

# **Global Food Governance, Trade Rules and the Right to Know the Provenance of Food.**

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## Introduction

As movements have developed at the local and global level around concerns with the nature and quality of food the demands to know more about the provenance of food have increased. The concept of provenance encompasses much more than just geographic origins and includes social and cultural aspects as well as ethical issues around food production. As Morgan, Marsden and Murdoch indicate the concept of food provenance 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 et al, 3)

Issues of provenance, as they point out, are part of political struggles over food labeling policy and “whether consumers have the right, or even the need to know the spatial history of their food.” However, for most eaters who are far distant from the sites of food production access to knowledge about the provenance of most food is governed by national regulations on labeling and increasingly international rules and standards that judge whether these labeling regulations constitute barriers to trade. Thus the global governance of food labeling involves a struggle over these standards and rules involving an array of actors in forums such as the Codex Alimentarius and World Trade Organization (WTO). This is due in part to the fact that restrictive standards and rules regarding what is the acceptable and thus permissible justification for mandatory labeling of food products are coming under increased pressure from growing demands of citizens to know more about the provenance of food as part of a desire to establish more democratic and local control over food systems. This paper examines these pressures on the global governance of food and the accompanying trade rules through two cases involving the struggle over food labeling in terms of its provenance, in these cases, more specifically, its origins. The paper begins with a brief overview of the global food system and the key actors involved in, and seeking to influence, governance at the national, regional and global level. It then focuses on the key global actors involved in setting and interpreting international standards and rules around food labeling, the World Trade Organization and the Codex Alimentarius. The paper then briefly describes an array of movements that have challenged these rules and made increased demands regarding the rights of eaters to know the provenance of their food. The fourth section of the paper looks at two case studies of struggles over the labeling of food in terms of country of origin, the first involving recent US law mandating country of origin labeling for meat which has now resulted in a dispute at the WTO with Canada and a second emerging struggle in the EU over food labeling which also includes an expansion of regulations over the labeling of meat and other products in terms of their origin. The concluding section of the paper outlines how these cases reflect broader challenges to

international standards and trade rules which have sought to limit policy space for food regulations that would privilege the eaters' right to know the provenance of their food.

### **The Global Food Regime**

The global food regime according to McMichael, can be characterized as a

corporate food regime', organized around a politically constructed division of agricultural labour between Northern staple grains traded for Southern high-value products (meats, fruits and vegetables). The free trade rhetoric associated with the global rule (through states) of the World Trade Organisation suggests that this ordering represents the blossoming of a free trade regime, and yet the implicit rules (regarding agro-exporting) preserve farm subsidies for the Northern powers alone, while Southern states have been forced to reduce agricultural protections and import staple, and export high-value, foods (McMichael, 2009, 148)

In addition this global food regime features industrial style food production that is export-intensive, monoculture with globally organized systems of production, where distribution and processing tend to be dominated by large corporate entities ever increasing in size and market dominance. The challenge to this regime which has emerged at the global level has increasingly organized around the concept of food sovereignty framing an alternative to the existing food regime and the global governance that supports and enforces it. Food sovereignty was initially defined in 1996 by the peasant movement Via Campesina (Demarais) and subsequently elaborated further through a number of international and meetings and networks to include:

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.... 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.

At the national and local level an array of organizations and movements have emerged which also challenged the corporate food regime and involve a wide array of actors from smaller farmers, to nutritionists and health activists, environmentalists, local food activists and consumer movements. Increasingly, as I argue in the conclusion, many of these movements are also using the language and framing of food sovereignty.

This paper argues that these movements are challenging the prevailing system of global food governance, in particular trade rules as manifested in the World Trade Organization (WTO) and seeks to reverse a trend since the Uruguay Trade Round which has been shrinking local and national food policy space and creating ever greater distance between food eaters and food producers. The paper uses two case studies of food labeling and international trade rules to illustrate however that such rules are a subject of political struggle over eaters' rights to know the provenance of their food

even within the countries of the North and thus should be seen as part of the broader struggle to achieve food sovereignty. Corporate agri-business, along with some governments, have claimed that consumers need not know the provenance of their food or at best such information should only be provided on a voluntary basis when it suits their marketing and product promotion aims. Food labeling thus is a “key site of the quality battleground in the contemporary food chain” (Morgan et al, 3) linked to the issue of food sovereignty.

