

Food Sovereignty, the right to know the origins of food and the struggle over trade rules

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Introduction

Food sovereignty has emerged as a major challenge to the globalized system of food production. While its focus is on re-localising the food system which profoundly challenges international trade rules the initial emphasis in the development of the concept and discourse around it tended to be on food providers in the global south. Food sovereignty critiques trade rules that demand liberalization of market access while legitimizing the dumping of agricultural products. What it calls for more properly is a reclaiming of lost sovereignty in relation to food policy in communities and nations. Those transnational agrarian movements, such as Via Campesina, which have played a key role in articulating and developing the concept of food sovereignty (Rosset) have put less emphasis on the role of non-producer groups (especially in the North) in building and supporting alternative food systems and challenging the prevailing export-oriented, agri-business factory model of food production. This paper argues that the concept of food sovereignty is resonating with a broader array of groups and local food activists, not all of whom are small-scale food producers in the South. Such groups are increasingly attentive, for a variety of reasons, to the provenance of food. They are also important to the global struggle to achieve food sovereignty but they face a multilevel complex structure of public and private governance which limits their capacity to acquire knowledge about the provenance of what they are eating illustrated in rules relating to food labeling. To relocalize the food system then requires action at the global, national and local levels involving both food producers and non-producers. Challenging national and international trade rules and regulations that impede the capacity of food eaters to privilege the local or act in ways that support alternative food systems is important to the realization of food sovereignty.

The paper begins with a discussion of the transnational movements around food and agriculture and the development of the concept of food sovereignty. It discusses why this concept poses a challenge to the global food system and trade rules and why it is increasingly resonating with others outside peasant movements in the global south. The second section examines national regulations and international trade rules, in particular the role of the World Trade Organization (WTO) and the Codex Alimentarius and efforts to set international standards on what are the acceptable (in trade terms) justifications for mandatory food labeling. It then looks at two case studies of rules on food labeling focusing on the positions of Canada

and the United States. These cases demonstrate that while these rules are often seen as technical in fact, they reflect the political struggle over the eaters' right to know the provenance of their food and thus are part of the struggle to achieve food sovereignty.

As Morgan, Marsden and Murdoch indicate the concept of food provenance is broad and encompasses much more regarding the origins of food than just place including:

a spatial dimension (its place of origin), a social dimension (its methods of production and distribution), and a cultural dimension (its perceived qualities and reputation). The social dimension is particularly important because it helps consumers to deal with the ethical issues in globally dispersed food supply chains, including the employment conditions of food production workers; the welfare of animals farmed as food animals, such as battery hens and veal calves for example; the integrity of some food production methods, such as adding hormones to beef for instance; the environmental effects of certain production methods, such as the use of pesticides and the destruction of flora and fauna. To the extent that a new moral economy is beginning to emerge around food issues, this question of provenance assumes a central importance in food chain regulation. (Morgan, 3)

Issues of provenance as they point out and my cases below indicate, are part of current political struggles over food labeling policy and “whether consumers have the right, or even the need to know the spatial history of their food.” Corporate agri-business, and various US and Canadian governments have claimed that consumers have no interest in the place or provenance of their food. In contrast consumer groups, small farmers, environmentalists, global justice and local food activists have claimed otherwise. Far from being a technical issue food labeling is a “key site of the quality battleground in the contemporary food chain”(Morgan, 3) and thus intimately linked to the issue of food sovereignty.

Transnational Movements and Food Sovereignty

The early 1990s saw the emergence of transnational networks challenging aspects of corporate globalization. One of the most significant the Via Campesina (VC) emerged out of a network of peasant based organizations in Latin America and has grown to encompass today a world-wide network of 148 peasant and small farmer organizations in 69 countries (which includes National Farmers Union in Canada, the Quebec based Union Paysanne and the National Coalition for Family Farming in the US). Since its formal creation in 1993 the VC has played an increasingly important role in both challenging the prevailing model of the global food system and international trade rules and articulating an alternative vision of agricultural production that focuses on what food is produced, how it is done and the scale of production.

