trade restrictive evils.

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[i] See Clapp and Fuchs for a discussion of these concepts

[ii] Under Plans to Support Rural Communities in his campaign platform Obama committed to:

"Establish Country of Origin Labellilng: Obama supports immediate implementation of the Country of Origin Labellilng law so that American producers can distinguish their products from imported ones." Available at http://www.barackobama.com/issues/rural/index_campaign.ph (accessed May 20, 2009).