### **Global Governance and Food**

First however we need to recognize and briefly discuss the array of actors involved in global food governance and their changing roles over time. The oldest of the current international organizations is the Food and Agricultural Organization (FAO), established in 1945 as a specialized agency of the UN with a limited mandate. As McKeon (2010) argues however the FAO was able, as a result of food crises in the 1970s and the process of World Food Summits, to develop a mandate around food security and development.

Achieving food security for all is at the heart of FAO's efforts - to make sure people have regular access to enough high-quality food to lead active, healthy lives.

FAO's mandate is to raise levels of nutrition, improve agricultural productivity, better the lives of rural populations and contribute to the growth of the world economy”

(<http://www.fao.org/about/mission-gov/en/> accessed March 10)

This food security focus is embodied in its Committee for World Food Security (CFS), the United Nations’ forum for reviewing and following up on policies concerning world food security and issues which affect the world food situation. The evolution of the FAO’s role in global governance and that of other international governmental organizations is tied however to the development of the global food regime which, by the 1980s, could be described as an increasingly globalized corporate one (Holt-Giménez and Shattuck) where other institutions and actors play prominent roles. These include international financial institutions (IFIs) such as the World Bank and the IMF, which in the context of debt relief and aid to developing countries, were able to impose a series of structural adjustment policies to lower tariffs and reduce the role of states in the south in agriculture and food production leading to less domestically oriented food production in favour of more export-oriented monoculture. Such policies accorded with the preferences of the largest state food exporters desiring market access to the south (eg the US and the EU) and large agrifood corporations wanting to organize their production on a global scale. Such goals demanded a revision of the trade rules reflected in an expanded role for the WTO.

The expansion is reflected in the outcome of the lengthy Uruguay Round of trade negotiations which brought agriculture into the purview of the WTO along with services, investment and intellectual property, all of which have profound implications for the governance of food. Most often noted is the GATT Agreement on Agriculture (AonA) finalized in 1994 which had three “pillars” of commitments: increased market access, elimination of export subsidies and ending domestic subsidies that were trade distorting. Commitments were to be phased in over ten years for developing countries. The agreement also included an agreement to further negotiations. The 2001 Doha ministerial incorporated these into the broader negotiations across a range of areas (the single undertaking) which remain ongoing after several crises, most of which revolved around agriculture negotiations. In essence the developing countries have become more wary as their initial experience, as outlined above by McMichael, was one of

opening markets in the context of little movement of the large Northern countries on their subsidies which led to dumping and low cost imports destroying local producers and creating high levels of dependence on food imports. While it is beyond the scope of this paper to discuss the WTO agriculture negotiations recent impasses in the process have revolved around issues of the trade-off between offering increased market access for non-agricultural products (NAMA) a US/EU demand, and more movement on reduction in their subsidies, a demand of a number of developing countries led by India and Brazil. In addition other countries are seeking to maintain special safeguard mechanisms that protect domestic producers against surges of imports (SSM).

The process of agriculture negotiations and the devastation that liberalization has imposed on many peasants in the global south was a key factor in the development of social movements like VC and their demand for food sovereignty. However the Uruguay agreement also included commitments requiring states to strengthen protection of intellectual property, which has implications for access to seeds. It also strengthened the newly created World Trade Organization's dispute settlement process and agreements on non tariff barriers to trade.

These changes all occurred within a context of the extraordinary growth in the market power of agrifood corporations such as ADM, Cargill and Bunge which, as of 2003 controlled 80 per cent of the world's grain, and the dominance of corporations like Monsanto in seeds which these changes in trade rules, of course, helped facilitate. Within many national economies patterns of corporate concentration have led to a handful of giant firms, dominating both processing and retailing. For example, in the case of beef in the United States four firms control 83.5 % of the supply (Holt-Giménez and Shattuck, 111). Such globalized food production dominated by large corporate conglomerates, the rapidly increasing level of food imports and differing national food regulations made harmonizing standards an important part of the WTO and other trade agreements' trade liberalization project. This is reflected in WTO agreements on Sanitary and Phytosanitary (SPS) measures and Technical Barriers to Trade (TBT).