Its approach has been one of maintaining its autonomy, organizing horizontally and directly challenging organizations like the WTO and the World Bank, identified as threats to small scale producers. Direct action and fierce opposition to organizations like the WTO and regional trade agreements were demonstrated again and again in places like Seattle and Cancún and has led to a claim that:

La Via Campesina today is the leading network of grassroots organisations with presence in the anti-globalisation or ‘altermundista’ (‘another world’) movement, as

manifested in protests against the World Trade Organization (WTO) and Free Trade Area of the Americas (FTAA), in the World Social Forum (WSF) process, in its scathing critiques of World Bank land policies, and in its ability to force the novel concept of food sovereignty into common usage (Martinez-Torres and Rosset)

The first key principle of food sovereignty which the VC articulated in 1996 was 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)

This concept of food sovereignty directly challenges key assumptions of international trade rules. The network that formed in 1999 coordinating the opposition to the WTO which manifested itself so dramatically in the streets of Seattle, Our World is not For Sale includes Via Campesina as one of its member. It has taken the concept of food sovereignty and integrated it into 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. (www.ourworldisnotforsale.org)

The declaration challenges the assumptions underpinning trade liberalization, calls for rules allowing states to control food trade, especially imports and exports and ultimately calls for agriculture to be taken out of the WTO altogether. Beyond that however Via Campesina has developed over the phases of its history a broader set of campaigns. They include agrarian (land) reform, migrant and rural workers, human rights (a charter of peasant rights), gender issues including the marginalization and violence against rural women and sustainable peasant agriculture and climate change. They have also challenged transnational corporation, intellectual property and the control of seeds and 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 scope of its concerns has allowed VC to work in cooperation with other broad networks in the areas of global justice, development and environmental issues. Food sovereignty

however, is a key concept that has emerged in recent years that allows for strategic framing of issues relating to the global food system that resonate with a broad array of actors at multiple levels who are challenging the prevailing corporate, industrial global food system.

Via Campesina has worked with broad coalitions, some more moderate, to further elaborate the concept of food sovereignty. In some cases this was a result of the need to represent civil society in UN based forums dealing with food including the Food and Agricultural Organization (FAO) and the World Food Summit. A group of 52 civil society organizations came together in preparation for the 2002 Rome summit which evolved into the International Planning Committee on Food Sovereignty (www.foodsovereignty.org , Borras). The IPC describes itself as:

A global network of NGOs/CSOs concerned with food sovereignty issues and programs. It includes social organizations representing small farmers, fisher folk, indigenous peoples, agricultural workers' trade unions; sub-regional/regional NGOs/CSOs which act as regional focal points; and NGO networks with particular expertise and a long history of lobbying and action and advocacy on issues related to food sovereignty and agriculture which act as thematic focal points.

Organizations involved included the VC and the more mainstream International Federation of Agricultural Producers and local organizations like the Toronto Food Policy Council. Its basic principles outlined in 2002 include:

1. The Right of All Peoples to Food Sovereignty;
2. The Right of Local Populations to Manage and Control Local Resources;
3. The Need to Move Towards Sustainable, Agro-Ecological Methods of Food Production;
4. The Need to give primacy to food security and food sovereignty principles when considering trade measures

It has headquarters in Rome (as does the FAO), receives some funding from FAO and European governments and has organized major gatherings in conjunction with FAO and Food Summit meetings. As a loose network it has facilitated discussion and education around food sovereignty. Along with Via Campesina it has also been active in the World Social Forum.

Several major conferences on food sovereignty apart from the FAO process have been held including one in Cuba in 2002 and a second in 2007 in Mali which brought together 600 people representing a wide array of food providers and other civil society groups along with academics. The 2007 International Forum for Food Sovereignty identified six pillars of food sovereignty:

- Focuses on Food for People-puts people's need for food at the centre of policies and insists food is not just a commodity
- Values Food Providers-supports sustainable livelihoods and respects the work of all food producers
- Localises food systems-reduces the distance between food providers and consumers
- Rejects dumping and inappropriate food aid and resists dependency on remote and unaccountable corporations
- Puts Control Locally-places control in the hands of food providers, recognizes the need to inhabit and share territories and rejects the privatization of natural resources
- Builds knowledge and skills-based on traditional knowledge, research to support and pass

knowledge to future generations and rejects technologies that undermine or contaminate local food systems

- Works with nature- maximizes the contribution of ecosystems, improves resilience and rejects energy intensive, monocultural, industrialized and destructive methods.(peoples food project website)

The final declaration of the meeting defined food sovereignty as:

The right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems. It puts those who **produce, distribute and consume food at the heart of food systems and policies rather than the demands of markets** and corporations. It defends the interests and inclusion of the next generation. It offers a strategy to resist and dismantle the current corporate trade and food regime, and directions for food, farming, pastoral and fisheries systems determined by local producers. Food sovereignty prioritises local and national economies and markets and empowers peasant and family farmer-driven agriculture, artisanal fishing, pastoralist-led grazing, and food production, distribution and consumption based on environmental, social and economic sustainability. **Food sovereignty promotes transparent trade that guarantees just income to all peoples and the rights of consumers to control their food and nutrition.** It ensures that the rights to use and manage our lands, territories, waters, seeds, livestock and biodiversity are in the hands of those of us who produce food. Food sovereignty implies new social relations free of oppression and inequality between men and women, peoples, racial groups, social classes and generations.