### **Global Food Governance and Harmonization: The Role of the WTO and the Codex**

The WTO has two key agreements and resulting committees dealing with food, the first the Committee on Sanitary and Phytosanitary (SPS) measures which deals with food safety and Technical Barriers to Trade (TBT) which deals with any state regulatory measures adopted to deal with consumer safety, health or environmental protection, including product labeling. In keeping with trade liberalization WTO members using such regulatory measures are obligated to not discriminate against foreign products, employ the least trade restrictive regulations possible and, in the case of food safety, base or justify them only on scientific grounds and, where available, relevant international standards. The standards of an existing body, the Codex Alimentarius, are referenced in the SPS agreement and thus serve as a benchmark and justification to the WTO for national measures to protect food safety. As a result the Codex Commission, along with the WTO, became a site of struggle around states' rights to regulate food, food eaters' rights to know the provenance of food, and the extent to which such regulations constitute unjustifiable barriers to trade. National rules which deviate (i.e.exceed) Codex standards in response to consumer or other domestic demands could become the subject of trade disputes and targets for WTO-authorized trade retaliation. On the other hand, as Buckingham 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 (Buckingham, 210)

Thus Codex standards can 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 Codex rule-making processes have become more politicized, reflected in its growing state membership (181) and the increased involvement of trade officials, along with non-state actors, both corporations and non-governmental organizations (NGOs) (Veggeland and Borgen) 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 and its committees and influencing 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) Committees carry out much of the work 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 geographic regions National chairs of Codex committees host the committee’s work, that is, fund the secretariat and the costs of annual committee meetings. Canada has chaired and hosted the food labeling committee’s work for many years. Decisions of the Codex committees and the Commission are made by consensus. The development of new food standards follows an 8 step process involving 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 member governments for comment and may 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.

Like other organizations in the UN system, the Codex process allows for input from non-states actors, especially food producers and processors, and is more transparent than the WTO. Given the trade significance of Codex standards this openness has provided a direct channel for corporations and others to try to influence international standards. By 2007 the number of International Non-Governmental Organizations (INGOs –the Codex term) represented at Codex meetings numbered 157. Observer’s numbers have increased even more rapidly than state membership and the Codex Committee on Food Labeling (CCFL) has followed a similar pattern. Moreover national delegations often include industry representatives and other organizations. 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 Kraft, Nestle and Mead Johnson.

Consumer and environmental NGOs, despite more limited resources, have also sought to influence regulations on food labeling. Consumers International, a federation of 220 member organizations in 115 countries, along with Friends of the Earth International and Greenpeace demanded labeling of foods produced with GMOs. These groups have used their capacity to access committee and commission meetings to report on, and try to influence the proceedings, either themselves, or as part of national delegations. Their reports on Codex activities are shared with other trans-national coalitions making the work of the Codex more known, along with the efforts of biotechnology companies, such as Monsanto, to shape its standards. In terms of how food standards are developed the scope of risk assessment within the Codex has been restricted to human health. Given its small secretariat and limited resources, the Codex relies heavily on “independent experts” for scientific advice on questions of health risks. Determining what is independent disinterested scientific knowledge is not always easy as Buse and Lee point out. The International Life Sciences Institute with links to the FAO and active in the Codex CCFL claims to be “a global network of scientists devoted to enhancing public health decision-making” ([www.isli.org](http://www.isli.org)) but was founded in

1978 by various food and beverage firms including Coca-Cola and had links to the tobacco industry (Sell, 2007). 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 disputes within the Codex committee on General Principles. Where scientific uncertainty exists or social factors intervene, such as consumer or environmental concerns, the resulting differing national regulations could form the basis of trade disputes, as in the case of GM foods or hormones in beef. 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 material interests of actors. An example of this is the long, on-going struggle in the Codex Committee on Food Labeling over mandatory labeling of foods “obtained through genetic modification” to use the Codex term. The following provides a very brief discussion of this ongoing issue which I have dealt with at length elsewhere (Smythe, 2009) to illustrate the array of interests involved in struggles over food labeling at both the national and global level and the way in which global standards can expand or limit national food policy space as they become implicated in the enforcement of trade rules.