Aside from discussing the various social, economic and environmental aspects of the concept the meeting also recognized the need to strengthen the political power of those advocating for food sovereignty by:

- (1) expanding the debate outside producer groups to consumer groups and workers' trade unions;
- (2) building momentum and support among governments who are in favour of food sovereignty;
- (3) developing a collective and global strategy to ensure that the right of peoples to food sovereignty is recognised as a specific and full right, and that its defence is legally binding for states and guaranteed by the United Nations. (Pimbert)

The debates and the final declaration indicate increased attention to building coalitions with consumers and others who are concerned about the global food system. As Rosset (2003) has demonstrated the model of food sovereignty now being articulated provides a very different perspective across a range of issues from that of the predominant corporate, industrial, neoliberal model of food and agriculture. It views the sources of hunger and food insecurity as linked to poverty, and the lack of local community oriented food production and views community control over productive resources as a priority. Small farmers are not seen as inefficient anachronisms using outdated technology but rather as “stewards of productive resources, repositories of knowledge” practicing sustainable agroecology. Direct public support for inputs and credit also implies a different role for the state and the view of seeds as a “common heritage of humanity” directly challenging rules on intellectual property. The concept of food sovereignty profoundly challenges existing trade rules that push the

opening of markets, view food as just another commodity and expound an export-intensive, monoculture with globally organized system of production, distribution and processing dominated by large corporate entities. But it has also provided a space for a range of actors and groups including women's organizations, indigenous people, migrant farm labourers, environmental and local food activists to join with peasant farmers and fisherfolk to challenge the global food system. Still it has paid less attention to those who are not food providers and their role in supporting food providers. In particular rules that inhibit the privileging of the national and the local and allow policy space for measures and regulations that would facilitate local food systems need to be established. Such rules however involve multilevel governance and a complex struggle over food regulations that occurs on many levels in both the north and the south. Some of these international rules and their implications for food sovereignty are discussed below.

Food sovereignty, trade rules and multilevel governance

Globalized food production, much of it dominated by large corporate conglomerates, the rapidly increasing level of food imports, the existence of differing national food standards and regulations and their impact on trade made harmonizing standards an important part of trade liberalization and the existing global food system. This was reflected in WTO 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 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, food eaters rights to know the provenance of the food they eat and the extent to which such regulations or claims constitute unjustifiable barriers to trade. National rules which deviate (i.e. exceed) Codex standards often in response to consumer demands 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 and impact the capacity of eaters to access information on the provenance of their food. 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, other organizations such as the WTO and in

addition, non-state actors, both corporations and non-governmental organizations (NGOs) (Veggeland and Borgen 2005). The latter 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.

The Codex process, however, has 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. By 2005, the number of International Non-Governmental Organizations (INGOs –the Codex term) 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. In the 2008 committee meetings on labeling, for example, Canada’s delegation included the umbrella organization BIOTECCanada “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 been active at both national and international levels in seeking to influence regulations on food labeling. Consumers International a world-wide federation of over 220 member organizations in 115 countries, founded in 1960, has been very active along with Friends of the Earth International and Greenpeace in challenging the introduction of GM crops and demanding the labeling of foods produced with them. These groups have used their capacity to access

committee and commission meetings to report on, and influence, the proceedings, either in themselves, or as part of national delegations and through the Internet 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 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. 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 nonprofit 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.ilsa.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 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 would 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.

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 of GM crops 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 strong 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 products already deemed safe, the product would, in its entirety, also be considered safe. Despite limited regulation and the pervasive presence of GM

crops concerns have persisted about safety of GM crops, their environmental and other impacts in terms of crop contamination, accidental release in both countries and the stranglehold that strong intellectual property rules and market concentration have afforded biotechnology corporations over access to seeds. (Kollman and Prakash, Smythe)

Consumers, as reflected in numerous surveys, want to know which foods contain GMOs and prefer mandatory labeling. In both countries the influence of the biotechnology and food industries led to regulations only 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, public distrust of regulators 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 using GM crops in food to avoid the need to label them, anticipating strong consumer resistance to such foods. 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. The European Union, like the US and Canada has sought to use food diplomacy to advance its interests and to 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.