### ***GM Food Labeling***

In the case of GM food products the negotiating positions of state actors reflect their interests in GM commodities such as soybeans, maize, canola and cotton and major producers include the United States, Canada, Argentina, Brazil and China. As early adopters of biotechnology the US and Canada became heavily invested in GM crops and food with close links between the biotechnology industry, government departments and regulatory agencies (Smythe, 2009). The Grocery Manufacturers of America estimate that over 70% of food on the shelves of US super markets contain GMOs. In contrast Europe was slower to adopt these crops and hesitant to approve them.

With Canadian and American support for this industry and its influence came limited national regulation based on the concept of “substantial equivalence” which assumed that 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 among critics have persisted about their safety, environmental impacts, especially crop contamination, accidental releases and the growing stranglehold that strong intellectual property rules and market concentration have afforded biotechnology corporations over access to seeds. (Kollman and Prakash and Smythe, 2009)

Numerous surveys in both countries show consumers want to know which foods contain GMOs and prefer mandatory labeling. Biotechnology and food industries’ influence, however, resulted in voluntary labeling, which in practice has meant no labeling of GM food products. In contrast the European Union due to public distrust of regulators as a result of food scares and strong consumer and food retailer opposition had not approved any new GM products until mandatory labeling and traceability rules were put in place. On July 2, 2003 the European Parliament approved two laws requiring the labeling of GM products. As a result food producers and retailers avoided using GM crops in food 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 all had strong incentives to advance their interests through the Codex Commission. Like the US and Canada the EU sought to advance its interests and 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 synthetic hormones to increase milk production via a Codex standard failed, the basis of another trade challenge against the EU disappeared. A central issue has been the scientific justification and the role of risk assessment and management.

In 1991 the Codex Commission recognized a need to address biotechnology and GM foods and the CCFL agreed that work on labeling 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 argued in favour of labeling that indicated how food was produced in order to permit consumers to make choices based on values other than 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 solicit more member comments. The guidelines would have limited labeling to 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 major producers of GM foods including the United States, Brazil, and Mexico, along with the major players in the biotechnology industries. Norway, supported by consumer organizations, advocated a broader approach that reflected the right of consumers to know and choose. These divisions would be replicated in subsequent meetings of the CCFL as 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 argued that labeling was unnecessary, given the equivalence of GM foods to conventional foods and should only be required when there were health and safety concerns (eg allergens) or if the foods differed substantively from traditional equivalents. The United States claimed that labeling based on the methods of production would imply that GM foods were unsafe and deter consumers. The United States was supported by a number of industry associations. In the absence of consensus 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 included three labeling options. By 2003, the committee acknowledged no consensus and another working group was established whose report was reviewed in the 2004 meeting.

The US and Canada opposed any labeling based on the "method of production" arguing that such a policy would constitute an unfair trade practice and 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. The European Union, which had just developed its own labeling and traceability



regulations and been subjected to a US and Canada trade challenge on its earlier moratorium on GM approvals, opposed the US position.

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 to be sympathetic to local food activists, to argue, over the opposition of 80 consumer, environmental and food activists groups (Consumers Union, 2010) that GM labeling is misleading and inappropriate (even for organic food) because of substantial equivalence and to demand that all Codex work on the issue should stop. But the majority of country delegates now favour allowing countries to opt for mandatory labeling if they choose and the work continues.

The debate over comprehensive labeling has centered on the consumers' "right to know" how food is produced in order to make choices based on values not limited to health and safety. Both Canada and the United States argued that labeling based on process or production methods violates trade rules even though the Codex was developing standards on organic labeling. Moreover, they claimed the consumers' right to know was not a legitimate basis on which to require labeling.

### ***Trade Disputes and the SPS and TBT WTO committees***

In the WTO dispute about the EU moratorium on approvals of GM products of Oct 1998 the US and Canada claimed that the moratorium had restricted imports of their food products and violated WTO obligations including 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,6)

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 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 that states may go beyond those minimal international standards, but only if there is a “scientific justification. “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 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 justification that is not rooted in scientifically-based risk assessment.

The other relevant committee is the Technical Barriers to Trade which also covers labeling.