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 October 1994 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 methods 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. By 2003, the committee acknowledged no consensus and 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 thus a barrier to exports 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.

Over time the US position has 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), BIOTEC Canada, the International Association of Plant Breeders for the Protection of Plant Varieties, and the International Council of Grocery Manufacturers (US PIRG 2005). Recognizing that the more restrictive view of labeling was losing support the US at the May 2006 meeting argued that the Codex should 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, 2009

and 2010 a major issue, once again, was GM food labeling. The United States has continued, despite a new administration that seemed at first to be on the side of those favouring the consumer's right to know and more sympathetic to local food activists (see below), to argue, over the opposition of over 80 groups of consumer, environmental and food activists (Consumers Union, 2010) that GM labelling is misleading and inappropriate (even for organic food) because of substantial equivalence and all work on the issue at the Codex should stop. But the majority of country delegates now favour an approach that would allow countries to opt for mandatory labelling if they chose. The US and its few remaining allies were, once again, unable to stop work on the issue.

The debate over comprehensive labeling has centered on the consumers "right to know" how food was produced in order to make choices based on values other than just those of health and safety. Both Canada and the United States argued that labeling based on process or production methods was a violation of trade rules and thus a trade barrier, even though Codex was developing standards on organic labeling. Moreover, they claimed the consumers' right to know was not in and of itself a legitimate basis on which to require 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 as well as at the national level.

The SPS and TBT committees

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. While national security is a legitimate reason to label a consumer’s right to know is not, especially as it relates to the process of production. Given the level of concern about food and its provenance 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. Despite pressure from the biotechnology and agricultural sectors and some members of Congress to launch another complaint, this time, against EU regulations 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) has led to US restraint. But concerns remain that other countries may follow suit in tightening up and strictly enforcing labeling requirements

Country of Origin Labeling

The provenance of food in terms of its place of origin has been recognized historically and in some societies celebrated. Many foods especially in Europe were and are intimately connected and identified by place often a region, a locale, a *terroir*. However, the current system of globalized and integrated food production makes it difficult for consumers to identify or determine the place of production especially for many processed foods and their imported components. Place is often however closely identified with particular and distinctive products and their desirable qualities. Labeling the origin may be seen by food retailers, or even governments, as a marketing or promotional tool. As a marketing tool, however, control over what information is on the label, if voluntary, rests with corporate entities processing or distributing food. Having the right to know where food comes from is obviously important for those eaters who wish to use such information to privilege the local however it may be defined in their food purchases.

Both the World Trade Organization and the Codex Alimentarius have guidelines or rules that impact labeling food in terms of its origins. The WTO does permit the labeling of a

product's origin under Article 9 referring to marks of origin-often called geographic indications. But labeling requirements are subject to all of the principles of the WTO including nondiscrimination which requires that like products, be they domestic or foreign, be treated equally in terms of regulations, in this case labeling. Disputes have already arisen over the use of GIs between the United States and the European Union. Our focus here, however, is on the use of country of origin labels. As outlined above the SPS and TBT agreements cover matters of labeling and accept certain justifications for such labeling leading again to the question of whether Codex standards include mandatory 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 misled the Codex currently has little else to say on the issue. That might have changed had an attempt by the United Kingdom to have the CCFL engage in new work on COOL labeling been successful.

Arising out of its experience with BSE and its creation of a separate food standards agency the UK in 2000 had proposed that the Committee should consider new work to revise the Guidelines. The UK argued that wary consumers were demanding to know the origins of food and several countries were initiating work in this area. The CCFL decided to ask the UK, along with Malaysia and Switzerland to prepare a paper. 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. Despite the looming passage of the 2002 US Farm Bill which had mandatory COOL requirements for meat the US argued that the provisions of the existing Codex Guidelines were sufficient. According to the Report of the 2002 CCFL the US further:

expressed its 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 origins of their food. Given a lack of consensus the committee 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 North and South 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 Foods₁ (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)

The position was supported by the 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 International 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 and a decision was made 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 larger Canadian livestock 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 labeled as product of Canada or Canada and the United States would suffer at the hands of consumers in comparison to product labeled 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 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 of 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 and Canada suspended its WTO challenge in January 2009. In the interim a President supportive of COOL 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 the large US meat 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.