*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.(WTO, TBT)

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 calls for regulations to be based, where they exist, on international standards, be the least trade restrictive alternative, be notified to affected states in a timely and transparent way and follow MFN and non-discrimination provisions of the WTO. For measures where there are no 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 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 is pressure on states to label for reasons going 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 (EU, 2003)

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 against EU regulations uncertainty about its likely success based on the TBT obligations and the need for European cooperation to rescue the sinking Doha negotiations led to US restraint (Schramm, 96).

### *Country of Origin Labeling*

The provenance of food has been recognized historically and in many societies celebrated. Many foods especially in Europe were and are intimately connected and identified by place often a region, a locale, a *terroir*. Place is often closely identified with distinctive products and their desirable qualities. Labeling the origin may be seen by food retailers, or even governments, as a marketing tool. As a marketing tool, however, control over what is on the label, if voluntary, rests with corporate entities processing or distributing food. 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. Having the right to know where food comes from is obviously important for those eaters who wish to privilege the local, however it may be defined, in their food purchases.

Both the WTO and the Codex have rules on 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. But labeling requirements are subject to WTO principles including nondiscrimination which requires that like products, be they domestic or foreign, be treated equally. As outlined above the SPS and TBT agreements cover matters of labeling and accept only certain justifications for 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 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)

Beyond the need to ensure that consumers are not misled the Codex currently has little 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 of Bovine Spongiform Encephalopathy (BSE or mad cow disease) BSE and its creation of a separate food standards agency the UK in 2000 proposed that the Committee consider revising the Guideline given that 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 setting out issues and identifying 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 Secretariat. In 2002 this paper was discussed at the Halifax meeting where the extent of disagreement 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. 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 Report, 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) The basis of labeling was not to address food safety, but rather to "provide consumers with the information needed to make a choice of products". The UK position 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. 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 Foods (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) the International Frozen Food Association (IFFA) and the European association representing the food and drink industry. Favouring continuing work 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 satisfaction with the existing guidelines but 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 labeled as US meat. The CCFL reported their division to the Codex Commission which

encouraged a further attempt in 2004 to find a consensus which failed and a decision was made to cease work on the issue. As a result the existing Codex standard remains a limited one where country of origin labeling requirements are only justified if omitting them would mislead the consumer. Despite US delegates' opposition to COOL the US was in fact in the midst of a struggle over labeling which broadened over time as food movements emerged.

### *The battle in the US over COOL*

US regulations on the origin of goods go back to the Tariff Act of 1930, but the current issue dates from the Consumer Right to Know Act of 2001 introduced by Senator Tim Johnson, a South Dakota Democrat requiring beef, lamb, pork, fresh fruit and vegetables be labeled at final point of sale according to their country of origin. Similar bills were introduced by North Dakota and California Democrats in the House of Representatives. Bills passed both the House and Senate as part of the farm bill and the final compromise version contained a list of commodities including meat.

The labeling provisions were opposed by food processors, retailers, meat packers and large agri-business along with the Bush Administration and the US Department of Agriculture (USDA). A two year phase in from voluntary to mandatory labeling provisions allowed powerful forces of opposition to mobilize. The struggle in the United States over COOL has parallels to that involving GM food. In both cases opponents of mandatory labeling had the advantage of close links to the US Administration through the revolving doors of corporations and senior administrators and deep pockets for lobbying and campaign contributions. Corporate agri-business opponents, as Public Citizen noted in 2005, were 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). Similar to the GM case USDA and food industry cost estimates for implementing COOL were very high and ultimately challenged by the General Accounting Office (GAO) in a 2003 study. On the pro COOL side were groups of smaller-scale livestock producers, small farmers, environmental and consumer organizations and public opinion reflected in surveys which consistently showed a desire for mandatory country of origin labels.

COOL opponents, however, organized sympathetic members of Congress to pass an appropriations bill for the USDA which delayed implementation two more years and then a further year, until 2007 allowing those outside the US to provide comments in opposition as well including the Canadian government, Canadian meat producers and the food industry.

The United States notified the WTO's TBT of the measures on June 26, 2007 just as the clock on delaying COOL ran out. It justified them in terms of their objective "Protection of consumers and human health (WTO, 2007) though the US later retreated on the health grounds (Johnecheck, 2010) and called for comment on the measures to be sent to the USDA's Agricultural Marketing Services before the final rule. When the notification of the final rule on COOL was issued in 2007 the Canadian government commented. Its views closely matched those of larger Canadian livestock producers and US COOL opponents claiming regulations would cost 3.9\$ billion US (the USDA figure) and provide no benefit to consumers. It also claimed that the US and Canadian governments had been working hard for 18 years toward trade integration to "make national origin irrelevant in business and consumer decisions"(Government of Canada, 6) The submission noted that the definition of processing in the Act did not conform with the Codex standard. The problem

from a Canadian meat industry perspective lay in the high level of integration of the industry and the extensive movement of live animals, carcasses and meat products across the border. Some Canadian producers feared 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 of US origin. In contrast consumer groups and smaller livestock producers in the US argued that the voluntary system of labeling was misleading US consumers who did not realize that USDA inspected meat originated in Canada or Mexico and had only been slaughtered in the US.

In June 2008 the Food Conservation and Energy Act was finally passed by Congress after a drawn out battle that included a presidential veto and override. At 673 pages the bill contained much political pork and many tradeoffs among interests, including those of agri-business, recipients of massive subsidies and, most interestingly, local and organic farming. Title XI included measures to implement COOL effective September 30, 2008. Again similar forces opposed the COOL provisions. Canada raised concerns to the USDA in Sept 2008 and indicated it would launch formal consultations with the US under the provisions of the WTO. Canada objected to the three labeling options, the definition of processing and discriminatory treatment under the WTO. Canada argued that COOL represented a reversal of economic integration, would be costly and confuse consumers. COOL opponents mounted a concerted lobbying effort to have the Act implemented in a way that allowed 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 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 US Agriculture Secretary Vilsack who “suggested” to the industry that they voluntarily go beyond the rules and indicate specifically to consumers what production steps occurred in which country, signaling a possible move in the absence of compliance to tighter mandatory rules. Thus a label should note that the animal was born in Canada, raised and slaughtered in the US (Vilsack). Canadian producers feared that if compliance costs increased and led to a need to segregate Canadian cattle and meat there would be a reluctance on the part of US meat processors to purchase Canadian livestock, or lead to discounted prices for Canadian producers in the US market. At that point Canada re-started the WTO process.

What had changed in the period from the US Administration’s opposition to COOL at the Codex in 2003 and the Farm Bill in 2008? 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 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, 2008,6)

Small scale producers were joined in the battle for COOL by over 100 other local food, environmental and consumer activist organizations. In fact the COOL case reflects a broader set of trends around food that pose challenges for the globalized corporate food system. These trends have

also emerged at national and regional levels. The following outlines the emergence of issues of food eaters rights to know their provenance of food within the European Union.

### **Labeling How and for Whom: The Case of Country of Origin Labeling and the European Union**

In the European Union Country of Origin Labeling (COOL) has also recently become an issue within a broader struggle over what and how food eaters should be informed about what they are eating. As in the US case, the struggle involves a wide array of actors and European institutions including the Commission, the Council and the Parliament. As in many other cases regarding food labeling issues and concerns range from promoting healthy eating, supporting local producers and small farmers, environmental sustainability to food safety and quality. The array of actors and interests is thus wide and includes producers (large and small), environmentalists, consumers groups, health and nutrition advocates and an array of corporate interests including large food processors, distributors and retailers. What follows is a brief and preliminary summary of the COOL issue as it has emerged in the past three years to be developed further through in depth interviews with the key players.

As the paper has indicated above the European Union has been very active on issues of food regulation and safety including regulation of labeling for over two decades, partly as a result of efforts to harmonize national regulations and a number of food scares, the most notorious of which was that BSE and beef. Strong consumer concerns about food safety and labeling has lead some member countries and the EU itself to take action on labeling, in the case of foods derived from GMOs, in opposition to the positions of Canada and the United States. In addition increased concerns in recent years with the rising levels of obesity and the attendant health implications have opened a debate around how to use food labeling to promote healthy diets. This was reflected in, among other actions, the development of a White Paper on Obesity by the Commission in May 2007 (European Commission). The conclusion of the paper was that there was a need for policy coherence at the regional level, both for businesses and consumers who are operating within an integrated region, and regulations that would ensure consumers were better informed about the nutritional content of the food they were eating. Voluntary action on the part of the corporate food sector was also seen as likely to be insufficient and therefore there was a need to move to mandatory labeling requirements. The focus of the Commission was primarily on what should be labeled in terms of the nutritional content of food and how it should be labeled, that is the size and clarity of labels with a view to finding the best method which would ensure consumers could easily and quickly access information which would facilitate healthy food choices. However the process of revising European labeling regulations which the White Paper initiated opened up a struggle over food labeling that went well beyond the Commission's original intention.