What had changed in the period from the US Administration’s opposition to COOL at the Codex in 2003 and to the provisions of its own Farm Bill in 2002? A simple answer might be a new Democratic Administration however, there is little evidence that the previous Democratic Administrations had been supportive of COOL labeling. Rather the answer might be found in the changing attitudes about the food system. As Michael Pollan has argued:

The American people are paying more attention to food today than they have in decades, worrying not only about its price but about its safety, its provenance and its healthfulness. There is a gathering sense among the public that the industrial-food system is broken. Markets for alternative kinds of food — organic, local, pasture-based, humane — are thriving as never before. All this suggests that a political constituency for change is building (Pollan, 2008)

As indicated above US small scale 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 the COOL case reflects is part of a broader set of trends around food that pose challenges for the globalized corporate food system. These trends include the development of local and transnational movements challenging global agribusiness. Food-related movements have emerged in the past decade including those involving slow food, local food and concerns about the impact of the global food trade on food security and climate change. These movements have increasingly converged around concerns about knowing the provenance of food.

Linking the Local and the Global: Food Sovereignty and the Right to Know the Provenance of Food

The desire to create an alternative food system as Holt-Gimenez and Patel note has been reflected in organizations and activities both in Europe and across North America ranging from the growth in farmers markets, food policy councils (over 50 now in the United States) and systems of community supported agriculture along with networks and organizations that are linked in to broader transnational movements. Many of these movements and organizations have moved from a focus on food security and access to affordable food to embrace the broader concept of food sovereignty and its discourse. An example of such a shift is reflected in the Canadian networks Food Secure Canada and the Canadian Biotechnology Action Network (Cban) both of which extensively reference the concept of food sovereignty. Most recently the Peoples Food Policy Project has embarked on the task of outlining a food sovereignty policy for Canada through grassroots consultation with over 1000 Canadians in the fall of 2009 drawing specifically on the six pillars outlined above at the conference in Mali. The final report will include issues related to labeling.

In addition to acting to create alternative food systems that shrink the distance between smaller-scale producers and food eaters many of these movements and organizations have also reflected demands to a right of know more about the provenance of food beyond what large corporate processors and retailers choose to reveal. Many of these organizations have been involved in demanding and campaigning in both Canada and the United States for mandatory labeling of GM foods and country of origin labeling.

In Canada various food scares and confusion around misleading labeling of products such as Chinese apple juice labeled as “Product of Canada” led the Harper government in April 2008 to introduce new guidelines which would require both that the contents and processing be Canadian to qualify for the Product of Canada label. Debate and discussion around the issue of Made in Canada and Product of Canada however, have led consumer groups, local food activists, food retailers and processors to become engaged. A parliamentary committee has held hearings and the Canadian Food Inspection Agency has held public consultations. The government continues however, as does the food processing industry, to resist the idea that such labels should be mandatory. Given the investment of Canadian governments in an export-oriented corporate model of the food system and the international trade rules that support it this is not surprising. Governments in Canada for the past decade at the international level have argued that consumers do not have a right to know where their food comes beyond what a retailer or processor chooses to reveal. The demands of Canadian to know just that are will likely continue. As the National

Farmers Union argues:

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)

Achieving the right will involve struggle at the national level in Canada but it will also require transnational action.

Conclusion

This paper has argued that a transnational movement emerging around food, defined in terms of the concept of food sovereignty has been making some headway in challenging the prevailing discourse of the global food system and is resonating with a broad array of actors. A key element of developing alternative more localized food systems however will involve engaging not just food producers but eaters as well along with a set of rules and policies that support both local agriculture and the right to know the provenance of our food.

This paper has argued that beyond challenges to trade negotiations and further liberalization there is an ongoing struggle over food standards reflected in the two cases of GM food labeling and country of origin labeling. The emerging standards will impact the policy space available to states seeking to address the demands of their populations to know more about the food they eat. National standards which accept the right of eaters to know the provenance of their food, under existing rules could incur costly trade retaliation.

If alternative food systems are going to survive and challenge the dominant agri-business model they “will have to engage with, and draw support from, the multi-level governance system that regulates the agri-food system” (Morgan, 192) Mobilizing support for a system of local food and food sovereignty is more than merely a local or even a national matter. In addition it must involve a wide array of actors going beyond food producers in the south and small producers in the north to include the more numerous food eaters and their desire to have a right to know the provenance of their food.

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Notes

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“Establish Country of Origin Labelling: Obama supports immediate implementation of the Country of Origin Labelling 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).