In June 2008 the Commission tabled proposals that would consolidate and revise existing labeling regulations with a view to making food labels clearer and more relevant to consumers. These proposals were considered in depth by the European Parliament's Committee on the Environment, Public Health and Food Safety (ENVI). What emerged was a struggle over food labeling involving the actors outlined above, Members of the European Parliament (MEPs) arrayed along ideological (Socialist, Green and Conservative) and national lines and fierce lobbying at the national and regional level of the Commission, the MEPs and the national representatives of the Council. Among those able to bring significant resources to the table, as in the United States case, were the main corporate associations of food processors such as the Confederation of Food and Drink Industries (CIAA) and individual corporations such as Unilever. In addition the European Consumers

Organization (BEUC) and national consumer organizations such as the UK's Which were also heavily involved as were a wide array of producer federations and health advocates such as the European Health Network. The result of this was a broadening of the scope of the proposed revisions to regulations which ultimately included COOL for certain products.

In November 2008 after much debate the parliamentary committee issued its first report drafted by German MEP Renate Sommer (a centre right Peoples Party member) which proposed some limited revisions of the Commission proposals. The draft however, after much conflict among committee members, was withdrawn and the committee began once again to consider the issues at the beginning of the next legislative term in 2009. A second draft of the committee's report emerged in November 2009. Among the key issues and debates about labeling it addressed were the questions of what should be labeled (in terms of content and nutrients—singling out fat, sugar and salt), how they should be labeled—simple traffic light warnings devised in the UK (red is bad) the consumer groups' preference, or for a guideline daily amount—the food processing industry preference. A second major issue was where the label should appear. The Commission had proposed front of package labeling which the industry also opposed. In the case of COOL the Commission had proposed no changes to existing regulations leaving most labeling, in terms of origin as voluntary, unless the omission of such labeling would mislead consumers as to the origin of the product, echoing the Codex standard. What emerged however in the second draft of the parliamentary committee's report and is of interest to us here is a proposal to extend the mandatory requirement for COOL labeling to go beyond existing regulations which only cover beef, honey, olive oil fresh fruit and vegetables. The committee proposed extending this to include “all fresh meat, prepared meals with meat or fish as the main ingredient and dairy products” (Rankin). The addition of COOL to other products and the other changes to the Commission's original proposal by Parliament meant an extended and more complex process of adoption of new regulations which will include negotiations with the Council. In December 2009 Council took note of the EU presidency's progress report on labeling regulations.

On March 16, 2010 the ENVI committee voted to adopt its draft report which was followed on June 16 by a first reading vote approval in the European Parliament. EU Agriculture ministers also weighed in on the issues in February 2011 and supported mandatory COOL for pork, lamb and poultry but called for the extension to dairy products, meat and milk used as ingredients in prepared food should only be adopted after a feasibility study to be conducted by the European Commission. A second reading report was adopted by the ENVI on April 19 of this year with a full vote of Parliament scheduled for July 5. In the meantime “trilogue” negotiations between representatives of Parliament, the Commission and the EU member states are set to begin on May 10.

This prolonged rule-making process allows for continued lobbying and other efforts to shape labeling regulations on the part of the actors described above. The positions of various actors are similar to those outlined in the US case. Thus the food processing industry opposed the extension of COOL labeling as being impractical especially for processed or prepared food where sourcing may vary over a short time period, costly, especially for small and medium sized enterprises, and of no real benefit to consumers. A number of their views were echoed by Sommer, the committee's rapporteur who fears that the COOL regulations will be the most controversial and most difficult to resolve in negotiations with the Council. In contrast Green members of the committee and the consumers associations and many smaller producers at the national level have generally welcomed the COOL provisions while bemoaning the success of the food processors in defeating stronger regulations on the placement and content of label requirements in terms of nutrition. What will ultimately emerge in terms of COOL labeling remains to be seen. Whether or not such regulations if



they were to be adopted, would become the subject of a trade challenge, as was the case in the US, may ultimately depend on the outcome of the US case.

### ***COOL and the WTO***

After consultations failed to resolve it, the US dispute with Canada and Mexico over COOL moved to the formal panel stage at the WTO in the spring of 2010. The first US submission to the panel is indicative of how the US intends to justify these measures. While the initial US notification to the WTO spoke of measures “to protect consumers and human health” the first formal submission to the WTO panel in August 2010 was much more limited and circumspect in its justification of the measures. The United States was careful to argue that these measures in fact comply with WTO obligations because they do not discriminate against foreign products (all these meats must be labeled) and are necessary in effect to avoid misleading consumers, part of the Codex Criteria and the TBT justification. The US submission includes survey data showing the level of confusion of US consumers about the origins of meat under voluntary systems. As the US submission notes in response to Canadian and Mexican demands that the US retain only voluntary labeling such limited regulation has resulted in an absence of clear labeling. According to the US submission “The primary problem with voluntary labeling is that many businesses will not voluntarily make the choice to label their products with origin information when given the option.” A comment which could well be used to describe voluntary US rules on labeling GM food.

### **Conclusion**

While the outcomes of the struggle over COOL in the EU and the WTO COOL case are not yet clear they are indicative of a growing demand by citizens to know the provenance of food. Those demands are reflected in the development of local and transnational movements challenging global agribusiness such as slow food, local food and groups concerned about food security and climate change. Such movements have increasingly converged around demands to know the provenance of food. The struggles over food labeling are one aspect of the way in which these demands have manifested themselves at the national and regional level. While trade rules and standards have sought to harmonize regulations, limit policy space and facilitate the corporate food regime they have in and of themselves stimulated a response and challenge manifested in the concept of food sovereignty which has proven to be one that increasingly resonates with other food activists in addition to peasant farmers and in the struggles within the Codex and at the national level over food regulation. The 2007 International Forum for Food Sovereignty identified six policy pillars which includes a focus on food for people which “puts people’s need for food at the centre of policies” rejecting the corporatization of food (Pollan, 2010).

While they have not agreed on every aspect of food and agricultural policy in the United States or Europe food movements which, as Pollen notes look like a “big, lumpy tent”, have challenged the corporate food regime and its attendant form of global governance with what is ultimately a movement to re localize the global food system under the broader frame of food sovereignty. The formation of a US Food Sovereignty Alliance is one manifestation of this trend (Aziz) as was the recent effort in Canada to develop the Peoples Food Policy which has opened a policy debate in Canada that challenges the export-oriented agribusiness model embraced by Canadian governments for some time. The Peoples Food Policy calls upon states to ensure “clear and accurate food labeling based on consumer’ and farmers’ rights to access information about food content and origins’ (Peoples Food Sovereignty, 2007)

The battles over GM and COOL labeling illustrate on the one hand the extent to which the WTO rules and Codex standards appear to privilege trade liberalization over our right to know more about the provenance of our food. At the same time they also suggest that be they environmental, consumer, or peasant movements groups can work together to challenge such rules at all levels. In the process space is created to open a debate about the existing system, who benefits, who makes the rules and their role in limiting the policy space for national regulation and denying the rights of citizens to know the provenance of the food they eat.

While labeling and ethical consuming are often seen as part of a reformist project of individual consumption which can reinforce the existing food system and is open to cooptation by corporations (Friedman and McNair) the potential is still there for authentic alternative food systems to develop out of a debate over trade rules, the right of states to regulate food and the engagement of food eaters in a dialogue with food producers. Such a process could help to strengthen the movement to challenge the current system of global food governance. As Rosset says food is indeed “different” and not just another traded commodity. Eating food is the most intimate act of consumption, necessary to our survival and well-being, and so tied up in culture and community. People care about what they eat, where it comes from and how it is produced and are demanding a right to know.

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